1981 No. 184

MATRIMONIAL CAUSES

SUPREME COURT
COUNTY COURTS

The Matrimonial Causes Rules (Northern Ireland) 1981

Made . . . . . *21st May 1981*

Coming into operation . . . *1st September 1981*

To be laid before Parliament

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We, the Matrimonial Causes Rules Committee, in exercise of the powers conferred upon us by Article 54 of the Matrimonial Causes (Northern Ireland) Order 1978(a), hereby, with the concurrence of the Lord Chancellor, make the following Rules:

Lowry
Maurice Gibson
John MacDermott
Robert Babington
J. F. B. Russell
Peter Smith
John A. H. Martin
J. O. Greer
C. Nelson M. Rountree
Thomas S. Townley

Dated 30th April 1981.

I concur:

Hailsham of St. Marylebone, C.

Dated 21st May 1981.

(a) S.I. 1978/1045 (N.I. 15)

Citation and commencement

1. These Rules may be cited as the Matrimonial Causes Rules (Northern Ireland) 1981 and shall come into operation on 1st September 1981.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Order" means the Matrimonial Causes (Northern Ireland) Order 1978;

"ancillary relief" means—

(*a*) an avoidance of disposition order,

(*b*) a financial provision order,

(*c*) an order for maintenance pending suit,

(*d*) a property adjustment order, or

(*e*) a variation order;

"avoidance of disposition order" means an order under Article 39(2)(*b*) or (*c*) of the Order;

"cause" means a matrimonial cause;

"certificate of readiness" means a certificate under rule 32;

"chief clerk" means the chief clerk for the county court division in which a cause is pending;

"county court office" means the office of the chief clerk for the county court division in which a cause is pending;

"court" means the judge or the registrar;

"defended cause" means a cause not being an undefended cause;

"Department" means the Department of Health and Social Services;

"divorce county court" means a county court so designated by the Lord Chancellor pursuant to Article 48(1) of the Order;

"financial provision order" means any of the orders mentioned in Article 23(1) of the Order except an order under Article 29(6) of that Order;

"financial relief" has the same meaning as in Article 39 of the Order;

"judge" means—

(*a*) in relation to proceedings in the High Court, a judge of the High Court; and

(*b*) in relation to proceedings in a divorce county court, a county court judge;

"master" means the Master (Probate and Matrimonial) or Registrar (Probate and Matrimonial) when exercising supervision over the business of the Probate and Matrimonial Office;

"Matrimonial Office" means the Probate and Matrimonial Office of the Supreme Court of Judicature of Northern Ireland;

"matrimonial proceedings" means any proceedings with respect to which rules may be made under Article 54 of the Order;

"notice of intention to defend" has the meaning assigned to it by rule 15;

"person named" includes a person described as "passing under the name of A.B.";

"registrar" means—

(*a*) in relation to proceedings in the High Court, the Master (Probate and Matrimonial) or Registrar (Probate and Matrimonial); and

(*b*) in relation to proceedings in a divorce county court, a circuit registrar;

"sealed copy" means a copy examined against the original, marked as examined by the examining officer and sealed with the appropriate seal;

"taxing master" means—

(*a*) in relation to proceedings in the High Court, the Master (Taxing Office); and

(*b*) in relation to proceedings in a divorce county court, a circuit registrar;

"undefended cause" means—

(*a*) in the case of an application under Article 5 of the Order, a cause in which the respondent has not given notice of intention to defend within the time limited, or

(*b*) in any other case—

(i) a cause in which no answer has been filed or any answer filed has been struck out, or

(ii) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or

(iii) a cause to which rule 18(3) applies and in which no notice has been given under that rule or any notice so given has been withdrawn, or

(iv) a cause in which an answer has been filed claiming relief but in which no pleading has been filed opposing the granting of a decree on the petition or answer or any pleading or part of a pleading opposing the granting of a decree;

"variation order" means an order under Article 33 of the Order;

"welfare" has the same meaning as in Article 44 of the Order.

(2) Unless the context otherwise requires, a cause may be treated as pending for the purpose of these Rules notwithstanding that a final decree or order has been pronounced or made on the petition.

(3) Unless the context otherwise requires, a rule referred to by number means the rule so numbered in these Rules.

(4) In these Rules a form referred to by number means the form so numbered in Appendix 1 or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(5) In these Rules any reference to an Order and rule is—

(*a*) if prefixed by the letters "R.S.C.", a reference to that Order and rule in the Rules of the Supreme Court (Northern Ireland) 1980(**a**), and

(*b*) if prefixed by the letters "C.C.R.", a reference to that Order and rule in the County Court Rules (Northern Ireland) 1976(**b**).

(6) Unless the context otherwise requires, any reference in these Rules to any rule or statutory provision shall be construed as a reference to that rule or statutory provision as amended, extended or applied by any other rule or statutory provision.

Application of other rules

3.—(1) Subject to the provisions of these Rules and of any statutory provision, the Rules of the Supreme Court (Northern Ireland) 1980 and the County Court Rules (Northern Ireland) 1976 other than C.C.R. Order 25, rule 29 (which deals with a new hearing and re-hearing) shall apply with the necessary modifications to the commencement of matrimonial proceedings in, and to the practice and procedure in matrimonial proceedings pending in, the High Court and a divorce county court respectively.

(**a**) S.R. 1980 No. 346
(**b**) S.R. 1976 No. 374

(2) For the purposes of paragraph (1) any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court (Northern Ireland) 1980 and in the case of proceedings pending in a divorce county court, a provision of the County Court Rules (Northern Ireland) 1976.

Application for leave to present a petition

4.—(1) An application under Article 5 of the Order for leave to present a petition for divorce before the expiration of the period of 3 years from the date of the marriage ("the specified period") shall be made to the court in which the applicant wishes to present the petition, by originating summons in Form 1.

(2) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the proposed petition and (unless otherwise directed on an application made ex parte) a certificate of the marriage and stating—

(*a*) the grounds of the application;

(*b*) particulars of the hardship or depravity alleged;

(*c*) whether there has been any previous application under this rule;

(*d*) whether any, and if so what, attempts at reconciliation have been made;

(*e*) particulars of any circumstances which may assist the court in determining whether there is a reasonable probability of reconciliation between the parties;

(*f*) the date of birth of each of the parties.

(3) When the summons is issued it shall be made returnable for a fixed date before the judge in chambers.

(4) Unless otherwise directed, the summons shall be served on the respondent at least 14 clear days before the return date.

Proceedings after service of application for leave

5.—(1) The respondent may be heard without filing an affidavit.

(2) The judge may in an appropriate case adjourn the proceedings and refer the case to the Department in order that a suitably qualified person may investigate whether there is reasonable probability of a reconciliation between the parties to the marriage during the specified period.

(3) Without prejudice to the right of the petitioner to have the summons re-entered for hearing, if that person after discussion with the parties decides—

(*a*) that there is no reasonable probability of such reconciliation he shall so report to the court; or

(*b*) that there is reasonable probability of such reconciliation, he shall continue his conciliation and inform the court whether or not a reconciliation has been effected.

(4) Subject to the provisions of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the application as if the originating summons were a petition and the applicant a petitioner.

Discontinuance of cause before service of petition

6. Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

PETITION, PLEADINGS AND AMENDMENT

Cause to be begun by petition

7.—(1) Every cause other than an application under Article 5 of the Order shall be begun by petition.

(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under the age of 16 years or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, the petition shall be accompanied by a statement signed by the petitioner personally containing the information required by Form 4, to which shall be attached a copy of any medical report mentioned therein.

Contents of petition

8.—(1) Unless otherwise directed, every petition shall contain the information required by Appendix 2.

(2) A petitioner who, in reliance on section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971(**a**), intends to adduce evidence that a person—

(*a*) was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, or

(*b*) was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom,

must include in his petition a statement of his intention with particulars of—

(i) the conviction, finding or adjudication and the date thereof,

(ii) the court or court-martial which made the conviction, finding or adjudication and, in the case of a finding or adjudication the proceedings in which it was made, and

(iii) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

Signing of petition

9. Every petition shall be signed by counsel if settled by him or, if not, by the petitioner's solicitor in his own name or the name of his firm, or by the petitioner if he sues in person.

Presentation of petition

10.—(1) A petition may be presented to the High Court or to any divorce county court.

(2) Unless otherwise directed on an application made ex parte, a certificate of the marriage to which the cause relates together with the certificates of birth of any child of the family under the age of 18 shall be filed with the petition.

(3) Where there is before the court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of 3 years from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in Article 3(2) of the Order as were alleged in a petition for judicial separation presented before the expiration of that period.

(**a**) 1971 c. 36 (N.I.)

(4) Subject to paragraph (5), the petition shall be presented by filing it in the Matrimonial Office together with a notice in Form 5 with Form 6 attached addressed to the respondent and any co-respondent together with any statement and report required by rule 7(2).

(5) The petition and other documents specified in paragraph (4) may be presented at any county court office or at the office of the chief clerk at Enniskillen, for transmission to the Matrimonial Office for filing.

(6) C.C.R. Order 6, rule 10 (which deals with the service of petitions) shall not apply but on the filing of the petition the master shall—

(*a*) affix thereto the seal of the Matrimonial Office;

(*b*) enter the cause in the appropriate records, and

(*c*) annex to every copy of the petition for service a notice in Form 5 with Form 6 attached and shall also annex to the copy petition for service on a respondent the copy of any statement and report filed pursuant to paragraph (4) of this rule.

Conciliation and report on children

11.—(1) Where—

(*a*) a petition for divorce, nullity of marriage or judicial separation has been presented and service on the respondent of the petition has been effected or dispensed with, and

(*b*) there are children of the family to whom Article 44 of the Order (restriction on decrees affecting children) applies;

the master shall inform the Department with a view to a reference to a suitably qualified person (hereinafter called "the conciliator");

(i) to consider the possibility of conciliating the parties to the marriage, and

(ii) for a report by the conciliator or other suitably qualified person on the children and the suitability of any arrangements which have been made, or are proposed by either party to be made for their welfare.

(2) Where a reference is made under this rule the conciliator, subject to the approval of the master, may inspect the court file and after completing his investigation he shall file his report in the Matrimonial Office.

(3) This rule shall not prejudice the right of any party to lodge a certificate of readiness.

Parties

12.—(1) Subject to paragraph (2), where a petition alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the cause unless—

(*a*) that person is not named in the petition and, if the adultery is relied on for the purpose of Article 3(2)(*a*) of the Order, the petition contains a statement that his or her identity is not known to the petitioner, or

(*b*) the court otherwise directs.

(2) Where a petition alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1), that person shall not be made a co-respondent in the cause unless the court so directs.

(3) Where a petition alleges that the respondent has been guilty of improper conduct (other than adultery) with a person named, the court may direct that the person named be made a co-respondent in the cause, and for that purpose the registrar may cause notice to be given to the petitioner and to any other party who has given notice of intention to defend of a date and time when the court will consider giving such a direction.

(4) An application for directions under paragraph (1) may be made ex parte if no notice of intention to defend has been given.

(5) Paragraphs (1) and (3) of this rule do not apply where the person named has died before the filing of the petition.

Service of petition

13.—(1) Subject to the provisions of this rule and rules 90 and 94 a sealed copy of every petition shall be served personally or by post on every respondent or co-respondent together with a copy of the notice in Form 5 with Form 6 attached and with any statement and report required by rule 7(2).

(2) Personal service shall in no case be effected by the petitioner himself.

(3) An application for leave to substitute for the modes of service prescribed by paragraph (1) some other mode of service, or to substitute for service notice of the proceedings by advertisement or otherwise, shall be made ex parte by lodging with the master an affidavit setting out the grounds on which the application is made.

Provided that no order giving leave to substitute notice of the proceedings by advertisement shall be made unless it appears to the registrar that there is a reasonable probability that the advertisement will come to the knowledge of the person concerned.

(4) Where leave is given to substitute for service notice of the proceedings by advertisement, the form of the advertisement shall be settled by the registrar and copies of the newspapers containing the advertisement shall be filed.

(5) Where in the opinion of the registrar it is impracticable to serve a party in accordance with any of the foregoing paragraphs or it is otherwise necessary or expedient to dispense with service of a copy of a petition on the respondent or on any other person, the registrar may make an order dispensing with such service.

An application for an order under this paragraph shall, if no notice of intention to defend has been given, be made in the first instance ex parte by lodging an affidavit setting out the grounds of the application, but the registrar may, if he thinks fit, require the attendance of the petitioner on the application.

(6) Where the solicitor for the respondent or co-respondent signs a receipt that he accepts service of the petition on behalf of the party, the petition shall be deemed to have been duly served on that party and to have been so served on the date on which the receipt was signed.

Proof of service

14.—(1) A petition shall be deemed to be duly served if—

(*a*) an acknowledgment of service in Form 6 is signed by the party to be served or by a solicitor on his behalf and is returned to the Matrimonial Office, and

(*b*) where the form purports to be signed by the respondent, his signature is proved at the hearing.

(2) Where a copy of a petition has been sent to a party and no acknowledgment of service has been returned to the Matrimonial Office, the registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.

(3) Where a copy of a petition has been served on a party personally and no acknowledgment of service has been returned to the Matrimonial Office, service shall be proved by filing an affidavit of service in Form 7 showing the server's means of knowledge of the identity of the party served.

(4) Where a solicitor has accepted service of a petition in accordance with rule 13(6), a copy of his receipt accepting service of the petition shall be lodged in the Matrimonial Office.

(5) Where an acknowledgment of service is returned to the Matrimonial Office, the master shall send a photographic copy thereof to the solicitor for the petitioner or to the petitioner if he sues in person.

Notice of intention to defend

15.—(1) In these Rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form 6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgment relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the Matrimonial Office.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgment of service to be returned to the Matrimonial Office references in these Rules to the time limited for giving notice of intention to defend are references to 14 days after service of the document, inclusive of the day of service, or such other time as may be fixed.

(3) Subject to paragraph (2), a person may give notice of intention to defend notwithstanding that he has already returned to the Matrimonial Office an acknowledgment of service not constituting such a notice.

Consent to the grant of a decree

16.—(1) Where, before the hearing of a petition alleging 2 years' separation coupled with the respondent's consent to a decree being granted, the respondent wishes to indicate to the court that he consents to the grant of a decree, he must do so by giving the master a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgment of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgment is signed—

(*a*) in the case of a respondent acting in person, by the respondent, or

(*b*) in the case of a respondent represented by a solicitor, by the respondent as well as by the solicitor.

(2) A respondent to a petition which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

Where any such notice is given and none of the other facts mentioned in Article 3(2) of the Order is alleged, the proceedings on the petition shall be stayed and the master shall thereupon give notice of the stay to all parties.

Supplemental petition, pleadings and amendment of petition

17.—(1) A supplemental petition may be filed only with leave.

(2) A petition may be amended without leave before it is served but only with leave after it has been served.

