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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 322**

**The Family Proceedings Rules (Northern Ireland) 1996**

**Part VII**

**Procedure**

**Application**

**7.1.** Except for rule 7.2, the provisions of this Part apply to all family proceedings, but have effect subject to the provisions of any other Part of these Rules.

**Security for costs in a matrimonial cause**

**7.2.—**(1) A wife who is petitioner in a cause 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 Master 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 Master 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 county court.

**Service out of Northern Ireland**

**7.3.—**(1) Any document in family proceedings 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**

**7.4.—**(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,

- (i) to the solicitor's address; or
  - (ii) where that address includes a numbered box at a document exchange, at that document exchange or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this paragraph, shall unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left;
  - (iii) by sending a legible copy of the document by FAX (as defined by R.S.C. Order 1 rule 3(1)) in accordance with the provisions of R.S.C. Order 65 rule 5(2A) to the solicitor's office;
- (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 Master the document would be unlikely to reach him if sent to that address, the Master may dispense with sending the document to him.
- (2) Unless the court otherwise directs, service of any document in family 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 first class pre-paid 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 first class pre-paid 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 Master that it is impracticable to deliver the documents 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 Master may dispense with service of the document.

### **Mode of making applications**

**7.5.** Except where these Rules, or any rules applied by these Rules, otherwise provide, every application in family proceedings shall be made to a Master by summons.

### **No notice of intention to proceed after year's delay**

**7.6.** 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 family proceedings.

### **Filing of documents at place of hearing, etc**

**7.7.** Where the file of any matrimonial proceedings has been sent from the Matrimonial Office to a 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**

**7.8.** Unless the court otherwise directs, 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 proper officer or chief clerk, shall be given by post.

### **Copies of Decrees and Order**

**7.9.**—(1) A copy of every decree or order shall be sent by the proper officer or chief clerk 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**

**7.10.**—(1) Where an order made in family proceedings has been drawn up, the proper officer 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 Master 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 57, 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.

### **Record of proceedings at trial**

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

(2) A record may be made by mechanical or electronic 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 Master 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**

**7.12.**—(1) A party to any family proceedings or his solicitor or the Crown Solicitor or a person appointed under rule 2.59 or 6.6 to be the guardian ad litem of a child in any family proceedings may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court office in those proceedings.

(2) Except as provided by paragraph (1) of this rule no document filed or lodged in the 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 Master, 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.

### **Disclosure of information under the Order of 1991**

**7.13.** Where the Department requires a person mentioned in regulation 2(2) or (3) of the Child Support (Information, Evidence and Disclosure) Regulations (Northern Ireland) 1992(1) to furnish information or evidence for a purpose mentioned in regulation 3 of those Regulations nothing in rule 7.12 shall prevent that person from furnishing the information or evidence sought or require him to seek the leave of the court before doing so.

### **Applications for relief which are precluded by the Order of 1991**

**7.14.—**(1) Where an application is made for an order which in the opinion of the Master, the court would be prevented from making by Article 10 or 11 of the Order of 1991 the proper officer or chief clerk as the case may be, shall send a notice in Form M31 to the applicant and to the other parties.

(2) In the first instance, the Master shall consider the matter under paragraph (1), without holding a hearing.

(3) An applicant who has been sent a notice under paragraph (1) may within 14 days of receipt of the notice inform the proper officer or chief clerk, as the case may be, in writing, that he wishes to pursue his application and upon being so informed the proper officer shall act in accordance with paragraph (4) and the chief clerk shall refer the matter to the district judge who shall act in accordance with paragraph (4).

(4) Where the Master acts in accordance with this paragraph he shall fix an appointment for the matter to be heard and determined by the court and may direct that the hearing shall be *ex parte*.

(5) Where an appointment has been fixed in accordance with paragraph (4) the proper officer or chief clerk, as the case may be, shall give the applicant notice of the date and time of the appointment and in relation to the other parties—

(a) where the hearing is to be *ex parte*, inform them that the matter is being resolved *ex parte* and that they will be informed of the result in due course;

(b) where the hearing is to be *inter partes*, inform them of the date and time of the appointment.

(6) Where a notice is sent under paragraph (1) and the proper officer or chief clerk, as the case may be, is not informed under paragraph (3) the application shall be treated as having been withdrawn.

(7) Where the matter is heard in accordance with paragraph (4) and the court determines that it would be prevented by Article 10 or 11 of the Order of 1991 from making the order sought it shall dismiss the application.

(8) Where the court dismisses an application under this rule it shall give its reasons in writing, copies of which shall be sent to the parties by the proper officer or chief clerk, as the case may be.

(9) In this rule “the matter” means the question whether the making of an order in the terms sought by the application would be prevented by Article 10 or 11 of the Order of 1991.

### **Additional requirement where application for child maintenance is combined with application for other relief**

**7.15.** Where a notice is sent under rule 7.14(1) in respect of an application which is contained in a petition or other document (“the document”) which contains material intrinsic to the application—

(a) the document shall, until the contrary is directed under sub-paragraph (c), be treated as if it did not contain the application in respect of which the notice was sent;

(b) the proper officer or chief clerk shall, when he sends a copy of the notice under rule 7.14(1) to the parties, also send a notice informing them of the effect of sub-paragraph (a); and

- (c) where it is determined under rule 7.14 that the court would not be prevented by Article 10 or 11 of the Order of 1991 from making the order sought by the application, the court shall direct that the document shall be treated as if it contained the application, and it may give such directions as it considers appropriate for the conduct of the proceedings in consequence of that direction.

#### **Disclosure of address**

**7.16.**—(1) Subject to rule 2.4 nothing in these Rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) except by order of the court.

(2) Where a party declines to reveal an address in reliance upon paragraph (1) he shall give notice to the court in Form C5 and that address shall not be revealed to any person except by order of the court.

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

**7.17.** 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.