STATUTORY INSTRUMENTS

# 1972 No. 1095 (L.11)

# MATRIMONIAL CAUSES

# SUPREME COURT OF JUDICATURE, ENGLAND

# COUNTY COURTS

## The Matrimonial Causes (Amendment) Rules 1972

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| *Made* - - - - | 20*th July* 1972 |
| *Laid before Parliament* | 3*rd August* 1972 |
| *Coming into Operation* | 1*st September* 1972 |

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) Rules 1972 and shall come into operation on 1st September 1972.

(2) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1971**(b)**, as amended **(c)**, and Form 6 means the form so numbered in Appendix 2 to those Rules.

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

**2.** In rule 2(2) before the definition of "the Act of 1965" there shall be inserted the following definition:—

" "section 17 of the Act of 1882" means section 17 of the Married Women's Property Act 1882**(e)**, as originally enacted, or as extended by section 7 of the Matrimonial Causes (Property and Maintenance) Act 1958**(f)** or by section 2 of the Law Reform (Miscellaneous Provisions) Act 1970**(g)** or by section 39 of the Matrimonial Proceedings and Property Act 1970".

**3.** Rule 16 shall be amended as follows:—

(1) For the title there shall be substituted the words "*Consent to the grant of a decree*".

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(a) 1967 c. 56.
(b) S.I. 1971/953 (1971 II, p. 2713).
(c) S.I. 1971/1923 (1971 III, p. 5243).
(d) 1889 c 63.
(e) 1882 c. 75.
(f) 1958 c. 35.
(g) 1970 c. 33.

(2) At the beginning of the rule there shall be inserted the following paragraph:—

"(1) Where, before the hearing of a petition alleging any such fact as is mentioned in section 2(1)(*d*) of the Act of 1969, the respondent wishes to indicate to the court that he consents to the grant of a decree, he must do so by giving the registrar a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgement of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgement is signed—

(*a*) in the case of a respondent acting in person, by the respondent, or

(*b*) in the case of a respondent represented by a solicitor, by the respondent as well as by the solicitor."

(3) Paragraph (1) shall stand as paragraph (2) and the figure "(2)" at the beginning of the existing paragraph (2) shall be deleted.

**4.** The following rule shall be inserted after rule 37:—

"*Taking of affidavit in county court proceedings*

37A. In relation to matrimonial proceedings pending or treated as pending in a divorce county court, section 87(1) of the County Courts Act 1959 shall have effect as if after paragraph (*c*) there were inserted the following words:—

"or

(*d*) a registrar of the divorce registry; or

(*e*) any officer of the divorce registry authorised by the President under section 2 of the Commissioners for Oaths Act 1889**(a)**; or

(*f*) any clerk in the Central Office of the Royal Courts of Justice authorised to take affidavits for the purpose of proceedings in the Supreme Court."

**5.** Rule 46 shall be amended as follows:—

(1) For the heading there shall be substituted the words "*Lists at divorce towns and exercise of registrar's jurisdiction*".

(2) In paragraph (3) after the words "set down for trial" there shall be inserted the words "or, in the case of a cause set down for trial at the Royal Courts of Justice, a registrar of the divorce registry".

**6.** For paragraph (3) of rule 65 there shall be substituted the following paragraph:—

"(3) In the following cases an application for a decree nisi to be made absolute shall be made to a judge, that is to say—

(*a*) where, within six weeks after a decree nisi has been pronounced, the Queen's Proctor gives to the registrar and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or

(a) 1889 c. 10.

(*b*) where there are other circumstances which ought to be brought to the attention of the court before a decree nisi is made absolute.

Unless otherwise directed, the summons by which the application is made (or, where the cause is pending in a divorce county court, notice of the application) shall be served on every party to the cause (other than the applicant) and, in a case to which sub-paragraph (*a*) applies, on the Queen's Proctor."

**7.** Rule 80 shall be amended as follows:—

(1) In paragraph (3) for the words from "the court may" to "divorce county court" there shall be substituted the words "the court in which an application for ancillary relief is pending may, if it is a divorce county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a divorce county court".

(2) In paragraph (5) for the words "to the High Court" there shall be substituted the words "from a divorce county court to the High Court or from the High Court to a divorce county court".

**8.** The following paragraph shall be added to rule 86:—

"(5) The Attachment of Earnings Act 1971**(a)** and Part VII of C.C.R. Order 25 (which deals with attachment of earnings) shall apply to the enforcement of an order made in matrimonial proceedings in the divorce registry which are treated as pending in a divorce county court as if the order were an order made by such a court."

**9.** Rule 97 shall be amended as follows:—

(1) In paragraph (1) the words "pending in a divorce county court" shall be omitted.

