

2009 No. 345

COURT OF JUDICATURE, NORTHERN IRELAND

PROCEDURE

**The Rules of the Court of Judicature (Northern Ireland)
(Amendment No. 4) 2009**

Made - - - - 12th October 2009

Coming into operation in accordance with Rule 1

To be laid before Parliament

The Northern Ireland Court of Judicature Rules Committee^(a) makes the following Rules in exercise of the powers conferred by sections 55 and 55A of the Judicature (Northern Ireland) Act 1978^(b) and sections 8, 9(1) and 11(5) of the Presumption of Death Act (Northern Ireland) 2009^(c).

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Court of Judicature (Northern Ireland) (Amendment No. 4) 2009 and subject to paragraph (2), shall come into operation on the 9th November 2009.

(2) Rules 3(4) and 3(7)(a) shall come into operation on the 6th January 2010.

(3) In these Rules, “the principal Rules” means the Rules of the Court of Judicature (Northern Ireland) 1980^(d), and an Order or Form referred to by a number or an Appendix referred to by a letter means the Order or Form so numbered or the Appendix so lettered in the principal Rules.

Transitional provision

2. Order 18 of the principal Rules as it applied immediately before rule 3(4) and rule 3(7)(a) came into operation shall continue to apply where a statement of claim is served on the defendant before 6th January 2010.

Amendments to the principal Rules

3. The principal Rules shall be amended as follows—

(a) The Northern Ireland Supreme Court Rules Committee was renamed the Northern Ireland Court of Judicature Rules Committee in accordance with section 59(3) of the Constitutional Reform Act 2005 (c.4).
(b) 1978 c.23; to which the most recent relevant amendments were made by paragraphs 29 and 30 of Schedule 5 to the Constitutional Reform Act 2005 (c.4).
(c) 2009 c.6.
(d) S.R. 1980 No. 346; the Rules of the Court of Judicature (Northern Ireland) 1980 to which the most recent relevant amendments were made by S.R. 1986 No.203, S.R. 2000 No.393 and S.R. 2008 No.22 were renamed in accordance with paragraph 3 of Schedule 11 to the Constitutional Reform Act 2005 (c.4) .

(1) in the Arrangement of Orders, after the entry relating to Order 93, insert the following new entry—

“**93A.** Presumption of Death Act (Northern Ireland) 2009”;

(2) in Order 1—

(a) after rule 10(i), insert—

“(j) proceedings under the Presumption of Death Act (Northern Ireland) 2009.”;

(b) after rule 11(1), insert—

“(m) appeals under rule 15 or 17B of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005(a).”;

(3) in Order 7—

(a) in rule 2(1), for “or 9”, substitute “, 9 or 9A”;

(b) in rule 2(2), after “Order 90”, insert “, Order 93A”;

(4) in Order 18—

(a) in rule 2, in paragraphs (1) and (2) for “21 days” substitute “6 weeks”;

(b) after rule 15 insert—

“Defence

15A.—(1) In his defence the defendant must state—

(a) which of the allegations in the particulars of the statement of claim he denies;

(b) which of the allegations he is unable to admit or deny but which he requires the plaintiff to prove;

(c) which of the allegations he admits.

(2) Where the defendant denies liability the defence shall be so pleaded that it raises the defendant’s case with sufficient clarity that the opposite party is made aware of the true nature of the defendant’s case and, where appropriate, the defence shall put forward the defendant’s version of relevant facts or events if that version is materially different from the plaintiff’s version as pleaded in the statement of claim.

(3) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.”;

(5) in Order 23, rule 1—

(a) at the end of paragraph (d), insert “or”; and

(b) after paragraph (d), insert—

“(e) that the plaintiff is a company or other body (whether incorporated inside or outside Northern Ireland) and there is reason to believe that it will be unable to pay the defendant’s costs if ordered to do so.”;

(6) after Order 93, insert new Order 93A as set out in Schedule 1 to these Rules;

(7) in Appendix A—

(a) in Forms Nos. 2 and 5, for “21 days” substitute “6 weeks”;

(b) after Form No. 9, insert new Form No. 9A as set out in Schedule 2 to these Rules;

(c) after Form No. 75, insert new Forms Nos. 76, 77, 78, 79, 80, 81 and 82 as set out in Schedule 2 to these Rules.

(a) S.R. 2005 No. 112; as amended by S.R. 2009 No. 267.

*Declan Morgan
John Gillen
Paul Girvan
Bernard McCloskey
Patrick Coghlin
Paul Maguire
Tony Caher*

Dated 8th October 2009

Signed by the authority of the Lord Chancellor.

