STATUTORY INSTRUMENTS

# 1970 No. 1349 (L.28)

# MATRIMONIAL CAUSES
# SUPREME COURT OF JUDICATURE, ENGLAND
# COUNTY COURTS

## The Matrimonial Causes (Amendment No. 3) Rules 1970

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| *Made* - - - - | *27th July* 1970 |
| *Laid before Parliament* | *23rd September* 1970 |
| *Coming into Operation* | *1st January* 1971 |

We, the authority having power to make rules of court for the purposes mentioned in section 7(1) of the Matrimonial Causes Act 1967(a), hereby exercise that power as follows:—

**1.**—(1) These Rules may be cited as the Matrimonial Causes (Amendment No. 3) Rules 1970.

(2) In these Rules a rule referred to by number means the rules so numbered in the Matrimonial Causes Rules 1968(b), as amended (c); "Appendix II" and "Appendix III" mean respectively Appendices II and III to those Rules, and a form referred to by number means the form so numbered in Appendix II.

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

**2.** For paragraph (2) of rule 2 there shall be substituted the following paragraph:—

"(2) In these rules, unless the context otherwise requires—

"the Act of 1965" means the Matrimonial Causes Act 1965(e);

"the Act of 1967" means the Matrimonial Causes Act 1967;

"the Act of 1969" means the Divorce Reform Act 1969(f);

"the Act of 1970" means the Matrimonial Proceedings and Property Act 1970(g);

"adopted" has the same meaning as in section 27 of the Act of 1970;

"ancillary relief" means—

(*a*) an avoidance of disposition order,

(*b*) a lump sum order,

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

(*d*) a periodical payments order,

(*e*) a secured periodical payments order,

(a) 1967 c. 56.
(b) S.I. 1968/219 (1968 I, p. 665).
(c) The relevant amending instruments are S.I. 1970/29, 1161(1970 I, p.226; II, p.3929).
(d) 1889 c. 63.
(e) 1965 c. 72.
(f) 1969 c. 55.
(g) 1970 c. 45.

(*f*) a settlement of property order,

(*g*) a transfer of property order,

(*h*) a variation of settlement order, or

(*i*) a variation order;

"avoidance of disposition order" means an order under section 16 of the Act of 1970;

"cause" means a matrimonial cause as defined by section 10(1) of the Act of 1967;

"child" and "child of the family" have the same meaning as in section 27 of the Act of 1970;

"court" means a judge or the registrar;

"court of trial" means a divorce county court designated by the Lord Chancellor as a court of trial pursuant to section 1(1) of the Act of 1967 and, in relation to matrimonial proceedings pending in a divorce county court, the divorce registry shall be treated as a court of trial having its place of sitting at the Royal Courts of Justice;

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

"directions for trial" means directions for trial given under rule 33;

"district registry" means any district registry having a divorce county court within its district;

"divorce county court" means a county court so designated by the Lord Chancellor pursuant to section 1(1) of the Act of 1967;

"divorce registry" means the principal probate registry;

"divorce town" means a town mentioned in Appendix I;

"financial provision" has the same meaning as in section 16 of the Act of 1970;

"judge"—

(*a*) in relation to proceedings pending in a divorce county court means one of the county court judges assigned by the Lord Chancellor to exercise the jurisdiction conferred by the Act of 1967 on divorce county courts,

(*b*) in relation to proceedings pending in the High Court, includes the President, any judge of the Probate, Divorce and Admiralty Division, any judge of the High Court exercising jurisdiction in matrimonial proceedings and any commissioner exercising jurisdiction in such proceedings under or by virtue of section 70(5) of the Supreme Court of Judicature (Consolidation) Act 1925**(a)** and any order made thereunder;

"long cause" means a cause which has been included in the long cause list by virtue of a direction given by the registrar under rule 34(8);

"lump sum order" means an order under section 2(1)(*c*) or section 3(2)(*c*) of the Act of 1970 in respect of a party or a child of the family respectively;

"matrimonial proceedings" means any proceedings with respect to which rules may be made under section 7(1) of the Act of 1967;

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

"order for maintenance pending suit" means an order under section 1 of the Act of 1970;

"periodical payments order" means an order under section 2(1)(*a*) or

**(a)** 1925 c. 49.

section 3(2)(*a*) of the Act of 1970 in respect of a party or a child of the family respectively;

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

"the President" means the President of the Probate, Divorce and Admiralty Division or, in the case of his incapacity through illness or otherwise or of a vacancy in the office of President, the senior puisne judge of that Division;

"registrar" means—

(*a*) in relation to proceedings pending in a divorce county court, the registrar of that court,

(*b*) in relation to proceedings pending in the divorce registry, one of the registrars of that registry,

(*c*) in relation to proceedings in a district registry, the registrar of that district registry;

"registry for the divorce town" shall be construed in accordance with rule 44(4);

"Royal Courts of Justice", in relation to matrimonial proceedings pending in a divorce county court, means such place, being the Royal Courts of Justice or elsewhere, as may be specified in directions given by the Lord Chancellor pursuant to section 4(2)(*a*) of the Act of 1967;

"secured periodical payments order" means an order under section 2(1)(*b*) or section 3(2)(*b*) of the Act of 1970 in respect of a party or a child of the family respectively;

"senior registrar" means the senior registrar of the divorce registry;

"settlement of property order" means an order under section 4(*b*) of the Act of 1970;

"short cause" means a cause which has been included in the short cause list by virtue of a direction given by the registrar under rule 34(8);

"transfer of property order" means an order under section 4(*a*) of the Act of 1970;

"undefended cause" means—

(*a*) in the case of an application under section 2 of the Act of 1965, a cause in which the respondent has not given notice of intention to defend within the time limited;

(*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(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn;

"variation of settlement order" means an order under section 4(*c*) or (*d*) of the Act of 1970;

"variation order" means an order under section 9 of the Act of 1970;

"welfare" has the same meaning as in section 17 of the Act of 1970."

**3.** Rule 3 shall stand as paragraph (1) of that rule and the following paragraph shall be added at the end:—

"(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 a divorce county court, a provision of the County Court Rules 1936 and, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court 1965."

**4.** In rule 4(1) after the words "the Act of 1965" there shall be inserted the words "or Part I of the Act of 1970".

**5.** In rule 5(2) for the words "the proposed petition is to be presented" there shall be substituted the words "it is proposed to present the petition" and in sub-paragraph (*a*)(vi) for the figure "21" there shall be substituted the figure "18".

**6.** The following rule shall be substituted for rule 6:—

"*Application to court to consider agreement made in contemplation etc. of divorce or judicial separation*

6.—(1) On application made either before or after the presentation of a petition for divorce or judicial separation, the parties to the marriage or either of them may refer to the court any agreement or arrangement made or proposed to be made between them which relates to, arises out of or is connected with, the proceedings which are contemplated or have begun.

(2) Unless otherwise directed on an application made ex parte, every party to the agreement or arrangement (other than the applicant or applicants) and any other party to the proceedings or, where application is made before the presentation of the petition, any person whom it is intended to make a party to those proceedings, shall be made a respondent to the application.