(2) In paragraph (2) after the words "application" and "such proceedings" and in paragraph (3) after the word "application" there shall in each case be inserted the words "pending in a divorce county court".

**10.** After rule 104 there shall be inserted the following rules:—

"*Transfer of proceedings under section* 15 *of the Act of* 1970, *etc.*

104A.—(1) The court in which an application under section 15 of the Act of 1970, section 26 of the Act of 1965 or section 17 of the Act of 1882 is pending may, if it is a county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a divorce county court, where the transfer appears to the court to be desirable.

(2) In considering whether an application should be transferred under paragraph (1) from a county court to the High Court or from the High Court to a divorce county court the court shall have regard to all relevant considerations, including the nature and value of the property involved, and, in the case of an application under section 15 of the Act of 1970 or section 26 of the Act of 1965, the limits for the time being of the jurisdiction of county courts under section 7 of the Family Provision Act 1966**(b)**.

(3) Rule 80(10) shall apply to an order under paragraph (1) of this rule as it applies to an order under paragraph (3) of that rule.

(a) 1971 c. 32. (b) 1966 c. 35.

*Exercise in divorce registry of county court jurisdiction under section* 17 *of the Act of* 1882, etc.

104B.—(1) Where any proceedings for divorce, nullity of marriage or judicial separation pending in the divorce registry are treated as pending in a divorce county court, an application under section 17 of the Act of 1882 by one of the parties to the marriage may be made to the divorce registry as if it were a county court.

(2) In relation to proceedings begun in the divorce registry under paragraph (1) of this rule or transferred to the divorce registry under rule 104A(1)—

(*a*) section 4 of the Act of 1967 and the rules made thereunder shall have effect, with the necessary modifications, as they have effect in relation to proceedings begun in or transferred to the divorce registry under that section;

(*b*) C.C.R. Order 2, Rule 13 (which relates to venue), and C.C.R. Order 46, Rule 11(2) (which deals with reference to the registrar), shall not apply, and a registrar may exercise the jurisdiction conferred on a county court judge by the said section 17."

**11.** The following paragraph shall be added to rule 120:—

"(4) Where by virtue of any provision of these Rules a county court has power to order that any proceedings pending in the court be transferred to the High Court, the High Court shall have power, exercisable in the like circumstances, to order the removal of the proceedings into the High Court, and the foregoing paragraphs of this rule shall apply as if the power conferred by this paragraph were conferred by the said section 115."

**12.** In Form 6 before the word "*Signed*" where it first appears there shall be inserted the words "[*If a solicitor is instructed, he will sign below on your behalf* [*but if the answer to question* 5 *is Yes, you must also sign here*]]", and the words "*Or, if a solicitor is instructed*" shall be omitted.

Dated 20th July 1972.

*Hailsham of St. Marylebone*, C.
*George Baker*, P.
*John Latey*, J.
*Ifor Lloyd.*
*Irvon Sunderland.*
*W. D. S. Caird.*
*J. L. Williams.*
*Joseph Jackson.*
*Harold Law.*
*J. D. Clarke.*
*D. E. Morris.*

## EXPLANATORY NOTE

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

These Rules make a number of miscellaneous amendments in the Matrimonial Causes Rules 1971. Under the extended rule-making powers conferred by section 45 of the Courts Act 1971 (C. 23) provision is made for the transfer of ancillary proceedings from the High Court to a divorce county court (rules 7 and 9) and for the transfer of proceedings under section 17 of the Married Women's Property Act 1882, section 26 of the Matrimonial Causes Act 1965 (C. 72) or section 15 of the Matrimonial Proceedings and Property Act 1970 (C. 45) from a county court to the High Court and from the High Court to a divorce county court (rule 10); an application under section 17 of the Act of 1882 may be made to the divorce registry as if it were a county court, where county court proceedings for divorce, nullity of marriage or judicial separation are pending between the same parties in the divorce registry (rule 10). A respondent who consents to a divorce after two years' separation may give notice to that effect in his acknowledgment of service if the form is signed by him as well as by any solicitor acting for him (rules 3 and 12). Clerks in the Central Office of the Supreme Court are empowered to take affidavits in matrimonial proceedings pending or treated as pending in a divorce county court (rule 4). Registrars of the divorce registry are authorised to exercise the powers of the district registrar in a district registry cause set down for hearing at the Royal Courts of Justice (rule 5). The normal period between decree nisi and absolute having been reduced from three months to six weeks by General Order of the High Court, the Queen's Proctor is enabled, where he desires more time to decide whether to show cause against the decree, to file a notice having the effect of preventing the decree being made absolute except on application to a judge (rule 6). Provision is made for the divorce registry to act as a county court for the purposes of the Attachment of Earnings Act 1971 in relation to maintenance orders treated as having been made in a divorce county court (rule 8).

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