In exercise of the powers conferred by section 55A (3) of the Judicature (Northern Ireland) Act 1978, I allow these Rules.

Bridget Prentice
Parliamentary Under-Secretary of State
Ministry of Justice

Dated 12th October 2009

“ORDER 93A

PRESUMPTION OF DEATH ACT (NORTHERN IRELAND) 2009

Interpretation**1. In this Order—**

“the 2009 Act” means the Presumption of Death Act (Northern Ireland) 2009 and a section referred to by a number means the section so numbered in the 2009 Act, and expressions used have the same meaning in this Order as in the 2009 Act;

an “application for a declaration of presumed death” means an application for a declaration under section 1;

a “declaration of presumed death” means a declaration under section 1.

Application for a declaration of presumed death

2.—(1) An application for a declaration of presumed death shall be made by originating summons in Form No. 9A, and any further application under this Order, other than an application under rule 7(2), shall be made by summons in Form No. 28, unless the Court otherwise directs.

(2) The applicant, and any other person as the Court may direct, shall be a party to an application for a declaration of presumed death.

(3) An application for a declaration of presumed death shall be supported by an affidavit which shall contain details of the following, where known—

- (a) the name and address of the applicant;
- (b) the relationship of the applicant to the missing person;
- (c) the name of the missing person to whom the application relates, and any other names by which the missing person is known;
- (d) the address or the last known residence of the missing person;
- (e) the date of birth of the missing person;
- (f) the national insurance number of the missing person;
- (g) the date on which the missing person is—
 - (i) thought to have died; or
 - (ii) last known to have been alive;
- (h) a statement as to which of sections 1(2)(a), (b) or (c) is relied upon to give the Court jurisdiction to entertain the proceedings;
- (i) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the name and address of the spouse or, as the case may be, the civil partner of the missing person;
- (j) where the application is made by a person other than the spouse, civil partner, or a close relative of the missing person, details of the applicant’s interest in the determination of the application;

- (k) an estimate of the total value of the assets of the missing person;
- (l) details of any property owned by the missing person; and
- (m) details of the interest of any person in the property of the missing person sought to be determined by the Court.

Service of notice of application for a declaration of presumed death on Attorney General

3. The applicant shall give notice to the Attorney General of an application for a declaration of presumed death by serving on the Crown Solicitor on behalf of the Attorney General a copy of the application and of the supporting affidavit at least 30 days before the application is issued.

Notice of application

4.—(1) The applicant shall give notice of an application for a declaration of presumed death by serving a copy of the application and of the supporting affidavit, unless the Court otherwise directs, on—

- (a) the Registrar General;
- (b) where the missing person is married, or is party to a civil partnership and the applicant is neither the spouse nor the civil partner of the missing person, the spouse or, as the case may be, the civil partner of the missing person;
- (c) any other person, including any insurance company, who, so far as is known to the applicant, has any interest in the application; and
- (d) any other person, as the Court may direct.

(2) Notice under paragraph (1)(a)-(c) shall be served by the applicant upon issue of the application, or as soon thereafter as is reasonably practicable.

(3) Notice under paragraph (1)(d) shall be served by the applicant not more than 7 days after such direction is given.

(4) The applicant shall cause notice of an application for a declaration of presumed death to be published, in Form No. 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person, unless the Court otherwise directs.

(5) A copy of the page of the newspaper bearing the advertisement of the notice of the application required by paragraph (4), and the date on which it was published, shall be lodged with the Court at least 2 clear days before the hearing of the application.

Declaration of presumed death

5. A declaration of presumed death shall be in Form No. 77, and shall include such finding as is required under section 2(1) and such further direction, determination or order as the Court may make under sections 4, 7(1) or 12.

Application for variation or revocation of a declaration of presumed death

6.—(1) An application for a variation order under section 5(1) shall be supported by an affidavit setting out the grounds for the application, and shall include—

- (a) the name and address of the person applying for the variation order;
- (b) the relationship of the person applying for the variation order to the missing person;
- (c) details of the interest of the person applying for the variation order in the determination of the application;