(3) Where an application is made before the presentation of a petition—

(*a*) it shall be made by originating application to the divorce county court to which it is proposed to present the petition;

(*b*) there shall be filed with the originating application a copy thereof and a copy of the affidavit mentioned in paragraph (5) of this rule for service on each respondent;

(*c*) C.C.R. Order 6, rule 4(2)(*c*)(ii) (which deals with the service of an originating application), shall apply with the modification that the documents required to be served on each respondent shall, unless otherwise directed, be served by an officer of the court sending them to him by post;

(*d*) paragraph (5) of rule 5 shall apply to the application as if it were an application under that rule;

(*e*) subject to the provisions of this rule, these rules shall, so far as applicable, apply with the necessary modifications to the application as if it were a cause and as if the originating application were a petition and the applicant a petitioner.

(4) An application made after the presentation of a petition shall—

(*a*) if the proceedings are pending in a divorce county court, be made on notice in accordance with C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings), and

(*b*) in any other case, be made by summons in the proceedings.

(5) At the time of the filing of an originating application or notice of application or the issue of a summons under this rule, there shall be filed an affidavit by the applicant or applicants setting out particulars of the agreement or arrangement in question and the grounds on which the application is made, and a copy of the affidavit shall accompany every copy of the originating application, notice or summons for service.

(6) An application under this rule shall be heard by a judge and, unless otherwise directed, shall be heard in chambers.

(7) On the hearing of an application under this rule the judge may express an opinion, should he think it desirable to do so, as to the reasonableness of the agreement or arrangement and may give such directions, if any, in the matter if he thinks fit.

(8) A respondent to an application under this rule may be heard without filing an affidavit in answer to the application."

**7.** Rule 8 shall be revoked.

**8.** Rule 9 shall be amended as follows:—

(1) In paragraph (2) after the words "Form 2" there shall be inserted the words " as near as may be in the order there set out".

(2) The following paragraphs shall be inserted after paragraph (2):—

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

(4) Where a petition for divorce alleging any such fact as is mentioned in section 2(1)(*e*) of the Act of 1969 contains a proposal by the petitioner (not being a proposal agreed between the petitioner and the respondent) to make financial provision for the respondent, the petition shall be accompanied by an affidavit by the petitioner giving brief particulars of his means and commitments".

(3) Paragraphs (3), (4), (5), (6) and (8) shall stand as paragraphs (5), (6), (7), (8) and (9) respectively.

(4) In paragraph (8) as so re-numbered for the words from the beginning of sub-paragraph (*b*) to "domicile of the petitioner" there shall be substituted the words "(in lieu of a statement as to the domicile, occupation and residence of the parties) the domicile, occupation and residence of the petitioner."

(5) The existing paragraph (7) shall be revoked.

**9.** For paragraphs (3), (4) and (5) of rule 12 there shall be substituted the following paragraphs:—

"(3) Where a solicitor is acting for a petitioner for divorce or judicial separation, a certificate in Form 2A shall be filed with the petition, unless otherwise directed on an application made ex parte.

(4) Where there is before a divorce county court or the High 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 section 2(1) of the Act of 1969 as were alleged in a petition for judicial separation presented before the expiration of that period.

(5) The petition shall be presented by filing it, together with any statement, report and affidavit required by rule 9(3) and (4), in the court office, with as many copies of the petition as there are persons to be served and a copy of the statement, report and affidavit required by rule 9(3) and (4), for service on the respondent spouse.

(6) C.C.R. Order 6, rule 4(2) (which, as applied by rule 5 of that Order, deals with the filing and service of petitions), shall not apply but on the filing of the petition the registrar shall—

(*a*) enter the cause in the books of the court, and

(*b*) annex to every copy of the petition for service a notice in Form 3 with Form 4 attached and shall also annex to the copy petition for service on a respondent spouse the copy of any statement, report and affidavit lodged pursuant to paragraph (5) of this rule."

**10.** In rule 13, sub-paragraph (*c*) of paragraph (1) and the words "or sodomy" in paragraph (2) shall be omitted.

**11.** The following rules shall be inserted after rule 15:—

"*Notice of absence or withdrawal of consent*

15A.—(1) A respondent to a petition which alleges any such fact as is mentioned in section 2(1)(*d*) of the Act of 1969 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.

(2) Where any such notice is given and none of the other facts mentioned in section 2(1) of the Act of 1969 is alleged, the proceedings on the petition shall be stayed and the registrar shall thereupon give notice of the stay to all parties.

*Respondent's statement as to arrangements for children*

15B. A respondent spouse on whom there is served a statement in accordance with rule 9(3) may, at any time before the judge makes an order under section 17(1) of the Act of 1970, file in the court 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 registrar shall send a copy to the petitioner."

**12.** Rule 18 shall be amended as follows:—

(1) The following paragraph shall be substituted for paragraph (1):—

"(1) Subject to paragraph (2) and to rules 15A, 20 and 49, a respondent or co-respondent who—

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

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

(*c*) being the respondent to a petition to which section 4(1) of the Act of 1969 applies, wishes to oppose the grant of a decree nisi on the ground mentioned in that subsection,

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) In paragraph (4) the words "1(1)(*a*)(iv) or" shall be omitted and for the word "allegations" there shall be substituted the word "charges".

**13.** Rule 21 shall be amended as follows:—

(1) In paragraph (1) for the words "paragraphs (6), (7) and (8)" there shall be substituted the words "paragraphs (10), (11) and (14)."

(2) In paragraph (2) for the words "paragraphs (9), (10) or (11) there shall be substituted the words "paragraphs (4), (5) and (6)."

(3) In paragraph (3) for the words "Paragraph (14)" there shall be substituted the words "Paragraph (8)".

(4) Paragraph (4) shall be revoked.

(5) Paragraphs (5), (6) and (7) shall stand as paragraphs (4), (5) and (6).

(6) In paragraphs (4) and (5) as so re-numbered for the figures "9(8)" there shall be substituted the figures "9(9)".

**14.** In rule 27 for the words "the registrar" wherever they appear and for the word "he" there shall be substituted the words "the court".

**15.** In rule 28(1) the words "Subject to paragraph (4) of this rule" shall be omitted.

**16.** In rule 29(1) the words "Subject to paragraph (2) of this rule" shall be omitted.

**17.** In rule 30(1) after the word "incapacity" there shall be inserted the words "to consummate the marriage".

**18.** Rule 32 shall be amended as follows:—

(1) In paragraph (1) for the words "A judge" there shall be substituted the words "The court" and for the word "he" there shall be substituted the words "the court".

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

"(2) The court may order that any cause pending in a divorce county court shall be transferred to another divorce county court."

(3) Paragraphs (4) and (5) shall stand as paragraphs (3) and (4) respectively.

**19.** In rule 34(7) the words "of a defended cause" shall be omitted and for the words "a divorce town" there shall be substituted the word "elsewhere".

**20.** Rule 35 shall be amended as follows:—

(1) In the heading for the words "*of cruelty*" there shall be substituted the words "*under s.* 2(1)(*b*) *of the Act of 1969*".

(2) The following paragraph shall be substituted for paragraph (1):—

"(1) Where in a defended cause the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the registrar may, of his own motion on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter allegations made in the pleadings or particulars."

**21.** Rule 36 shall be revoked.

**22.** Rules 39 and 40 shall be amended as follows:—

(1) In the heading of rule 39 the words "Power to order" shall be omitted.

