STATUTORY INSTRUMENTS

1976 No. 2166 (L. 39)

MATRIMONIAL CAUSES

SUPREME COURT OF JUDICATURE, ENGLAND

COUNTY COURTS

The Matrimonial Causes (Amendment No. 2) Rules 1976

Made - - - -	15*th December* 1976
Laid before Parliament	23*rd December* 1976
Coming into Operation—	
rules 9, 10 *and* 11	17*th January* 1977
all except rules 9, 10 *and* 11	1*st April* 1977

We, the authority having power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(**a**), hereby exercise that power as follows:—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment No. 2) Rules 1976.

(2) These Rules (except rules 9, 10 and 11) shall come into operation on 1st April 1977 and rules 9, 10 and 11 shall come into operation on 17th January 1977.

(3) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1973(**b**), as amended (**c**), "the Appendix" means the Appendix to those Rules and a form referred to by number means the form so numbered in that Appendix.

(4) The Interpretation Act 1889(**d**) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

2. Rule 8 shall be amended as follows:—

(1) In paragraph (2) for the words "a separate written statement" there shall be substituted the words "a statement signed by the petitioner personally".

(2) Paragraph (3) shall be revoked and in consequence—

(*a*) in rule 12(5) for the words "report and affidavit required by rule 8(2) and (3)", wherever they appear, there shall be substituted the words "and report required by rule 8(2)";

(**a**) 1973 c. 18. (**b**) S.I. 1973/2016 (1973 III, p. 6943).
(**c**) S.I. 1974/2168, 1976/607 (1974 III, p. 8512; 1976 I, p. 1735).
(**d**) 1889 c. 63.

(*b*) in rule 12(6)(*b*) for the words "report and affidavit" there shall be substituted the words "and report";

(*c*) in rule 57(2) the words "rule 8(3) or" shall be omitted;

(*d*) in Form 12 the words "*with his petition under rule* 8(3) *or*" shall be omitted.

3.—(1) In rule 9—

(*a*) the following paragraph shall be substituted for paragraphs (1), (2) (3) and (4):—

"(1) Unless otherwise directed, every petition shall contain the information required by Appendix 2 to these Rules.";

(*b*) paragraph (5) shall stand as paragraph (2).

(2) In consequence of the foregoing amendments rule 10 and Form 2 shall be revoked and the rules and the form mentioned in column 1 of the following table shall be amended by deleting the words in column 2 and substituting the words, if any, in column 3:—

Column 1	*Column* 2	*Column* 3
Rule or Form	*Words to be deleted*	*Words to be substituted*
Rule 21(1)	"paragraphs (11) and (12) of Form 2"	"paragraph 1(*k*) of Appendix 2"
Rule 21(2)	"paragraphs (4), (5) and (6) of Form 2"	"paragraph 1(*f*), (*g*) and (*h*) of Appendix 2"
Rule 21(3)	from "Paragraph (8) of Form 2" to "relief claimed"	"Paragraph 5(*a*) of Appendix 2"
	"they apply"	"it applies"
Rule 21(4)	"to which rule 9(2) applies"	—
	"that paragraph"	"paragraph 1(*j*) of Appendix 2"
Rule 21(5) and (6)	"rule 9(5)" wherever they appear	"rule 9(2)"
Rule 36(3)	"rule 9(2) or"	"paragraph 1(*j*) of Appendix 2 or rule"
	"rule 9(2)"	"paragraph 1(*j*) of Appendix 2"
Rule 36(4)	"rules 9(2) and 21(4)"	"paragraph 1(*j*) of Appendix 2 and rule 21(4)"
Rule 111(2)	"rule 9(2)"	"paragraph 1(*j*) of Appendix 2"
Form 5, paragraph 6	"Paragraph (12) of"	—

4. Rule 13 shall be amended as follows:—

(1) For paragraph (3) there shall be substituted the following paragraph:—

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

(2) In paragraph (4) the words "or (3)" shall be omitted.

5. Rule 14 shall be amended as follows:—

(1) At the end of paragraph (4) there shall be added the words "or, if on a request by the petitioner the registrar so directs, by a bailiff delivering a copy of the petition to the party personally.".

