STATUTORY INSTRUMENTS

1981 No. 5

MATRIMONIAL CAUSES

SUPREME COURT OF JUDICATURE, ENGLAND AND WALES

COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1981

Made - - - -	*2nd January* 1981
Laid before Parliament	*9th January* 1981
Coming into Operation	*1st February* 1981

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:—

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules 1981.

(2) These Rules shall come into operation on 1st February 1981.

(3) In these Rules 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 A to those Rules.

Originating application for failure to provide reasonable maintenance

2. For rules 98 and 99 there shall be substituted the following rules:—

"*Application in case of failure to provide reasonable maintenance*

98.—(1) Every application under section 27 of the Act of 1973 shall be made by originating application in Form 19.

(2) The application may be made to any divorce county court and there shall be filed with the application an affidavit by the applicant and also a copy of the application and of the affidavit for service on the respondent.

(3) The affidavit shall state:—

(*a*) the same particulars regarding the marriage, the court's jurisdiction, the children and the previous proceedings as are required in the case of a petition by sub-paragraphs (*a*), (*c*), (*d*), (*f*) and (*i*) of paragraph 1 of Appendix 2;

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

(*b*) particulars of the respondent's failure to provide reasonable maintenance for the applicant, or, as the case may be, of the respondent's failure to provide, or to make a proper contribution towards, reasonable maintenance for the children of the family; and

(*c*) full particulars of the applicant's property and income and of the respondent's property and income, so far as may be known to the applicant.

(4) C.C.R.Order 6, rule 4(2)(*c*)(ii) and (*d*) (which deal with the service of an originating application), shall not apply but there shall be annexed to the copy of the application for service a copy of the affidavit referred to in paragraph (2) and a notice in Form 20 with Form 6.

(5) Subject to paragraph (6), the respondent shall, within 14 days after the time allowed for sending the acknowledgment of service, file an affidavit stating:—

(*a*) whether the alleged failure to provide, or to make a proper contribution towards, reasonable maintenance is admitted or denied, and, if denied, the grounds on which he relies;

(*b*) any allegation which he wishes to make against the applicant; and

(*c*) full particulars of his property and income, unless otherwise directed.

(6) Where the respondent challenges the jurisdiction of the court to hear the application he shall, within 14 days after the time allowed for sending the acknowledgment of service, file an affidavit setting out the grounds of the challenge; and the obligation to file an affidavit under paragraph (5) shall not arise until 14 days after the question of jurisdiction has been determined and the court has decided that the necessary jurisdiction exists.

(7) Where the respondent's affidavit contains an allegation of adultery or of an improper association with a person named, the provisions of rule 76 (which deal with service on, and intervention by, a named person) shall apply.

(8) If the respondent does not file an affidavit in accordance with paragraph (5), the court may order him to file an affidavit containing full particulars of his property and income, and the registrar shall serve a copy of any such affidavit on the applicant.

(9) Within 14 days after being served with a copy of any affidavit filed by the respondent, the applicant may file a further affidavit as to means and as to any fact in the respondent's affidavit which is disputed, and in that case the registrar shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

Investigation, etc. of applications under rule 98

99. Rules 77 to 82 (regarding the investigation of any application for ancillary relief, the making of an interim order, the reference of the application to the judge, the transfer of the application and the arrangements for the application to be heard) shall apply, with such modifications as may be appropriate, to an application for an order under section 27 of the Act of 1973 as if the application were an application for ancillary relief.".

Form 19

3. For Form 19 there shall be substituted the following Form:—

"Form 19

ORIGINATING APPLICATION ON GROUND OF FAILURE TO PROVIDE REASONABLE MAINTENANCE

In the County Court
[Divorce Registry]
No. of
Matter

(Seal)

In the Matter of an Application under section 27 *of the Matrimonial Causes Act* 1973

Between Applicant

and Respondent

I, , of , the wife [husband] of of (hereinafter called the "respondent") say that the respondent has failed to provide reasonable maintenance for myself [and has failed to provide, or to make a proper contribution towards, maintenance for the child[ren] of our family, namely] and I apply for an order for [*here set out the financial relief claimed and any order for custody claimed under s.*42(2) *of the Matrimonial Causes Act* 1973].

My address for service is [*Where the applicant sues by a solicitor, state the solicitor's name or firm and address or, where the applicant sues in person, state her place of residence as given above, or, if no place of residence in England or Wales is given, the address of a place in England or Wales at or to which the documents for her may be delivered or sent.*].

Dated .".

Form 20

4. Form 20 shall be amended by substituting, for the paragraph starting "If you intend to contest the application", the following paragraph:—

> "If you wish to challenge the jurisdiction of the court to hear this application you must file an affidavit stating the grounds of your challenge. In any other case (or where the court decides the question of jurisdiction in the applicant's favour) you must file an affidavit stating (*a*) whether the alleged failure is admitted or denied, and if denied the grounds on which you rely, (*b*) any allegation which you wish to make against the applicant, and (*c*) full particulars of your property and income, unless otherwise directed. In either case the affidavit must be sent, together with a copy for the applicant, so as to reach the court within 14 days after the time allowed for sending the acknowledgment of service (or, if you have unsuccessfully challenged the jurisdiction, within 14 days after the court has decided that the necessary jurisdiction exists). If you include in your affidavit an allegation of adultery or of an improper association with a named person, the affidavit must be accompanied by an extra copy for service on that person.".

Hailsham of St. Marylebone, C.
John Arnold, P.
Kenneth Hollings, J.
T. R. Heald.
Anthony Tibber.
R. L. Bayne-Powell.
A. B. Macfarlane.
Joseph Jackson.
Mathew Thorpe.
L. J. J. Morgan.
Douglas Rubery.

Dated *2nd January* 1981.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules revise the procedure and forms for originating applications under s.27 of the Matrimonial Causes Act 1973. As enacted, s.27 provided for proceedings on the ground of *wilful* neglect to provide reasonable maintenance, but amendments have been made to this section by s.63 of the Domestic Proceedings and Magistrates' Courts Act 1978(c.22). The amendments base the revised jurisdiction on a failure to provide reasonable maintenance (which need not be *wilful*) and they take effect on 1st February 1981 pursuant to the Domestic Proceedings and Magistrates' Courts Act 1978 (Commencement No. 4) Order 1980 (S.I. 1980/1478).

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