(2) In paragraph (1) of rule 39 for the words "A judge or registrar" there shall be substituted the words "The court".

(3) In paragraph (4) for the word "registrar" there shall be substituted the word "court".

(4) Paragraphs (3) and (4) of rule 40 shall stand as paragraphs (5) and (6) respectively of rule 39.

(5) For the remainder of rule 40 there shall be substituted the following rule:—

"*Evidence of marriage outside England and Wales*

40.—(1) The celebration of a marriage outside England and Wales 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."

**23.** Rule 49 shall be amended as follows:—

(1) Paragraph (2) shall be revoked.

**(a)** 1933 c. 4.

(2) Paragraphs (3), (4) and (5) shall stand as paragraphs (2), (3) and (4) respectively.

(3) In paragraph (3) as so re-numbered for the words "or (3)" there shall be substituted the words "or (2)".

**24.** Rule 50 shall be revoked.

**25.** The following rule shall be substituted for rule 51:—

"*Order as to arrangements for children to be drawn up*

51. Any order made pursuant to section 17(1) or (4) of the Act of 1970 shall be drawn up."

**26.** For paragraph (2) of rule 52 there shall be substituted the following paragraph:—

"(2) Where in proceedings for divorce, nullity of marriage or judicial separation the judge has not made an order pursuant to section 17(1) of the Act of 1970, 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 for hearing in chambers."

**27.** Rule 53 shall be revoked.

**28.** In rule 54(6) for the words "judge or registrar" there shall be substituted the word "court".

**29.** The following paragraph shall be added to rule 56:—

"(3) Where a decree nisi is pronounced on a petition in which any such fact as is mentioned in paragraph (*d*) or (*e*) of section 2(1) of the Act of 1969 is alleged, the decree shall state whether that fact was the only fact mentioned in the said section 2(1) on which the petitioner was entitled to rely in support of his petition."

**30.** The following rules shall be inserted after rule 56:—

"*Application for rescission of decree*

56A.—(1) An application by a respondent under section 5 of the Act of 1969 for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court.

(2) Paragraphs (3) and (5) of rule 55 shall apply to an application under this rule as they apply to an application under that rule.

(3) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed for the hearing of the application.

(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 section* 6 *of the Act of* 1969

56B.—(1) An application by the respondent to a petition for divorce for the court to consider the financial position of the respondent after the divorce shall be made by notice in Form 8A.

(2) The application shall be made to a judge.

(3) On the hearing of the application the judge may determine the application or may refer it to the registrar for him to investigate any matter arising on the application.

(4) Where an application is referred to the registrar under paragraph (3) he shall fix an appointment for the hearing of the application and rules 77(3) to (7), 79 (1) and (3), 80 and 80A shall apply to the application as if it were an application for ancillary relief referred to a registrar for investigation and report.

(5) A statement of any of the matters mentioned in sub-section (2) of section 6 of the Act of 1969 with respect to which the judge is satisfied, or, where the judge has proceeded under sub-section (3) of the said section, a statement that the conditions for which that sub-section provides have been fulfilled, shall be entered in the court minutes."

**31.** For paragraphs (2) and (3) of rule 61 there shall be substituted the following paragraphs:—

"(2) Within 21 days after giving notice under paragraph (1) the Queen's Proctor shall file his plea setting out the grounds 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 registrar shall serve a copy of the plea on each of the persons mentioned in paragraph (2)."

**32.** In rule 62(1) after the words "was pronounced and" there shall be inserted the words "in the case of a decree of nullity."

**33.** In rule 64(1) after the word "respondent" there shall be inserted the word "spouse".

**34.** For paragraph (2) of rule 65 there shall be substituted the following paragraph:—

"(2) On the lodging of such a notice, the registrar shall search the court minutes and if he is satisfied—

(*a*) that no appeal against the decree and no application for re-hearing of the cause or 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 by a judge extending the time for making an application for re-hearing of the cause 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 61 or 62 is pending;

(*e*) that the judge has made an order under section 17(1) of the Act of 1970;

(*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 section 6 of the Act of 1969 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 such order on the application as he thinks fit or refer the application to a judge."

**35.** Rule 68 shall be amended as follows:—

(1) For sub-paragraphs (*a*) to (*f*) of paragraph (1) there shall be substituted the following sub-paragraphs:—

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

(*b*) a periodical payments order,

(*c*) a secured periodical payments order,

(*d*) a lump sum order,

(*e*) a settlement of property order,

(*f*) a transfer of property order,

(*g*) a variation of settlement order."

(2) In paragraph (2)(*a*) for the words "a judge" there shall be substituted the words "the court".

**36.** In rule 69 for the words "a child maintenance order" there shall be substituted the words "an order for ancillary relief".

**37.** Rule 70 shall be amended as follows:—

(1) In the heading after the words "*Form* 8" there shall be added the words "*or* 8A."

(2) After the words "notice in Form 8" there shall be inserted the words "or an application under rule 56B is made by notice in Form 8A".

**38.** For paragraphs (1) and (2) of rule 72 there shall be substituted the following paragraphs:—

"(1) Where an application is made to the High Court or a divorce county court for a variation of settlement order, the court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests 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)."

**39.** Rule 73 shall be amended as follows:

(1) For the heading there shall be substituted the words "*General provisions as to evidence etc. on application for ancillary relief*".

(2) For sub-paragraphs (*a*) and (*b*) of paragraph (2) there shall be substituted the words "with a notice in Form 8 or 9 in respect of an application for ancillary relief, not being an application to which rule 74 or 75 applies".

**40.** The following rule shall be substituted for rule 74:—

"*Evidence on application for settlement of property, etc.*

74.—(1) Where an application is made for a settlement of property order, a variation of settlement order, a transfer of property order or an avoidance of disposition order, the application shall state briefly the nature of the settlement, variation or transfer proposed or the disposition to be set aside and the notice in Form 8 or 9 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 of an application for a settlement of property order or a transfer of property order shall contain full particulars of the property in respect of which the application is made and shall contain full particulars, so far as they are known to the applicant, of the property to which the party against whom the application is made is entitled either in possession or reversion; and the affidavit in support of an application for a variation of settlement order shall contain full particulars of all settlements, whether ante-nuptial or post-nuptial, made on the spouses and of the funds brought into settlement by each spouse.

(3) A copy of Form 8 or 9, 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 settlements 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 and such other persons, if any, as the registrar may direct.

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

**41.** In rule 75 for the word "modification" in the heading and in paragraph (1) there shall be substituted the word "variation".

**42.** The following rule shall be substituted for rule 76:—

"*Service of affidavit in answer or reply*

76.—(1) A person who files an affidavit for use on an application under rule 73, 74 or 75 shall at the same time serve a copy on the opposite party and, where the affidavit 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 20 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 77(6) within 8 days of service of the affidavit on him, inclusive of the day of service.

(2) Rule 49 (4) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent."

**43.** Rule 77 shall be amended as follows:—

(1) In the heading the word "*Preliminary*" shall be omitted.

(2) In paragraph (2) for the word "relief" there shall be substituted the word "provision".

(3) In paragraph (5) for the words "rule 80(3)" there shall be substituted the words "rules 78, 80 and 80A".

