

1973. No. 515

[NC]

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (No. 2) 1973

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 7 of the Northern Ireland Act 1962(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. Order 70 of the Rules of the Supreme Court (Northern Ireland) 1936(b) shall be amended as follows:—

- (1) In rule 2(1) paragraphs (c), (d) and (e) shall be deleted and the following paragraphs inserted in the places appropriate to their letters—

“(c) the full names (including surname) and dates of birth of every living child of the family;

(d) where it is alleged that the Court has jurisdiction by virtue of section 13(2)(a) or (3)(a) of the Act of 1973 the domicile of the petitioner and respondent; or

where it is alleged that the Court has jurisdiction by virtue of section 13(4)(a) of the Act of 1973 the domicile of the petitioner; or

where it is alleged that the Court has jurisdiction by virtue of section 13(2)(b) or (3)(b) of the Act of 1973 the habitual residence of the petitioner and respondent throughout the period of one year ending with the date when the proceedings are begun; or

where it is alleged that the Court has jurisdiction by virtue of section 13(4)(b) of the Act of 1973 the habitual residence of the petitioner throughout the period of one year ending with the date when the proceedings are begun;

where it is alleged that the Court has jurisdiction by virtue of the habitual residence of the petitioner or respondent the details of the habitual residence relied on including the places of residence and the length of residence at each place;

(e) the occupation and residence of the parties to the marriage;

(f) whether or not there are to the knowledge of the petitioner any proceedings continuing in any country outside Northern Ireland which are in respect of the marriage to which the petition relates or are capable of affecting its validity or subsistence, and if there are any such proceedings, shall give particulars of them including—

(i) the court in or tribunal or authority before which they were begun,

- (ii) the date when they were begun,
- (iii) the names of the parties,
- (iv) the date, or as the case may be, the 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 Act of 1973 as applied by Schedule 5 to the said Act.

“Proceedings continuing in any country outside Northern Ireland” includes any proceedings in that country which are not instituted in a court of law, if those proceedings are instituted before a tribunal or other authority in that country having power under the law having effect there to determine questions of status, and proceedings shall be treated as continuing in a country outside Northern Ireland if they have been begun and have not been finally disposed of.

- (k) where a petitioner in reliance on section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971(c) intends to adduce evidence that a person
 - (i) was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, or
 - (ii) 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, a statement of his intention with particulars of—
 - (A) the conviction, finding or adjudication and the date thereof,
 - (B) 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
 - (C) the issue in the proceedings to which the conviction, finding or adjudication is relevant.”.

- (2) In rule 15 immediately after paragraph (3) there shall be inserted the following paragraphs:—

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

(5) Rule 2(1)(k) shall apply with the necessary modifications to an answer as it applies to a petition.

(6) Where a petition includes such a statement as is mentioned in rule 2(1)(k), 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 answer.”.

- (3) Immediately after rule 43 there shall be inserted the following rule:—

“Application for declaration affecting matrimonial status

43A.—(1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by petition.

(2) The petition shall state—

- (a) the names of the parties, the residential address of each of them at the date of presentation of the petition and the occupation of the male party;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) the name of every living child of the marriage and the date of his birth;
- (d) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates, or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;
- (e) the information required by rule 2(1)(j);
- (f) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it:

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) The rules of this order shall apply with the necessary modifications to the petition as if it were a petition in a matrimonial cause.”

- (4) Immediately after rule 32 there shall be inserted the following rule:

“Stay under Act of 1973

32A.—(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 Act of 1973(d) as applied by Schedule 5 to the said Act (in this rule referred to as “Schedule 1”) shall be made to the Judge.

(2) Any party who makes an application to the Registrar for his certificate that the pleadings and proceedings are in order shall, if there has been a change in the information given pursuant to rule 2(1)(j) or 15(4), file a statement giving particulars of the change.

(3) Where it appears to the Registrar from any information given pursuant to rule 2(1)(j) or 15(4) or paragraph (2) 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 fix a date and time for the consideration of that question by a 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 rule 2(1)(j).

(4) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 shall be made to the Judge."

(5) In rule 80 immediately after the definition of "Act of 1939"(e) insert—
"Act of 1973" means the Domicile and Matrimonial Proceedings Act 1973;

"Child of the family" in relation to any proceedings means a child of the parties whose marriage is the subject of the proceedings or a child of one party who has been accepted as one of the family by the other party, and includes an illegitimate child or an adopted child within the meaning of section 7 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(f) and children of the family has a corresponding meaning."

2. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (No. 2) 1973 and shall come into force on the 11th day of January 1974.

Dated the 14th day of December 1973.

(Signed) *Robert Lowry*

L. E. Curran

E. W. Jones

Maurice W. Gibson

Turlough O'Donnell

Donald Murray

E. Malachy Doris

EXPLANATORY NOTE

(This note is not part of the rules, but is intended to indicate their general purport.)

These rules amend Order 70 of the Rules of the Supreme Court (Northern Ireland) 1936 which regulates the procedure in matrimonial causes.

Rule 1(1) specifies the information to be included in the petition with regard to the domicile and residence of the parties so as to reflect the new bases of the court's jurisdiction under the Domicile and Matrimonial Proceedings Act 1973 and the requirements as to the names and dates of birth of every living child of the family and the occupation and residence of both parties to the marriage.

Rule 1(2) requires the petition to give details of concurrent proceedings in respect of the marriage in any other country. It also specifies the particulars to be included in a petition where it is intended to put in evidence (by virtue of section 7 or 8 of the Civil Evidence Act (Northern Ireland) 1971) a previous conviction, finding of adultery or adjudication of paternity.

Rule 2 requires an answer to give particulars of concurrent proceedings in so far as these have not been given in the petition and to include the same particulars as a petition where it is intended to put in evidence of a previous conviction, finding of adultery or adjudication of paternity. This rule also prescribes the procedure where the opposite party disputes the conviction finding or adjudication.

Rule 3 prescribes the procedure on an application for a declaration as to the validity or subsistence of a marriage.

Rule 4 provides for a statement of any change in the details about concurrent proceedings to be given on the application for the registrar's certificate that the pleadings are in order. Provision is also made for an application for a stay of proceedings under Schedule 1 to the Act and for discharge of an order staying proceedings.

Rule 5 amends rule 80 which deals with interpretation of the Order.

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This Order has been exempted from printing by the Statutory Rules Act (Northern Ireland) 1958. A summary is given in the List of Statutory Rules and Orders of a Local Character under the heading ROADS.