(2) In paragraph (7) after the words "affidavit of service" there shall be inserted the words "(or, in the case of service by bailiff, an indorsement of service under C.C.R. Order 8, Rule 2(*c*)(i))".

(3) After paragraph (9) there shall be inserted the following paragraph:—

"(9A) C.C.R. Order 8, Rule 6(4), shall apply in relation to service by bailiff under this rule as it applies to service of a summons by bailiff in accordance with Rule 8 of that Order.".

6. Rule 33 shall be amended as follows:—

(1) In paragraph (1), sub-paragraph (*a*) shall be omitted and sub-paragraphs (*b*) to (*f*) shall be re-lettered accordingly.

(2) For paragraph (3) there shall be substituted the following paragraph:—

"(3) Where the cause is an undefended cause for divorce or judicial separation and, in a case to which section 1(2)(*d*) of the Act of 1973 applies, the respondent has given the registrar a notice under rule 16(1) that he consents to the grant of a decree, then, unless otherwise directed,—

(i) there shall be filed with the request for directions for trial an affidavit by the petitioner containing the information required by Form 7(*a*), 7(*b*), 7(*c*), 7(*d*) or 7(*e*) (whichever is appropriate), as near as may be in the order there set out, together with any corroborative evidence on which the petitioner intends to rely; and

(ii) the registrar shall give directions for trial by entering the cause in a list to be known as the special procedure list.

In the case of an undefended cause proceeding on the respondent's answer, this paragraph shall have effect as if for the references to the petitioner and the respondent there were substituted references to the respondent and the petitioner respectively.".

7. Rule 48 shall be amended as follows:—

(1) In paragraph 1(*a*) the words "and that there are no children of the family to whom section 41 of the Act of 1973 applies" shall be omitted.

(2) For the word "day" at the end of paragraph (2) there shall be substituted the word "occasion".

(3) The following paragraph shall be added after paragraph (3):—

"(4) Where there are children of the family to whom section 41 of the Act of 1973 applies and—

(*a*) the respondent has not returned to the court office an acknowledgment of service containing a statement to the effect that he objects to any claim in the petition for custody of the children or that he wishes to make an application on his own account for custody of the children; and

(*b*) the respondent has not filed a statement under rule 50 proposing arrangements for the children which differ materially from those proposed by the petitioner in his statement under rule 8(2) and

(*c*) no application by the respondent for custody of or access to the children is pending,

then, unless in the circumstances of the particular case the court thinks it inappropriate to do so, the registrar shall, after filing his certificate under paragraph (1), fix an appointment for consideration by a judge in chambers of the arrangements for the children and send notice of the appointment to the petitioner and the respondent.

Unless otherwise directed, nothing in this paragraph shall apply to an undefended cause which is proceeding on the respondent's answer.".

8.—(1) Rule 50, with the omission of the words "at any time before the judge makes an order under section 41 of the Act of 1973", shall stand as paragraph (1) of that rule and at the end there shall be added the following paragraph:—

"(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 section 41 of the Act of 1973.".

(2) Accordingly, paragraph 9 of Form 5 shall be amended by inserting, after the first sentence, the following sentence:—

"Any such statement ought, if practicable, to reach the Court within the time for returning the acknowledgment of service.".

9. In rule 92(3) for the words "the guardian" there shall be substituted the words "a guardian or step-parent".

10. In rule 109 for paragraph (4) there shall be substituted the following paragraph:—

"(4) Where the petition is under section 45 of the Act of 1973 for a declaration as to the validity of a marriage, paragraphs (2) to (7) of rule 110 shall apply to the petition as they apply to a petition under that rule.".

11. Rule 110 shall be amended by inserting in the title and in paragraph (1) after "1973" the words "for a declaration of legitimacy or legitimation".

12. For Form 4 there shall be substituted the following form:—

Rule 8(2)

"FORM 4

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

[*Heading as in Form 5*]

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 a welfare officer or officer appointed by a local authority or other person or organisation [, namely, [*give details, and state the date of any order for care or supervision and the circumstances which gave rise to its being made*]].

Dated this day of 19 .

