1989 No. 306

COUNTY COURTS

County Court (Amendment No. 2) Rules (Northern Ireland) 1989

Made . . . . . *26th July 1989*

Coming into operation . . *1st September 1989*

We, the County Court Rules Committee, appointed by the Lord Chancellor under Article 46 of the County Courts (Northern Ireland) Order 1980(**a**), in exercise of the powers conferred on us by Article 47 of that Order and all other powers enabling us in that behalf, hereby make the following rules:—

Citation

1. These rules may be cited as the County Court (Amendment No. 2) Rules (Northern Ireland) 1989.

Interpretation

2. In these rules a reference to an Order or an Appendix by number is a reference to that Order or Appendix as numbered in the County Court Rules (Northern Ireland) 1981(**b**).

Amendment of the County Court Rules (Northern Ireland) 1981

3.—(1) Order 1 shall be amended by revoking rule 10.

(2) Order 49 shall be amended by revoking rule 7 and by deleting the words "OR 2" from the title of Part VI.

(3) Order 51 shall be amended by the addition, after Rule 11, of the new rules set out in Schedule 1.

(4) Appendix 1 shall be amended as follows:—

(*a*) by removing Forms 246 to 248;

(*b*) by inserting the new Forms 308 to 313 set out in Schedule 3.

Applications for Declarations under the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

4. The new rules set out in Schedule 2 shall be inserted as Order 53.

(**a**) S.I. 1980/397 (N.I. 3)
(**b**) S.R. 1981 No. 225

Saving for previous application of pre-existing rules

5. Nothing in these Rules shall affect any proceedings under section 2 of the Legitimacy Act (Northern Ireland) 1928(**a**) commenced before the coming into operation of these Rules.

We, the undersigned members of the County Court Rules Committee, having by virtue of the powers vested in us in this behalf made the foregoing rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

John K. Pringle
J. F. B. Russell
S. D. Massey
K. G. Nixon
John J. Curran
Raymond Keer
Peter J. Cush
Brian F. Walker

Dated 27th June 1989

After consultation with the Lord Chief Justice, I allow these rules which shall come into operation on 1st September 1989.

Dated 26th July 1989 *Mackay of Clashfern*, C.

(a) 1928 c. 5 (N.I.)

SCHEDULE 1 Rule 3(3)

Rules to be inserted in Order 51

PART III

REGISTRATION OF MAINTENANCE ORDERS UNDER PART II OF THE MAINTENANCE AND AFFILIATION ORDERS ACT (NORTHERN IRELAND) 1966

Interpretation

12. In this Part—

"the Act" means the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(**a**);

"maintenance order" has the meaning assigned to it by section 10(2) of the Act.

Application for registration

13.—(1) An application under section 11 of the Act for the registration in a court of summary jurisdiction of a maintenance order made by a county court may be made—

(*a*) on the making of the maintenance order or an order varying the maintenance order; or

(*b*) at any other time by lodging with the chief clerk a certified copy of the maintenance order and an affidavit by the applicant, together with a copy thereof, stating—

(i) the address and occupation of the person liable to make payments under the maintenance order;

(ii) the reason why registration of the maintenance order in a court of summary jurisdiction is desired;

(iii) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment falls due;

(iv) the date of birth of each child (if any) named in the maintenance order;

(v) that the maintenance order is not already registered under the Act; and

(vi) whether any proceedings are pending for the enforcement of the maintenance order.

(2) The chief clerk on receipt of the certified copy of a maintenance order and accompanying affidavit shall refer the application to the judge in chambers.

(3) Where the application is granted on the making of the maintenance order or an order varying the maintenance order the applicant shall lodge a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in paragraph (1)(*b*)(i), (iii) and (iv).

(4) The period required to be prescribed for the purpose of section 11(2) of the Act shall be 14 days.

(5) The chief clerk shall send the certified copy of the maintenance order, as required by the said section 11(2), to the clerk of petty sessions acting for the petty sessions district in which the defendant appears to be, indorsed with a note that the application for registration of the maintenance order has been granted and to be

(**a**) 1966 c. 35 as amended by Article 42(1) of, and Schedule 2 to, the Matrimonial and Family Proceedings (Northern Ireland) Order 1989, S.I. 1989/677 (N.I. 4)

accompanied by a copy of the affidavit or statement lodged under paragraph (1) or (3), as the case may be.