(4) The following paragraph shall be inserted after paragraph (5):—

"(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."

(5) Paragraph (6) shall stand as paragraph (7).

**44.** The following rule shall be substituted for rule 78:—

"*Applications heard by registrar*

78.—(1) Except in a case to which rule 79 applies and subject to paragraph (2), the registrar shall, after completing his investigation under rule 77, make such order as he thinks just.

(2) The registrar may at any time refer the application, or any question arising thereon, to a judge for his decision; and, pending the final determination of the application, the registrar may make an interim order upon such terms as he thinks just."

**45.** The following rule shall be substituted for rule 79:—

"*Applications heard by judge*

79.—(1) In the case of an application for an avoidance of disposition order and any related application for financial provision which is being heard at the same time, the registrar shall, after completing his investigation under rule 77, report the result thereof in writing to a judge to whom the application shall be adjourned.

(2) The registrar's report shall contain an estimate of the financial provision to which, in his opinion, the applicant is entitled (if he has not already obtained an order for financial provision) and of the provision to which, in the registrar's opinion, the applicant would be entitled if the application were granted.

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

(4) On the hearing of the application the judge may confirm or vary the registrar's report or make such other order as he thinks just."

**46.** The following rules shall be substituted for rule 80:—

"*Transfer of application for ancillary relief: general provisions*

80.—(1) If the court considers that an application for ancillary relief pending in a divorce county 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 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 of that Court.

(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 a judge or the registrar who shall, subject to paragraph (5) of this rule, order the transfer unless he is of opinion that it would not be justified.

(3) Without prejudice to paragraphs (1) and (2) of this rule, the court may order the transfer to the High Court of any application for ancillary relief pending in 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 77 an application for ancillary relief pending in a divorce county court shall consider whether the case is one in which the court should exercise its powers under paragraph (1) or (3) of this rule.

(5) In considering whether an application should be transferred to the High Court the court shall have regard to all relevant considerations, including the nature and value of the property involved, the relief sought and the financial limits for the time being relating to the jurisdiction of county courts in other matters.

(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 32.

(7) Where pursuant to the provisions of this rule an application for ancillary relief or the cause is transferred to the High Court, the court may, on making the order for transfer, give directions as to the further conduct of the proceedings.

(8) 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.

(9) Where an application for ancillary relief is pending in the High Court, the registrar of the registry in which the application is proceeding or a judge may order that the application be transferred to another registry.

(10) An order under paragraph (1), (3), (8) or (9) 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 on the question of transfer and for that purpose the registrar may give the parties notice of a date, time and place at which the question will be considered.

*Transfer to High Court for purpose of expedition*

80A. Without prejudice to the last foregoing rule, a judge or the registrar may, on the application of a party or of his own motion, order that an application for ancillary relief pending in a divorce county court shall be transferred to the High Court if he is of opinion that the transfer is desirable for the purpose of expediting the hearing of the application; but where a transfer is ordered under this rule, the costs of the application for ancillary relief shall be on the county court scale unless the judge or registrar who hears the appli-

cation considers that a transfer would have been justified otherwise than for expediting the hearing and for that reason directs that the costs incurred after the transfer of the application shall be on the High Court scale."

**47.** Rule 82 shall be amended as follows:—

(1) In the heading for the word "*maintenance*" there shall be substituted the words "*periodical payments*" and for the word "*alimony*" there shall be substituted the word "*maintenance*".

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

"(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."

**48.** The proviso to rule 83 shall be omitted.

**49.** Rule 84 shall be amended as follows:—

(1) In the heading for the words "*section* 32(1)(*a*) *of the Act of* 1965" there shall be substituted the words "*section* 16(1)(*a*) *of the Act of* 1970".

(2) The following paragraph shall be substituted for paragraph (1):—

"(1) An application under section 16(1)(*a*) of the Act of 1970 for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim shall be made to a judge."

**50.** For paragraph (2) of rule 86 there shall be substituted the following paragraph:—

"(2) Except with the leave of the registrar, no writ of fieri facias or warrant of execution shall be issued to enforce payment of any sum due under an order for ancillary relief or an order made under the provisions of section 6 of the Act of 1970 where an application for a variation order is pending."

**51.** In rule 87(8) the word "damages" in sub-paragraph (*a*) shall be omitted and for the words "alimony, maintenance" in sub-paragraph (*b*) there shall be substituted the words "maintenance pending suit".

**52.** For paragraph (4) of rule 92 there shall be substituted the following paragraphs:—

"(4) If on any application to a judge relating to a child there is a dispute as to the care and control of, or access to, the child, then, without prejudice to his powers under rules 39(5) and 41, the judge may refuse to admit any affidavit unless the party by whom or on whose behalf it was made is available at the hearing to give oral evidence and (where the cause or the application is proceeding in the High Court) a writ of subpoena to compel the attendance of a witness for the purpose of the application may issue in accordance with rule 42 without the production of the note from a judge or registrar mentioned in R.S.C. Order 32, rule 7.

(5) Where an affidavit filed for use in proceedings to which this rule applies 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 20 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 paragraph (7) within 8 days of service of the affidavit on him, inclusive of the day of service.

(6) Rule 49(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."

**53.** For paragraph (2) of rule 93 there shall be substituted the following paragraph:—

"(2) If the local authority wish to represent that, in the event of an order being made under section 36, the court should make an order for payments for the maintenance and education of the child, the authority shall, within 7 days after receipt of the notice, file an affidavit setting out such facts relevant to the means of the person against whom the order for those payments is sought as are known to the authority and shall at the same time serve a copy of the affidavit on that person."

**54.** At the beginning of paragraph (1) of rule 94 there shall be inserted the words "Subject to rule 97(2)".

**55.** The following rule shall be substituted for rule 97:—

"*Transfer of proceedings relating to children*

97.—(1) Rules 80 and 80A shall, so far as applicable, apply to proceedings pending in a divorce county court for the exercise of any power under section 36 or 37 of the Act of 1965 or under section 17, 18 or 19 of the Act of 1970 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 77 an application for ancillary relief" in paragraph (4) of rule 80 there shall be substituted the words "The court before hearing an application"

(*b*) paragraph (5) of rule 80 shall be omitted.

(2) Where it appears to the court that an application for leave to remove a child permanently out of England and Wales or for an order under section 36 of the Act of 1965 is contested, or that any such proceedings as are mentioned in paragraph (1) of this rule relate to a child who is a ward of court, the court shall, subject to rule 80(6), order that the proceedings be transferred to the High Court.

(3) Where in any cause it appears to the court that an application for a declaration under section 18(3) of the Act of 1970 is contested, the court shall make an order that the cause be transferred to the High Court.

(4) Where any proceedings relating to a child are transferred to the High Court under this rule a writ of subpoena to compel the attendance of a witness for the purpose of the proceedings may issue in accordance with rule 42 without the production of the note from a judge or registrar mentioned in R.S.C. Order 32, rule 7."

**56.** Rule 98 shall be amended as follows:—

(1) In paragraph (1) for the words "by a wife for an order under section 22 of the Act of 1965" there shall be substituted the words "under section 6 of the Act of 1970".