(3) Subject to paragraph (4), an application for leave under this rule—

(*a*) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made ex parte by lodging in the Matrimonial Office the supplemental petition or a copy of the petition as proposed to be amended, together with the appropriate consent, and

(*b*) shall, in any other case, be made by summons to be served, unless otherwise directed, on every opposite party.

(4) The registrar may, if he thinks fit, require an application for leave to be supported by an affidavit.

(5) An order granting leave shall—

(*a*) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;

(*b*) where the order is made after the certificate of readiness has been lodged, provide for a stay of the hearing until after the certificate has been renewed.

(6) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(7) Rules 9 and 12 shall apply to a supplemental or amended petition as they apply to the original petition.

(8) Unless otherwise directed, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under this rule shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(9) Rules 13 and 14 shall apply to a respondent or co-respondent named in the original petition or in the supplemental or amended petition as they apply in relation to a person required to be served with an original petition.

Filing of answer to petition

18.—(1) Subject to paragraph (2) and to rules 16, 20 and 39, a respondent or co-respondent who has given notice of intention to defend and who—

(*a*) wishes to defend the petition or to dispute any of the facts alleged in it;

(*b*) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief, or

(*c*) being the respondent to a petition to which Article 7(1) of the Order applies, wishes to oppose the grant of a decree on the ground mentioned in that paragraph,

shall within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed at any time before the certificate of readiness has been lodged, notwithstanding that the time for filing the answer has expired.

(3) Where in a cause in which relief is sought under Article 14(*d*) of the Order the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the charges in the petition, give the master notice to that effect either when filing his answer or later by leave of the court.

(4) On the filing of an answer to a petition presented to a divorce county court the registrar shall order the cause to be transferred to the High Court, unless it is a case to which paragraph (3) applies and the respondent has not given any such a notice as is mentioned in that paragraph.

Filing of reply and subsequent pleadings

19.—(1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 23.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed on lodging the certificate of readiness to have denied every material allegation of fact made in the answer.

(3) No pleadings subsequent to a reply shall be filed without leave.

Filing of pleadings after lodgment of certificate of readiness

20. No pleadings shall be filed without leave after the certificate of readiness has been lodged.

Contents of answer and subsequent pleadings

21.—(1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall in relation to those facts, contain the information required in the case of a petition by paragraph 1(*k*) of Appendix 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs 1(*f*), (*g*) and (*h*) of Appendix 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph 5(*a*) of Appendix 2 shall, where appropriate, apply, with the necessary modifications, to a respondent's answer as it applies to a petition:

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) Where an answer to any petition contains a prayer for relief, it shall contain the information required by paragraph 1(*j*) of Appendix 2 in the case of the petition in so far as it has not been given by the petitioner.

(5) Rule 8(2) shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

(6) Where a party's pleading includes such a statement as is mentioned in rule 8(2), then if the opposite party—

(*a*) denies the conviction, finding or adjudication to which the statement relates, or

(*b*) alleges that the conviction, finding or adjudication was erroneous, or

(*c*) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(7) Rule 9 shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

Allegation against third person in pleading

22.—(1) Rules 12, 13 and 14 shall apply, with the necessary modifications, to a pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

(2) Rule 18 shall apply, with the necessary modifications, to a party cited as it applies to a co-respondent.

Service of pleadings

23. A party who files an answer, reply or subsequent pleading shall within 7 days of filing it serve a copy thereof on every opposite party.

Supplemental answer and amendment of pleadings

24. Rule 17 shall apply, with the necessary modifications, to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as it applies to the filing of a supplemental petition and the amendment of a petition.

Service and amendment of pleadings

25. Pleadings in matrimonial proceedings may be served on any day except Sunday, Good Friday and Christmas Day and may be amended on any day on which the appropriate court office is open.

Particulars

26.—(1) A party on whom a pleading has been served may by notice request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) A party giving particulars whether in pursuance of an order or otherwise shall at the same time file a copy of them.

Re-transfer of cause to divorce county court

27.—(1) Where a cause begun by petition has been transferred to the High Court under rule 18(4) and subsequently becomes undefended, the court shall order it to be re-transferred to a divorce county court, unless (because of the proximity of the probable date of trial or for any other reason) the court thinks it desirable that the cause should be heard and determined in the High Court.

(2) Nothing in paragraph (1) shall require a case to be re-transferred at the time when it becomes undefended if in the opinion of the court the question whether it is desirable to retain it in the High Court cannot conveniently be considered until later.

Preparation for Trial

Discovery of documents

28. A party to a matrimonial cause may apply for an order for discovery and inspection of documents by an opposite party and R.S.C. Order 24 shall apply with the necessary modifications.

Discovery by interrogatories

29.—(1) R.S.C. Order 26 (which deals with discovery by interrogatories) shall apply to a matrimonial cause with the necessary modifications.

(2) A copy of the proposed interrogatories shall be filed when the summons for an order is issued.

Medical examination in proceedings for nullity

30.—(1) In proceedings for nullity on the grounds of incapacity to consummate the marriage the petitioner may apply to the registrar to determine whether medical inspectors should be appointed to examine the parties.

(2) An application under paragraph (1) shall not be made in an undefended cause—

(*a*) if the husband is the petitioner, or

(*b*) if the wife is the petitioner and—

(i) it appears from the petition that she was either a widow or divorced at the time of marriage in question, or

(ii) it appears from the petition or otherwise that she has borne a child, or

(iii) a statement by the wife that she is not a virgin is filed,

unless, in any such case, the petitioner is alleging his or her own incapacity.

(3) References in paragraph (1) and (2) to the petitioner shall, where the cause is proceeding only on the respondent's answer or where the allegation of incapacity is made only in the respondent's answer, be construed as references to the respondent.

(4) An application under paragraph (1) by the petitioner shall be made—

(*a*) where the respondent has not given notice of intention to defend, after the time limited for giving notice of intention to defend has expired;

(*b*) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and any application under paragraph (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under paragraph (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the cause, make the application.

(6) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the registrar for the appointment of medical inspectors to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the petitioner under paragraph (1) or (6) may be made ex parte.

(8) If the registrar hearing an application under paragraph (1) or (6) considers it expedient to do so, he shall appoint a medical inspector or, if he thinks it necessary, two medical inspectors to examine the parties and report to the court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in paragraph (1) the court may, if it thinks fit, appoint a medical inspector or two medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under paragraph (8) is made or who has the conduct of proceedings in which an order under paragraph (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

Conduct of medical examination

31.—(1) The examination under rule 30 shall, if either party so requires, be held at the residence of one of the medical inspectors appointed or at some other convenient place selected by them and in every other case shall be held at the Matrimonial Office.

(2) Where a medical inspection takes place at a place other than the Matrimonial Office every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined. Where the medical inspection takes place in the Matrimonial Office the identification shall be conducted before the registrar in such manner as he may direct.

(3) Every report made in pursuance of rule 30 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

(4) It shall not be necessary in any cause for the inspector or inspectors to attend or give evidence at the trial unless required either by the court of its own motion or by either party to do so after receiving appropriate notice.

(5) Where pursuant to paragraph (4) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the court by a court expert and be given such weight as the court thinks fit.

Entry for hearing and certificate of readiness

32.—(1) The petitioner or any party who is defending a cause or the respondent in the case of an undefended cause proceeding on the respondent's answer, may, even though the report required under rule 11(1) has not been filed, request the master to enter the cause for hearing if—

(*a*) a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, any affidavit required by rule 91(2) has been filed;

(*b*) (i) no notice of intention to defend has been given by any party entitled to defend and the time limited for giving such notice has expired; or

(ii) where a notice of intention to defend has been given by any party, the time allowed him for filing an answer has expired; or

(iii) where an answer has been filed, the time allowed for filing any subsequent pleading has expired;

(*c*) in proceedings for nullity, where an order for the examination of the parties has been made on an application under rule 30, the notice required by paragraph (10) of that rule has been served and the report of the inspector or inspectors has been filed;

(*d*) any other directions of the court have been complied with.

(2) The party making such request shall at the same time lodge in the Matrimonial Office a certificate in Form 8 that the cause is ready for trial and, in the case of a cause for hearing in a divorce county court, the certificate shall state the place of trial requested.

(3) The party lodging the certificate of readiness shall at the same time deliver to the Matrimonial Office a bundle of pleadings for the judge consisting of an indexed copy of the following documents—

(*a*) the certificate of readiness;

(*b*) the petition;

(*c*) any other pleadings;

(*d*) notices for particulars and answers thereto;

(*e*) affidavit of service;

(*f*) interlocutory orders;

(*g*) any statement as to arrangements for children under rule 7(2);

(*h*) any statement under rule 33(4);

(*i*) the requisite legal aid documents,

fastened together in the order shown and having endorsed thereon the names and addresses of the solicitors of the parties.

(4) If there are any further proceedings after the lodging of the certificate of readiness, the party lodging the certificate shall deliver to the master or the chief clerk, as the case may be, for the use of the judge a copy of any further document of the kind mentioned in paragraph (3).

Stay under Schedule 1 to the Order

33.—(1) An application to the court by the petitioner or respondent in proceedings for divorce for an order under paragraph 8 of Schedule 1 to the Order (in this rule referred to as "Schedule 1") shall be made to the registrar, who may determine the application or refer the application, or any question arising thereon, to the judge for his decision as if the application were an application for ancillary relief.

(2) An application for an order under paragraph 9 of Schedule 1 shall be made to the judge.

(3) Where on the lodgment of the certificate of readiness, it appears to the registrar from any information given pursuant to paragraph 1(*j*) of Appendix 2 or rule 21(4) or paragraph (4) of this rule that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in

any country outside Northern Ireland and he considers that the question whether the proceedings on the petition should be stayed under paragraph 9 of Schedule 1 ought to be determined by the court, he shall before the master proceeds under rule 36 fix a date and time for the consideration of that question by the judge and give notice thereof to all parties.

In this paragraph "proceedings continuing in any country outside Northern Ireland" has the same meaning as in paragraph 1(*j*) of Appendix 2.

(4) Any party who lodges a certificate of readiness in matrimonial proceedings within the meaning of paragraph 2 of Schedule 1 shall, if there has been a change in the information given pursuant to paragraph 1(*j*) of Appendix 2 and rule 21(4), file a statement giving particulars of the change.

(5) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 may be made to the registrar, and he may determine the application or may refer the application, or any question arising thereon, to the judge as if the application were an application for ancillary relief.

TRIAL, ETC.

Mode and place of trial

34.—(1) Subject to section 62(4) of the Judicature (Northern Ireland) Act 1978(a), every cause and any issue arising therein shall be tried by a judge without a jury.

(2) A cause pending in a divorce county court may be heard at any county court sitting for any division but, subject to the provisions of rules 35 and 36, shall be heard at the place of trial requested in the certificate of readiness.

(3) Unless otherwise directed, every cause listed for hearing and any issue arising therein shall be heard by a judge in Chambers and adjourned into court for judgment.

Setting down for trial

35.—(1) A cause shall be deemed to have been set down as soon as the certificate of readiness has been lodged.

(2) Where a cause is set down for hearing in the High Court, the master shall, as soon as practicable, fix the date of the hearing and give notice thereof to every party to the cause and, where a report has been sought under Article 43 of the Order, to the Department.

(3) Where a cause is set down for hearing in a divorce county court, the master shall forthwith send the file of the cause and the bundle of pleadings to the chief clerk.

(4) As soon as practicable after the chief clerk has received the file of the cause and the bundle of pleadings in accordance with paragraph (3), he shall fix the date and place of the hearing and give notice thereof to every party to the cause and, where a report has been sought under Article 43 of the Order, to the Department.

(5) Except with the consent of all parties or by leave of the judge, no cause shall be tried before the expiration of 10 days from the date of issue stamped on the notice of hearing.

Order for transfer of cause

36.—(1) A divorce county court may order that a cause pending therein be transferred to the High Court, if, having regard to all the circumstances including the difficulty or importance of the cause or of any issue arising therein, the court thinks it desirable that the cause should be heard and determined in the High Court.

(a) 1978 c. 23

(2) The court may, if it appears to it that a cause cannot conveniently be tried at the place of trial requested in accordance with rule 32(2), change the place of trial to another place within the same or another county court division.

(3) The power conferred by paragraph (2) may be exercised by the judge or registrar of his own motion or on the application of a party, but before acting of his own motion the judge or registrar shall give the parties an opportunity of being heard on the question of change, and for that purpose the chief clerk shall give the parties notice of the date and place at which the question will be considered.

Trial of issue

37. Where directions are given for the separate trial of any issue, the registrar shall—

(*a*) if the issue arises on an application for ancillary relief or in proceedings for the exercise of any power under Part IV of the Order proceed as if the issue were a question referred to a judge on an application for ancillary relief and rule 74 shall apply accordingly;

(*b*) in any other case, cause the issue to be set down for trial.

Lists in the divorce county court

38.—(1) The chief clerk for each county court division shall maintain a list of the causes which are for the time being set down for trial in that division.

(2) Causes shall be entered in the said list in the order in which they were set down for trial and for the purpose of this paragraph—

(*a*) a cause shall, subject to sub-paragraph (*b*), be treated as having been set down for trial when the file of the cause is received by the chief clerk from the Matrimonial Office under rule 35(3);

(*b*) a cause transferred for trial from another county court division shall be treated as having been set down for trial at the end of the day on which it was originally set down for trial.

Right to be heard on ancillary questions

39.—(1) A respondent may, without filing an answer, be heard on—

(*a*) any question of custody of, or access to, any child of the family,

(*b*) any question whether any such child should be committed to the care of the Department under Article 46 of the Order,

(*c*) any question whether a supervision order should be made as respects any such child under Article 47 of the Order, and

(*d*) any question of ancillary relief.

(2) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs, but the court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.

(3) A party shall be entitled to be heard on any question pursuant to paragraph (1) or (2) whether or not he has returned to the Matrimonial Office an acknowledgment of service stating his wish to be heard on that question.

(4) In proceedings after a decree nisi of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the decree shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

Respondent's statement as to arrangements for children

40.—(1) A respondent on whom there is served a statement in accordance with rule 7(2) may file in the Matrimonial Office a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the master shall send a copy to the petitioner.

(2) Any such statement of the respondent's views shall, if practicable, be filed within the time limited for giving notice of intention to defend and in any event before the judge makes an order under Article 44 of the Order.

Order as to arrangements for children to be drawn up

41. Any order made pursuant to Article 44(1) or (4) of the Order shall be drawn up in accordance with rule 49.

Restoration of matters adjourned, etc., at the hearing

42.—(1) Where at the trial of a cause any application is adjourned by the judge it may be restored by any party or by the registrar when in his opinion the matter ought to be further considered, by notice in Form 9 which shall be served on every party concerned and (when served by a party) on the master or chief clerk, as the case may be.

