STATUTORY INSTRUMENTS

1985 No. 1315 (L.11)

MATRIMONIAL CAUSES

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS

The Matrimonial Causes (Amendment No. 2) Rules 1985

Made - - - -	31*st July* 1985
Laid before Parliament	23*rd August* 1985
Coming into Operation	
Rule 14	2*nd December* 1985
Remainder	16*th September* 1985

We, the authority having the 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 1985.

(2) These Rules shall come into operation on 16th September 1985 save for rule 14 which shall come into operation on 2nd December 1985.

(3) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1977(**b**).

2. Rule 2(2) shall be amended as follows—

(a) before ' "ancillary relief" ' there shall be inserted—

' "the Act of 1984" means the Matrimonial and Family Proceedings Act 1984;'(**c**)

(b) for the definition of "senior registrar", there shall be substituted the following:—

' "senior registrar" means the senior registrar of the Family Division or, in his absence from the divorce registry, the senior of the registrars in attendance at the registry;'.

3. Rule 15 shall be amended as follows—

(a) paragraph (3) shall be omitted and

(b) in paragraph (4) for "(4)" there shall be substituted "(3)" and for the words "paragraphs (2) and (3)" there shall be substituted the words "paragraph (2)".

4. Rule 18(2) shall be amended by omitting the words between "filed" and "notwithstanding" and between "notwithstanding" and "that" where the latter occurs for the second time.

5. In rule 65(2) for sub-paragraphs *(a)* and *(b)* there shall be substituted the following—

(**a**) 1973 c.18.
(**b**) S.I. 1977/344; relevant amending instruments are S.I. 1980/977, 1484, 1982/1853, 1984/1511, 1985/144.
(**c**) 1984 c.42.

"*(a)* that no application for rescission of the decree or for re-hearing of the cause and no appeal against the decree or the dismissal of an application for re-hearing of the cause is pending;

(b) that no order has been made by a judge extending the time for making an application for re-hearing of the cause or by the Court of Appeal extending the time for appealing against the decree or the dismissal of an application for re-hearing of the cause or, if any such order has been made, that the time so extended has expired;".

6. In rule 73 for paragraphs (2) and (3) there shall be substituted the following—

"(2) Where an application is made for ancillary relief, not being an application to which rule 75 or rule 76A applies, the notice in Form 11 or 13, as the case may be, shall, unless otherwise directed, be supported by an affidavit by the applicant containing full particulars of his property and income, and stating the facts relied on in support of the application.

(3) Within 14 days after the service of an affidavit under paragraph (2) or within such other time as the court may fix, the respondent to the application shall file an affidavit in answer containing full particulars of his property and income."

7. Rule 74 shall be amended as follows—

(a) Paragraph (1) shall be revoked;

(b) paragraph (2) shall be re-numbered paragraph (1) and there shall be inserted at the commencement thereof the following words:—

"Where an application is made for a property adjustment order or an avoidance of disposition order,"

(c) the existing paragraphs (3) to (6) shall be re-numbered (2) to (5).

8. Rule 75 shall be amended by adding before the full stop the following words—

"and rule 73(3) shall apply to a respondent served with such an affidavit".

9. For rule 76A there shall be substituted the following rule—

"76A (1) Subject to paragraphs (2) and (3) there shall be lodged with every application for a consent order under any of sections 23, 24, 24A or 27 of the Act of 1973 minutes of the order in the terms sought, indorsed with a statement signed by the respondent to the application signifying his agreement, and a statement of information which may be made in more than one document and shall include—

(a) the duration of the marriage, the age of each party and of any minor or dependent child of the family;

(b) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;

(c) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;

(d) whether either party has remarried or has any present intention to marry or to cohabit with another person;

(e) where the terms of the order provide for the transfer of property, a statement confirming that any mortgagee of that property has been

served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and

(f) any other especially significant matters.

