STATUTORY INSTRUMENTS

1984 No. 1511 (L. 15)

MATRIMONIAL CAUSES

SUPREME COURT OF ENGLAND AND WALES

COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1984

Made - - - -	20*th September* 1984
Laid before Parliament	21*st September* 1984
Coming into Operation	
Rule 14 - - -	1*st March* 1985
Remainder - - -	12*th October* 1984

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 power as follows:—

1.— (1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules 1984.

(2) These Rules shall come into operation on 12th October 1984 save for rule 14 which shall come into operation on 1st March 1985.

(3) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1977(**b**).

2. In rule 2(2) the following shall be inserted before '"court"'—

'"consent order" means an order under section 33A of the Act of 1973;'

3. In rule 59(1), there shall be inserted after the word "registrar" the words "of the court where the order is made".

4. In rule 65(2) for the proviso there shall be substituted the following—

"Provided that if the notice is lodged more than 12 months after the decree nisi there shall be lodged with the notice an explanation in writing:—

(a) giving reasons for the delay;

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

(b) stating whether the parties have lived with each other since the decree nisi and, if so, between what dates; and

(c) stating whether the applicant being the wife has, or being the husband has reason to believe that his wife has, given birth to any child since the decree nisi and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the family;

and the registrar may require the applicant to file an affidavit verifying the said explanation and may make such order on the application as he thinks fit or refer the application to a judge, but shall refer the application to a judge where it appears that there is or may be a child of the family born since decree nisi and no order has been made under section 41(1) of the Act of 1973 in respect of that child".

5. Rule 73 shall be amended as follows—

(a) in paragraph (2) before the word "applies" there shall be inserted the words "or 75"; and

(b) for paragraph (3) there shall be substituted the following paragraph—

"(3) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the applicant shall file an affidavit in reply containing full particulars of his property and income."

6. For paragraphs (3), (4) and (5) of rule 74 there shall be substituted the following:—

"(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the notice in Form 11 or 13 shall identify the land and—

(a) state whether the title to the land is registered or unregistered and, if registered, the Land Registry title number; and

(b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

(4) A copy of Form 11 or 13, as the case may be, together with a copy of the supporting affidavit, shall be served on the following persons as well as on the respondent to the application, that is to say—

(a) in the case of an application for an order for a variation of settlement order, the trustees of the settlement and the settlor if living;

(b) in the case of an application for an avoidance of disposition order, the person in whose favour the disposition is alleged to have been made;

and such other persons, if any, as the registrar may direct.

(5) In the case of an application to which paragraph (3) refers, a copy of Form 11 or 13, as the case may be, shall be served on any mortgagee of whom particulars are given pursuant to that paragraph; any

person so served may apply to the court in writing, within 14 days after service, for a copy of the applicant's affidavit.

(6) Any person who:—

(a) is served with an affidavit pursuant to paragraph (4); or

(b) receives an affidavit following an application made in accordance with paragraph (5);

may, within 14 days after service or receipt, as the case may be, file an affidavit in answer."

7. For rule 75 there shall be substituted the following rule—

"75. On or after the filing of a notice in Form 11 in respect of an application for a variation order, the registrar may order the applicant to file an affidavit setting out full particulars of his property and income and the grounds on which the application is made."

8. After rule 76 the following shall be inserted—

"Information on application for consent order for financial relief

76A.— (1) Subject to paragraph (2), there shall be lodged with every application for a consent order for financial relief or for a consent order varying or discharging an order for financial relief, a statement of information relied on in support of the application which shall include:—

(a) the date of the marriage and the respective ages of the parties and of any minor child of the family;

(b) an estimate in summary form of the approximate amount or value of the capital and income resources of each of the parties and, where relevant, of any minor child of the family;

(c) what is intended with regard to the occupation or disposal of the matrimonial home;

(d) what arrangements are intended for the accommodation of each of the parties and, where relevant, of any minor child of the family; and

(e) any especially significant circumstances from amongst those matters listed in section 25(2) and (3) of the Act of 1973, and in particular the value of any benefit (for example, a pension or a death benefit) which by reason of dissolution or annulment of the marriage either party will lose the chance of acquiring upon the death of the other.