(2) Where in proceedings for divorce, nullity of marriage or judicial separation the judge has not made an order pursuant to Article 44(1) of the Order, paragraph (1) shall, unless the judge otherwise directs, apply as if an application with respect to the arrangements for the care and upbringing of any such child had been adjourned.

EVIDENCE

Evidence generally

43. Subject to the provisions of rules 44 and 45 and of the Civil Evidence Act (Northern Ireland) 1971(a) and any other statutory provisions, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally.

Evidence by affidavit, etc.

44.—(1) The court may order—

(*a*) that any particular fact to be specified in the order may be proved by affidavit,

(*b*) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable,

(*c*) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—

(i) by statement on oath of information or belief, or

(ii) by the production of documents or entries in books, or

(iii) by copies of documents or entries in books, or

(*d*) that not more than a specified number of expert witnesses may be called.

(2) An application to the registrar for an order under paragraph (1) shall—

(*a*) if no notice of intention to defend has been given, or

(*b*) if the petitioner and every party who has given notice of intention to defend consents to the order sought, or

(*c*) if the cause is undefended and the certificate of readiness has been lodged,

be made ex parte by filing an affidavit stating the grounds on which the application is made.

(a) 1971 c. 36 (N.I.)

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under paragraph (2).

(4) The court may, on the application of any party to a cause begun by petition, make an order for the examination on oath of any person, and R.S.C. Order 38, rule 7, and Order 39, rules 1 to 14, (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

(5) On any interlocutory application made to the court evidence may be given by affidavit unless these Rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such attendance has been ordered, such affidavit shall not be used as evidence without the leave of the court.

(6) Medical and other expert evidence or the evidence of an inquiry agent to prove adultery may without leave, and in an undefended cause shall, be given by affidavit, but the court may, of its own motion or on the application of any party at the trial, order the attendance for cross-examination of the person making any such affidavit; and after such attendance has been ordered such affidavit shall not be used in evidence without the leave of the court.

(7) Where the statement of a co-respondent or a person named admitting his or her adultery with the respondent or of a respondent admitting his or her adultery with a person named or a co-respondent has been made in the presence and hearing of the person with whom adultery is admitted, the affidavit must contain an averment that the statement has been so made.

Evidence of marriage outside Northern Ireland

45.—(1) The celebration of a marriage outside Northern Ireland and its validity under the law of the country where it was celebrated may, in any matrimonial proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

(*a*) a marriage certificate or similar document issued under the law in force in that country; or

(*b*) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(**a**) or in any other manner authorised apart from this rule.

Rules 44 and 45 not to affect the power of the judge at the trial to refuse to admit any evidence

46. Nothing in rule 44 or 45 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

Issue of writ of subpoena or witness summons

47.—(1) A writ of subpoena in a cause pending in the High Court shall be issued out of the Matrimonial Office.

(a) 1933 c. 4

(2) A witness summons in a cause pending in a divorce county court shall be issued in any county court office.

Hearsay and expert evidence

48.—(1) R.S.C. Order 38, rules 5 and 19(1) shall not apply in relation to an undefended cause in the High Court.

(2) R.S.C. Order 38, rule 19 shall have effect in relation to a defended cause in the High Court as if—

(*a*) for the words "this Order" in paragraph (3), there were substituted a reference to rule 44 of these Rules; and

(*b*) paragraph (4) were omitted.

(3) Unless in any particular case the court otherwise directs, C.C.R. Order 24, rule 24(1), shall not apply in relation to an undefended cause pending in a divorce county court.

Decrees and Orders

Decrees and orders

49.—(1) Every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up—

(*a*) in the case of a decree or order pronounced or made in the High Court, in the Matrimonial Office;

(*b*) in the case of a decree or order pronounced or made in a divorce county court, in the county court office;

and shall have affixed thereto the seal of the office in which it is drawn up.

(2) C.C.R. Order 30, rule 4(1) (which deals with the lodgment of a decree) shall not apply to a decree pronounced in a cause pending in a divorce county court.

(3) The chief clerk to whom the file of a cause has been sent under rule 35(3) shall, as soon as practicable after the cause has been tried, forward to the Matrimonial Office a copy of the decree or order pronounced or made in the cause.

Application for rescission of decree

50.—(1) An application by a respondent under Article 12(1) of the Order for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court.

(2) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed by the master or chief clerk, as the case may be, for the hearing of the application.

(3) The applicant shall file an affidavit showing that the notice of the application has been served.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

Application under Article 12(2) of the Order

51.—(1) An application by the respondent to a petition for divorce for the court to consider his financial position after the divorce shall be made by notice in Form 14.

(2) Where a petitioner is served with a notice in Form 14, then, unless he has already filed an affidavit under rule 65(2), he shall, within 14 days after the service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the respondent shall file an affidavit in reply containing full particulars of his property and income unless already given in an affidavit filed by him under rule 65(3).

(4) The powers of the court on the hearing of the application may be exercised by the registrar.

(5) The registrar by whom an application under Article 12(2) of the Order is to be heard shall fix an appointment for the hearing, and rules 69(3) to (7), 72 and 73 shall apply to the application as if it were an application for ancillary relief.

(6) At any time before the hearing of the application is concluded (and without prejudice to any right of appeal), the registrar may, and if so requested by either party shall, refer the application or any question arising thereon, to a judge.

(7) A statement of any of the matters mentioned in paragraph (3) of Article 12 of the Order with respect to which the court is satisfied, a statement that the conditions for which that paragraph and paragraph (4) provide have been fulfilled, shall be entered in the court records.

Copies of decrees and orders

52.—(1) A copy of every decree shall be sent by the master or chief clerk, as the case may be, to every party to the cause.

(2) A sealed or other copy of a decree or order pronounced or made in open court shall be issued to any person requiring it on payment of the prescribed fee.

Service of order

53.—(1) Where an order made in matrimonial proceedings has been drawn up, the master or chief clerk, as the case may be, shall, unless the court otherwise directs, send a copy of the order to every party affected by it.

(2) Where a party against whom the order is made is acting by a solicitor, a copy may, if the registrar thinks fit, be sent to that party as well as to his solicitor.

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to R.S.C. Order 45, rule 5 (which deals with the service of an order to do or abstain from doing an act), C.C.R. Order 48, rule 7 (which deals with orders enforceable by attachment), and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

Intervention to show cause by the Crown Solicitor

54.—(1) If the Crown Solicitor wishes to show cause why a decree nisi should not be made absolute, he shall give notice to that effect to the master or chief clerk, as the case may be, and to the party in whose favour it was pronounced, and, if the cause is pending in a divorce county court, the registrar shall thereupon order it to be transferred to the High Court.

(2) Within 21 days after giving notice under paragraph (1) the Crown Solicitor shall file his plea setting out the ground on which he desires to show cause, together with a copy for service on the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The master shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

(4) Except as hereinafter provided, these Rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition.

(5) If no answer to the plea is filed within the time limited, or if an answer is filed and is struck out or not proceeded with, the Crown Solicitor may apply forthwith by motion to rescind the decree nisi and dismiss the petition.

(6) If an answer is filed denying all the charges in the plea, the Crown Solicitor shall within 14 days thereafter request the master to enter the intervention for hearing but, if no such request is made, the party in whose favour the decree nisi was pronounced may request the master to enter the intervention for hearing or may apply under rule 57 to make the decree absolute.

(7) If an answer is filed in which any charge in the plea is not denied, the party in whose favour the decree nisi was pronounced may within 14 days after the answer has been filed request the master to enter the intervention for hearing but, if no such request is made, the Crown Solicitor may apply forthwith by motion to rescind the decree and dismiss the petition.

(8) The Crown Solicitor or the party in whose favour the decree was pronounced, as the case may be shall, when requesting the intervention to be entered for hearing, deliver to the Matrimonial Office a bundle of pleadings for the judge consisting of an indexed copy of the following documents:—

(*a*) the decree nisi;

(*b*) the Crown Solicitor's plea;

(*c*) the answer;

(*d*) notices for particulars and answers thereto;

(*e*) affidavits, if any;

(*f*) the requisite legal aid documents,

fastened together in the order shown and having endorsed thereon the names and addresses of the solicitors of the parties.

(9) After the expiration of 7 days from the date on which the master was requested to enter the intervention for hearing, the intervention shall be deemed to be set down for trial and the master shall—

(*a*) give notice to this effect to every party to the intervention, and

(*b*) as soon as practicable thereafter fix the date of the hearing and give notice thereof to every party to the intervention.

Intervention to show cause by person other than Crown Solicitor

55.—(1) If any person other than the Crown Solicitor wishes to show cause under Article 11 of the Order why a decree nisi should not be made absolute, he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced.

(2) A party on whom a copy of an affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be filed without leave.

(5) Any person who files an affidavit under paragraph (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the master or chief clerk, as the case may be, shall thereupon serve the copy on that person.

(6) A person showing cause shall apply to the judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within 14 days after expiry of the time allowed for filing such an affidavit.

(7) If the person showing cause does not apply under paragraph (6) within the time limited, the person in whose favour the decree was pronounced may do so.

(8) The judge may either give directions for the trial of the intervention or, if he is satisfied that there is no question to be tried, dismiss the intervention.

(9) If the judge gives such directions in a cause pending in a divorce county court, he shall thereupon order the cause to be transferred to the High Court.

(10) When directions have been given under paragraph (8) and, if necessary, the cause has been transferred to the High Court, the intervention shall proceed as nearly as may be in the manner prescribed by paragraphs (6) to (9) of rule 54, substituting for references to the Crown Solicitor references to the person showing cause, but no plea or answer need be filed unless the judge so directs.

Recission of decree nisi by consent

56.—(1) Where a reconciliation has been effected between the petitioner and the respondent—

(*a*) after a decree nisi has been pronounced but before it has been made absolute, or

(*b*) after the pronouncement of a decree of judicial separation,

either party may apply for an order rescinding the decree by consent.

(2) Where the cause is pending in a divorce county court, the application shall be made on notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise affected by the decree, and where the cause is pending in the High Court, a copy of the summons by which the application is made shall be served on every such person.

(3) The application shall be made to the judge and shall be heard in chambers.

Decree absolute on lodging notice

57.—(1) Subject to rule 58(1), an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the master or chief clerk, as the case may be, notice in Form 10.

(2) On the lodging of such a notice, the master or chief clerk, as the case may be, shall search the court records and if he is satisfied—

(*a*) that no appeal against the decree and no application for rescission of the decree is pending;

(*b*) that no order has been made by the Court of Appeal extending the time for appealing against the decree or, if any such order has been made, that the time so extended has expired;

(*c*) that no application for such an order as is mentioned in sub-paragraph (*b*) is pending;

(*d*) that no intervention under rule 54 or 55 is pending;

(*e*) that the judge has made an order under Article 44(1) of the Order;

(*f*) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(**a**) in respect of the decree—

(i) that no application for leave to appeal directly to the House of Lords is pending;

(**a**) 1969 c. 58

(ii) that no extension of the time to apply for leave to appeal directly to the House of Lords has been granted or, if any such extension has been granted, that the time so extended has expired; and

(iii) that the time for any appeal to the Court of Appeal has expired; and

(*g*) that the provisions of Article 12(2) to (4) of the Order do not apply or have been complied with,

the registrar shall make the decree absolute.

Provided that if the notice is lodged more than 12 months after the decree nisi, the registrar may require the applicant to file an affidavit accounting for the delay and may make the decree absolute if he thinks fit or refer the application to the judge.

Decree absolute on application

58.—(1) In the following cases an application for a decree nisi to be made absolute shall be made to the judge by summons, that is to say—

(*a*) where, within 6 weeks after a decree nisi has been pronounced, the Crown Solicitor gives to the master or chief clerk, as the case may be, and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or

(*b*) where there are other circumstances which in the opinion of the registrar ought to be brought to the attention of the court before the decree nisi is made absolute.

Unless the court otherwise directs, the summons shall be served on every party to the cause (other than the applicant) and, in a case to which sub-paragraph (*a*) applies, on the Crown Solicitor.

(2) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to the judge or the registrar by summons to be served on the other spouse not less than 7 clear days before the day on which the application is to be heard.

(3) An order granting an application under this rule shall not take effect until the master or chief clerk, as the case may be, has searched the court records and is satisfied as to the matters mentioned in rule 57(2).

Indorsement and certificate of decree absolute

59—(1) Where a decree nisi is made absolute, the registrar shall make an indorsement to that effect on the decree, stating the precise time at which it was made absolute.

(2) On a decree nisi being made absolute, the master or chief clerk, as the case may be, shall—

(*a*) send to the petitioner and the respondent a certificate in Form 11 or 12, authenticated by the appropriate seal, and

(*b*) if the cause is pending in a divorce county court, notify the Matrimonial Office.

(3) A certificate in Form 11 or 12 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

(4) A central index of decrees absolute shall be kept in the Matrimonial Office and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

ANCILLARY RELIEF

Application by petitioner or respondent for ancillary relief

60.—(1) Any application by a petitioner or by a respondent who files an answer claiming relief, for—

(*a*) an order for maintenance pending suit,

(*b*) a financial provision order,

(*c*) a property adjustment order,

shall be made in the petition or answer, as the case may be.

(2) Notwithstanding anything in paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently—

(*a*) by leave of the court, either by notice in Form 13 or at the trial, or

(*b*) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 13.

(3) An application by a petitioner or respondent for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form 13.

Application by guardian, etc., for ancillary relief in respect of children

61. Any of the following persons, namely—

(*a*) the guardian of any child of the family,

(*b*) any person who has the custody or the care and control of a child of the family under an order of the High Court or a divorce county court,

(*c*) the Department to whom the care of a child of the family has been committed by an order made under Article 46 of the Order,

(*d*) any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a child of the family,

(*e*) the guardian ad litem of a child of the family under rule 92, and

(*f*) any other person in whose care a child of the family is and who has obtained leave to intervene in the cause for the purpose of applying for ancillary relief in respect of that child,

may apply for an order for ancillary relief as respects that child by notice in Form 13.

Application in Form 13 or 14

62. Where an application for ancillary relief is made by notice in Form 13 or an application under rule 51 is made by notice in Form 14, the notice shall—

(*a*) if the cause has been set down for trial in a divorce county court, be filed in the county court office, or

(*b*) in any other case be filed in the Matrimonial Office,

and within 7 days after filing the notice the applicant shall serve a copy on the respondent to the application.

Application for ancillary relief after order of court of summary jurisdiction

63. Where an application for ancillary relief is made while there is in force an order of a court of summary jurisdiction for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

Children to be separately represented on certain applications

64.—(1) Where an application is made to the High Court or a divorce county court for an order for a variation of settlement the court shall, unless it is satisfied that the

proposed variation does not adversely affect the rights or interest of any children concerned, direct that the children be separately represented on the application, either by a solicitor or by a solicitor and counsel, and may appoint the Official Solicitor or other fit person to be guardian ad litem of the children for the purpose of the application.

(2) On any other application for ancillary relief the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).