(2) Where an application is made for a consent order varying an order for periodical payments paragraph (1) shall be sufficiently complied with if the statement of information required to be lodged with the application includes only the information in respect of net income mentioned in paragraph (1)*(b)*, and an application for a consent order for interim periodical payments pending the determination of an application for ancillary relief may be made in like manner.

(3) Where the parties attend the hearing of an application for financial relief the court may dispense with the lodging of minutes of the order and a statement of information in accordance with paragraph (1) and give directions for—

(a) the order to be drawn, and

(b) the information which would otherwise be required to be given in such a statement to be given,

in such a manner as it sees fit."

10. Rule 91 shall be amended as follows:—

(a) In the heading for the word "Removal" there shall be substituted the word "Transfer" and for the word "into" there shall be substituted the word "to".

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

"(1) Any person who desires the transfer to the High Court of any order made by a divorce county court in matrimonial proceedings except an order for periodical payments or for the recovery of arrears of periodical payments shall apply to the court *ex parte* by affidavit stating the amount which remains due under the order, and on the filing of the application the transfer shall have effect."

(c) In paragraph (2) for the word "removed" there shall be substituted the word "transferred".

11. Rule 92(2) shall be amended as follows—

(a) for the words before sub-paragraph *(b)* there shall be substituted the following—

"(2) An application—

(a) which is unopposed or for an order in terms agreed between the parties; or";

(b) in sub-paragraph *(b)* the word "for" shall be inserted at the beginning and the word "or" shall be omitted;

(c) sub-paragraph *(c)* shall be revoked.

12. After rule 111 the following three new rules shall be inserted—

"Application for leave under section 13 of the Act of 1984

111A—(1) An application for leave to apply for an order for financial relief under Part III of the Act of 1984 shall be made *ex parte* by originating summons issued in Form 25 out of the divorce registry and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in section 16(2) of that Act.

(2) The affidavit in support shall give particulars of the judicial or other proceedings by means of which the marriage to which the application relates was dissolved or annulled or by which the parties to the marriage were legally separated and shall state, so far as is known to the applicant:—

(a) the names of the parties to the marriage and the date and place of the marriage;

(b) the occupation and residence of each of the parties to the marriage;

(c) whether there are any living children of the family and, if so, 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;

(d) whether either party to the marriage has remarried;

(e) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;

(f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for an order for financial relief under Part III of the said Act of 1984.

(3) The registrar shall fix a date and time for the hearing of the application by a judge in chambers and give notice thereof to the applicant.

Application for an order for financial relief or an avoidance of transaction order under Part III of the Act of 1984

111B—(1) An application for an order for financial relief under Part III of the Act of 1984 shall be made by originating summons issued in Form 26 out of the divorce registry and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the summons giving full particulars of his property and income.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgment of service in Form 28, and rule 15 shall apply to such an acknowledgment of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) of that rule to eight days were, respectively, references to Form 28 and 31 days.

(3) Rules 72, 74, 75, 76A, 77(4), (6) and (7), and 82(1) and (2) shall apply, with the necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for ancillary relief made by notice in Form 11 and the court may order the attendance of any person for the purpose of being examined or cross-examined and the discovery and production of any document.

(4) An application for an interim order for maintenance under section 14 or an avoidance of transaction order under section 23 of the Act of 1984 may be made, unless the court otherwise directs, in the originating summons under paragraph (1) or by summons in accordance with rule 122(1) and an application for an order under section 23 shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

(5) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(6) In respect of any application for an avoidance of transaction order the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (3) and rule 74 shall apply, with the necessary modifications, to an application for an avoidance of transaction order as it applies to an application for an avoidance of disposition order.

(7) Where the originating summons contains an application for an order under section 22 of the Act of 1984 the applicant shall serve a copy on the landlord of the dwelling house and he shall be entitled to be heard on the application.

(8) An application for an order for financial relief under Part III of the Act of 1984 or for an avoidance of transaction order shall be determined by a judge.

