STATUTORY INSTRUMENTS

1978 No. 527

MATRIMONIAL CAUSES

SUPREME COURT OF JUDICATURE, ENGLAND
COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1978

Made - - - -	3*rd April* 1978
Laid before Parliament	11*th April* 1978
Coming into Operation–	
Rules 5, 8 *and* 9 -	6*th June* 1978
Remainder - -	2*nd May* 1978

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 1978 and shall come into operation on 2nd May 1978 with the exception of Rules 5, 8 and 9, which shall come into operation on 6th June 1978.

(2) In these Rules, except where the context otherwise requires, a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1977(**b**) and a form referred to by number means the form so numbered in Appendix 1 to those Rules.

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

2. In the definition of "undefended cause" in rule 2(2), the word "or" shall be inserted at the end of paragraph (*b*)(iii) and after that sub-paragraph there shall be added the following sub-paragraph: —

"(iv) a cause in which an answer has been filed claiming relief but in which no pleading has been filed opposing the grant of a decree on the petition or answer or any pleading or part of a pleading opposing the grant of such relief has been struck out."

3. The following proviso shall be added to rule 33(4):—

"Provided that, in the case of a defended cause the registrar may treat the request for directions for trial as a summons for directions under R.S.C. Order 25, and in that event he shall give the parties notice of a

(**a**) 1973 c. 18. (**b**) S.I. 1977/344. (**c**) 1889 c. 63.

date, time and place at which the request will be considered and that Order shall apply, with the necessary modifications, as if the cause and any application made therein for ancillary relief or for an order relating to a child were an action to which rule 1 of the Order applies."

4. The following paragraph shall be added to rule 46:—

"(4) R.S.C. Order 34, rule 5(3), shall apply, with the necessary modifications, to a defended cause as it applies to an action begun by writ."

5. Rule 48 shall be amended as follows:—

(1) In paragraph (1)(*a*) the words "and any costs for which he prays" shall be omitted.

(2) In paragraph (2) after the word "but" there shall be inserted the words "subject to paragraph (2A)".

(3) After paragraph (2) there shall be inserted the following paragraph: —

"(2A) Where the registrar makes a certificate under paragraph (1) and the petition contains a prayer for costs, the registrar may—

(*a*) if satisfied that the petitioner is entitled to such costs, include in his certificate a statement to that effect;

(*b*) if not so satisfied, refer the prayer to the judge who pronounces the decree and give to any party who objects to paying such costs notice that, if he wishes to proceed with his objection, he must attend before the judge on the day fixed pursuant to paragraph (2)."

(4) In paragraph (4) sub-paragraphs (*a*) and (*b*) and the letter "(*c*)" shall be omitted.

6. Rule 84 shall be amended as follows:—

(1) In paragraph (1) for the words "shall be made to a judge" there shall be substituted the words "may be made to the registrar".

(2) In paragraph (2) for the words "Rule 82 (except paragraph (2)" there shall be substituted the words "Rules 79 and 82".

7. Rule 94(3) shall be amended as follows:—

(*a*) In sub-paragraph (*b*) for the words from "and is opposed" to the end there shall be substituted the words "unless it is opposed on the ground that the child may not be duly returned".

(*b*) After sub-paragraphs (*a*) and (*b*) there shall be added the following words "and the registrar may make such order on the application as he thinks fit or may refer the application or any question arising thereon to a judge for his decision".

8. Form 5 shall be amended as follows:—

(1) In paragraph 8(*a*) for the words from "You must" to the end there shall be substituted the following words: —

> "You must state the grounds on which you object. An objection cannot be entertained unless grounds are given which, if established, would form a valid reason for not paying the costs. If such grounds are given, you will be notified of a date on which you must attend before the judge if you wish to pursue your objection".

(2) In paragraph 10(*c*) for the words from "then" to "you and" there shall be substituted the words "the Judge will not deal with custody or access without your being notified in advance of the date".

9. In paragraph 8 of Form 6 there shall be added the following question:—

"If so, on what grounds?"

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Dated 3rd April 1978.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Matrimonial Causes Rules 1977 by enabling the registrar in a defended cause to treat a request for directions for trial as a summons for directions under Order 25 of the Rules of the Supreme Court (rule 3). He will also be able to require information to be given to him about the state of a defended cause which has been set down for trial (rule 5). A cause in which both the petitioner and the respondent are asking for decrees but neither opposes the grant of a decree to the other is to be treated as undefended (rule 2).

The Rules also facilitate the disposal of causes in the special procedure list where there is an objection to paying any costs for which the petitioner prays (rules 5(1)—(3), 8(1) and 9) and where there are children of the family to whom section 41 of the Matrimonial Causes Act 1973 applies (rules 5(4) and 8(2)).

In addition, the Rules enable the registrar to grant an order under section 37(2)(*a*) of the 1973 Act restraining a person from attempting to defeat a claim for financial relief (rule 6) and extend the registrar's power to allow the temporary removal of children from the jurisdiction (rule 7).

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