(2) Where an application is made for a consent order for maintenance pending suit or for an interim order pending the final determination of an application for ancillary relief, or for a consent order varying an order for periodical payments, paragraph (1) shall be sufficiently complied with if the statement of information required to be lodged with the application includes the information mentioned in paragraph (1)*(a)* and *(b)* but omits information about capital resources.

(3) Where a relevant affidavit has been filed for use on an application

under rule 73, 74 or 75 paragraphs *(b)* and *(c)* of paragraph (1) shall be sufficiently complied with if a reference is made to the relevant affidavit and it is stated that there has been no material change in the matters mentioned in the affidavit or, if there has been such a change, what has changed is stated.

(4) The statement lodged under paragraph (1) may be made in more than one document provided that each document in respect of each party shall be signed:—

(a) where a solicitor is acting for that party by that solicitor; and

(b) where no solicitor is acting for that party by that party.

(5) Where the statement is signed by a solicitor in accordance with paragraph (4) the solicitor shall certify that his client has been advised whether it would be in the interest of the client to agree to the proposed order."

9. Rule 92 shall be amended as follows:—

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

"(2) An application for—

(a) an order in terms agreed between the parties relating to:—

(i) the custody or education of a child, or

(ii) the supervision of a child or the committal of a child to the care of a local authority; or

(b) access to a child where the other party consents to give access and the only question for determination is the extent to which access is to be given; or

(c) the variation or discharge of an order under section 43 or 44 of the Act of 1973 which is unopposed,

may be made to the registrar who may make such order on the application as he sees fit or may refer the application or a question arising thereon to a judge for his decision."

(b) In paragraph (7) at the end there shall be inserted the words "and may restore for hearing any application under paragraph (1) or (2) which it has adjourned".

10. Rule 95(3) shall be amended as follows:—

(a) after sub-paragraph *(b)* there shall be inserted the following sub-paragraph:—

"*(c)* the officer may at any stage apply to the Registrar for directions as to the further conduct of the application or other proceedings relating to the matter referred to him; and"

(b) in sub-paragraph *(c)* for "*(c)*" there shall be substituted "*(d)*".

11. Rule 104 shall be amended as follows:—

(a) in paragraph (3) the words "or the affidavit in support" shall be omitted; and

(b) in paragraph (5) the words "with a copy of the affidavit in support" shall be omitted and after the word "served" there shall be inserted the words "may apply to the court in writing, within 14 days after service, for a copy of the affidavit in support, within 14 days of receiving such an affidavit may file an affidavit in answer and".

12. For rule 107 there shall be substituted the following rule:—

"Proceedings under sections 1 and 9 of and Schedule 1 to the Matrimonial Homes Act 1983

(1) Subject to paragraph (2) below the jurisdiction of the High Court under sections 1 and 9 of the Matrimonial Homes Act 1983 may be exercised in chambers and the provisions of rule 104 (except paragraph (2)) shall apply, with the necessary modifications, to proceedings under those sections as they apply to an application under section 17 of the Act of 1882.

(2) Where a cause begun in accordance with rule 8(1) is pending in the High Court an application under the said section 1 or section 9 by one of the parties shall be made as an application in that cause in accordance with rule 122(1)*(b)*.

(3) An application for an order under the said section 1 or section 9 (except, subject to paragraph (4) below, an order to oust the respondent from the dwelling house to which the application relates) may be heard and determined by a registrar.

(4) Where the applicant asks for an order under the said section 1 or section 9 terminating the respondent's rights of occupation and it appears to the registrar, on the ex parte application of the applicant, that the respondent is not in occupation of the dwelling house to which the application relates and his whereabouts cannot after reasonable inquiries be ascertained, the registrar may dispense with service of the summons on the respondent and hear and determine the application.

(5) The jurisdiction of the court under Schedule 1 to the said Act of 1983 may be exercised by a registrar.

(6) Where an application is made for an order under the said Schedule 1, notice of the application (or, in the High Court, the summons by which the application is made) shall be served on—

(a) the spouse entitled as mentioned in paragraph 1 of that Schedule to occupy the dwelling house to which the application relates, and

(b) the landlord of the dwelling house,

and any person so served shall be entitled to be heard on the application.