(3) Before a person other than the Official Solicitor is appointed guardian ad litem under this rule there shall be filed a certificate by the solicitor acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

General provisions as to evidence, etc., on application for ancillary relief

65.—(1) A petitioner or respondent who has applied for ancillary relief in his petition or answer and who intends to proceed with the application before the registrar shall, subject to rule 75, file a notice in Form 15 and within 7 days after doing so serve a copy on the other spouse.

(2) Where a respondent or a petitioner is served with a notice in Form 13 or 15 in respect of an application for ancillary relief, not being an application to which rule 66 applies, then, unless the parties are agreed upon the terms of the proposed order, he shall, within 14 days after service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) Except where the application is for a variation order the applicant shall, within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, file an affidavit in reply containing full particulars of his property and income.

Evidence on application for property adjustment or avoidance of disposition order

66.—(1) Where an application is made for a property adjustment order, or an avoidance of disposition order, the application shall state briefly the nature of the adjustment proposed or the disposition to be set aside and the notice in Form 13 or 15, as the case may be, shall, unless otherwise directed, be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The affidavit in support shall contain, so far as known to the applicant, full particulars—

(*a*) in the case of an application for a transfer or settlement of property—

(i) of the property in respect of which the application is made,

(ii) of the property to which the party against whom the application is made is entitled either in possession or in reversion;

(*b*) in the case of an application for a variation of settlement order—

(i) of all settlements, whether ante-nuptial or post-nuptial, made on the spouses, and

(ii) of the funds brought into settlement by each spouse;

(*c*) in the case of an application for an avoidance of disposition order—

(i) of the property to which the disposition relates,

(ii) of the persons in whose favour the disposition is alleged to have been made and, in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.

(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the affidavit in support shall, in addition to containing any particulars required by paragraph (2)—

(*a*) state if known to the applicant, whether the title to the land is registered or unregistered and, if registered, the Land Registry folio number,

(*b*) give particulars, so far as known to the applicant, of any mortgage, charge or lien whatsoever on the land or on any interest therein.

(4) A copy for Form 13 or 15, as the case may be, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application, that is to say—

(*a*) in the case of an application for a variation of settlement order, the trustees of the settlement and the settlor if living,

(*b*) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made,

(*c*) in the case of an application to which paragraph (3) refers, any mortgagee or chargee or person who claims a lien on the property of whose interest particulars are given pursuant to that paragraph,

and such other persons, if any, as the registrar may direct.

(5) Any person served with notice of an application to which this rule applies may, within 14 days after service, file an affidavit in answer.

Evidence on application for variation order

67. An application for a variation order shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.

Service of affidavit in answer or reply

68.—(1) A person who files an affidavit for use on an application under rule 65, 66 or 67 shall at the same time serve a copy on the opposite party and, where the affidavit contains an allegation of adultery or of improper conduct with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 16, and a copy of the affidavit or of such part thereof as the court may direct, indorsed as aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 69(6) within 7 days after service of the affidavit on him.

(2) Rule 39(4) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

Investigation by registrar of application for ancillary relief

69.—(1) On or after the filing of a notice in Form 13 or 15 an appointment shall be fixed for the hearing of the application by the registrar.

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

(3) Notice of the appointment, unless given in Form 13 or 15 (as the case may be) shall be given to every party to the application.

(4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the registrar for directions.

(5) At the hearing of an application for ancillary relief the registrar shall, subject to rules 70 and 71, investigate the allegation made in support of and in answer to the application, and may take evidence orally and may at any stage of the proceedings.

whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined, and order the discovery and production of any document or require further affidavits.

(6) The registrar may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

(7) Where any party to such an application intends on the day appointed for the hearing to apply only for directions, he shall file and serve on every other party a notice to that effect.

Order on application for ancillary relief

70.—(1) Subject to rule 71, the registrar shall, after completing his investigation under rule 69, make such order as he thinks just.

(2) Pending the final determination of the application, the registrar may make an interim order upon such terms as he thinks just.

Reference of application to judge

71. The registrar may at any time refer an application for ancillary relief, or any question arising thereon, to the judge for his decision.

Transfer of application for ancillary relief: general provisions

72.—(1) If a divorce county court considers that an application for ancillary relief pending in that court gives rise to a contested issue of conduct of a nature which is likely materially to affect the question whether any, or what, order should be made therein and that for that reason the application should be transferred to the High Court, the court shall, subject to paragraph (5) of this rule, make an order for transfer accordingly and, where an application is transferred to the High Court under this paragraph, it shall be heard by a judge.

(2) Where an application for ancillary relief is pending in a divorce county court and the parties to the proceedings consent to the making of an order for the transfer of the application to the High Court, an application for that purpose may be made to the registrar who shall, subject to paragraph (5) of this rule, either order the transfer or refer the application to the judge for his decision.

(3) Without prejudice to paragraphs (1) and (2) of this rule, the court in which an application for ancillary relief is pending may, if it is a divorce county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a divorce county court, where the transfer appears to the court to be desirable.

(4) The judge before hearing and the registrar before investigating under rule 69 an application for ancillary relief pending in a divorce county court shall consider whether the case is one in which the court should exercise any of its powers under paragraph (1) or (3) of this rule.

(5) In considering whether an application should be transferred from a divorce county court to the High Court or from the High Court to a divorce county court, the court shall have regard to all relevant considerations, including the nature and value of the property involved and the relief sought.

(6) Where a decree nisi has been pronounced in the cause, the court shall, before making an order for the transfer of the application to the High Court, consider whether it would be more convenient to transfer the cause to the High Court under rule 36.

(7) Where an application for ancillary relief is pending in a divorce county court, the court may order that the application be transferred to another divorce county court.

(8) An order under paragraph (1), (3) or (7) may be made by the court of its own motion or on the application of a party, but before making an order of its own motion the court shall give the parties an opportunity of being heard, and for that purpose shall cause notice to be given to the parties of the date, time and place at which the question will be considered.

Transfer for purpose of expedition

73. Without prejudice to the last foregoing rule, a judge or registrar may, on the application of a party or of his own motion, order that an application for ancillary relief pending in the High Court or a divorce county court shall be transferred to a divorce county court or the High Court if he is of opinion that the transfer is desirable for the purpose of expediting the hearing of the application.

Arrangements for hearing of application etc., by judge

74.—(1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to the judge, the master or chief clerk, as the case may be, shall fix a date and time for the hearing of the application or the consideration of the question and give notice thereof to all parties.

(2) The hearing or consideration shall, unless the judge otherwise directs, take place in chambers.

(3) Where the application is proceeding in a divorce county court, the hearing or consideration may be transferred to such divorce county court as, in the opinion of the registrar, is the most convenient.

Request for periodical payments order at same rate as order for maintenance pending suit

75.—(1) Where at or after the date of a decree nisi of divorce or nullity of marriage an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his petition or answer, as the case may be, request the registrar in writing to make such an order (in this rule referred to as a "corresponding order") providing for payments at the same rate as those provided for by the order for maintenance pending suit.

(2) Where such a request is made, the applicant shall serve on the other spouse a notice in Form 17 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the master or chief clerk, as the case may be, and to the applicant, within 14 days after service of the notice in Form 17.

(3) If the other spouse does not give notice of objection within the time aforesaid the registrar may make a corresponding order without further notice to that spouse and without requiring the attendance of the applicant or his solicitor.

Application for order under Article 39(2)(a) of the Order

76.—(1) An application under Article 39(2)(*a*) of the Order for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim may be made to the registrar.

(2) Rules 71 and 74 shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

APPLICATIONS RELATING TO CHILDREN

Custody, care and supervision of children

77.—(1) Subject to paragraph (2), an application for an order relating to the custody or education of a child, or for an order committing him to the care of the Department under Article 46 of the Order or providing for his supervision under Article 47 of the Order, shall be made to a judge.

(2) An application by the petitioner or the respondent for—

(*a*) an order in terms agreed between the parties relating to the custody or education of a child, or

(*b*) access to a child where the other party consents to give access and the only question for determination is the extent to which access is to be given,

may be made to the registrar who may make such order on the application as he thinks fit or may refer the application or any question arising thereon to the judge for his decision.

(3) Without prejudice to the right of any other person entitled to apply for an order as respects a child, a guardian or step-parent of any child of the family and any other person who, by virtue of an order of a court, has the custody or control of such a child or his care or supervision in pursuance of Article 46 or 47 of the Order, may without obtaining leave to intervene in the cause, apply by summons for such an order as is mentioned in paragraph (1).

(4) On any application to the judge relating to the custody, care and control of, or access to, a child—

(*a*) neither the applicant nor the respondent shall be entitled to be heard in support of or, as the case may be, in opposition to the application unless he is available at the hearing to give oral evidence or the judge otherwise directs;

(*b*) the judge may refuse to admit any affidavit by any person (other than the applicant or respondent) who is or is proposed to be responsible for the child's care and upbringing or with whom the child is living or is proposed to live unless that person is available at the hearing to give oral evidence;

(*c*) a writ of subpoena or witness summons to compel the attendance of any such person as is mentioned in sub-paragraph (*b*) may issue in accordance with rule 47 without (in the case of a writ of subpoena) the production of the note from a judge or master mentioned in R.S.C. Order 32, rule 9;

(*d*) no writ of subpoena or witness summons shall be issued to compel the attendance of any other witness except with the production of such a note and accordingly in any such case R.S.C. Order 32, rule 9, shall apply, with such modifications as may be appropriate, to a witness summons as it applies to a writ of subpoena.

(5) Where an affidavit filed for use in proceedings relating to a child contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 16 and a copy of the affidavit, or of such part thereof as the court may direct, indorsed aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under paragraph (7) within 7 days after service of the affidavit on him.

(6) Rule 39(4) shall apply to a person served with an affidavit under paragraph (5) of this rule as it applies to a co-respondent.

(7) The court may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Further provisions as to orders under Articles 46 and 47 of the Order

78.—(1) Before an order is made committing a child to the care of the Department under Article 46 of the Order the master or chief clerk, as the case may be, shall fix a date, time and place for the hearing of any representations by the Department and shall send notice in Form 18 to the Department not less than 14 days before the date so fixed.

(2) If the Department wishes to represent that, in the event of an order being made under Article 46, the court should make a financial provision order in favour of the

child, the Department shall, within 7 days after receipt of the notice, file an affidavit setting out such facts relevant to the property and income of the person against whom the financial provision order is sought as are known to the Department and shall at the same time serve a copy of the affidavit on that person.

(3) A person on whom a copy of the Department's affidavit is served under paragraph (2) may, within 4 days after service, file an affidavit in answer and, if he does so, he shall at the same time serve a copy of the affidavit on the Department.

(4) An application by the Department or by an officer appointed under Article 47 of the Order for the variation or discharge of an order made under Article 46 or 47 of that Order or for directions as to the exercise of the powers of the Department or officer under the order may, in the case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the court and the Department or officer shall, if practicable, notify any interested party of the intention to make the application.

(5) In proceedings under Article 46 or 47 the Department may be represented by its director of social services or other officer employed by it for the purposes of their social services functions under the Health and Personal Social Services (Northern Ireland) Order 1972(a).

Removal of child out of Northern Ireland

79.—(1) In any cause the petitioner or the respondent may apply at any time for an order prohibiting the removal of any child of the family under 18 years of age out of Northern Ireland without the leave of the court except on such terms as may be specified in the order.

Unless otherwise directed, an application under this paragraph may be made ex parte.

(2) Unless otherwise directed, any order relating to the custody or care and control of a child shall provide for the child not to be removed out of Northern Ireland without the leave of the court except on such terms as may be specified in the order.

(3) An application for leave to remove a child out of Northern Ireland shall be made to the judge except in the following cases when it may be made to the registrar, namely—

(*a*) where the application is unopposed, or

(*b*) where the application is for the temporary removal of the child unless it is opposed on the ground that the child may not be duly returned.

Reference to officer of the Department

80.—(1) The judge or the registrar may at any time refer to an officer of the Department for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.

(2) Without prejudice to paragraph (1), any party to an application to which rule 77 applies may, before the application is heard, request the registrar to call for a report from an officer of the Department on any matter arising on the application, and if the registrar is satisfied that the other parties to the application consent and that sufficient information is available to enable the officer to carry out the investigation, the registrar may refer the matter to the officer for investigation and report before the hearing.

(3) Where a reference is made under this rule—

(*a*) after completing his investigation, the officer shall file his report:

(*b*) the master or chief clerk, as the case may be, shall give notice to the officer of the date of hearing of the application or other proceedings.

(a) S.I. 1972/1265 (N.I. 14)

Notice of other proceedings relating to children

81. If, while a cause is pending, proceedings relating to any child of the family are begun in the High Court or county court or a court of summary jurisdiction, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if that person is not a party to the cause, by the petitioner.

Transfer of proceedings relating to children

82.—(1) Rules 72 and 73 shall, so far as applicable, apply to proceedings for the exercise of any power under Part IV of the Order as they apply to an application for ancillary relief with the following modifications:—

(*a*) for the words "The judge before hearing, and the registrar before investigating under rule 69, an application for ancillary relief" in paragraph (4) of rule 72 there shall be substituted the words "The Court before hearing an application";

(*b*) paragraph (5) of rule 72 shall be omitted.

(2) Where it appears to the court that an application made to a divorce county court for leave to remove a child permanently out of Northern Ireland is contested, or that any such proceedings listed for hearing in a divorce county court as are mentioned in paragraph (1) of this rule relate to a child who is a ward of court or where proceedings relating to the welfare of the child are pending in the High Court, the court shall order that the proceedings be transferred to the High Court:

Provided that, if a decree nisi has been pronounced in the cause, the court shall, before ordering a transfer as aforesaid, consider whether it would be more convenient to transfer the cause to the High Court under rule 36.

(3) Where in any cause it appears to the court that an application pending in a divorce county court for a declaration under Article 45(3) of the Order is contested, the court shall make an order that the cause be transferred to the High Court.

OTHER APPLICATIONS

Application by a spouse for failure to maintain

83.—(1) An application under Article 29 of the Order by a party to a marriage who alleges that the other party to the marriage—

(*a*) has failed to provide reasonable maintenance for the applicant, or

(*b*) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family,

shall be made by originating summons in Form 19. Such summons shall be issued out of—

(i) the Matrimonial Office, in relation to applications to the High Court;

(ii) a county court office, in relation to applications to a divorce county court.

(2) There shall be filed in support of the summons an affidavit by the applicant which shall state—

(*a*) the names of the parties to the marriage, the place and date of the marriage and the name and status of the wife before marriage;

(*b*) the full name (including surname) of each child and his date of birth or, if it be the case, that he is over 18 years of age, and in the case of each minor child over the age of 16 years whether he is, or will be, or if an order for provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation and the person with whom any such child is residing or, if it be the case, that any such child has been committed to the care of the Department;

(*c*) whether there have been any previous proceedings in any court in Northern Ireland or elsewhere with reference to the marriage or children of the marriage or between the applicant and respondent with reference to any property of either or both of them, the date and effect of any decree or order, and in the case of proceedings in reference to the marriage whether there has been any resumption of cohabitation since the making of the decree or order;

(*d*) particulars of the alleged failure to maintain;

(*e*) the means of the applicant and the respondent;

(*f*) the facts upon which it is claimed that the court has jurisdiction to entertain the proceedings.

(3) If the master or chief clerk, as the case may be, does not consider it practicable to fix a day for the hearing of the application at the time when it is issued he may do so subsequently and in that case he shall forthwith give notice of the day to all parties.

(4) Within 21 days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an affidavit in answer setting out the grounds on which he relies (including any allegation which he wishes to make against the applicant), and shall in any case, unless otherwise directed, file an affidavit containing full particulars of his property and income and serve a copy of the affidavit on the applicant.

(5) Where the respondent's affidavit alleges adultery the alleged adulterer shall, unless otherwise directed, be made a party cited and be served with a copy of the affidavit, with notice in Form 20, and rule 13 shall apply, with the necessary modifications, as if the affidavit were a petition and the party cited were a co-respondent.

(6) A party cited who wishes to defend all or any of the charges made against him shall within 21 days after the time limited for giving notice of intention to defend, file an affidavit in answer and serve a copy of the affidavit on the respondent.

(7) If the respondent does not file an affidavit in accordance with paragraph (4), the court may order him to file an affidavit containing full particulars of his property and income and serve a copy of any such affidavit on the applicant.

(8) Within 14 days after being served with a copy of any affidavit in answer filed by the respondent the applicant may file an affidavit in reply and serve a copy on the respondent and on any party cited. No further affidavit shall be filed without leave.

Transfer to High Court of applications under rule 83

84.—(1) Where it appears to a divorce county court that the respondent intends to contest an application under the last foregoing rule on the ground that—

(*a*) by reason of the applicant's conduct or otherwise the respondent is not liable to maintain the applicant, or

(*b*) no court in Northern Ireland has jurisdiction to entertain the application,

the court shall order that the application be transferred to the High Court.

Hearing of applications under rule 83

85.—(1) Without prejudice to the provisions of rule 84, rules 72 (except paragraphs (5) and (7) thereof) and 73 shall apply with the necessary modifications to an application for an order under Article 29 of the Order as if the application were an application for ancillary relief.

(2) The application shall be heard by a judge in chambers, and , if the application is to a divorce county court, the hearing shall be fixed to take place at such court as in the opinion of the chief clerk is the most convenient.

(3) On the hearing of the application the judge may make such order as he thinks just or may refer the application (except any claim for custody), or any application for an order under Article 29(5) of the Order, to the registrar for him to investigate the means of the parties to the marriage.

(4) Where an application is referred to the registrar under paragraph (3), the master or the chief clerk, as the case may be, shall fix an appointment for the hearing of the application and thereupon the provisions of these Rules relating to ancillary relief shall apply except that where the judge has not made a finding that there has been wilful neglect to maintain—

(*a*) the registrar shall, after completing his investigation under rule 69, report the result thereof in writing to a judge to whom the application shall be adjourned;

(*b*) the registrar's report shall contain an estimate of the financial relief to which, in his opinion, the applicant would be entitled if the application were granted;

(*c*) the registrar's report shall be filed and any party shall be entitled to inspect the report and to be supplied with a copy of it on payment of the prescribed fee.

(5) Where a person has been made a party cited, the judge may, if after the close of the evidence on the part of the respondent he is of opinion that there is not sufficient evidence against the party cited, dismiss him from the proceedings.

(6) Subject to the provisions of this rule and of rules 83 and 84, these Rules shall, so far as applicable, apply with the necessary modifications to an application under Article 29 of the Order as if—

(*a*) the application were a cause, and

(*b*) the originating summons were a petition and the applicant the petitioner.

Application for alteration of maintenance agreement during lifetime of parties

86.—(1) An application to the court under Article 37 of the Order for the alteration of a maintenance agreement shall be made by originating summons in accordance with Form 21.

(2) The application may be filed in the Matrimonial Office or a county court office and may be heard and determined by the registrar.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and stating—

(*a*) the residence of the parties to the agreement at the date of the application and, unless both parties are then resident in Northern Ireland, their domicile at that date;

(*b*) the date and place of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(*c*) the full names (including surnames) of any children of the family and of any other children for whom the agreement makes financial arrangements and—

(i) the date of birth of each child, now living or, if it be the case, that he is over 18 years of age, and, in the case of each minor over 16 years of age, whether he is or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation and the place where and the person with whom any minor child is residing;

(ii) the date of death of any such child who has died since the agreement was made;

(*d*) whether there have been any previous proceedings in any court with reference to the agreement or to the marriage or to the children of the family or of the other children for whom the agreement makes financial arrangements or between the applicant and respondent with reference to any property of either or both of them, and the date and effect of any order made;

(*e*) the means of the applicant and the other party to the agreement in so far as they are within the applicant's knowledge or belief;

(*f*) the nature of the alteration of the agreement sought and the facts alleged by the applicant to justify the alteration.

(4) A copy of the affidavit shall be served on the respondent with the summons.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application containing full particulars of his property and income and, if he does not do so, the court may order him to file an affidavit containing such particulars.

(6) A respondent who files an affidavit under paragraph (5) shall serve a copy on the applicant.

Application of other rules to proceedings under Article 37 of the Order

87.—(1) Rules 68, 69(1) and (4) to (7), 70, 71 and 74 shall apply, with the necessary modifications, to an application under Article 37 of the Order as if it were an application for ancillary relief.

(2) Subject to paragraph (1) and to the provisions of rule 86, these Rules shall, so far as applicable, apply with the necessary modifications to an application under Article 37 of the Order as if the application were a cause, the originating summons a petition, and the applicant the petitioner.

Proceedings in respect of polygamous marriage

88.—(1) The provisions of this rule shall have effect where a petition or originating summons asks for matrimonial relief within the meaning of Article 50(2) of the Order in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(2) The petition or originating summons—

(*a*) shall state that the marriage in question is polygamous;

(*b*) shall state whether or not there is, to the knowledge of the petitioner or applicant, any living spouse of his or hers additional to the respondent or, as the case may be, any living spouse of the respondent additional to the petitioner or applicant (in this rule referred to as an additional spouse); and

(*c*) if there is any additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the petitioner or applicant or, as the case may be, to the respondent or state, so far as may be applicable, that such information is unknown to the petitioner or applicant.

(3) Without prejudice to its powers under R.S.C. Order 15 (which deals with causes of action, counterclaims and parties) or C.C.R. Order 9 (which deals with amendments), the court may order that any additional spouse be added as a party to the proceedings or be given notice of the proceedings or of any application in the proceedings for any such order as is mentioned in Article 50(2)(*d*) of the Order.

(4) Any order under paragraph (3) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in a petition or an acknowledgment of service of a petition, the petitioner shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on lodging the certificate of readiness, ask for directions as to whether an order should be made under paragraph (3).

(5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

DISABILITY

Person under disability must sue by next friend, etc.

89.—(1) In this rule—

"person under disability" means a person who is a minor or a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**a**) is incapable of managing and administering his property and affairs.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(3) No person's name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (7) have been filed.

(4) Where the disability of a person who is entitled to defend any matrimonial proceedings is not solely due to minority, the Official Solicitor shall, if he consents, be guardian ad litem; but at any stage of the proceedings an application may be made (on not less than 4 days' notice to the Official Solicitor, if he has consented to act) for the appointment of some other person as guardian; and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (7).

(5) Where a petition, answer or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given or answer or affidavit in answer filed on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to the registrar for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the registrar may, if he considers it necessary in order to protect the interest of the person served, order that some proper person be appointed his guardian ad litem.

(6) No notice of intention to defend shall be given, or answer or affidavit in answer filed (by or on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit—

(*a*) is the Official Solicitor or, in a case in which paragraph (4) applies, is the Official Solicitor or has been appointed by the court to be guardian ad litem; or

(*b*) in any other case, has filed the documents mentioned in paragraph (7).

(7) The documents referred to in paragraphs (3), (4) and (6) are—

(*a*) a written consent to act by the proposed next friend or guardian ad litem;

(*b*) a certificate by the solicitor acting for the person under disability—

(i) that he knows or believes that the person to whom the certificate relates is a person under disability stating the grounds of his knowledge or belief, and

(ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and is a proper person to be next friend or guardian.

(**a**) 1961 c. 15 (N.I.)

Service on person under disability

90.—(1) Where a document to which rule 13 applies is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served—

(*a*) in the case of a minor who is not otherwise a person under disability, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(*b*) in the case of any other person under disability—

(i) on the Official Solicitor if he has consented under rule 89(4) to be the guardian ad litem, or

(ii) if the Official Solicitor has not so consented, on the person with whom he resides or in whose care he is:

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (*a*) or (*b*) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1), it shall be indorsed with a notice in Form 22; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

Petition for nullity on ground of insanity, etc.

91.—(1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the registrar.

(2) The registrar may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

Separate representation of children

92.—(1) Without prejudice to rule 64, if in any matrimonial proceedings it appears to the court that any child ought to be separately represented, the court may appoint—

(*a*) the Official Solicitor, or

(*b*) some other proper person

(provided, in either case, that he consents) to be the guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of a party to the proceedings or of the proposed guardian ad litem.

(3) The court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless otherwise directed, on making an application for an order under paragraph (1) the applicant shall—

(*a*) unless he is the proposed guardian ad litem, file a written consent by the proposed guardian to act as such;

(*b*) unless the proposed guardian ad litem is the Official Solicitor, file a certificate by a solicitor that the proposed guardian has no interest in the proceedings adverse to that of the child and is a proper person to be guardian.

(5) Unless otherwise directed, a person appointed under this rule or rule 64 to be the guardian ad litem of a child in any matrimonial proceedings shall be treated as a party for the purpose of any provision of these Rules requiring a document to be served on or notice to be given to a party to the proceedings.

PROCEDURE: GENERAL

Security for costs

93.—(1) A wife who is petitioner or who has given notice of intention to defend may, after the certificate of readiness has been lodged or at an earlier stage of a cause with leave, lodge her bill of costs incurred to the date of such certificate for taxation against her husband. The taxing master on the taxation of such bill of costs shall if requested by the wife so to do ascertain what is a sufficient sum of money to cover the costs of the wife of and incidental to the trial or hearing of the cause, and the registrar may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband within such time as the registrar may fix to pay to the wife or into court the amount of such taxed costs and to pay into court or secure the sum ascertained as sufficient to cover the costs of and incidental to the trial or hearing and may direct a stay of the proceedings until the order is complied with.

(2) C.C.R. Order 4, rule 1 (which provides that a plaintiff may be required to give security for costs if he is not resident in Northern Ireland), shall not apply to matrimonial proceedings in a divorce county court.

Service out of Northern Ireland

94.—(1) A petition, notice or other document in a matrimonial cause or matter may be served out of the jurisdiction without leave either in the manner prescribed by these Rules for service within the jurisdiction or in accordance with R.S.C. Order 11.

(2) Where a petition or notice of an application for ancillary relief is to be served out of the jurisdiction, the time limited for giving notice of intention to defend which is to be endorsed on the petition or contained in the notice shall be fixed having regard to the place where or country within which the petition or notice is to be served in accordance with the practice adopted under the said Order.

Service of documents

95.—(1) Where a document is required by these Rules to be sent to any person, it shall, unless otherwise directed, be sent by post—

(*a*) if a solicitor is acting for him, to the solicitor's address;

(*b*) if he is acting in person, to the address for service given by him or, if he has not given an address for service, his last known address, but if in the opinion of the registrar the document would be unlikely to reach him if sent to that address, the registrar may dispense with sending the document to him.

(2) Unless otherwise directed, service of any document in matrimonial proceedings shall, if no other mode of service is prescribed or ordered, be effected—

(*a*) if a solicitor is acting for the person to be served by leaving the document at, or sending it by post to, the solicitor's address;

(*b*) if the person to be served is acting in person, by delivering the document to him or by leaving it at, or sending it by post to, the address for service given by him or, if he has not given an address for service, his last known address:

Provided that where, in a case to which sub-paragraph (*b*) applies, it appears to the registrar that it is impracticable to deliver the document to the person to be served and

that, if the document were left at, or sent by post to, the address specified in that sub-paragraph, it would be unlikely to reach him, the registrar may dispense with service of the document.

Mode of making applications

96. Except where these Rules, or any rules applied by these Rules, otherwise provide, every application in matrimonial proceedings shall be made to a registrar by summons.

Appeal from a judge in divorce county court proceedings

97. R.S.C. Order 58, rule 4 and Order 59 shall apply with the necessary modifications to an appeal to the Court of Appeal under Article 48(9) of the Order from a decree or order of a judge in divorce county court proceedings as if the reference to the High Court in Order 59, rule 10(1) were a reference to a divorce county court.

Appeal from the registrar in divorce county court proceedings

98.—(1) C.C.R. Order 14, rule 1(1)(*f*) (which enables the judge to vary or rescind an order by the registrar in the course of proceedings), shall not apply to an order or decision made or given by the registrar in matrimonial proceedings pending in a divorce county court, but any party may appeal from such an order or decision to a judge on notice filed within 5 days after the order or decision was made or given and served not less than 2 clear days before the day fixed for hearing of the appeal, which shall be heard in chambers unless the judge otherwise orders.

(2) Except so far as the court may otherwise order, an appeal under paragraph (1) shall not operate as a stay of proceedings on the order or decision appealed from.

No notice of intention to proceed after year's delay

99. No provision in the Rules of the Supreme Court (Northern Ireland) 1980, which requires a party to give notice of intention to proceed after a year's delay, shall apply to any matrimonial proceedings.

Filing of documents at place of hearing, etc.

100. Where the file of any matrimonial proceedings has been sent from the Matrimonial Office to a divorce county court for the purpose of a hearing or for some other purpose, any document required to be filed shall be filed in that court.

Mode of giving notice

101. Unless otherwise directed, any notice which is required by these Rules to be given to any person shall be in writing and, if it is to be given by the master or chief clerk, shall be given by post.

Enforcement of Matrimonial Orders

Application

102. In this rule and in rules 103 to 129, unless the context otherwise requires—

"matrimonial order" means an order made in matrimonial proceedings for the periodical payment of money;

"judgment creditor" means the person entitled to payments under a matrimonial order;

"judgment debtor" means the person liable to make payments under a matrimonial order.

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor

103.—(1) On the application of the judgment creditor where there is an amount remaining unpaid by the judgment debtor under a matrimonial order and any other person within the jurisdiction (hereinafter referred to as "the garnishee") is indebted to the judgment debtor, the court may, subject to the provisions of paragraph (2) and rules 104 to 109 and 111 and to any other statutory provision, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy the order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) In this rule "the garnishee" shall include a limited company having a place of business within the jurisdiction or a firm any member of which is resident within the jurisdiction and a garnishee order may be made against any firm in the name of the firm; and any appearance by any member then within the jurisdiction pursuant to an order made under this rule shall be a sufficient appearance by the firm.

Application for order

104. An application for an order under rule 103 must be made ex parte supported by an affidavit—

(*a*) identifying the order to be enforced and stating the amount remaining unpaid under it at the time of the application;

(*b*) stating that to the best of the information and belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information and the grounds for his belief; and

(*c*) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information is not known to the deponent.

Service and effect of order to show cause

105.—(1) An order under rule 103 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

(*a*) on the garnishee personally, and

(*b*) unless the court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee

106.—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may, subject to rule 109, make an order absolute under rule 103 against the garnishee.

(2) An order absolute under rule 103 against the garnishee may be enforced as if judgment for the amount payable thereunder had been given against the garnishee.

Dispute of liability by garnishee

107. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

Claims of third persons

108.—(1) If in garnishee proceedings it is brought to the notice of the court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the court may order that person to attend before the court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the court in compliance with an order under paragraph (1), the court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 107.

Discharge of garnishee

109. Any payment made by a garnishee in compliance with an order absolute under these Rules, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose is reversed.

Money in court

110.—(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the court by summons for an order that the money or so much thereof as is sufficient to satisfy the order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On issuing a summons under this rule the applicant must produce the summons at the Court Funds Office and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Court Funds Office.

(3) Unless the court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing.

(4) The court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

Costs

111. The costs of any application for an order under rules 103 to 110 and of any proceedings arising therefrom or incidental thereto, shall, unless the court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

CHARGING ORDERS, STOP ORDERS, ETC.

Order imposing charge on securities

112.—(1) The court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in

such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the matrimonial order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are—

(*a*) any Government stock, and any stock of any company registered under any general Act of the Parliament of Northern Ireland including any such stock standing in the name of the Accountant General, and

(*b*) any dividend of or interest payable on such stock.

(4) In these Rules "Government stock" means securities of which the principal and interest, if any, are charged directly or by way of guarantee on the Consolidated Fund of Northern Ireland or of the United Kingdom, being inscribed or registered in Northern Ireland, and funds or stocks on the National Savings Stock Register maintained by trustee savings banks in Northern Ireland.

Application for order under rule 114

113. An application for an order under rule 114 must be made ex parte supported by an affidavit—

(*a*) identifying the order to be enforced, stating the amount unpaid under it at the date of the application and showing that the applicant is entitled to enforce the order;

(*b*) specifying the securities on the judgment debtor's interest in which it is sought to impose a charge and stating in whose name they stand;

(*c*) stating that to the best of the information and belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest and stating the sources of the deponent's information or the grounds for his belief.

Service of notice of order to show cause

114.—(1) Unless the court otherwise directs, a copy of the order under rule 112 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and, if he does not attend on such consideration, proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served—

(*a*) where the order relates to Government stock, on the principal office in Belfast of the Bank of Ireland,

(*b*) where the order relates to other stock, on the company concerned,

(*c*) where the order relates to stock standing in the name of the Accountant General, on the proper officer of the Court Funds Office.

Effect of order to show cause

115.—(1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 112 to show cause relates which is made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute, the Bank of Ireland or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order or pay to any person any dividend thereof or interest payable thereon, except with the authority of the court.

(3) If, after the notice of the making of such order is served on the Bank of Ireland or a company, the Bank or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

Making and effect of charging order absolute

116.—(1) On the further consideration of the matter the court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the court that the order should not be made absolute, it shall discharge the order.

(3) A charge imposed by an order under rule 112 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge, etc., of charging order

117. The court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 112 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks just.

Money in court: charging order

118.—(1) The court may for the purpose of enforcing a matrimonial order by order impose on any interest to which the judgment debtor is beneficially entitled in any money in court identified in the order a charge for securing payment of the amount due under the matrimonial order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 113 and 114 shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 112 and to such order.

(4) Notice of the making of an order under this rule to show cause, with a copy of that order, must as soon as practicable after the making of the order, be served on the proper officer of the Court Funds Office.

(5) Rules 115(1), 116(1) and (2) and 117 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 112.

Jurisdiction of registrar to grant injunction or appoint receiver to enforce charge

119. The registrar shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 112 or 118, and an application for an injunction under this rule may be joined with the application for the order under rule 112 or 118 to which it relates.

Funds in court: stop order

120.—(1) The court, on the application of the judgment creditor may without notice to the applicant make an order prohibiting the transfer, sale, delivery out or payment of, or other dealing with, funds in court or any part thereof or the income thereon in which the judgment debtor has an interest.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the proper officer of the Court Funds Office but shall not be served on any other person.

(4) Without prejudice to the court's powers and discretion as to costs, the court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in court: stop notice

121.—(1) A judgment creditor claiming to be beneficially entitled to an interest in any securities to which rule 112 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Matrimonial Office or the county court office, as the case may be—

(*a*) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises, and

(*b*) a notice in Form 23, signed by the deponent to the affidavit, and annexed to it, addressed to the Bank of Ireland or, as the case may be, the company concerned,

and must serve an office copy of the affidavit and a copy of the notice sealed with the seal of the court on the Bank or that company.

(3) There must be indorsed on the affidavit filed under this rule a notice stating the address to which any such notice as is referred to in rule 122(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 122 by serving on the Bank of Ireland or, as the case may be, the company concerned, a notice to that effect, and as from the date of service of such a notice the address stated thereon shall for the purpose of that rule be the address for service of that person.

Effect of stop notice

122.—(1) Where a notice under rule 121 has been served on the Bank of Ireland or a company, then, so long as the notice is in force, the Bank or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Bank of Ireland or a company receives a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 121 relates, the Bank or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the court.

Amendment of stop notice

123. If any securities are incorrectly described in a notice filed under rule 121, the person on whose behalf the notice was filed may file in the Matrimonial Office or county court office, as the case may be, an amended notice and serve on the Bank of Ireland or, as the case may be, the company concerned a copy of that notice sealed with the appropriate seal and where he does so the notice under rule 121 shall be deemed to have been served on the Bank or company on the day on which the copy of the amended notice was served on it.

Withdrawal, etc., of stop notice

124.—(1) The person on whose behalf a notice under rule 121 was filed may withdraw it by serving a request for its withdrawal on the Bank of Ireland or, as the case may be, the company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 121 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by summons, and the summons must be served on the person on whose behalf the notice under rule 121 was filed.

Receivers: Equitable Execution

Appointment of receiver by way of equitable execution

125. Where an application is made for the appointment of a receiver by way of equitable execution, the court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

Registrar may appoint receiver, etc.

126. The registrar shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver, etc.

127. An application for the appointment of a receiver by way of equitable execution shall be made by summons.

Attachment of earnings

128. Sections 73 and 77D of the Judgments (Enforcement) Act (Northern Ireland) 1969(a) and R.S.C. Order 105 (which deals with attachment of earnings) shall apply to the enforcement of orders made in matrimonial proceedings in a divorce county court as if they were orders of the High Court.

Examination in Aid of Enforcement

Examination as to debts owing to judgment debtor, etc.

129.—(1) Any party entitled to enforce a matrimonial order may issue and serve a summons on the judgment debtor liable under such order requiring him to attend

(a) 1969 c. 30 (N.I.)

before the court to be orally examined as to whether any and what debts are owing to the judgment debtor, and whether the judgment debtor has any and what other property or means of satisfying the order.

(2) The summons under paragraph (1) shall be in Form 24 or as near thereto as the circumstances of the case may render necessary and shall be served on the judgment debtor by recorded delivery or personally.

(3) If the judgment debtor shall fail to attend in pursuance of the summons the court may make an order for the attendance of the judgment debtor or any other person and for the production of any books or documents.

(4) An order for attendance under paragraph (3) shall be served personally on such person or persons and within such time as the court shall direct.

(5) Upon the examination the court may make any of the following orders:—

(*a*) a conditional order of garnishee,

(*b*) a charging order or stop order or any order ancillary thereto,

(*c*) an order for the appointment of a receiver by way of equitable execution, under the preceding rules,

(*d*) an attachment of earnings order under section 77D of the Judgments (Enforcement) Act (Northern Ireland) 1969.

(6) The evidence given on the examination shall be taken down in writing, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the examinee. A copy of the note of such evidence shall, on payment of the appropriate fee, be made available to the parties to any such examination, but save as aforesaid no person shall, without leave of the court, be entitled to examine such note or obtain a copy thereof.

JUDGMENT SUMMONSES

Application for issue of judgment summons

130.—(1) In this rule and in rules 131 and 132 unless the context otherwise requires—

"the Act" means the Judgments (Enforcement) Act (Northern Ireland) 1969;

"order" means an order made in matrimonial proceedings for the periodical payment of money or an order made by the Enforcement of Judgments Office for the payment by instalments of the amount due under an order made in matrimonial proceedings for payment of a lump sum or costs;

"judgment creditor" means a person entitled to enforce an order;

"debtor" means a person liable under an order

"judgment summons" means a summons under Part VII of the Act.

(2) An application for the issue of a judgment summons may be made—

(*a*) in the case of an order of the High Court, to the Matrimonial Office;

(*b*) in the case of an order of a divorce county court to that court;

by filing an affidavit verifying the amount due under the order and showing how the amount is arrived at.

(3) A judgment summons shall not be issued without the leave of the judge if the debtor is in default under an order of committal made on a previous judgment summons in respect of the same order.

(4) Every judgment summons shall be in Form 25 and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court.

(5) Where a judgment summons has not been served in due time, it may by leave of the registrar be re-issued and, if necessary, amended from time to time within 6 months of the date of the original judgment summons.

(6) If the judge makes an order for committal, he may direct its execution to be stayed on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original order.

(7) All payments under an order made under section 83(3) of the Act or an order of committal shall be made to the judgment creditor unless the judge otherwise directs.

(8) Where an order of committal is stayed on such terms as are mentioned in paragraph (9)—

(*a*) all payments thereafter made shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons; and

(*b*) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

(9) Where an order of committal has been made but execution of the order is stayed and the debtor subsequently desires to apply for a further stay, he shall attend at or write to the Matrimonial Office or the county court office, as the case may be, and apply for the stay he requires, stating the reasons for his inability to comply with the order, and the master or chief clerk, as the case may be, shall fix a day for the hearing of the application by the judge and serve notice thereof on the judgment creditor and on the debtor by recorded delivery at least 3 clear days before the day fixed for the hearing.

(10) The judgment creditor shall serve notice by recorded delivery on the debtor of the terms of any order made under this rule whether or not the debtor has attended the hearing.

(11) An order for committal shall be directed to any police officer or other person as the court may direct for execution.

Further provisions as to judgment summonses

131.—(1) R.S.C. Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgment summons issued in the High Court or a divorce county court as if it were an originating summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena or witness summonses may be issued for that purpose.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of commitment is made, the judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

Special provisions as to judgment summonses in divorce county courts

132. C.C.R. Order 37 (which deals with enforcement of decrees) shall not apply to a judgment summons issued in a divorce county court.

Removal of divorce county court order into High Court

133.—(1) Any order made by a divorce county court in matrimonial proceedings may, on an application made to the High Court ex parte by affidavit by the person entitled to enforce the order, be removed into the High Court by direction of the registrar, if he is satisfied that the order cannot conveniently be enforced in the county court.

(2) Where an order is so removed, it shall have the same force and effect and the same proceedings may be taken on it as if it were an order of the High Court.

MISCELLANEOUS

Record of proceedings at trial

134.—(1) A record of the proceedings at the trial of every cause shall where practicable be made by mechanical means.

(2) A record may be made by mechanical means of any other proceedings before the judge if directions for making such a record are given by him.

(3) The person who operated the recording machine shall, if it be the case, certify that the recording is a complete recording or a continuous part of a complete recording taken at the proceedings to which it relates.

(4) On being so directed a shorthand writer or other competent person shall furnish the registrar with a transcript of the whole or such part as may be directed of the record.

(5) The shorthand writer or other competent person shall, if it be the case, certify the transcript to be a correct transcript of the record or such part of the record as may be requested.

(6) Any party, any person who has intervened in a cause or the Crown Solicitor shall be entitled to bespeak a copy of the transcript on payment of the appropriate fee.

Inspection of documents retained in court

135.—(1) A party to any matrimonial proceedings or his solicitor or the Crown Solicitor or a person appointed under rule 64 or 92 to be the guardian ad litem of a child in any matrimonial proceedings may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the Matrimonial Office or county court office in those proceedings.

(2) Except as provided by paragraph (1) of this rule no document filed or lodged in the Matrimonial Office or county court office other than a decree or order made in open court, shall be open to inspection by any person without the leave of the registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Practice to be observed in the Matrimonial Office and divorce county courts

136. The Lord Chief Justice may with the concurrence of the Lord Chancellor, issue directions for the purpose of securing due observance of statutory requirements and uniformity of practice in matrimonial proceedings in the Matrimonial Office and divorce county courts.

Revocation

137. The Matrimonial Causes Rules (Northern Ireland) 1979(a) are hereby revoked.

(a) S.R. 1979 No. 89

APPENDIX 1

Form 1 Rule 4

Originating Summons under Rule 4

In the High Court of Justice in Northern Ireland

Family Division(1)

In the Country Court for the Division of(1)

In the Matter of a Proposed Petition by A.B. for the Dissolution of his (or her) Marriage with C.B.

LET of in the County of attend the Judge in Chambers at on day the day of 19 , at o'clock in the noon on the hearing of an application of for an order that the said may be at liberty to file a petition for dissolution of his (or her) marriage with the said solemnized on the day of 19 , notwithstanding that 3 years have not passed since the date of the said marriage.

A copy of the affidavit to be used in support of the application is delivered herewith.

If you wish to be heard on the application, you must attend at the time and place above-mentioned and if you do not attend, such order will be made and proceedings taken as the Judge may think just and expedient.

Dated this day of 19 .

THIS SUMMONS was taken out by solicitor for the above named.

Note:

1. You must complete the accompanying acknowledgment of service and send it so as to reach the court within fourteen days after you receive this summons.

2. In default of your giving notice of intention to defend the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.

3. If you intend to instruct a solicitor to act for you, you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

(1) Delete if inapplicable.

FORM 2

HEADING OF PETITION

In the High Court of Justice in Northern Ireland

Family Division(1)

In the County Court for the Division of(1)

The Petition of A.B.—

1.

2.

3.

Etc.

(1) Delete if inapplicable.

FORM 3

GENERAL HEADING OF PROCEEDINGS

In the High Court of Justice in Northern Ireland

Family Division(1)

In the County Court for the Division of(1)

Between	Petitioner
and	Respondent
and	Co-Respondent(1)

(1) Delete if inapplicable.

