STATUTORY INSTRUMENTS

1976 No. 607 (L. 11)

MATRIMONIAL CAUSES
SUPREME COURT OF JUDICATURE, ENGLAND
COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1976

Made - - - -	12*th April* 1976
Laid before Parliament	29*th April* 1976
Coming into Operation—	
all except rules 5 *and* 12	1*st June* 1976
rules 5 *and* 12	1*st July* 1976

We, the authority having power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(a), hereby exercise that power as follows:—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules 1976.

(2) These Rules (except rules 5 and 12) shall come into operation on 1st June 1976 and rules 5 and 12 shall come into operation on 1st July 1976.

(3) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1973(b), as amended (c), and a form referred to by number means the form so numbered in the Appendix 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 2(2) shall be amended as follows:—

(1) the definition of "the Act of 1965" shall be omitted;

(2) in the definition of "divorce town" for the words "a town" there shall be substituted the words "a place".

(a) 1973 c. 18. (b) S.I. 1973/2016 (1973 III, p. 6943).
(c) There are no relevant amendments. (d) 1889 c. 63.

3. The third paragraph of rule 43 shall be re-numbered (3), and paragraph (3) shall stand as paragraph (4).

4. At the end of rule 44(4) there shall be added the words "or, if the divorce town is not situated within the district of any district registry, as a reference to the divorce registry".

5. For paragraph (2) of rule 49 there shall be substituted the following paragraph:—

"(2) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs, but the court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.".

6. In rule 78 the words "except in a case to which rule 79 applies and" shall be omitted.

7. Rule 79 shall be revoked.

8. In rule 101(3)(*e*) for the words "Inheritance (Family Provision) Act 1938" there shall be substituted the words "Inheritance (Provision for Family and Dependants) Act 1975**(a)** or any Act repealed by that Act".

9. In rule 102 paragraphs (7) and (8) shall be omitted, in paragraph (9) for "79(3) and (4)" there shall be substituted "78" and that paragraph and paragraph (10) shall be renumbered (7) and (8) respectively.

10. Rule 103 shall be revoked.

11.—(1) In rule 105(1) the words "section 26 of the Act of 1965" and in rule 105(2) the words "section 26 of the Act of 1965 or" shall be omitted.

(2) In rule 105(2) for the words "section 7 of the Family Provision Act 1966" there shall be substituted the words "section 22 of the Inheritance (Provision for Family and Dependants) Act 1975".

12. For Forms 5 and 6 there shall be substituted the following forms:—

"Form 5

Rule 12(6)

NOTICE OF PROCEEDINGS

In the County Court[1]

[Divorce Registry]

No. of Matter

(Seal)

Between Petitioner

and Respondent

[and Co-Respondent]

[1] Amend if the proceedings are pending in High Court.

(a) 1975 c. 63.

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.

(2) Or as the case may be.

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

2. 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.

Notes on Questions in Form 6

3. If you answer Yes to **Question [4 or 6]** (3) 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).

(3) Delete if inapplicable.

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

4. (3) Before you answer Yes to Question 5 you should understand that—

(*a*) if the petitioner satisfies the Court that the petitioner and you have lived apart for two years immediately before the presentation of the petition and that you consent to a decree, the Court will grant one unless it considers that the marriage has not broken down irretrievably;

(*b*) a decree absolute of divorce will end your marriage so that—

(i) any right you may have to a pension which depends on the marriage continuing will be affected;

(ii) you will not be able to claim a State widow's pension when the petitioner dies;

(iii) any rights of occupation you may have in the matrimonial home under the Matrimonial Homes Act 1967 will cease unless the Court has ordered otherwise before the decree is granted;

(*c*) once the Court grants a decree absolute of divorce or a decree of judicial separation, you will lose your right to inherit from the petitioner if he or she dies without having made a will;

(*d*) a decree may have other consequences in your case depending on your particular circumstances and if you are in any doubt about these you would be well advised to consult 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 petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least five years. Section 10 of the Matrimonial Causes Act 1973 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, a decree nisi based on five years' separation only 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 (12) 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 you answer Yes to **Question 7** you **must** before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 12, which may be obtained from the Court.

8. (3) (*a*) If you do not wish to defend the case but object to the claim for costs, you should answer Yes to **Question 8** in the acknowledgment. **You must attend the hearing of the petition if you wish to proceed with your objection.**

(*b*) If you do not object to the claim for costs but simply wish to be heard on the amount to be allowed, you should answer No to **Question 8.**

(*c*) If you are ordered to pay costs, the amount will be assessed by the Court unless it is agreed between the petitioner and yourself or fixed at a prescribed sum. If the costs are to be assessed, you will be sent a copy of the petitioner's bill of costs and will have the right to be heard about the amount before it is finally settled.

9. (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 children and a copy of your statement will be sent to the petitioner.

10. (3) (*a*) If you object to the petitioner's claim for custody of the children, answer Yes to **Question 9** in the acknowledgment.

(*b*) If you wish to apply on your own account for custody of or access to the children, answer Yes to (*a*) or (*b*) of **Question 10.**

(*c*) If you answer Yes to **Question 9 or 10** then, unless you have come to an agreement with the petitioner, the Judge will not deal with the question of custody or access at the hearing of the petition but at a later date which will be notified to you and on which you should attend the Court.

It will be open to you to apply for access to the children later even if you do not do so now. You may also apply later, for good reason, for the variation of any order made by the Court as to their custody.

11. (3) If you wish to contest the petitioner's financial or property claim, you will have an opportunity of doing so when you receive a notice stating that the petitioner intends to proceed with the claim. You will then be required to file an affidavit giving particulars of your property and income and be notified of the date when the claim is to be heard.

12. If you wish to make some financial or property claim on your own account, you will have to make a separate application. If you are in doubt as to the consequences of divorce on your financial position, you should obtain legal advice from a solicitor.

Dated this day of 19 .

To Registrar.

Form 6 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 5*]

Read carefully the Notice of Proceedings before answering the following questions.

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 two years' separation coupled with the respondent's consent to a decree being granted*] 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 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 a decree nisi being granted on the basis of two years' separation coupled with the respondent's consent, 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?

8. [3] Even if you do not intend to defend the case, do you object to paying the costs of the proceedings?

9. [3] Even if you do not intend to defend the case, do you object to the claim in the petition for custody of the children?

10. [3] Do you wish to make any application on your own account for—

(*a*) custody of the children?

(*b*) access to the children?

11. [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]?

Dated this day of 19 .

**[*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*]]*

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.*]

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

Signed

Address for service:]".

13. Form 23 shall be revoked.

14. Nothing in rules 2(1), 8, 10, 11 and 13 of these Rules shall apply to proceedings relating to the estate of a person who died before 1st April 1976.

Dated 12th April 1976.

Elwyn-Jones, C.
George Baker, P.
John Latey, J.
Ifor Lloyd.
Irvon Sunderland.
W. D. S. Caird.
J. L. Williams.
W. A. Macpherson.
David Webster.
J. D. Clarke.
Hugh O'Neill.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Matrimonial Causes Rules 1973 in consequence of the coming into force of the Inheritance (Provision for Family and Dependants) Act 1975 (rules 2(1), 8, 10, 11 and 13).

Minor amendments are also made so as—

(*a*) to clarify the meaning of "divorce town" (rules 2(2), 3 and 4);

(*b*) to revise the Notice of Proceedings and Acknowledgement of Service (Forms 5 and 6) in order to make them clearer and elicit only the necessary information (rules 5 and 12); and

(*c*) to enable the registrar in certain proceedings to make a final order instead of investigating and reporting to the judge (rules 6, 7 and 9).

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