(6) On receipt of notice that a maintenance order made by a county court has been registered in a court of summary jurisdiction in accordance with section 11(5) of the Act the chief clerk shall enter particulars of the registration in the court minutes.

Variation or discharge of registered order

14.—(1) Where a county court makes an order varying or discharging a maintenance order registered in a court of summary jurisdiction under Part II of the Act, the chief clerk shall send a certified copy of the first-mentioned order to the clerk of petty sessions concerned.

(2) Where a certified copy of an order varying a maintenance order made by a county court and registered in a court of summary jurisdiction under Part II of the Act is received from the clerk of petty sessions, the chief clerk shall file the copy and enter particulars of the variation in the court minutes.

Cancellation of registration

15. On receipt of notice from a clerk of petty sessions that the registration in a court of summary jurisdiction under Part II of the Act of a maintenace order made by a county court has been cancelled, the chief clerk shall enter particulars of the cancellation in the court minutes.

SCHEDULE 2 Rule 4

Rules to be inserted as Order 53

ORDER 53

Applications for Declarations under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

PART I

INTERPRETATION

Interpretation

1. In this Order "the Order" means the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

PART II

DECLARATIONS AS TO LEGITIMACY OR LEGITIMATION

Commencement of Proceedings

2.—(1) An application under Article 32 of the Order for a declaration as to legitimacy or legitimation shall be commenced by petition in Form 308.

(2) There shall be attached to the petition a copy of the petitioner's birth certificate.

3. The petitioner's father and mother, or the survivor of them, shall be respondents to the application.

PART III

DECLARATIONS AS TO ADOPTIONS EFFECTED OVERSEAS

Commencement of Proceedings

4.—(1) An application under Article 33 of the Order for a declaration as to an adoption effected overseas shall be commenced by petition in Form 309.

(2) There shall be attached to the petition a copy of the petitioner's birth certificate (if it is available, this should be the certificate made after the adoption referred to in the petition) and a certified copy of the adoption order effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man.

(3) Where a document produced by virtue of paragraph (2) is not in English it shall be accompanied by a translation certified by a notary public or authenticated by affidavit.

5. The following persons shall, if alive, be respondents to the application—

(*a*) those whom the petitioner claims are his adoptive parents for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987(**a**);

(*b*) those whom the petitioner claims are not his adoptive parents for the purpose of that Article.

(**a**) S.I. 1987/2203 (N.I. 22)

PART IV

GENERAL PROVISIONS

Application

6. The provisions of this Part apply to all proceedings whether commenced under Part II or Part III.

Affidavit in support of petition

7.—(1) The petition shall be supported by an affidavit by the petitioner giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner.

Provided that if the petitioner is under the age of 18 the affidavit shall be made by his next friend.

Notice of the Petition to be given to the Attorney-General

8.—(1) A copy of the petition and every document accompanying it shall be given by the petitioner to the Crown Solicitor, on behalf of the Attorney-General, at least one month before the petition is filed and it shall not be necessary thereafter to serve these documents upon him.

(2) On the petition being filed in accordance with Rule 9, notice of filing shall be given by the petitioner to the Crown Solicitor on behalf of the Attorney-General, who shall notify the chief clerk in writing within fourteen days of such notice if he intends to intervene in the proceedings.

(3) The Attorney-General, in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for and may inspect a copy of any document filed or lodged in the court which relates to any other matrimonial proceedings referred to in the proceedings.

Filing of Petition

9. The petition and accompanying documents shall be submitted to the chief clerk together with copies for service and a copy for the use of the court, and he shall issue the petition by indorsing on it a notice in Form 310 and shall file the original and return the copies for service.

Service of Petition

10. Not less than twenty-eight days before the date fixed for hearing the petitioner shall serve every respondent other than the Attorney-General with a copy of the petition.

Objections

11. A respondent wishing to object to the making of the declaration sought shall, within the time limit specified in Form 310, serve notice of objection in Form 311 on the chief clerk and a copy on every other party to the proceedings, including the Crown Solicitor on behalf of the Attorney-General.

Reply by Attorney-General

12. Where the Attorney-General has given the chief clerk notice of intention to intervene in the proceedings he shall, at least ten days before the date fixed for hearing, file a summary of his argument in the court office and shall deliver a copy thereof to all other parties to the proceedings.

Form of Declaration

13.—(1) Declarations made in accordance with Article 32 of the Order shall be in Form 312.

(2) Declarations made in accordance with Article 33 of the Order shall be in Form 313.

SCHEDULE 3 Rule 3(4)(*b*)

Forms to be inserted in Appendix 1

FORM 308

Petition for Declaration as to legitimacy or legitimation

ORDER 53 RULE 2(1)

IN THE COUNTY COURT/RECORDER'S COURT for the Division of

IN THE MATTER OF Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

THE PETITION OF of showeth as follows:

1. Your petitioner's name as it appears in the certificate of his/her birth is

2. Your petitioner was born on the day of 19 , at in the county/city of .

3. The name of your petitioner's father is and his present residential address is .

4. The maiden name of your petitioner's mother is and her current name is and her present residential address is .

5. Your petitioner is domiciled and resident in Northern Ireland at [*or* your petitioner has been habitually resident in Northern Ireland through the past year having resided at the following address(es):

(a)

(duration:)

(b)

(duration:)

(c)

(duration:)].

6. Your petitioner prays for a declaration that (*here state terms of declaration sought*) on the grounds that .

7. A copy of your petitioner's birth certificate is attached.

Signed

Petitioner

Dated

FORM 309

Petition for Declaration as to adoption effected overseas

ORDER 53 RULE 4(1)

IN THE COUNTY COURT/RECORDER'S COURT for the Division of

IN THE MATTER OF Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

THE PETITION of of showeth as follows:

1. Your petitioner was born on the day of 19 , at in the country/city of .

2. The persons who are to be respondents to this petitioner are residing at

and residing at

(*here enter the names and addresses of the persons whom the petitioner claims are* [*or are not*] *his adoptive parents*).

3. Your petitioner refers to the adoption order a copy [and translation] of which is attached made at by on the day of 19 .

4. Your petitioner is domiciled and resident in Northern Ireland at [*or* your petitioner has been habitually resident in Northern Ireland throughout the past year having resided at the following address(es):

(a)

(duration:)

(b)

(duration:)

(c)

(duration:)].

5. Your petitioner prays for a declaration that (*here state terms of declaration sought*) on the gounds that .

6. A copy of your petitioner's birth certificate is attached.

Signed

Petitioner

Dated

FORM 310

Endorsement on petition for declaration under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

ORDER 53 RULE 9

[*Title as in Form 308*]

TAKE NOTICE that the sittings at which the Petition in this matter is intended to be dealt with will commence on the day of 19 , and will be held at . If you do not attend either in person or by your solicitor at the aforesaid court at the hour of on the day of 19 ,* such declaration will be made as the court thinks fit. If you wish to object to the making of a declaration in the terms sought you must within 10 days of the service hereof send a notice of objection in Form 311 addressed to the chief clerk at the aforesaid court.

Dated

Signed Chief Clerk

* Day for hearing as in court calendar

FORM 311

Notice of objection to making of Declaration under Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

ORDER 53 RULE 11

[*Title as in Form 308*]

WHEREAS I have been served with a copy of the petition of praying for a declaration that .

AND WHEREAS the Petition is to be dealt with at on the day of 19 at the hour of .

TAKE NOTICE that I intend to object to the making of the Declaration in the terms sought and wish to be heard in the proceedings. The grounds of my objection may be summarised as follows:

Dated

Signed
Respondent/
Solicitor for Respondent

FORM 312

Declaration as to legitimacy or legitimation under Article 32 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

ORDER 53 RULE 13(1)

BY THE COUNTY COURT JUDGE/RECORDER

IN THE MATTER OF Part V of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989.

UPON READING the petition of (*the petitioner*) and upon hearing the petitioner and upon hearing (*the respondent*).