FORM 4 Rule 7(2)

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

[*Heading as in Form 3*]

The proposed arrangements for the children of the family under 16 and those over 16 but under 18 who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:—

[*State in respect of each child*]–

(i) residence [*state where the child is to live with particulars of the accommodation, what other persons (naming them) live there and who will look after the child; and, if it is proposed that the child should be in the immediate care of a person other than the petitioner, state whether or not that person has agreed to this arrangement*]

(ii) education, etc. [*state the school or other educational establishment which the child will attend or, if he is working, his place of employment, the nature of his work and details of any training he will receive*]

(iii) financial provision [*state who is at present supporting the child or contributing to his support and the extent thereof and whether it is proposed to make any application to the Court for the financial support of the child and if so what support is to be applied for*]

(iv) access [*state any arrangements which have been agreed for access and the extent to which access is to be given*].

The said child[ren] is [are] [not] suffering from serious disability or chronic illness or from the effects of such illness [, namely, [*state in respect of each child so suffering, the nature of the disability or illness and attach a copy of any up-to-date medical report which is available*]].

The said child[ren] is [are] [not] under the care or supervision of an officer, or officer appointed by the Department of Health and Social Services, or other person or organisation [namely, [*give details, and state the date of any order for care or supervision and the circumstances which give rise to its being made*]].

Dated this day of 19 .

Signed

Petitioner

FORM 5 Rule 10(4)

NOTICE OF PROCEEDINGS

[*Heading as in Form 3*]

TAKE NOTICE that a petition [for divorce](1) has been presented to the Court. A sealed copy of it [and a copy of the petitioner's proposals regarding the children] [is] [are] delivered with this notice.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, within 14 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

2. If you intend to instruct a solicitor to act for you, you should at once give him all documents which have been served on you, so that he may send the acknowledgment to the Matrimonial Office on your behalf. If you do not intend to instruct a solicitor, you should nevertheless give an address for service in the acknowledgment so that any documents affecting your interests which are sent to you will in fact reach you. Change of address should be notified to the Matrimonial Office.

NOTES ON QUESTIONS IN FORM 6

3. If you answer Yes to Question [4 or 7](2) you must within 35 days after you receive this notice, inclusive of the day of receipt, file in the Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast, an answer to the petition, and deliver a copy to every other party to the proceedings. The case will then be transferred to the High Court(3).

4. (2) Before you answer Yes to Question 5 you should understand that—

(*a*) you are under no obligation to answer this question but you may do so if you wish;

(*b*) the answer Yes will be treated by the Court as an admission on which the petitioner is entitled to rely and may result in an order for costs being made against you;

(*c*) if you are in any doubt about the answer to give you should consult a solicitor.

5. (2) Before you answer Yes to Question 6 you should understand that—

(*a*) if the petitioner satisfies the Court that the petitioner and you have lived apart for 2 years immediately before the presentation of the petition and that you consent to a decree, the Court will grant one unless it considers that the marriage has not broken down irretrievably;

(*b*) a decree absolute of divorce will end your marriage so that—

(i) any right you may have to a pension which depends on the marriage continuing will be affected;

(ii) you will not be able to claim a State widow's pension when the petitioner dies;

(*c*) once the Court grants a decree absolute of divorce or a decree of judicial separation, you will lose your right to inherit from the petitioner if he or she dies without having made a will;

(*d*) a decree may have other consequences in your case depending on your particular circumstances and if you are in any doubt about these you would be well advised to consult a solicitor.

6. (2) If after consenting you wish to withdraw your consent you must immediately inform the Matrimonial Office and give notice to the petitioner.

7. (2) The petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least 5 years. Article 12 of the Matrimonial Causes (Northern Ireland) Order 1978 provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial position after the divorce, a decree nisi based on 5 years' separation only cannot be made absolute unless the Court is satisfied that the petitioner has made or will make proper financial provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. The petition will tell you whether the petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 7 in the acknowledgment.

8. (2) If you answer Yes to Question 8 you must, before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 14.

9. (2) (*a*) If you do not wish to defend the case but object to the claim for costs, you should answer Yes to Question 9 in the acknowledgment. You must state the grounds on which you object. An objection cannot be entertained unless grounds are given which, if established, would form a valid reason for not paying the costs. If such grounds are given, you will be notified of a date on which you must attend before the Judge if you wish to pursue your objection.

(*b*) If you do not object to the claim for costs but simply wish to be heard on the amount to be allowed, you should answer No to Question 9.

(*c*) If you are ordered to pay costs, the amount will, unless agreed between the petitioner and yourself, be fixed by the Court, or will be taxed by the taxing master, after lodgment of the petitioner's bill of costs. In the latter event, you will be sent a copy of the bill and will have the right to be heard about the amount before it is finally settled.

10. (2) If you wish to do so, you may send to the Matrimonial Office a statement setting out your views on the proposals regarding the children. If you send a statement it will be placed before the Judge dealing with the arrangements for the children and a copy of your statement will be sent to the petitioner. Any such statement ought, if practicable, to reach the Matrimonial Office within the time for returning the acknowledgment of service.

11. (2) (*a*) If you object to the petitioner's claim for custody of the children, answer Yes to Question 10 in the acknowledgment.

(*b*) If you wish to apply on your own account for custody of or access to the children, answer Yes to (*a*) or (*b*) of Question 11.

(*c*) If you answer Yes to Question 10 or 11 you will be notified of the date of the hearing of the petition when you should attend the Court.

It will be open to you to apply for access to the children later even if you do not do so now. You may also apply later, for good reason, for the variation of an order made by the Court as to their custody.

12. If you wish to contest the petitioner's financial or property claim, you will have an opportunity of doing so when you receive a notice stating that the petitioner intends to proceed with the claim. You will then be required to file an affidavit giving particulars of your property and income and be notified of the date when the claim is to be heard.

13. If you wish to make some financial or property claim on your own account, you will have to make a separate application. If you are in doubt as to the consequences of divorce on your financial position, you should obtain legal advice from a solicitor.

Dated this day of 19 .

Registrar

To

(1) Or as the case may be.

(2) Delete if inapplicable.

(3) Delete if the petition has been presented to the High Court or if the case has already been transferred to the High Court.

FORM 6 Rule 14(1)

ACKNOWLEDGMENT OF SERVICE

If you intend to instruct a solicitor to act for you, give him this form immediately.

[*Heading as in Form 3*]

Read carefully the Notice of Proceedings before answering the following questions.

1. Have you received the originating summons [and copy of the supporting affidavit] [*or* the petition for [divorce] (2)] delivered with this form?

2. On what date and at what address did you receive it?

3. Are you the person named as the Respondent in the application [or as in the petition] (2) ?

4. Do you intend to defend the case?

*5. (3) [*In the case of a petition alleging adultery*] Do you admit the adultery alleged in the petition?

*6. (3) [*In the case of a petition alleging 2 years' separation coupled with the respondent's consent to a decree being granted*]. Do you consent to a decree being granted?

7. (3) [In the case of a petition asking for divorce alleging 5 years' separation]. Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage?

8. (3) In the event of a decree nisi being granted on the basis of 2 years separation, coupled with the respondent's consent, or 5 year's separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?

9. (3) Even if you do not intend to defend the case, do you object to paying the costs of the proceedings? If so, on what grounds?

10. (3) Even if you do not intend to defend the case, do you object to the claim in the petition for custody of the children?

11. (3) Do you wish to make any application on your own account for—

(*a*) custody of the children?

(*b*) access to the children?

12. [*In the case of proceedings relating to a polygamous marriage*]. If you have any wife [or husband] in addition to the petitioner [or applicant] who is not mentioned in the petition [or originating summons], what is the name and address of each such wife [or husband] and the date and place of your marriage to her [or him]?

Dated this day of 19 .

*[*If a solicitor is instructed, he will sign below on your behalf* [*but if the answer to Question 5 or 6 is Yes, you must also sign here*]].

Signed

Address for service [*unless you intend to instruct a solicitor, give your place of residence, or if you do not reside in Northern Ireland, the address of a place to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast*].

[I am [We are] acting for the Respondent [*or* the above-named in this matter].

Signed

Address for service:

(2) Or as the case may be.

(3) Delete if inapplicable.

FORM 7 Rule 14(3)

AFFIDAVIT OF SERVICE

[*Heading as in Form 3*]

I, of make Oath and say:

1. That a sealed copy of the (1) bearing date the day of 19 filed in this Court was duly served by me on the said at on the day of 19 by delivery to the said personally a sealed copy thereof [together with copies of the notices in Forms 5 and 6] [Means of knowledge of identity of the person served must be inserted here].

(1) Petition or notice or originating summons.

Sworn, etc.

FORM 8 Rule 32(2)

CERTIFICATE OF READINESS

[*Heading as in Form 3*]

To the Master

Sir,

I/We request that you enter this cause for hearing at (1)

I/We certify on the part of the petitioner/respondent (hereinafter called "this party")—

(1) that the requirements of rule 32(1) are satisfied;
(2) that there are no pending interlocutory proceedings by or against this party;
(3) that this party does not intend to commence any (further) interlocutory proceedings before trial;
(4) that, so far as concerns this party, the cause is ready for trial.

(Signed)

Solicitor(s) for petitioner/respondent

(1) State, in the case of a petition pending in a divorce county court, the desired place of hearing.

FORM 9 Rule 42(1)

NOTICE UNDER RULE 42(1)

[*Heading as in Form 3*]

TAKE NOTICE that the application [state nature of application] which was adjourned on , has been restored to the list for hearing at on at o'clock.

(Signed)
Solicitor(s) for the Petitioner/Respondent

To: the Petitioner/Respondent,
the Master/Chief Clerk.

FORM 10 Rule 57(1)

NOTICE OF APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE

[*Heading as in Form 3*]

TAKE NOTICE that the petitioner [*or* respondent] applies for the decree nisi pronounced in his (her) favour on the day of 19 , to be made absolute.

Dated this day of 19 .

Signed

[Solicitor for the] Petitioner
[*or* Respondent]

FORM 11 Rule 59(2)

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (DIVORCE)

[*Heading as in Form 3*]

(Seal)

Referring to the decree made in this cause on the day of 19 , whereby it was decreed that the marriage solemnized on the day of 19 at between the petitioner and the respondent be dissolved unless sufficient cause be shown to the Court within from the making thereof why the said decree should not be made absolute, and no such cause having been shown it is hereby certified that the said decree was on the day of 19 , made final and absolute and that the said marriage was thereby dissolved.

Dated this day of 19 .

FORM 12 Rule 59(2)

CERTIFICATE OF MAKING DEGREE NISI ABSOLUTE (NULLITY)

[*Heading as in Form 3*]

(Seal)

Referring to the decree made in this cause on the day of 19 , whereby it was ordered that the marriage in fact solemnized on the day of 19 , at between the petitioner and the respondent [*in the case of a void marriage* be pronounced and declared to have been by law void and the said petitioner be pronounced to have been and to be free of all bond of marriage with the said respondent]. [*in the case of a voidable marriage* be annulled] unless sufficient cause be shown to the court within from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the day of 19 , made final and absolute [*in the case of a void marriage* and that the said marriage was by law void and that the said petitioner was and is free from all bond of marriage with the said respondent] [*in the case of a voidable marriage* and that the said petitioner was from that date and is free from all bond of marriage with the said respondent].

Dated this day of 19 .

FORM 13 Rule 60(2) and (3)

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

[*Heading as in Form 3*]

TAKE NOTICE that the petitioner [or respondent] intends to apply to the Court for [*here set out the ancillary relief claimed, stating the terms of any agreements as to the order which the Court is to be asked to make and, in the case of an application for a property adjustment order or an avoidance of disposition order, stating briefly the nature of the adjustment proposed or the disposition to be set aside*].

Notice will be given to you of the place and time fixed for the hearing of the application [or The application will be heard by the registrar in chambers at on day, the day of 19 , at o'clock].

[*Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for maintenance pending suit or a financial provision order or variation order:*

TAKE NOTICE ALSO that you must file in the [Matrimonial Office, Royal Court of Justice, Chichester Street, Belfast], [or county court office at] within 14 days after you receive this notice, an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the [solicitor for] the applicant.

If you wish to allege that the petitioner has property or income, you should say so in your affidavit].

Dated this day of 19 .

Signed

[Solicitor for the] Respondent
[*or* Petitioner]

FORM 14 Rule 51

NOTICE OF APPLICATION UNDER RULE 51

[*Heading as in Form 3*]

TAKE NOTICE that the respondent applies to the Court under Article 12(2) of the Matrimonial Causes (Northern Ireland) Order 1978 for the Court to consider the financial position of the respondent after the divorce.

The application will be heard on a date to be fixed [*or if, in the case of an application made after a decree nisi, a date has been fixed* by the registrar in chambers at on day, the day of 19 , at o'clock].

[*Unless the petitioner has already filed an affidavit in connection with an application for ancillary relief under rule 68(2):*

TAKE NOTICE ALSO that you must within 14 days after you receive this notice, file in the [Matrimonial Office, Royal Courts of Justice, Chichester Street, Belfast] [or county court office at] an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the [solicitor for the] respondent.

If you wish to allege that the respondent has property or income, you should say so in your affidavit].

Dated this day of 19 .

Signed

[Solicitor for the] Respondent

FORM 15 Rule 65(1)

NOTICE OF INTENTION TO PROCEED WITH APPLICATION FOR ANCILLARY RELIEF MADE IN PETITION OR ANSWER

[*Heading as in Form 3*]

The petitioner [*or* respondent] having applied to his [her] petition [*or* answer] for [*here set out the ancillary relief claimed and intended to be proceeded with, stating the terms of any agreement as to the order which the court is to be asked to make*].

[*Add where applicable* TAKE NOTICE that the application will be heard by the registrar in chambers at on day, the day of 19 , at o'clock].

TAKE NOTICE [ALSO] that [*continue as in third paragraph of Form 13*].

Dated this day of 19 .

Signed

[Solicitor for the] Petitioner [*or* Respondent]

FORM 16 Rules 68 and 77(5)

NOTICE OF ALLEGATION IN PROCEEDINGS FOR ANCILLARY RELIEF

[*Heading as in Form 3*]

TAKE NOTICE that this affidavit has been filed in proceedings for [*state nature of application*] and that if you wish to be heard on any matter affecting you in the proceedings you may intervene by applying to the Court, within 7 days after you receive this notice, inclusive of the day of receipt, for directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Dated this day of 19 .

Issued by
[Solicitor for the] Petitioner [*or* Respondent].

FORM 17 Rule 75(2)

NOTICE OF REQUEST FOR PERIODICAL PAYMENTS ORDER AT SAME RATE AS ORDER FOR MAINTENANCE PENDING SUIT

[Heading as in Form 3]

To of . The petitioner [*or* respondent] having on the day of 19 , obtained an order for payment by you of maintenance pending suit at the rate of

AND the petitioner [*or* respondent] having applied to his [her] petition [*or* answer] for a periodical payments order for himself [*or* herself].