Application for an order under section 24 of the Act of 1984 preventing a transaction

111C—(1) An application under section 24 of the Act of 1984 for an order preventing a transaction shall be made by originating summons issued in Form 27 out of the divorce registry and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgment of service in Form 28, and rule 15 shall apply to such an acknowledgment of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) of that rule to eight days were, respectively, references to Form 28 and 31 days.

(3) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(4) The application shall be determined by a judge.

(5) Rule 82 (save paragraph (3)) shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief."

13. In rule 130(2) there shall be inserted after the word "registrar," the words "or of the Lord Chancellor given with the concurrence of the President,".

14. In Form 7*(b)* the following Questions shall be substituted for Question 5:—

"5. (i) Is the respondent's behaviour as set out in your petition and particulars continuing?

(ii) If the respondent's behaviour is not continuing, what was the date of the final incident relied upon by you in your petition?

6. (i) Since the date given in answer to Question 5 or, if no date is given in answer to that Question, since the date of the petition have you lived at the same address as the respondent for a period of more than 6 months, or for periods which together amount to more than 6 months?

(ii) If so, state the addressses and the period or periods, giving dates to the best of your knowledge or belief, and describe the arrangements for sharing the accommodation. *[State whether you have shared a bedroom; whether you have taken your meals together; what arrangements you have made for cleaning the accommodation and for other domestic tasks; and what arrangements you have made for the payment of household bills and other expenses.]*"

15. In Form 11 for the words "add in the case of an application for an order for maintenance pending suit or a financial provision order:" there shall be substituted the words "or the application is for a variation order, add:".

16. After Form 24 there shall be inserted the following new Forms:—

FORM 25 Rule 111A(1)

EX PARTE ORIGINATING SUMMONS UNDER SECTION 13 OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

In the High Court of Justice
Family Division

In the Matter of an Application under section 13 of the Matrimonial and Family Proceedings Act 1984

Let all parties concerned attend before a judge of the Family Division in chambers at the Royal Courts of Justice, Strand, London WC2A 2LL on day, the day of 19 , at o'clock on the hearing of an application by that leave be granted to the said to make an application for an order for financial relief under Part III of the Matrimonial and Family Proceedings Act 1984.

Dated the day of 19 .
This summons was taken out by
[Solicitor for] the above-named applicant whose address is

FORM 26 Rule 111B(1)

ORIGINATING SUMMONS UNDER SECTION 12 OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

In the High Court of Justice
Family Division

In the Matter of an Application under section 12 of the Matrimonial and Family Proceedings Act 1984

Between Applicant

and Respondent

Let of
attend before a judge of the Family Division in chambers at the Royal Courts of Justice, Strand, London WC2A 2LL on a date to be fixed on the hearing of an application by
for the following relief, namely:

Dated this day of 19 .

This summons was taken out by
[Solicitor for] the above-named applicant whose address is

FORM 27 Rule 111C(1)

ORIGINATING SUMMONS UNDER SECTION 24 OF THE MATRIMONIAL AND FAMILY PROCEEDINGS ACT 1984

In the High Court of Justice
Family Division

In the Matter of an Application under section 24 of the Matrimonial and Family Proceedings Act 1984

Between Applicant

and Respondent

Let of
attend before a judge of the Family Division in chambers at the Royal Courts of Justice, Strand, London WC2A 2LL on a day to be fixed on the hearing of an application by
that the court shall make an order restraining
from making any disposition or transferring out of the jurisdiction or otherwise dealing with any property with intent to defeat a claim for financial relief by the applicant under Part III of the Matrimonial and Family Proceedings Act 1984.

Dated this day of 19

This summons was taken out by
[Solicitor for] the above-named applicant whose address is

FORM 28 Rule 111B(2) and 111C(2)

NOTICE OF PROCEEDINGS
AND
ACKNOWLEDGMENT OF SERVICE

In the High Court of Justice
Family Division

Between Applicant

and Respondent

Read carefully this Notice of Proceedings before answering the questions which follow.