(7) Any court in which an application for an order under the said Schedule is pending may, if it is a divorce county court, order the transfer of the application to the High Court or another divorce county 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 and, unless the

court otherwise directs, a transfer of the cause in which the decree is sought or granted shall include a transfer of the application.".

13. Rule 121 shall be amended as follows:—

(a) In paragraph (1), for the words "indorse on a copy of Form 5" there shall be substituted the word "record" and for the word "indorsement" there shall be substituted the word "record".

(b) In paragraph (2) for the words "an indorsement" there shall be substituted the words "a record".

14. Appendix 1 shall be amended as follows:—

(a) In Form 5 paragraph 5 shall be amended as follows—

(a) in subparagraph *(b)*(iii) for "1967" there shall be substituted "1983"; and

(b) there shall be inserted at the end of subparagraph *(c)* the words "and if the petitioner has made a will a decree absolute of divorce will deprive you of any right which you may have under that will to act as executor or to take any gift under the will, unless a contrary intention appears in the will".

(b) The following note shall be inserted at the end of Forms 9 and 10—

"*Note:* Divorce affects inheritance under a will.

Where a will has already been made by either party to the marriage then, by virtue of section 18A of the Wills Act 1837, from the above date on which the decree was made absolute:—

(a) any appointment of the former spouse as an executor or trustee is treated as if omitted; and

(b) any gift in the will to the former spouse lapses;

unless a contrary intention appears in the will.".

(c) In the third paragraph of Form 11 there shall be inserted after the word "applicant" the words "A standard form of affidavit may be obtained from the court office.".

(d) In the third paragraph of Form 12 there shall be inserted after the word "respondent" the words "A standard form of affidavit may be obtained from the court office".

Dated 20th September 1984

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EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Matrimonial Causes Rules 1977 so as—

(a) to provide a definition of "consent order" (Rule 2);

(b) to provide that the registrar of the court making an order shall be the Registrar responsible for sending a copy of the order to every party affected by it (Rule 3);

(c) where a notice of application is lodged more than 12 months after decree nisi, to require an explanation in writing to be given of the reason for delay and whether cohabitation or the birth of a child has occurred since the decree nisi, instead of an affidavit simply accounting for the delay (Rule 4);

(d) to dispense with the need for a mortgagee of property to be served with the affidavit which accompanies a notice of an application concerning mortgaged property, unless the mortgagee requests in writing a copy of the affidavit within 14 days of receipt of the notice (Rules 6 and 11);

(e) to dispense with the need for an applicant for a variation order to file an affidavit of property and income in every case (Rule 7—Rule 5 is consequential upon Rule 7);

(f) to prescribe the information to be given on an application for a consent order in accordance with section 33A of the Matrimonial Causes Act 1973 (Rule 8);

(g) to enable a registrar to make a consent order to commit a child to the care of a local authority and also to deal with unopposed applications for variation or discharge of an order for the care and supervision of a child (Rule 9*(a)*);

(h) to enable a court welfare officer to apply to a registrar for directions, particularly as to the further hearing of proceedings, when a matter concerning the welfare of a child has been referred to him for investigation and report (Rules 9*(b)* and 10);

(j) to make fresh provision for the making of an application in the High Court under the Matrimonial Homes Act 1983 (c.19), and where a matrimonial cause is pending to require such an application to be made as an application in that cause (Rule 12);

(k) where a petition is served by the court, to substitute for the requirement of endorsement of service on a copy of the form of Notice of Proceedings (Form 5) a requirement for a record to be kept by the court of the date of posting and address to which the petition was sent (Rule 13);

(l) to draw the attention of a recipient of a Notice of Proceedings, or a Certificate of Making Decree Nisi Absolute (Divorce) or (Nullity), to the effect of section 18A of the Wills Act 1837 (c.26) on the appointment of, or a gift to, a former spouse in a will (Rule 14*(a)* and *(b)*); and

(m) to inform a respondent to an application for ancillary relief, or a petitioner to whom notice is given of an application under section 10(2) of the Matrimonial Causes Act 1973, that a standard form of affidavit may be obtained from the court office (Rule 13*(c)* and *(d)*).

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