- (d) any relevant change of circumstances which has occurred since the making of the declaration; and
 - (e) details of any rights to or in any property acquired as a result of the declaration.
- (2) The following shall be parties to an application for a variation order—
- (a) the applicant for the variation order;
 - (b) the person who applied for the declaration of presumed death to which the application to vary or revoke applies (if other than the applicant for the variation order); and
 - (c) any other person, as the Court may direct.
- (3) The applicant shall give notice of an application for a variation order by serving a copy of the application together with a copy of the supporting affidavit, unless the Court otherwise directs, on—
- (a) the Attorney General;
 - (b) the person who applied for the declaration of presumed death to which the application to vary or revoke applies (if other than the applicant);
 - (c) every person upon whom notice was served under rule 4(1); and
 - (d) any other person, as the Court may direct.
- (4) (a) Notice under paragraph (3)(a) and (b) shall be served at the same time as the application issues, or as soon thereafter as is reasonably practicable.
- (b) Notice under paragraph (3)(c) shall be served by the person applying for the variation order not more than 7 days after such direction is given.
- (5) The applicant shall cause notice of an application for a variation order to be published, in Form No. 76, at least 21 days before the hearing, in at least one edition of one newspaper circulating in the vicinity of the last known residence of the missing person, unless the Court otherwise directs.
- (6) A copy of the page of the newspaper bearing the advertisement of the notice of application required by paragraph (5), and the date on which it was published, shall be lodged with the Court at least 2 clear days before the hearing of the application.
- (7) The proper officer shall give notice, in Form No. 78, of the making of a variation order to any person who applied for the declaration under section 1 to which the application to vary or revoke relates, and to the Registrar General, as soon as is reasonably practicable after the making of the order.
- (8) Any variation or revocation of a declaration of presumed death shall be in Form No.79 and shall include such further determination or order as may be made by the Court under sections 5(4), 6(2) or 12.

Interveners

7.—(1) Where a person who is the spouse, civil partner or a close relative of the missing person intervenes under section 10(1), he or she shall file and serve on all parties to the proceedings an affidavit specifying his or her relationship to the missing person, reasons for intervening and particulars of any determination or order sought under section 10(3)(b) or (c).

(2) An application under section 10(2) for leave to intervene shall be made ex parte by affidavit specifying the applicant's relationship to the missing person, the reasons for intervening, and particulars of any determination or order sought under section 10(3)(b) or (c).

(3) Where leave is granted under paragraph (2), the intervener shall, as soon as is practicable, serve a copy of the affidavit, together with a copy of the order granting leave to intervene, on all parties to the proceedings to which the application relates.

(4) A person who intervenes under section 10 shall not be a party to the proceedings, unless the Court otherwise directs.

Disclosure

8.—(1) An application under section 11(1) for disclosure of information by a person who is not a party to the proceedings shall be supported by an affidavit which shall—

- (a) specify or describe the information in respect of which the order is sought;
- (b) set out the reasons why the person making the application believes the person against whom the order is sought is likely to have such information; and
- (c) include any further details of the missing person, where any are known, which are likely to assist in providing the information sought.

(2) Any party making an application under section 11(1) shall serve a copy of the application, together with a copy of the supporting affidavit, on the person against whom the order is sought, and on every other party to the proceedings, at least 14 days before the date fixed for the hearing of the application.

(3) The proper officer shall serve notice under section 11(3) of the Court's intention to make an order for disclosure of information, in Form No. 80, on any person who is likely to be affected by the order, as directed by the Court, at least 14 days before the hearing at which the order is intended to be made.

(4) An order for disclosure shall be in such terms as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any information specified or described in the order is, or at any time has been, in his or her possession, custody or power and, if no longer in his or her possession, custody or power, when he or she parted with it and what has become of it.

(5) The proper officer shall serve a copy of an order for disclosure, in Form No. 81, on every person upon whom notice of the Court's intention was served under paragraph (3) within 7 days of the order being made, or as soon as is reasonably practicable thereafter.

(6) An application under section 11(4) to discharge or vary an order made under section 11(1) shall be supported by an affidavit which shall specify the reasons relied on.

(7) Any person making an application under section 11(4) shall serve a copy of the application, together with a copy of the supporting affidavit, at the same time as the application issues or as soon thereafter as is reasonably practicable, on every other person upon whom notice of the Court's intention was served under paragraph (3), and on every party to the proceedings.

(8) The proper officer shall serve a copy of an order for the variation or discharge of an order made under section 11(1), in Form No. 82, on every person upon whom notice of the Court's intention was served under paragraph (3) within 7 days of the order being made, or as soon as is reasonably practicable thereafter.

Affidavits

9. Any affidavit in support of an application under these Rules shall exhibit any documentary evidence relied on.

Originating summons procedure

10.—(1) Order 28 does not apply in relation to originating summonses issued under this Order, with the exception of—

- (a) rule 5; and
- (b) rule 10(1), which applies subject to the appropriate modification.

(2) Order 32, rule 7, shall apply in relation to an originating summons issued under this Order as it applies in relation to other summonses.”

SCHEDULE 2

Rules 3(7)(b) and (c)

“No. 9A

Originating summons for an application under section 1 of the Presumption of Death Act (Northern Ireland) 2009

(O.93A, r.2(1))

In the High Court of Justice in Northern Ireland 20 , No.