Signed

Petitioner"

13. Forms 7(1), (2), (3) and (4) shall stand as Forms 7(*a*), (*c*), (*d*) and (*e* respectively and after Form 7(*a*) as so re-numbered there shall be inserted th following form:—

Rule 33(3)

"Form 7(*b*)

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 1(2)(*b*) OF MATRIMONIAL CAUSES ACT 1973

[*Heading as in Form 5*]

QUESTION	ANSWER
1. Have you read your petition in this case including what is said about the behaviour of the respondent?	
2. Do you wish to alter or add to any statement in the petition or the particulars? If so, state the alterations or additions.	
3. Are all the statements in the petition and the particulars, including any alterations or additions, true?	
4. If you consider that the respondent's behaviour has affected your health, state the effect that it has had.	
5. Since the date of the last instance of the respondent's behaviour set out in the petition or the particulars have you lived in the same household as the respondent? If so state the addresses and the period or periods, giving dates.	

I (*full name*)

of (*full residential address*)

(*occupation*)

make oath and say as follows:—

1. I am the petitioner in this cause.
2. The answers to Questions 1 to 5 above are true.
3.(1) I identify the signature.....(2) appearing on the copy acknowledgment of service now produced to me and marked "A" as the signature of my husband/wife, the respondent in this cause.
4. I exhibit marked "B" a certificate/report of Dr.....(3)
5. I ask the Court to grant a decree dissolving my marriage with the respondent(4) on the grounds stated in my petition [and to order the respondent to pay the costs of this suit](5).

(1) Delete if the acknowledgment is signed by a solicitor.
(2) Insert name.
(3) Exhibit any medical report or other document on which the petitioner wishes to rely.
(4) If the petitioner seeks a judicial separation amend accordingly.
(5) Delete if costs are not sought.

Sworn at

in the County of

this day of 19 .

Before me,

A Commissioner for Oaths
[*or as the case may be*]".

14. The Appendix shall stand as Appendix 1 and immediately thereafter there shall be added the following Appendix:—

"APPENDIX 2

CONTENTS OF PETITION

(*Unless otherwise directed under rule* 9.)

1. Every petition other than a petition for jactitation of marriage or under rule 109 or 110 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 had jurisdiction based on domicile—

(i) the country in which the petitioner is domiciled, and

(ii) if that country is not England and Wales, 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 England and Wales, 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, 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 living child 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;

(*h*) if it be the case, that there is a dispute whether a living child is a child of the family;

(*i*) whether or not there have been any previous proceedings in any court in England and Wales 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 England and Wales which relate to the marriage or are capable of affecting its validity or subsistence and, if so—

(i) particulars of the proceedings, including 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 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 Domicile and Matrimonial Proceedings Act 1973;

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*) 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, that the marriage has broken down irretrievably;

(*m*) the fact alleged by the petitioner for the purposes of section 1(2) of the Act of 1973 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;

(*n*) any further or other information required by such of the following paragraphs and by rule 108 as may be applicable.

2. A petition for a decree of nullity under section 12(*e*) or (*f*) of the Act of 1973 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, times 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 section 42(3) of the Act of 1973, any claim for costs and any application for ancillary relief which it is intended to claim;

(*b*) the names and address 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 England or Wales is given, the address of a place in England or Wales at or to which documents for him may be delivered or sent.".

Dated 15th December 1976.

Elwyn-Jones, C.
George Baker, P.
John Latey, J.
Ifor Lloyd.
Irvon Sunderland.
W. D. S. Caird.
J. L. Williams.
W. A. Macpherson.
David Webster.
J. D. Clarke.
Hugh O'Neill.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules amend the Matrimonial Causes Rules 1973 so as to—

(1) extend the special procedure to all types of undefended divorce cases, including those in which there are children under 16 (Rules 6(2) and 13);

(2) simplify or relax some of the existing procedural requirements (Rules 2 to 6(1), 12 and 14);

(3) provide, where appropriate, for the registrar to fix an appointment for the petitioner to see the judge in chambers in order to satisfy him as to the arrangements for any children under 16 (Rules 7 and 8);

(4) enable a step-parent to apply for an order relating to the custody, care or supervision of a child (Rules 9);

(5) clarify the rules relating to applications for a declaration as to the validity of a marriage (Rules 10 and 11).

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