(2) For paragraphs (5) and (6) there shall be substituted the following paragraphs:—

"(5) Within 14 days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an 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 the registrar shall serve a copy of the answer, if any, and of the affidavit on the applicant.

(6) Where an answer is filed alleging adultery, the alleged adulterer shall be made a party cited and shall be served with a copy of the answer, and rules 12(6) and 14 shall apply with the necessary modifications as if the answer were a petition and the party cited were a co-respondent."

(3) For paragraphs (9) and (10) there shall be substituted the following paragraphs:—

"(9) Within 14 days after being served with a copy of any answer filed by the respondent the applicant may file a reply, and in that case the registrar shall serve a copy on the respondent and on any party cited in the respondent's answer.

(10) Within 14 days after being served with a copy of the respondent's affidavit the applicant may file a further affidavit as to means and as to any fact stated in the respondent's affidavit which he wishes to dispute, and in that case the registrar shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

(11) An applicant, respondent or party cited who files an answer, affidavit or reply under any of the preceding paragraphs of this rule shall at the same time file a copy for service on every party required to be served therewith."

**57.** The following rule shall be substituted for rule 99:—

"*Transfer and hearing of applications under rule* 98

99.—(1) Where it appears to the 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 England or Wales has jurisdiction to entertain the application,

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

(2) Without prejudice to the provisions of paragraph (1) of this rule, rules 80 (except paragraphs (5) and (7) thereof) and 80A shall apply with the necessary modifications to an application for an order under section 6 of the Act of 1970 as if the application were an application for ancillary relief.

(3) The application shall be heard by a judge in court, and where the

application is proceeding in a divorce county court which is not a court of trial or where it has been transferred to the High Court and is proceeding in a district registry which is not in a divorce town, the hearing shall be fixed to take place at such court of trial or divorce town as in the opinion of the registrar is the nearest or most convenient.

For the purpose of this paragraph the Royal Courts of Justice shall be treated as a divorce town.

(4) 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 section 6(5) of the Act of 1970, to the registrar for him to investigate the means of the parties to the marriage.

(5) Where an application is referred to the registrar under paragraph (5) he shall fix an appointment for the hearing of the application and the provisions of these rules relating to ancillary relief shall apply subject to the modification that in rule 79(1) for the words from "In the case of" to "the same time" there shall be substituted the words "Except where the application is for an order made under section 6(5) of the Act of 1970 or the judge has made a finding that there has been wilful neglect to maintain".

(6) Subject to the provisions of this and the last foregoing rule, these rules shall, so far as applicable, apply with the necessary modifications to an application under section 6 of the Act of 1970 as if—

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

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

**58.** Rule 100 shall be amended as follows:—

(1) In paragraphs (1), (7) and (8) for the words "section 24 of the Act of 1965" there shall be substituted the words "section 14 of the Act of 1970".

(2) In paragraph (7) for the words "Rules 77(4) to (6), 78, 80 and 81" there shall be substituted the words "Rules 76, 77(4) to (7), 78, 80, 80A and 81".

**59.** Rule 101 shall be amended as follows:—

(1) In paragraph (1) for the words "application under section 25 of the Act of 1965" there shall be substituted the words "application to the High Court under section 15 of the Act of 1970."

(2) In paragraphs (3)(*d*) and (*e*) for the words "of the marriage" there shall be substituted the words "of the family".

(3) In paragraph (3)(*d*)(i) for the figure "21" there shall be substituted the figure "18" and for the word "infant" there shall be substituted the word "minor".

**60.** Rule 102 shall be amended as follows:—

(1) In paragraph (3)(*c*) for the words "an infant" there shall be substituted the words "a minor".

(2) In paragraph (9) for the words "Rules 77(4), (5) and (6), 79(3) and (4), 80(4) and (5)" there shall be substituted the words "Rules 76, 77(4) to (7), 79(3) and (4), 80(9) and (10)".

(3) In paragraphs (9) and (10) for the words "section 25 of the Act of 1965" there shall be substituted the words "section 15 of the Act of 1970".

**61.** Rule 103 shall be amended as follows:—

(1) In paragraph (3)(*c*)(i) for the figure "21" there shall be substituted the figure "18".

(2) In paragraph (3)(*e*) after sub-paragraph (ii) there shall be inserted the following sub-paragraph:—

"(iii) where the survivor is a former wife or a former husband of the deceased, for an order under section 2 or 4 of the Act of 1970".

**62.** Rule 105 shall be amended as follows:—

(1) In paragraphs (1) and (8)(*c*)(i) for the words "an infant" there shall be substituted the words "a minor".

(2) In paragraph (5)(*a*) the words from "if relief" to "Act of 1965" shall be omitted.

(3) In paragraph (6) the words "or an affidavit under rule 98(6)" shall be omitted.

**63.** In rule 106(1) for the words "rule 6(2)(*c*)" there shall be substituted the words "rule 6(3)(*b*)" and in sub-paragraph (*a*) for the words "an infant" there shall be substituted the words "a minor".

**64.** The following rule shall be inserted after rule 119:—

"*Removal of proceedings to the High Court under section* 115 *of the County Courts Act* 1959**(a)**

119A.—(1) The power of the High Court or a judge thereof under section 115 of the County Courts Act 1959 to order the removal into the High Court, otherwise than by order of certiorari, of matrimonial proceedings pending in a divorce county court may be exercised by a registrar of the divorce registry or by the registrar of any district registry having that county court within its district, except where a judge of the county court has refused to order the transfer of the proceedings to the High Court.

(2) Proceedings for the exercise of the power shall be begun by originating summons.

No appearance need be entered to the summons.

(3) Rule 120(3) shall have effect in relation to an order for the removal of matrimonial proceedings into the High Court as if it were an order for the transfer of the proceedings to the High Court."

**65.** In rule 121(1) the words "Subject to rule 36(4)" shall be omitted.

**66.** Rule 123 and Appendix III shall be revoked.

**67.** The following form shall be substituted for Form 2:—

**(a)** 1959 c. 22.

"Form 2 Rule 9(2)

GENERAL FORM OF PETITION

In the County Court
[Divorce Registry]
No. of
Matter

THE PETITION OF SHOWS THAT—

(1) On the day of 19 the petitioner was lawfully married to (hereinafter called the respondent) at

(2) The petitioner and the respondent have cohabited at [*state the last address at which they have cohabited in England or Wales*] [*or* The petitioner and the respondent have not cohabited in England or Wales].

(3) Both the petitioner and the respondent are domiciled in England and Wales [*or as the case may be*]; the petitioner is a [*state occupation*] and resides at , and the respondent is a [*state occupation*] and resides at .

(4) There is [are] [no [*or state number*] children of the family now living] [namely [*state the name of each child and his date of birth or, if it be the case, that he is over 18 and, 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*]].

(5) [*In the case of a husband's petition*] No other child now living has been born to the respondent during the marriage so far as is known to the petitioner [*or in the case of a wife's petition*] No other child now living has been born to the petitioner during the marriage [except [*state the name of any such child and his date of birth, or if it be the case, that he is over 18*]].

(6) [*Where there is a dispute whether a child is a child of the family*] The petitioner alleges that is [not] a child of the family because [*give full particulars of the facts relied on by the petitioner in support of his or her allegation that the child is or, as the case may be, is not, a child of the family*].