Chancery Division

In the matter of an application for the presumed death of []

Let all persons concerned attend before the Judge [*or* Master] in chambers, at the Royal Courts of Justice, Chichester Street, Belfast, on day, the day of 20 , at a.m./p.m. on the hearing of an application by [] for a declaration that [] is presumed to be dead.

Dated the day of 20 .

The summons was taken out by , solicitor for the said applicant whose address is

[or when the applicant acts in person] This summons was taken out by the said applicant who resides at

and *(if the applicant does not reside within the jurisdiction)* whose address for service is

No. 76

Form of advertisement on an application for a [declaration][variation of a declaration] of presumed death under [section 1(1)][section 5(1)] of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 4(4))

In the High Court of Justice in Northern Ireland, Chancery Division

In the matter of an application for the presumed death of *(insert name)*

An application will be heard on day, the day of 20 , at a.m./p.m. in the High Court of Justice in Northern Ireland, for a [declaration][variation of a declaration] that *(insert name)*, whose last known address was *(insert address)*, is presumed to be dead. Any person having an interest may apply to the Court to be joined in the matter.

If you wish to apply to the Court, you must do so by *(insert date on which period of notice expires)* at the Chancery Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3LA.

(Signed)

Solicitor for the Applicant

(Address)

No. 77

**Declaration of presumed death under section 2 of the Presumption of Death Act
(Northern Ireland) 2009**

(O. 93A, r. 5)

In the High Court of Justice in Northern Ireland

Chancery Division

Upon the application of *(the applicant)*

And upon hearing the applicant and *(any other person)*

It is hereby declared that it has been proved to the Court's satisfaction that *(insert name of missing person)* is presumed to be dead, and that the said *(insert name)* [is found to have died on *(date)* at *(time)*] [is found to have died at the end of the day occurring 7 years after the date on which he/she was last known to be alive, namely on *(date of presumed death)*]*

And it is further [directed][determined][ordered]* (here insert details of such further direction/determination/order of the Court made in accordance with sections 4, 7(1) or 12 of the Presumption of Death Act (Northern Ireland) 2009)

Dated the day of 20 .

To: The Registrar General

* delete as appropriate

No. 80

Notice of Intention to make an Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r. 8(3))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of (*insert name*)

Take notice that the Judge [*or Master*] [*in Chambers*] at the Royal Courts of Justice, Chichester Street, Belfast on day, the day of 20 , at am/pm [on the hearing of an application on the part of (*insert name*)] intends to make an order requiring you to disclose information under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009.

The information required is (here specify the information required)

Dated the day of 20 .

To:

Notice to person in possession of information who is not a party to the proceedings

If you have no objection to the Court making an order for disclosure of the information specified above you need not attend Court in answer to this Notice.

No. 81

Order for Disclosure of Information under section 11 of the Presumption of Death Act (Northern Ireland) 2009

(O. 93A, r 8(5))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of *(insert name)*

Take notice that the Judge [*or Master*] [*in Chambers*] at the Royal Courts of Justice, Chichester Street, Belfast on *(insert date)*, made an order for disclosure of the following information under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009: *(here insert terms of the order)*

Dated the day of 20 .

To:

No. 82

**Order for Discharge/Variation of Disclosure Order under section 11 of the
Presumption of Death Act (Northern Ireland) 2009**

(O. 93A, r. 8(8))

In the High Court of Justice in Northern Ireland

Chancery Division

In the matter of an application for a declaration of the presumed death of (*insert name*)

Take notice that the order for disclosure of information made in this matter on (*insert date*), under section 11(1) of the Presumption of Death Act (Northern Ireland) 2009 is hereby varied as follows: [*or discharged*].

(*insert terms of order as varied*)

Dated the day of 20 .

To: ”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980 No. 346) as follows:

- Rule 3(2)(b) amends Order 1, Part 2A (Distribution amongst Divisions of the High Court) to assign appeals from the Taxing Master, under rules 15 and 17B of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005, to the Queen’s Bench Division;
- Rule 3(4) amends Order 18 (Pleadings) to extend the period for serving a defence on the plaintiff and to specify matters which must be included in any defence;
- Rule 3(5) amends Order 23 (Security for Costs) to provide that the High Court may order a plaintiff to give security for the defendant’s costs where the plaintiff is a company or other body and there is reason to believe that it will be unable to pay the defendant’s costs if ordered to do so;
- Rule 3(6) inserts a new Order 93A, which prescribes the practice and procedure to be used in proceedings under the Presumption of Death Act (Northern Ireland) 2009.

© Crown Copyright 2009

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly.