STATUTORY INSTRUMENTS

# 1961 No. 1082

# SUPREME COURT OF JUDICATURE, ENGLAND

## PROCEDURE

## The Matrimonial Causes (Amendment) Rules, 1961

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| *Made* - - - - | *7th June*, 1961 |
| *Laid before Parliament* | 14*th June*, 1961 |
| *Coming into Operation* | 3*rd July*, 1961 |

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under subsection (4) of section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925(a), to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise those powers as follows:—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules, 1961, and shall come into operation on the third day of July, 1961.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) In these Rules, unless the context otherwise requires, a Rule referred to by number means the Rule so numbered in the Matrimonial Causes Rules, 1957(c), as amended, and a Form referred to by number means the Form so numbered in Appendix III to those Rules.

2. The following amendments shall be made in Rule 3 (which relates to the commencement of proceedings):—

(1) At the beginning of paragraph (2) there shall be inserted the words "Except with the leave of a judge,".

(2) In subparagraph (iii) of the proviso to paragraph (3) the words "if it is made within the time prescribed in Rule 44 (1)" shall be omitted.

3. In paragraph (4) of Rule 4 (which relates to the form of a petition) and in paragraph (1) of Rule 28 (which relates to discretion statements), the word "nisi" shall be omitted.

4. In paragraph (9) of Rule 32 (which relates to trial in the provinces), for the word "Plymouth" there shall be substituted the word "Truro".

5. The headnote to Rule 34 shall be amended so as to read "Decrees" and paragraph (2) of that Rule shall be omitted.

6. In Rule 52 and in paragraph (1) of Rule 53 (which relate respectively to applications for ancillary relief which may be disposed of by a registrar and those which must be disposed of by a judge) the word "infant" shall be inserted before the word "children".

7. In paragraph (4) of Rule 64 (which relates to the enforcement of orders), for the words "is satisfied" there shall be substituted the words "if satisfied".

(a) 15 & 16 Geo. 5. c. 49. (b) 52 & 53 Vict. c. 63. (c) S.I. 1957/619 (1957 II, p. 2406).

**8.** In paragraph (1) of Rule 73 (which relates to appeals from magistrates' courts), for the words "the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949", there shall be substituted the words "the Matrimonial Proceedings (Magistrates' Courts) Act, 1960(a)", and for the words "those Acts" there shall be substituted the words "that Act".

**9.** The following proviso shall be added to paragraph (2) of Rule 79 (which relates to business in the Divorce Registry):—

"Provided that no person other than a party to any proceedings or the solicitor acting for such a party shall be entitled, without the leave of a registrar, to search for or to take copies of or extracts from any documents relating to those proceedings other than decrees or orders made in open court".

**10.** The following amendments shall be made in Form 3 (Notice of Petition):—

(1) In the fifth paragraph the words "together with a fee of 2s. 6d." shall be omitted.

(2) In subparagraph (i) of the sixth paragraph the word "support," shall be omitted.

**11.** The following amendments shall be made in Form 5 (Memorandum of Appearance):—

(1) In side-note (4), after the word "altered" there shall be inserted the words "by the petitioner or his solicitor".

(2) In paragraph 6 the word "support" shall be omitted.

**12.** In the sixth paragraph of Form 6 (Notice of Proceedings) the words "together with a fee of 2s. 6d." shall be omitted.

**13.** In side-note (3) of Form 7 (Memorandum of Appearance), for the word "Delete" there shall be substituted the words "To be deleted by the petitioner or his solicitor".

**14.** In Form 15 (Notice of Application for Decree Nisi to be made Absolute) after the words "to be made absolute" there shall be inserted the following paragraph:—

"I certify that—

(3) Strike out whichever is not applicable.

(3) to the best of my knowledge, information and belief there is no child of the family under the age of sixteen years at the date of this application.

*or*

(3) a Judge has declared himself satisfied as respects every child of the family who has not attained the age of sixteen years at the date of this application that [arrangements have been made for the care and upbringing of the child and that those arrangements are satisfactory or are the best which can be devised in the circumstances] [that it is impracticable for the party or parties

(a) 8 & 9 Eliz. 2. c. 48.

(4) Strike out whichever is not applicable.

appearing before the court to make arrangements for the care and upbringing of the child](4).

*or*

(3) a Judge has decided that there are circumstances making it desirable that the decree nisi should be made absolute without delay and has accepted an undertaking to bring the question of the arrangements for the child[ren] of the family before the court within a specified time."

**15.** In the heading to Form 20 (Notice of Appointment to hear Originating Summons under Rule 58) the following words shall be inserted below the words "District Registry":—

"In the matter of an Application by A.B. under section 23 of the Matrimonial Causes Act, 1950".

Dated the 7th day of June, 1961.

*Kilmuir*, C.
*Evershed*, M.R.
*Merriman*, P.
*B. Ormerod*, L.J.
*Harold Danckwerts*, L.J.
*Colin H. Pearson*, L.J.
*Reginald W. Goff*.
*John F. Donaldson*.
*W. Charles Norton*.
*W. O. Carter*.

## EXPLANATORY NOTE

*(This Note is not part of the Rules, but is intended to indicate their general purport.)*

These Rules make a number of miscellaneous amendments in the Matrimonial Causes Rules, 1957, with the principal objects of (*a*) enabling a second petition to be filed with the leave of a judge while an earlier petition between the same parties is still pending (Rule 2); (*b*) requiring a discretion statement to be lodged in a suit for judicial separation as well as a suit for divorce (Rule 3); (*c*) regulating the rights of persons other than the parties to search for and take copies of documents in a matrimonial cause (Rule 9); (*d*) deleting the references in the prescribed forms to the fee payable on filing an answer in consequence of the abolition of this fee by the Supreme Court Fees (Amendment) Order, 1961 (Rules 10 (1) and 12); (*e*) providing that an application for a decree nisi to be made absolute shall contain a certificate that the requirements of section 2 of the Matrimonial Proceedings (Children) Act, 1958, have been complied with (Rule 14).