(7) [*Where appropriate in the case of a child who is under 18*] The said was, on the day of 19 , received into the care of [*or* is a child with respect to whom a resolution was, on the day of 19 , passed by] [*name of local authority*] under section 1 [*or* 2] of the Children Act 1948.

(8) [*Where an application is made in the petition for an order for the support of a child of whom the respondent is not a parent*] The respondent assumed responsibility for the maintenance of the said to the following extent and for the following time namely [*give details*]. There is no other person liable to maintain the said child [except ].

(9) There have been no previous proceedings in any court in England and Wales or elsewhere with reference to the marriage [or to any children of the family] [except [*state the nature of the proceedings, the date and effect of any decree or order and, 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*]].

(10) The following [*or* No] agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent [and the said children] [namely [*state details*]].

(11) [*In the case of a petition for divorce alleging only any such fact as is mentioned in section* 2(1)(*e*) *of the Act of 1969* [The petitioner proposes, if a decree nisi is granted, to make the following financial provision for the respondent [*give details of any proposal not mentioned in paragraph* (10)] [*or* The petitioner makes no proposals for financial provision for the respondent in the event of a decree nisi being granted].

(12) [*In the case of a petition for divorce*] The said marriage has broken down irretrievably.

(13) The respondent has committed adultery with and the petitioner finds it intolerable to live with the respondent [*or* The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent] [*or* The respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of this petition] [*or* The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the respondent consents to a decree being granted] [*or* The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition] [*or, where the petition is not for divorce or judicial separation, set out the ground on which relief is sought, and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved*].

(14) [*In the case of a petition for nullity*] This petition is not presented or prosecuted in collusion with the respondent.

The petitioner therefore prays—

(1) That the said marriage may be dissolved [*or as the case may be*].

(2) That he [she] may be granted the custody of [*state name*[*s*] *of the child*[*ren*] *and add any application for a declaration under section 18*(*3*) *of the Matrimonial Proceedings and Property Act 1970*].

(3) [*Where appropriate*] That may be ordered to pay the costs of this suit.

(4) That he [she] may be granted the following ancillary relief, namely [*state particulars of any application for ancillary relief which it is intended to claim*].

The names and addresses of the persons who are to be served with this petition are [*give particulars, stating if any of them is a person under disability*].

The petitioner's address for service is [*Where the petitioner sues by a solicitor, state the solicitor's name or firm and address, or, where the petitioner sues in person, state his place of residence as given in paragraph 3 of the petition 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 this day of 19 .

*Note: Under the Matrimonial Causes Rules 1968 further information is required in certain cases.*"

**68.** The following forms shall be inserted in Appendix II after Form 2:—

"Form 2A Rule 12

CERTIFICATE WITH REGARD TO RECONCILIATION

[*Heading as in Form 3*]

I the solicitor acting for the petitioner in the above cause do hereby certify that I have [*or* have not] discussed with the petitioner the possibility of a reconciliation and that I have [*or* have not] given to the petitioner the names and addresses of persons qualified to help effect a reconciliation.

Dated this day of 19 .

*Signed*

Solicitor for the Petitioner.

Form 2B Rule 9(3)

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

[*Heading as in Form 3*]

The present arrangements for the minor children of the family under 16 and those over 16 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 living and who is at present responsible for his care and upbringing*]

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

(iii) financial provision [*state who is supporting the child or contributing to his support and the extent thereof*]

(iv) access [*state any arrangements which have been agreed for access by either of the parties and the extent to which access is and has been afforded*]

The arrangements proposed for the children in the event of a decree being granted are as follows:—

(i) residence

(ii) education etc.

(iii) financial provision

(iv) access

[*In each of these paragraphs state whether the grant of a decree will affect the present arrangements set out above, whether it is proposed that those arrangements should continue, and if not, and to the extent that they are likely to alter, state what alteration is anticipated and what proposals in substitution are proposed. In the case of residence, where it is proposed that for any period a child should be in the immediate care of a person other than the petitioner, give details of that person's willingness and ability to care for the child. In the case of education state, if possible, any long-term proposals for further education or training. In the case of financial provision give details of any application which will be made for ancillary relief in respect of the children and, where applicable, state the object of any application which is other than for the day-to-day support of the child.*]

The said child[ren] is [are] [not] suffering from [any] serious disability or chronic illness or from the effects of [any] serious 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 supervision of a probation officer, children's officer or welfare officer or organisation [namely [*state the date of any order for supervision and the circumstances which gave rise to its being made*]].

Dated this day of 19 .

*Signed*
Petitioner."

**69.** The following forms shall be substituted for Forms 3 and 4:—

Rule 12(6)

"Form 3

NOTICE OF PROCEEDINGS

(1) Amend if the proceedings are pending in High Court

In the County Court(1)
[Divorce Registry]
No. of Matter
(Seal)

Between Petitioner

and Respondent

[and Co-Respondent]

(2) Or as the case may be.

TAKE NOTICE that a petition [for divorce] (2) has been presented to this Court. A sealed copy of it [and a copy of the petitioner's proposals regarding the children] [is] [are] delivered with this notice.

(3) Delete if inapplicable.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Court within 8 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

2. (3)If you wish to do so, you may send to the court 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 child[ren] and a copy of your statement will be sent to the petitioner.

3. If the reply to Question 4 [or 6] (3) in the acknowledgment is Yes, you must, within 29 days after you receive this notice, inclusive of the day of receipt, file in the Court office an answer to the petition (2), together with a copy for every other party to the proceedings. The case will then be transferred to the High Court (4).

(4) Delete if case has already been transferred to High Court.

4. (3)If the reply to Question 5 in the acknowledgment is Yes the consequences to you are that—

(*a*) provided the petitioner establishes the fact that the parties to the marriage have lived apart for two years immediately preceding the presentation of the petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the Court is satisfied that the marriage has not broken down irretrievably;

(*b*) your right to inherit from the petitioner if he or she dies without having made a will ceases on the grant of a decree of judicial separation or on a decree nisi of divorce being made absolute;

(*c*) in the case of divorce the making absolute of the decree will end the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon your being left a widow; the State widow's pension will not be payable to you when the petitioner dies, and any rights of occupation you may have in the matrimonial home under the Matrimonial Homes Act 1967 will cease unless the Court directs otherwise during the subsistence of the marriage;

(*d*) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances. About these you should obtain legal advice from a solicitor.

5. (3)If after consenting you wish to withdraw your consent you must immediately inform the court and give notice to the petitioner.

6. (3)The only fact on which the petitioner relies in support of the petition is that the parties to the marriage have lived apart for at least 5 years. Section 6 of the Divorce Reform Act 1969 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, the decree nisi 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. Paragraph (11) of 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.

7. (3)If the reply to Question 7 in the acknowledgment is Yes, you must, before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 8A, which may be obtained from the Court.

8. If you intend to instruct a solicitor 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 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 Court.

Dated this day of 19 .

Registrar.

To

[*Here set out Form 4*]

FORM 4

Rule 14(5)

ACKNOWLEDGMENT OF SERVICE

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

[*Heading as in Form 3*]

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

(2) Or as the case may be.

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 any such fact as is mentioned in section 2(1)(d) of the Divorce Reform Act 1969 (two years' separation and consent of respondent)*]: Do you consent to a decree being granted?

