STATUTORY INSTRUMENTS

1973 No. 777 (L.10)

MATRIMONIAL CAUSES
SUPREME COURT OF JUDICATURE, ENGLAND
COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1973

Made - - - -	9*th April* 1973
Laid before Parliament	30*th April* 1973
Coming into Operation—	
all except rule 2	1*st June* 1973
rule 2	1*st August* 1973

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 1973.

(2) These Rules (except rule 2) shall come into operation on 1st June 1973 and rule 2 shall come into operation on 1st August 1973.

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

(4) 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. Rule 53 shall be amended as follows:—

(1) In paragraph (1) after the words "trials of causes" there shall be inserted the words "in the High Court".

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

"(2) Unless the judge otherwise directs, a shorthand note shall be taken of the proceedings at the trial in open court of every cause pending in the High Court.

(3) A shorthand note may be taken of any other proceedings before a judge if directions for the taking of such a note are given by or on behalf of the Lord Chancellor."

(3) Paragraphs (3) to (7) shall be renumbered accordingly.

(a) 1967 c. 56. **(b)** S.I. 1971/953 (1971 II, p. 2713).
(c) S.I. 1971/1923, 1972/1095 (1971 III, p. 5243, 1972 II, p. 3248).
(d) 1889 c. 63.

3. In rule 57 the following new paragraphs shall be inserted after paragraph (2) and paragraphs (3), (4) and (5) shall be renumbered accordingly:—

"(3) Where a petitioner is served with a notice in Form 11, then, unless he has already filed an affidavit under rule 8(3) or rule 73(2), he shall, within 14 days after the service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(4) The respondent shall, unless he has already done so, file an affidavit in reply within 14 days after service of any affidavit under paragraph (3) or within such other time as the court may fix."

4. For rule 94 there shall be substituted the following rule:—

"*Removal of child out of England and Wales*

94.—(1) In any cause begun by petition the petitioner or the respondent spouse may apply at any time for an order prohibiting the removal of any child of the family under 18 out of England and Wales without the leave of the court except on such terms as may be specified in the order.

Unless otherwise directed, an application under this paragraph may be made *ex parte*.

(2) Unless otherwise directed, any order relating to the custody or care and control of a child shall provide for the child not to be removed out of England and Wales without the leave of the court except on such terms as may be specified in the order.

(3) Subject to rule 97(2), an application for leave to remove a child out of England and Wales shall be made to a judge except in the following cases when it may be made to the registrar, namely—

(*a*) where the application is unopposed, or

(*b*) where the application is for the temporary removal of the child and is opposed on a ground which in the opinion of the registrar relates only to the arrangements for the care of the child during the removal or any other incidental matter."

5. For rule 96 there shall be substituted the following rule:—

"*Notice of other proceedings relating to children*

96. If, while a cause is pending, proceedings relating to any child of the family are begun in the High Court, a county court or a magistrates' court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the cause, by the petitioner."

6. The following rule shall be inserted after rule 104B:—

"*Proceedings in respect of polygamous marriage*

104C.—(1) The provisions of this rule shall have effect where a petition, originating application or originating summons asks for matrimonial relief within the meaning of section 1(2) of the Matrimonial Proceedings (Polygamous Marriages) Act 1972**(a)** in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(2) The petition, originating application or originating summons—

(*a*) shall state that the marriage in question is polygamous;

(a) 1972 c. 38.

(*b*) shall state whether or not there is, to the knowledge of the petitioner or applicant, any living spouse of his or hers additional to the respondent spouse, or, as the case may be, any living spouse of the respondent spouse additional to the petitioner or applicant (in this rule referred to as an additional spouse); and

(*c*) if there is any additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the petitioner or applicant or, as the case may be, to the respondent spouse, or state, so far as may be applicable, that such information is unknown to the petitioner or applicant.

(3) Without prejudice to its powers under R.S.C. Order 15 (which deals with parties) or C.C.R. Order 15 (which deals with amendment), the court may order that any additional spouse be added as a party to the proceedings or be given notice of the proceedings or of any application in the proceedings for any such order as is mentioned in section 1(2)(*e*) of the said Act of 1972.

(4) Any order under paragraph (3) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in a petition or an acknowledgement of service of a petition, the petitioner shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on making a request for directions for trial, ask for directions as to whether an order should be made under paragraph (3).

(5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates."

7. Form 2 shall be amended as follows:—

(1) In paragraph (4) for the word "*name*" there shall be substituted the words "*full names* (*including surname*)".

(2) In paragraph (9) after the words "[or to any children of the family]" there shall be inserted the words "[or between the petitioner and the respondent with reference to any property of either or both of them]".

8. In Form 6 after the words in brackets following Question 9 there shall be inserted the following question:—

"10.(3) [*In the case of proceedings relating to a polygamous marriage*] If you have any wife [*or* husband] in addition to the petitioner [*or* applicant] who is not mentioned in the petition [*or* originating application [*or* summons]], what is the name and address of each such wife [*or* husband] and the date and place of your marriage to her [*or* him]?".

9. Form 11 shall be amended as follows:—

(1) In the second paragraph the words "Notice will be given to you of the place and time fixed for the hearing of the application [*or*" and the second bracket at the end of the paragraph shall be omitted.

(2) After the second paragraph there shall be inserted the following new paragraphs:—

"[*Unless the petitioner has already filed an affidavit with his petition under rule* 8(3) *or in connection with an application for ancillary relief under rule* 73(2):

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] respondent.

If you wish to allege that the respondent has property or income, you should say so in your affidavit]."

Dated 9th April 1973.

Hailsham of St. Marylebone, C.
George Baker, P.
John Latey, J.
Ifor Lloyd.
Irvon Sunderland.
W. D. S. Caird.
J. L. Williams.
Joseph Jackson.
Margaret Puxon.
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. Although it will remain necessary to take a shorthand note at the trial in open court of causes in the High Court, a shorthand note will be taken of other proceedings only if so directed by or on behalf of the Lord Chancellor (rule 2). A petitioner served with a respondent's application under section 6 of the Divorce Reform Act 1969 (c.55) is required, unless he has already done so, to file an affidavit of his property and income within 14 days and the respondent is similarly required to file an affidavit in reply (rules 3 and 9(2)). Fresh provision is made for restricting the removal of children out of England and Wales while a cause is pending (rule 4). A statement with regard to proceedings affecting a child of the family brought while a cause is pending is to be filed as soon as the proceedings are begun instead of only when an application relating to the child is made (rule 5). A new rule is inserted to deal with proceedings in respect of a polygamous marriage within the meaning of the Matrimonial Proceedings (Polygamous Marriages) Act 1972 (rules 6 and 8). The general form of petition is amended so as to require the full name (including surname) of each child of the family to be stated as well as any previous proceedings between the petitioner and the respondent with reference to any of their property (rule 7).

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