STATUTORY INSTRUMENTS

1973 No. 1973 (L.27)

MATRIMONIAL CAUSES

SUPREME COURT OF JUDICATURE, ENGLAND

COUNTY COURTS

The Matrimonial Causes (Amendment No. 3) Rules 1973

Made - - -	*26th November* 1973
Laid before Parliament	*30th November* 1973
Coming into Operation	*1st January* 1974

We, the authority having power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(**a**), as amended by section 6(2) of the Domicile and Matrimonial Proceedings Act 1973(**b**), hereby exercise that power as follows:—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment No. 3) Rules 1973 and shall come into operation on 1st January 1974.

(2) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1971(**c**), as amended(**d**), and a form referred to by number means the form so numbered in Appendix 2 to those Rules.

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

2. Rule 9 shall be amended as follows:—

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

"(2) A petition for divorce, nullity or judicial separation—

(*a*) shall state whether or not there are to the knowledge of the petitioner any proceedings continuing in any country outside England and Wales which are in respect of the marriage to which the petition relates or are capable of affecting its validity or subsistence, and

(*b*) if there are any such proceedings, shall give particulars of them including—

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

(ii) the date when they were begun,

(iii) the names of the parties,

(**a**) 1973 c. 18. (**b**) 1973 c. 45. (**c**) S.I. 1971/953 (1971 II, p. 2713).
(**d**) The relevant amending instruments are S.I. 1971/1923, 1973/777 (1971 III, p. 5243; 1973 I, p. 2459). (**e**) 1889 c. 63.

(iv) the date, or as the case may be, the expected date of any trial in the proceedings, and

(v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973.

(3) In paragraph (2) "proceedings continuing in any country outside England and Wales" includes any proceedings in that country which are not instituted in a court of law, if those proceedings are instituted before a tribunal or other authority in that country having power under the law having effect there to determine questions of status, and proceedings shall be treated as continuing in a country outside England and Wales if they have been begun and have not been finally disposed of."

(2) In paragraph (5) the letter (*a*) and the words "and (*b*)" to the end shall be omitted.

3. In rule 21 after paragraph (3) there shall be inserted the following paragraph:—

"(3A) Where an answer to any such petition as is mentioned in rule 9(2) contains a prayer for relief, it shall contain the information required by that paragraph in the case of the petition in so far as it has not been given by the petitioner."

4. After rule 36 there shall be added the following rule:—

"*Stay under Domicile and Matrimonial Proceedings Act* 1973

36A.—(1) An application to the court by the petitioner or respondent in proceedings for divorce for an order under paragraph 8 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (in this rule referred to as "Schedule 1") shall be made to the registrar, who may determine the application or refer the application, or any question arising thereon, to a judge for his decision as if the application were an application for ancillary relief.

(2) An application for an order under paragraph 9 of Schedule 1 shall be made to a judge.

(3) Where, on giving directions for trial, it appears to the registrar from any information given pursuant to rule 9(2) or 21(3A) or paragraph (4) of this rule that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in any country outside England and Wales, and he considers that the question whether the proceedings on the petition should be stayed under paragraph 9 of Schedule 1 ought to be determined by the court, he shall fix a date and time for the consideration of that question by a judge and give notice thereof to all parties.

In this paragraph "proceedings continuing in any country outside England and Wales" has the same meaning as in rule 9(2).

(4) Any party who makes a request for directions for trial in proceedings for divorce, nullity or judicial separation shall, if there has been a change in the information given pursuant to rule 9(2) or 21(3A), file a statement giving particulars of the change.

(5) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 may be made to the registrar and he may determine

the application or may refer the application, or any question arising thereon, to a judge as if the application were an application for ancillary relief."

5. Form 2 shall be amended as follows:—

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

"(3) [*In the case of a petition for divorce, nullity, judicial separation or presumption of death and dissolution of marriage where it is alleged that the court has jurisdiction based on domicile*] The petitioner is domiciled in England and Wales [*or* The petitioner is domiciled in and the respondent is domiciled in England and Wales] [*or, where it is alleged that the court has jurisdiction based on habitual residence*] The petitioner has [*or* The respondent has] [*or* The petitioner and the respondent have] been habitually resident in England and Wales throughout the period of one year ending with the date of the presentation of the petition [*or as the case may be*] [*give details of the habitual residence relied on including the addresses of places of residence during the one year period and the length of residence at each place*]. The petitioner is a [*state occupation*] [and resides at], and the respondent is a [*state occupation*] [and resides at]."

(2) After paragraph 9 there shall be added the following paragraph:—

"(9A) There are no proceedings continuing in any country outside England and Wales which are in respect of the marriage or are capable of affecting its validity or subsistence [except [*give particulars of the proceedings, including the court in or tribunal or authority before and the date on which they were begun, the names of the parties, the date or expected date of any trial in the proceedings and such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Domicile and Matrimonial Proceedings Act* 1973]]."

6. In Form 17 for paragraph 12 there shall be substituted the following paragraph:—

"12. This Court has jurisdiction to entertain these proceedings by reason of the fact that [*in the case of an application based on domicile* I am [*or* the respondent is] [*or* the respondent and I are] domiciled in England and Wales] [*or in the case of an application based on residence* I have been habitually resident in England and Wales throughout the period of one year ending with the date of this application [*or* the respondent is now resident in England and Wales]]."

Dated 26th November 1973.

Hailsham of St. Marylebone, C.
George Baker, P.
John Latey, J.
Ifor Lloyd.
Irvon Sunderland.
W. D. S. Caird.
J. L. Williams.
F. B. Purchas.
Margaret Puxon.
J. D. Clarke.
D. E. Morris.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules, which amend the Matrimonial Causes Rules 1971, are consequential on the coming into operation of the Domicile and Matrimonial Prceedings Act 1973.

Rules 2 and 5 alter the requirements as to information to be given in the petition, particularly those with regard to the domicile and residence of the parties, so as to reflect the new bases of the court's jurisdiction under the Act. Rule 6 makes similar provision for applications on the ground of wilful neglect to maintain. Rules 2 and 5 also require a petitioner to give details of concurrent proceedings in respect of the marriage in any other country, whether before a court or tribunal or other authority, and a respondent spouse praying for relief must supplement these details in his or her answer (Rule 3).

Rule 4 deals with staying proceedings on a petition where there are concurrent proceedings in another country. An application for an obligatory stay under paragraph 8 of Schedule 1 to the Act is to be made to a registrar. An application for a discretionary stay under paragraph 9 must be made to a judge and if the registrar, on giving directions for trial, considers that the question of imposing such a stay ought to be considered by the court, he must refer it to a judge.

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