STATUTORY INSTRUMENTS

1976 No. 606 (L. 10)

MATRIMONIAL CAUSES

SUPREME COURT OF JUDICATURE, ENGLAND

COUNTY COURTS

The Matrimonial Causes (Costs) (Amendment) Rules 1976

Made - - - -	12*th April* 1976
Laid before Parliament	29*th April* 1976
Coming into Operation	1*st June* 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 (Costs) (Amendment) Rules 1976 and shall come into operation on 1st June 1976.

(2) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes (Costs) Rules 1971(b), as amended (c), and "divorce scale" means the scale of costs set out in the Appendix to those Rules.

(3) Nothing in these Rules shall apply in relation to any costs which fall to be fixed, assessed or taxed before the coming into operation of these 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. The following rule shall be substituted for rule 5:—

"*Scale of costs in matrimonial proceedings in divorce county court*

5.—(1) Subject to paragraph (2), the costs of matrimonial proceedings in a divorce county court shall be on the divorce scale.

(2) On a taxation, whether as between party and party or on the common fund basis, of the costs of a cause for divorce or judicial separation which has proceeded throughout in a divorce county court, the amount to be allowed in respect of any item of costs opposite which a sum appears in brackets in the divorce scale shall not be more or less than that sum unless the registrar,

(a) 1973 c. 18. (b) S.I. 1971/987 (1971 II, p. 2869).
(c) The relevant amending instruments are S.I. 1973/350, 1414 (1973 I, p. 1231; II, p. 4346).
(d) 1889 c. 63.

taking into consideration the factors mentioned in C.C.R. Order 47, rule 16, is satisfied that, in the circumstances of the particular case, a higher or, as the case may be, a lower figure than the average for that item in a cause under the same provision of the Act of 1973 is justified."

3. Rule 6 shall be amended as follows:—

(1) In paragraph (1) after the word "directed" there shall be inserted the words "and subject to rule 5(2)".

(2) The following paragraph shall be inserted after paragraph (4):—

"(5) Where in any matrimonial proceedings in a divorce county court any costs of a litigant in person are ordered to be paid by any other party to the proceedings or in any other way, then, unless the court otherwise orders, those costs shall be assessed without taxation and in determining for the purposes of C.C.R. Order 47, rule 2, the sum which would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on behalf of the litigant in person it shall be assumed that the solicitor would have elected that the costs be fixed under rule 7 of these Rules.".

4. Rule 7 shall be amended as follows:—

(1) In paragraph (1)—

(*a*) in the definition of "assisted person" after the word "cause" there shall be inserted the words "or, as the case may be, an ancillary application";

(*b*) the definitions of "consent order for maintenance" and "higher rate case" shall be omitted.

(2) In paragraph (2) for the words "judicial separation or nullity of marriage" there shall be substituted the words "or judicial separation".

(3) For paragraph (3)(*a*), there shall be substituted the following sub-paragraph:—

"(*a*) in respect of solicitors' charges—

(i) if counsel was briefed at the hearing, £67;

(ii) if counsel was not briefed at the hearing, £77;

(iii) if the case was dealt with in the special procedure list, £55;

(iv) where an order has been made for substituted service or to dispense with service, £8·50;

(v) for any statement as to the arrangements for the children filed under rule 8(2) of the principal rules, £2;

(vi) where an affidavit of means has been filed under rule 8(3) of the principal rules, £3."

(4) In paragraph (3)(*b*)(i) for the words from "£3·50" to the end there shall be substituted "£4·50".

(5) In paragraph (3)(*c*), the following item shall be added after item (ii):—

"(iii) such sums in respect of travelling to court or to inspect documents or, alternatively, in respect of agency correspondence in the circumstances mentioned in items 36, 37 and 39 of the divorce scale as would have been allowed if the costs had been taxed, not exceeding, in the case of travelling expenses, £3."

(6) In paragraph (4)(*a*) for the words from "the following" to the end there shall be substituted the words "a further sum of £7" and, in sub-paragraph (*b*), the words from "together with" to the end shall be omitted.

(7) For paragraph (6) there shall be substituted the following paragraphs:—

"(6) Where an ancillary application is granted with costs, whether as between party and party or not, in the circumstances mentioned in any of the following items, then, unless the registrar otherwise directs, the costs shall, if the applicant's solicitor so elects, be fixed at the sum mentioned in that item instead of being taxed:—

(*a*) in respect of solicitors' charges—

(i) where a consent order for ancillary relief has been made, £10;

(ii) where any other consent order has been made and no affidavit has been filed by either party, £10;

(iii) where an order has been made after a hearing at which the respondent has not appeared, £15;

(iv) where an order has been made after a hearing at which the respondent has appeared, £25, or, if counsel is allowed, £22;

(*b*) in respect of counsel's fees where counsel is allowed—

(i) in the circumstances mentioned in item (*a*)(ii) or (iii), £10;

(ii) in the circumstances mentioned in item (*a*)(iv), £10 with brief and, in addition, £2·50 for any conference;

(*c*) in respect of other disbursements—

(i) such of the items mentioned in paragraph (3)(*c*) as are appropriate;

(ii) such amount as the Law Society certifies to be reasonable for conveying or transferring property pursuant to the order made on the application.

The proviso to paragraph (2), paragraph (4) (except the words "together with a further sum of £7") and paragraph (5) shall apply, with the necessary modifications, in relation to the costs mentioned in this paragraph as they apply in relation to the costs mentioned in paragraph (2).

(7) Except as provided in paragraph (6), nothing in this rule shall apply to the costs of an ancillary application and accordingly the costs of any such application may be taxed notwithstanding anything done under paragraph (2).".

5. In rule 13, paragraph (2) and the figure "(1)" at the beginning of the first paragraph shall be omitted.

6. Against each of the items in the divorce scale specified in the first column of the following table there shall be inserted in brackets the sum specified opposite thereto in the second column: —

Item		£
1(i)		2·00
(ii)		1·00
2		6·00
3(*a*)		2·00
6(*a*)	special procedure cases	36·00
	other cases	42·00
7(i)(*a*)		12·00
(*b*)		4·00
21		8·50
27(*a*)		10·00
31(*a*)	settling petition	4·50
(*b*)		3·50
35(*a*)		2·00
(*b*)		1·00

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 (Costs) Rules 1971 by—

(*a*) substituting new items of fixed costs which may be allowed without taxation in undefended causes (rules 2, 3(1), 4 and 5);

(*b*) inserting in the divorce scale the amounts to be allowed in the average case (rule 6); and

(*c*) providing for the costs of a litigant in person to be assessed by reference to the items of fixed costs (rule 3(2)).

SI 1976/606
ISBN 0-11-060606-X