TAKE NOTICE that the petitioner [*or* respondent] has requested the Court to make a periodical payments order for himself [*or* herself] providing for payments by you at the same rate as those mentioned above.

AND TAKE NOTICE that if you object to the making of such a periodical payments order, you must give notice to that effect to the [master] [or chief clerk] and the petitioner [*or* respondent] within 14 days after service of this notice on you, and if you do not do so, the registrar may make such a periodical payments order without further notice to you.

Dated this day of 19 .

[Master]
[Chief Clerk]

FORM 18 Rule 78(1)

NOTICE OF APPOINTMENT TO HEAR REPRESENTATIONS BEFORE CHILD IS COMMITTED TO CARE OF DEPARTMENT OF HEALTH AND SOCIAL SERVICES

[*Heading as in Form 3*]

To

TAKE NOTICE that if you wish to make representation before an order is made committing to the care of the Department of Health and Social Services you should attend before at on the day of 19 , and that if you do not attend at the time and place mentioned, such order will be made and proceedings taken as the Judge thinks fit.

Note: Where the Department to whose care a child is committed wish to ask for a financial provision order in favour of the child the Department must, within 14 days after receiving this notice, file an affidavit as to the property and income of the party against whom the order is sought and must at the same time send him a copy of the affidavit. Within 4 days after receiving the Department's affidavit the party against whom the order is sought may file an affidavit in reply and, if he does so, he must send a copy of his affidavit to the Department.

Dated this day of 19 .

[Master]
[Chief Clerk]

FORM 19 Rule 83(1)

ORIGINATING SUMMONS FOR MAINTENANCE

In The High Court Of Justice In Northern Ireland

Family Division (1)

(1) Delete if inapplicable.

In the County Court for the Division of (1)

In the Matter of an Application by A.B. under Article 29 of the Matrimonial Causes (Northern Ireland) Order 1978.

A.B. Applicant
C.B. Respondent

(2) Name, address and description of respondent.

(3) Name and address of applicant.

LET the respondent C.B. (2) attend before the Judge in Chambers at the Royal Courts of Justice, Chichester Street, Belfast, [or as the case may be] on day, the day of 19 , at o'clock, on the hearing of an application of A.B. (3) who claims that the said C.B., being the lawful husband of the applicant:

(a) has failed to provide reasonable maintenance for the applicant, or

(b) has failed to provide, or to make proper contribution towards, reasonable maintenance for any child of the family,

and applies that the said C.B. be ordered [here set out the relief claimed].

The applicant further applies that the costs of this application be provided for.

Dated the day of 19 .

This summons was taken out by

Solicitors for the Applicant.

(4) Name, address and description of respondent.

To C.B. (4)

TAKE NOTICE that—

1. A copy of the affidavit to be used in support of the application is delivered herewith.

2. You must complete the accompanying acknowledgment of service and send it so as to reach the court within 14 days after you receive this summons.

3. In default of your giving notice of intention to defend the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.

4. In the event of your giving notice of intention to defend you are required within 21 days after the time limited for giving such notice to file in the Matrimonial Office [or county court office] at the address above-mentioned an affidavit in answer to the application setting out the grounds on which you intend to contest the application and setting forth in a schedule to the affidavit full particulars of your property and income. You must at the same time send a copy of your affidavit (with the schedule) to the Solicitor for the Applicant.

5. If you intend to instruct a solicitor to act for you, you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

FORM 20 Rule 83(5)

NOTICE UNDER RULE 83(5)

[*Heading as in Form 19*]

To

(1) State name and address of wife.
(2) State name, address and description of husband.
(3) Or as the case may be.

TAKE NOTICE that in proceedings by A.B.(1) in the High Court of Justice in Northern Ireland [or in the County Court for the Division of]under Article 29 of the Matrimonial Causes (Northern Ireland) Order 1978 it has been alleged by C.B. (2) husband of the said A.B., that you have committed adultery with the said A.B. AND FURTHER TAKE NOTICE that you are at liberty within 14 (3) days after service of this notice on you to give notice of intention to defend in the proceedings either in person or by your Solicitor at the Matriminial Office, Royal Courts of Justice, Chichester Street, Belfast, [or county court office at], and to intervene in the proceedings and defend all or any of the charges set forth in the copy affidavit served on you with this notice.

(4) State name and address of petitioner or solicitor.

This notice is issued by(4)

Dated the day of 19

[Master]

[Chief Clerk]

1. You must complete the accompanying acknowledgment of service and send it so as to reach the Matrimonial Office [or county court office] within 14 days after you receive this summons.

2. In default of your giving notice of intention to defend the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.

3. If you intend to instruct a solicitor to act for you, you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

FORM 21 Rule 86(1)

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT DURING THE LIFETIME OF THE PARTIES

In the High Court of Justice in Northern Ireland

(1) Delete if inapplicable.

Family Division (1)

In the County Court for the Division of (1)

IN THE MATTER of an Application under Article 37 of the Matrimonial Causes (Northern Ireland) Order 1978

Between Applicant

and Respondent

LET of attend before the Judge in Chambers at the Royal Courts of Justice, Chichester Street, Belfast, [or as the case may be] on day, the day of 19 , at o'clock, on the hearing of an application of A.B. who claims that the agreement made between the said A.B. and the said on the day of 19 , should be altered as shown in the affidavit accompanying this summons so as to [make different] [contain] financial arrangements.

Dated the day of 19 .

This summons was taken out by solicitor for the above named A.B.

To

TAKE NOTICE:—

The Notice appended to the Summons should follow the Notice in Form 19 but the words "in a schedule to the affidavit" in paragraph 4 should be deleted.

FORM 22 Rule 90(2)

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE WITH RULE 90

To of

TAKE NOTICE that the contents or purport of this document are to be communicated to the respondent [or as the case may be], the said if he is over 16 [*add, if the person to be served is by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961 incapable of managing and administering his property and affairs;* unless you are satisfied [after consultation with the responsible medical officer within the meaning of the Mental Health Act (Northern Ireland) 1961, or if the said is not liable to be detained or subject to guardianship under that Act, his medical attendant]* that communication will be detrimental to his mental condition],

*Delete these words if the document is served on the responsible medical officer or medical attendant.

FORM 23 Rule 121(2)

AFFIDAVIT AND NOTICE UNDER RULE 121

[*Heading as in Form 3*]

I, A.B. [or C.D. the solicitor for A.B.] of make oath and say that according to the best of my knowledge, information and belief I am [or the said A.B. is] beneficially entitled under the above mentioned settlement [or as may be] to an interest in the securities specified in the notice hereto annexed.

Sworn, etc.

This affidavit is filed on behalf of A.B. whose address is
Notice to be annexed to the affidavit.

To the Governor and Company
of the Bank of Ireland
[or as may be]

TAKE NOTICE that the securities comprised in and subject to the trusts of the settlement [or as may be] referred to in the affidavit to which this notice is annexed consist of the following, namely [specify the stock, shares, etc., stating the names in which it stands].

This notice is intended to stop the transfer of the said securities and not the payment of any dividend thereof or interest thereon [or and also the payment of any dividend thereof or interest thereon].

(Signed) A.B. [or C.D. if affidavit sworn by him].

FORM 24 Rule 129(2)

SUMMONS UNDER RULE 129

[*Heading as in Form 3*]

WHEREAS the petitioner obtained an order against the above-named respondent on the day of 19 , for the sum of £ and there is now due and payable under the said order the sum of £

You are therefore hereby SUMMONED to appear personally before the Registrar in Room at the Royal Courts of Justice, Chichester Street, Belfast, [or at] on day, the day of 19 , at o'clock in the noon to be examined as to whether any and what debts are owing to you, and whether you have any and what other property or means of satisfying the above mentioned order.

Dated this day of 19

To:

Master

[Chief Clerk]

FORM 25 Rule 130(4)

JUDGMENT SUMMONS (Seal)

[*Heading as in Form 3*]

WHEREAS the above-named (hereinafter called "the judgment creditor") obtained an order in this Court on the day of 19 , against (hereinafter called "the debtor") for [state nature of order].

AND WHEREAS default has been made in payment of the sum of £ payable under the said order and the judgment creditor has required this judgment summons to be issued against you, the said debtor.

YOU ARE HEREBY SUMMONED to appear personally before one of the Judges sitting in this Division at on the day of 19 , at o'clock, to be examined on oath touching the means you have had since the date of the said order to pay the said sum in payment of which you have made default and also to show cause why you should not be committed to prison for such default.

[AND TAKE NOTICE THAT the judgment creditor intends to apply to the Court at the hearing of this judgment summons for leave to enforce arrears which became due more than 12 months before the date of this summons.]

Dated this day of 19

£

Amount due and unpaid in respect of order and costs .....

Costs of this summons .....

Travelling expenses to be paid to the debtor .....

Sum on payment of which this summons will be discharged .....

Note: If payment is made too late to prevent the judgment creditor's attendance on the day of the hearing, you may be liable for further costs.

[The judgment creditor's solicitor is .]

APPENDIX 2

CONTENTS OF PETITION

(Unless otherwise directed under rule 8)

1. Every petition other than a petition for jactitation of marriage shall state:—

(*a*) the names of the parties to the marriage and the date and place of the marriage;

(*b*) the last address at which the parties to the marriage have lived together as husband and wife;

(*c*) where it is alleged that the court has jurisdiction based on domicile—

(i) the country in which the petitioner is domiciled, and

(ii) if that country is not Northern Ireland, the country in which the respondent is domiciled;

(*d*) where it is alleged that the court has jurisdiction based on habitual residence—

(i) the country in which the petitioner has been habitually resident throughout the period of one year ending with the date of the presentation of the petition, or

(ii) if the petitioner has not been habitually resident in Northern Ireland, the country in which the respondent has been habitually resident during that period,

with details in either case, including the addresses of the places of residence and the length of residence at each place;

(*e*) the occupation and residence of the petitioner and the respondent;

(*f*) whether there are any living children of the family and, if so—

(i) the number of such children and the full names (including surname) of each and his date of birth or (if it be the case) that he is over 18 years of age; and

(ii) in the case of each minor child over the age of 16, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation;

(*g*) whether (to the knowledge of the petitioner in the case of a husband's petition) any other child now living has been born to the wife during the marriage, and if so, the full names (including surname) of the child and his date of birth, or, if it be the case, that he is over 18 years of age;

(*h*) if it be the case, that there is a question whether a living child is a child of the family;

(*i*) whether or not there are or have been any other proceedings in any court in Northern Ireland or elsewhere with reference to the marriage or to any children of the family or between the petitioner and the respondent with reference to any property of either or both of them, and, if so—

(i) the nature of the proceedings,

(ii) the date and effect of any decree or order, and

(iii) in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order;

(*j*) whether there are any proceedings continuing in any country outside Northern Ireland which relate to the marriage or are capable of affecting its validity of subsistence and, if so—

(i) particulars of the proceedings, including the court in or tribunal or authority before which the were begun,

(ii) the date when they were begun,

(iii) the names of the parties,

(iv) the date or expected date of any trial in the proceedings, and

(v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Order;

and such proceedings shall include any which are not instituted in a court of law in that country, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have been begun and have not been finally disposed of;

(*k*) where the fact on which the petition is based is 5 years' separation, whether any, and if so what, agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent or, as the case may be, the petitioner or any child of the family;

(*l*) in the case of a petition for divorce under Article 3(2)(*e*) of the Order whether the petitioner proposes if a decree nisi is granted to make any financial provision for the respondent giving details of any proposal not mentioned under paragraph (*k*);

(*m*) in the case of a petition for divorce, that the marriage has broken down irretrievably;

(*n*) the fact alleged by the petitioner for the purposes of Article 3(2) of the Order or, where the petition is not for divorce or judicial separation, the ground on which relief is sought, together in any case with brief particulars of the individual facts relied on but not the evidence by which they are to be proved;

(*o*) any further or other information required by such of the following paragraphs and by rule 88 as may be applicable.

2. A petition for a decree of nullity under Article 14(*e*) or (*f*) of the Order shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

3. A petition for a decree of presumption of death and dissolution of marriage shall state:—

(*a*) the last place at which the parties to the marriage cohabited;

(*b*) the circumstances in which the parties ceased to cohabit;

(*c*) the date when and the place where the respondent was last seen or heard of; and

(*d*) the steps which have been taken to trace the respondent.

4. A petition for jactitation of marriage shall state:—

(*a*) the residence and domicile of the petitioner and the respondent at the date of the institution of the cause;

(*b*) the dates, time and places of the alleged boastings and assertions;

(*c*) that the alleged boastings and assertions are false and that the petitioner has not acquiesced therein.

5. Every petition shall conclude with—

(*a*) a prayer setting out particulars of the relief claimed, including any claim for custody of a child of the family and any application for a declaration under Article 45(3) of the Order, any claim for costs and any application for ancillary relief which it is intended to claim;

(*b*) the names and addresses of the persons who are to be served with the petition, indicating if any of them is a person under disability;

(*c*) the petitioner's address for service, which, if the petitioner sues by a solicitor, shall be the solicitor's name or firm and address or, if the petitioner sues in person, shall be his place of residence as given under paragraph 1(*e*) above or, if no place of residence in Northern Ireland is given, the address to which documents for him may be delivered or sent.

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules replace the Matrimonial Causes Rules (Northern Ireland) 1979 and make provision for the procedure on the coming into operation of the Divorce County Courts Order (Northern Ireland) 1981.

While reproducing much of the former procedure the Rules make some important changes. Apart from drafting changes the main alterations are as follows:—

1. The petition and other documents may be presented at any county court office, or at the office of the chief clerk at Enniskillen, for transmission to the Matrimonial Office for filing (rule 10(5)).

2. Provision is made for a person who intends to defend the proceedings to give notice of intention to defend instead of entering an appearance, as hitherto (rule 15).

3. References to "judge" mean—
   (*a*) in relation to proceedings in the High Court, a judge of the High Court; and
   (*b*) in relation to proceedings in a divorce county court, a county court judge (rule 2(1)).

4. References to "registrar" mean—
   (*a*) in relation to proceedings in the High Court, the Master (Probate and Matrimonial) or Registrar (Probate and Matrimonial); and
   (*b*) in relation to proceedings in a divorce county court, a circuit registrar (rule 2(1)).

5. A Master's certificate that the pleadings and proceedings are in order will no longer be required but a party requesting the entry of a cause for hearing must lodge in the Matrimonial Office a certificate that the cause is ready for trial (rule 32).

6. When the certificate of readiness has been lodged, the cause is deemed to have been set down for trial (rule 35).

7. Medical and other expert evidence or the evidence of an inquiry agent to prove adultery may without leave, and in an undefended cause must, be given by affidavit (rule 44(6)).

8. Provision is made for an appeal from a judge in divorce county court proceedings, to the Court of Appeal (rule 97) and for an appeal from the registrar in divorce county court proceedings to a county court judge (rule 98).