IT IS DECLARED* that

and (*the petitioner's parents*) were lawfully married at on the day of 19 , and that the said the petitioner, born at on the day of 19 , is the lawful child of his parents the said and [*or, where the petitioner was born before such marriage*, and that by the said marriage the said , the petitioner, was [*or* was not] legitimated for the purposes of the Legitimacy Act (Northern Ireland) 1928 as from 4th day of June 1928, the date of the commencement of the said Act [*or* from the date of the said marriage]] [*or where Section 1 of the Legitimacy Act (Northern Ireland) 1961 applies* as from the date of commencement of the Legitimacy Act (Northern Ireland) 1961, 4th July 1961] [*or* as from the day of 19 , the date of the said marriage] (*whichever is the later date*)

Dated

* *or where Section 2 of the Legitimacy Act (Northern Ireland) 1961 applies, the following form shall be followed:—*

. . . that , the said petitioner, born on the day of 19 , at

the child of and who entered into a form of ceremony of marriage at on the day of 19 , is [*or* is not] by virtue of Section 2 of the Legitimacy Act (Northern Ireland) 1961 to be treated as a legitimate child of the said and

* *or where Section 8 of the Legitimacy Act (Northern Ireland) 1928 applies, the following form shall be followed:—*

. . . that, because the father of , the said petitioner, was [*or* was not] domiciled in Northern Ireland at the date of his marriage with , then, and that the requirements of (*country of domicile*) law as to the legitimation of a person, born out of wedlock, by the subsequent marriage of the parents of such a person had [*or* had not] been complied with, then by virtue of section 8 of the Legitimacy Act (Northern Ireland) 1928, the

said and (formerly) were [*or* were not] lawfully married at on the day of 19 , and that the said petitioner, born at on the day of 19 , is [*or* is not] the lawful child of his parents, the said and and that, by the said marriage, the said (*petitioner*) was [*or* was not] legitimated for the purposes of the Legitimacy Act (Northern Ireland) 1928 as from the date of the commencement of that Act, 4th June 1928 [*or* the date of the marriage] (*whichever is the later date*)

* *or where there has been a legitimation (whether or not by virtue of the subsequent marriage of the petitioner's parents) which is recognised by the law of Northern Ireland and effected under the law of any other country, the following form shall be followed:—*

. . . that because , the father of the said petitioner, was [*or* was not] domiciled in , at the date of his marriage with , then, and that the requirements of (*country of domicile*) law as to the legitimation of a person, both out of wedlock, by the subsequent marriage of the parents of such a person had [*or* had not] been compled with, then by virtue of the law of Northern Ireland, that the said and (formerly) were [*or* were not] lawfully married at on the day of 19 , and that the said , petitioner, born at on the day of 19 , is [*or* is not] the lawful child of his parents, the said and and that, by the said marriage, the said (*petitioner*) was [*or* was not] legitimated for the purpose of the law of Northern Ireland as from the date of the said marriage.

* *Delete as applicable*

FORM 313

Declaration as to adoption effected overseas under Article 33 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989

ORDER 53 RULE 13(2)

[*Title as in Form 312*]

UPON READING the petition of (*the petitioner*)
and upon hearing the petitioner
and upon hearing (*the respondent*)

IT IS DECLARED* that, the said
the petitioner was [*or* was not] adopted for the purposes of Section 4(3) of the Adoption (Hague Convention) Act (Northern Ireland) 1969 on the day of 19 , in
(*country where the adoption took place or did not take place*) by
(*the actual or alleged adoptive parent*), then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said , the petitioner, is [*or* is not] the adopted child of the said

(*the actual or alleged adoptive parent*)

Dated

* *or where the adoption is or is not recognised by the law of Northern Ireland and was not effected under the law of any country outside the United Kingdom, the Channel Islands and the Isle of Man, the following form shall be used:—*

. . . that, because the said ,
the petitioner, was [*or* was not] adopted for the purposes of being recognised under the law of Northern Ireland on the day of 19 , in
(*country where the adoption took place or did not take place*)
by (*the actual or alleged adoptive parent*), then for the purposes of Article 40 of the Adoption (Northern Ireland) Order 1987 the said , the petitioner, is [*or* is not] the adopted child of the said (*the actual or alleged adoptive parent*).

* *Delete as applicable*

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules amend the County Court Rules (Northern Ireland) 1981 in consequence of the coming into operation of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 so as to:

(*a*) revoke the provision in Order 49 relating to the transfer of a tenancy on divorce (such transfers will, in future, be regulated by Matrimonial Causes Rules) (rule 3(2));

(*b*) prescribe a procedure for the registration of a maintenance order made by a county court in a court of summary jurisdiction under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (rule 3(3) and Schedule 1);

(*c*) prescribe a procedure for the making of applications for declarations as to legitimacy or legitimation and declarations as to adoptions effected overseas (rule 4 and Schedules 2 and 3).