NOTICE OF PROCEEDINGS

(1) Or as the case may be.

TAKE NOTICE THAT an application [for financial relief] [to prevent a transaction] (1) has been presented to this Court. A sealed copy of it and a copy of the applicant's affidavit in support are delivered with this notice.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Court within 31 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 wish to dispute the claim made by the applicant you must file in the court an affidavit in answer within 28 days after the time allowed for sending the acknowledgment of service.

3. If you intend to instruct a lawyer to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgment to the Court on your behalf. If you do not intend to instruct a lawyer, 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. This should be your place of residence or, if you do not reside in England and Wales the address of a place in England or Wales to which documents may be sent to you. Change of address should be notified to the Court.

ACKNOWLEDGMENT OF SERVICE

In the High Court of Justice
Family Division

Between	Applicant
and	Respondent

1. Have you received an originating summons and a copy of the supporting affidavit in respect of the proceedings mentioned above?	
2. On what date and at what address did you receive them?	Date .....
	Address.....
	.....
	.....
	.....
3. Are you the person named as the respondent in the originating summons?	
4. Do you intend to defend the case? If your answer to this question is yes you must follow the instructions in paragraph 2 of the Notice of Proceedings.	
5. 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?	

Dated this day of 19

Signed .....
Respondent

I am [We are] acting for the Respondent in this matter

Signed .....

Address for service of documents

Dated 19 ."

Hailsham of St. Marylebone, C.
John Arnold, P.
Anthony Ewbank, J.
Hazel Counsell
Harold Wilson
B. P. Tickle
D. H. C. Lowis
Barbara Calvert
Peter Singer
J. M. Wickerson
A. S. L. Cleary.

Dated 31st July 1985.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Matrimonial Causes Rules 1977 so as—

(a) to make the definition of "senior registrar" accord with the definition given in section 89(2)*(e)* of the Supreme Court Act 1981 (a) (rule 2);

(b) to provide fixed time limits, as from the date of service of a document requiring or authorising an acknowledgment of service to be returned to the court office, of eight days for filing a notice of intention to defend and 29 days for filing an answer (rules 3 and 4);

(c) to provide that a decree nisi shall not be made absolute where an appeal against the dismissal of an application for re-hearing is pending, or where the Court of Appeal has extended the time for an appeal and that time has not expired (rule 5);

(d) to provide that an application for an ancillary relief order, other than a variation or consent order, shall be supported by an affidavit by the applicant and that the respondent to the application shall file an affidavit in answer (rules 6, 7 and 15);

(e) to require the respondent to an application for a variation order to file an affidavit in answer if an affidavit by the applicant is served on him (rule 8);

(f) to make fresh provision for the prescribed information which is required to be given on an application for a consent order for ancillary relief and the procedure for placing such information before the court (rule 9);

(g) to provide a new procedure for transferring a county court order to the High Court for the purpose of enforcement (rule 10);

(h) to provide that an unopposed application relating to a child may be made to a registrar (rule 11);

(i) to provide a procedure for applications under Part III of the Matrimonial and Family Proceedings Act 1984 which confers power on the court to make orders for financial relief in cases where the parties have been legally separated or where their marriage has been dissolved or annulled by judicial or other proceedings in an overseas country (rules 12 and 16);

(j) to provide that the Lord Chancellor, with the concurrence of the President, may give leave for copies of documents filed or lodged in the court office to be made available to a person who is not a party to the proceedings (rule 13);

(k) to require a petitioner who relies in his petition on the respondent's behaviour to give information concerning the parties' living arrangements in cases where they have lived at the same address for more than 6 months since the final incident of behaviour relied on in the petition or, if the behaviour is continuing, since the petition was filed (rule 14).

(a) 1981 c.54.

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