(3) Delete if inapplicable.

6. (3)[*In the case of a petition asking for divorce and alleging any such fact as is mentioned in section 2(1)(e) of the Divorce Reform Act 1969 (five 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?

7. (3)In the event of the grant of a decree nisi and the Court holding that the only fact on which the petitioner was entitled to rely in support of the petition was any such fact as is mentioned in section 2(1)(*d*) or (*e*) of the Divorce Reform Act 1969 (two years' separation and the consent of the respondent or five years' separation), do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?

(4) Delete Question 8 except in the case of a petition.

8. (4)Even if you do not intend to defend the case do you wish to be heard on the claim[s] in the petition for(5)—

(*a*) costs.....
(*b*) custody of the children.....
(*c*) periodical payments.....
(*d*) maintenance pending suit.....
(*e*) secured periodical payments.....
(*f*) a lump sum.....
(*g*) a settlement or transfer of property.....
(*h*) variation of a settlement.....

(5) Insert whichever of the following items is applicable.

(6) Delete Question 9 (except in the case of a respondent spouse in proceedings begun by petition).

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

(*a*) access to the children.....
(*b*) custody of the children.....
(*c*) periodical payments for the children.....
(*d*) maintenance pending suit.....
(*e*) periodical payments for yourself.....
(*f*) a lump sum.....
(*g*) secured periodical payments.....
(*h*) settlement or transfer of property.....
(*i*) variation of a settlement.....

(If possible answer YES or NO against each item in Question[s] 8 [and 9]. If you are uncertain leave a blank).

Dated this day of 19 .

*Signed*

*Address for service* [*Unless you intend to instruct a solicitor, give your place of residence, or if you do not reside in England or Wales, the address of a place in England or Wales to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Court.*]

[*Or, if a solicitor is instructed*

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

*Signed*

Address for service: ]"

**70.** The following form shall be substituted for Form 8:—

"Form 8 Rule 68(2)(*a*) 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 agreement as to the order which the court is to be asked to make and, in the case of an application for a settlement of property order, a variation of settlement order, a transfer of property order or an avoidance of disposition order, stating briefly the nature of the settlement, variation or transfer 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, periodical payments or a lump sum:*

TAKE NOTICE ALSO that you must send to the registrar, so as to reach him 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 ."

**71.** The following form shall be inserted in Appendix II after Form 8:—

"Form 8A Rule 56B

NOTICE OF APPLICATION UNDER RULE 56B

[*Heading as in Form 3*]

TAKE NOTICE that the respondent applies to the Court under section 6 of the Divorce Reform Act 1969 for the Court to consider the financial position of the respondent after the divorce.

The application will be heard immediately after a decree nisi is granted [*or if application is made after a decree nisi has been granted* 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 Judge in chambers at on day, the day of 19 , at o'clock]].

Dated this day of 19 .

*Signed*

[Solicitor for the] Respondent."

**72.** The following form shall be substituted for Form 10:—

Rule 82(2) "Form 10

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 in 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 registrar 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 ."

**73.** In Form 11 after the paragraph beginning "I apply" there shall be inserted the following paragraph:—

"[*If it be the case* I intend to apply to the Court at the hearing of the proposed judgment summons for leave to enforce arrears which became due more than twelve months before the date of the proposed summons]."

**74.** In Form 12 after the paragraph beginning "YOU ARE HEREBY SUMMONED" there shall be inserted the following paragraph:—

"[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 twelve months before the date of this summons]".

**75.** The following form shall be substituted for Form 14:—

Rule 98(1) "Form 14

ORIGINATING APPLICATION ON GROUND OF WILFUL NEGLECT TO MAINTAIN

In the County Court
[Divorce Registry]
No. of
Matter
(Seal)

*In the Matter of an Application under section 6 of the Matrimonial Proceedings and Property Act 1970*

Between Applicant
and Respondent

1. I, , of , the wife [husband] of
of (hereinafter called the respondent)
say that the respondent [*in the case of a wife's application* has wilfully neglected to provide reasonable maintenance for me *or in the case of a husband's application* has wilfully neglected to provide [*or* make a proper contribution towards] reasonable maintenance for me [and the child[ren] of our family]].

2. On the day of 19 , I [*in the case of an application by a wife* being then [state full name and status before the marriage]] was lawfully married to the respondent [*in the case of an application by a husband* who was then [state respondent's full name and status before marriage]] at

3. There is [are] [no [*or state number*] children of the family now living] [namely [*state the name of each child and his date of birth or, if it be the case, that he is over 18 and, in the case of each minor child over the age of 16, 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*] who is now residing at [*state the place*] with [*state the person*]].

4. There have been no previous proceedings in any court in England and Wales or elsewhere with reference to the marriage [or the children of the family] [except *state the nature of the proceedings, the date and effect of any decree or order and, 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*].

5. [*Where appropriate in the case of a child who is under 18*] The said was, on the day of 19 , received into the care of [*or* is a child with respect to whom a resolution was, on the day of 19 , passed by] [*name of local authority*] under section 1 [*or 2*] of the Children Act 1948.

6. The following are particulars of the wilful neglect by the respondent to provide reasonable maintenance for me [*or in the case of a husband's application* to provide reasonable maintenance [*or* to make a proper contribution towards reasonable maintenance] for me] [and for the said child[ren] [*state names*]] [*give particulars adding in the case of a husband's application in respect of himself the matters set out in section 6(1)(b)(i) of the Act of 1970 on which he relies*].

7. The respondent has not made any payments to me by way of maintenance for myself [or the said child[ren]] [except [*give particulars*]].

8. My means are as follows:—

9. To the best of my knowledge and belief the respondent's means are as follows:—

10. I apply for an order that the respondent do make provision by way of [periodical payments, secured periodical payments, a lump sum *delete as appropriate*] for me [and [*such of the said provisions as may be claimed*] for [*state name[s] of child[ren] in respect of whom such claim is made*]].

11. I ask that I may be granted the custody of the said [*state name[s] of the child[ren]*]].

12. This Court has jurisdiction to entertain these proceedings by reason of the fact that the respondent and I are resident in England or Wales [*or as the case may be*].

My address for service is [*Where the applicant sues by a solicitor, state the solicitor's name or firm and address or, where the applicant sues in person, state her place of residence as given in paragraph 1 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 her may be delivered or sent*].

Dated this day of 19 ."

**76.** The following forms shall be substituted for Form 15 and 16:—

Rules 98(3) and 100(4)

"Form 15

NOTICE OF APPLICATION UNDER RULE 98 OR 100

[*Heading as in Form 14*]

TAKE NOTICE that this application will be heard at County Court [*insert address of court-house*] on the day of 19 , at o'clock [*or* on a day to be fixed], and if you do not attend at that place and time, such order will be made as the Court thinks just.

A sealed copy of the application [and of the affidavit in verification] is delivered with this notice.

You must complete and detach the acknowledgment of service and send it so as to the reach the Court within 8 days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs.

[*Where the application is under rule 98*] If you intend to contest the application, you must file an answer setting out the grounds on which you rely (including any allegation which you wish to make against the applicant), and in any case, unless otherwise directed, you must file an affidavit containing full particulars of your property and income. The affidavit and any answer you wish to file must be sent, together with a copy for the applicant, so as to reach the Court within 14 days after the time allowed for sending the acknowledgment of service. If you file an answer alleging adultery it must be accompanied by a copy for the alleged adulterer.

[*Where the application is under rule 100*] You must also swear an affidavit in answer to the application, setting out any grounds on which you intend to contest the application and containing full particulars of your property and income, and send the affidavit, together with a copy for the applicant, so as to reach the Court within 14 days after the time allowed for sending the acknowledgment of service.

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

Dated this day of 19 .

Registrar

To the Respondent

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[*Here set out Form 4*]

Rule 100(1)

Form 16

ORIGINATING APPLICATION FOR ALTERATION OF MAINTENANCE AGREEMENT DURING PARTIES' LIFETIME

In the County Court
[Divorce Registry]
No. of
Matter
(Seal)

*In the Matter of an Application under section 14 of the Matrimonial Proceedings and Property Act 1970*

Between Applicant
and Respondent

1. I , the wife [*or* husband] of (hereinafter called the respondent), apply for an order altering the maintenance agreement made between me and the respondent on the day of 19 .

2. I reside at , and the respondent resides at .

[*Add, unless both parties are resident in England or Wales* We are both domiciled in England and Wales [*or as the case may be*]].

3. On the day of 19 , I was lawfully married to the respondent at .
I [*or in the case of an application by the husband* The respondent] was then [*state full name and status of wife before marriage*].

4. There is [are] [no [*or state number*] child[ren] of the family [namely [*state the name of each child now living and his date of birth or, if it be the case, that he is over 18 and, in the case of each minor child over the age of 16, 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*] who is now residing at [*state the place*] with [*state the person*] [and [*state name of any child who has died since the date of the agreement*] who died on the day of 19 .] [The agreement also makes financial arrangements for [*give similar particulars of any other child for whom the agreement makes such arrangements*]].

5. There have been no previous proceedings in any court with reference to the agreement or to the marriage [or to the child[ren] of the family] [or to the other child[ren] for whom the agreement makes financial arrangements] [except *state the nature of the proceedings and the date and effect of any order or decree*].

6. My means are as follows:—

7. I ask for the following alteration[s] to be made in the agreement:—

8. The facts on which I rely to justify the alteration[s] are:—

My address for service is [*Where the applicant sues by a solicitor, state the solicitor's name or firm and address, or, where the applicant sues in person, state his or her place of residence as given in paragraph 1 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 or her may be delivered or sent*].

Dated this day of 19 ."

**77.** In the heading to Form 17 for the words "*section* 25 *of the Matrimonial Causes Act* 1965" there shall be substituted the words "*section* 15 *of the Matrimonial Proceedings and Property Act* 1970".

**78.** The following form shall be added to Appendix II after Form 19:—

"Form 20

Rules 76 and 92(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 8 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]"

**79.** These Rules shall come into operation on 1st January 1971, so however that the provisions of the Matrimonial Causes Rules 1968 in force immediately before that day shall continue to apply to such extent as may be necessary for giving effect to the savings and transitional provisions in the Divorce Reform Act 1969 and the Matrimonial Proceedings and Property Act 1970.

Dated 27th July 1970.

*Hailsham of St. Marylebone*, C.
*J. E. S. Simon*, P.
*John Latey*, J.
*Ifor Lloyd.*
*Irvon Sunderland.*
*W. D. S. Caird.*
*J. L. Williams.*
*Alan de Piro.*
*Joseph Jackson.*
*J. D. Clarke.*
*D. E. Morris.*

## EXPLANATORY NOTE

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

These Rules amend the Matrimonial Causes Rules 1968 mainly to take into account the provisions of the Divorce Reform Act 1969, the Law Reform (Miscellaneous Provisions) Act 1970 and the Matrimonial Proceedings and Property Act 1970 which come into operation on 1st January 1971. The main changes are as follows:—

(1) The provisions of the rules and forms relating to proceedings for restitution of conjugal rights, damages for adultery and the discretionary bars to a petition for divorce or judicial separation are revoked (rules 7, 21, 23(1), 24, 31 and 32).

(2) A new form of petition is prescribed (rule 67) and, where the petitioner asks for divorce, a certificate with regard to reconciliation must be filed with the petition (rules 9 and 68).

(3) A separate statement as to the proposed arrangements for the children mentioned in section 17(5) of the Act of 1970 is required to be filed with any petition for divorce, nullity or judicial separation (rules 8(2) and 68) and the respondent is given an opportunity of sending to the court a statement giving his own views on the petitioner's proposals (rule 11).

(4) Where a petition for divorce under section 2(1)(*e*) of the Act of 1969 (five years' separation) contains a proposal by the petitioner for financial provision for the respondent, it must be accompanied by an affidavit by the petitioner as to his means and commitments (rule 8(2)).

(5) Where the respondent to a petition under section 2(1)(*e*) opposes the grant of a decree on the ground that it will result in grave financial or other hardship to him, he must file an answer and the petition will be treated as defended (rule 12(1)).

(6) A new form of notice of proceedings is prescribed (rule 69) which, in the case of a petition under section 2(1)(*d*) (two years' separation and consent) informs the respondent of the consequences of consenting to a decree being granted and asks him to state in the acknowledgment of service whether he consents. If he states that he does not consent, the proceedings will be stayed (rule 11). An application for the rescission of a decree on the ground that the respondent was misled by the petitioner is to be dealt with broadly in the same way as an application for rehearing (rule 30). In the case of a petition under section 2(1)(*d*) or (*e*) the notice also informs the respondent that if he wishes to make an application under section 6 of the 1969 Act for his financial position to be considered before any decree is made absolute, he must do so by filing and serving a notice in a new Form 8A. In general, such an application will be dealt with in the same way as an application for ancillary relief (rule 30).

(7) A simple procedure is prescribed for the proof of an undisputed marriage celebrated abroad (rule 22(5)).

(8) Provision is made to ensure that a decree nisi of divorce is not made absolute until the requirements of section 6 of the 1969 Act and section 17(1) of the 1970 Act have been complied with (rule 34).

(9) Where an affidavit for use on an application for ancillary relief or an application relating to children contains an allegation of adultery or improper association with a named person, that person must be served with a copy indorsed with a notice informing him that he can intervene in the proceedings by applying for directions (rules 42 and 52).

(10) The registrar is given power to hear and determine any application for ancillary relief except an application for an avoidance of disposition order (rule 44).

(11) Fresh provision is made for the transfer to the High Court of an application for ancillary relief or an application relating to children, and the registrar as well as a judge is given power to order such a transfer or the transfer or re-transfer of a cause (rules 14, 32(1), 80 and 97).

(12) Where an application made under section 6 of the Act of 1970 (wilful neglect to maintain) is contested, the respondent must file an answer as well as an affidavit of his means and if the answer alleges adultery a copy must be served on the alleged adulterer (rule 56(2)). Where an application for an immediate order under subsection (5) is referred to the registrar, he may make an order without reporting back to the judge (rule 57).

(13) Special provision is made for the removal of matrimonial proceedings into the High Court under section 115 of the County Courts Act 1959 otherwise than by order of certiorari (rule 64).

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