STATUTORY INSTRUMENTS

1968 No. 281 (L. 5)

MATRIMONIAL CAUSES

The Matrimonial Causes (Costs) Rules 1968

Made - - -	21*st February* 1968
Laid before Parliament	8*th March* 1968
Coming into Operation	11*th April* 1968

We, the authority having power to make rules of court for the purposes mentioned in section 7(1) of the Matrimonial Causes Act 1967(a), hereby exercise that power as follows:—

Citation and commencement

1. These rules may be cited as the Matrimonial Causes (Costs) Rules 1968 and shall come into operation on 11th April 1968.

Interpretation

2.—(1) In these rules, unless the context otherwise requires—

" the Act of 1949 " means the Legal Aid and Advice Act 1949(b);

" ancillary application " means an application for one or more of the following forms of relief:—

(*a*) ancillary relief,

(*b*) an injunction,

(*c*) an order under section 32(1)(*a*) of the Act of 1965 restraining any person from attempting to defeat a claim for financial relief or otherwise for protecting the claim, or

(*d*) an order relating to the custody or education of a child or an order committing him to the care of a local authority under section 36 of the Act of 1965 or providing for his supervision under section 37 of that Act, except where the order is made at or immediately after the trial of a cause;

" principal rules " means the Matrimonial Causes Rules 1968(c);

" scale 4 (divorce) " means the scale of costs set out in the Appendix to these rules.

(2) These rules shall be construed as one with the principal rules.

(3) The Interpretation Act 1889(d) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

Time for beginning proceedings for taxation

3. A party who is entitled to require the costs of a cause to be taxed must begin proceedings for the taxation of those costs not later than 3 months after the final decree or order in the cause:

Provided that where a notice in Form 8 or 9 has been filed within 3 months after the final decree or order, the proceedings for taxation may be begun at any time within 3 months after the making of any order on the application to which the notice relates.

(a) 1967 c.56. (b) 1949 c. 51. (c) S.I. 1968/219 (I, p. 665). (d) 1889 c. 63.

Taxation of costs of proceedings in divorce county court

4.—(1) Where a party (in this rule called " the applicant ") is entitled to require taxation of the costs of any matrimonial proceedings in a divorce county court, he must, within the time (if any) specified in rule 3 of these rules, lodge his bill of costs, together with all necessary vouchers and papers and a copy of the bill for every party who is liable to pay the costs.

(2) The registrar shall send to every such party a copy of the bill together with a notice requiring him to inform the registrar, within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(3) If a party to whom notice has been given under paragraph (2) informs the registrar within the time limited that he wishes to be heard on the taxation, the registrar shall fix an appointment for the taxation and give not less than 7 days' notice of the appointment to the applicant and that party.

(4) If no party to whom notice has been given under paragraph (2) informs the registrar within the time limited that he wishes to be heard on the taxation, the registrar shall send to the applicant a notice specifying the amount which the registrar proposes to allow in respect of the bill and requiring him to inform the registrar, within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(5) If the applicant informs the registrar within the time limited that he wishes to be heard on the taxation, the registrar shall fix an appointment for the taxation and give 7 days' notice of the appointment to the applicant.

(6) The foregoing provisions of this rule shall apply to the taxation of a bill which is to be paid out of the legal aid fund under the Act of 1949 subject to the modification that, if the bill is not also to be taxed as between party and party, paragraph (2) shall not apply and paragraph (4) shall apply as if the words preceding " the registrar shall " were omitted.

(7) Except as provided in paragraph (6), this rule shall not apply to a taxation between solicitor and client.

(8) In relation to matrimonial proceedings C.C.R. Order 47, rule 38 (which deals with taxation between party and party), shall have effect as if paragraph (1) of this rule were substituted for paragraph (1) of that rule.

(9) Paragraphs (1) and (2) of C.C.R. Order 47, rule 40 (which deals with taxation between solicitor and client), shall not apply to the taxation of a bill to which this rule applies.

Scale of costs of matrimonial proceedings in divorce county court

5.—(1) Subject to the provisions of this rule, the costs of matrimonial proceedings in a divorce county court shall be on scale 4 in Appendix B to the County Court Rules 1936(a).

(2) In relation to matrimonial proceedings scale 4 in the said Appendix B shall have effect as set out in scale 4 (divorce):

Provided that there may be allowed in respect of any charges or disbursements for which provision is made in scale 4 in the said Appendix B but not in scale 4 (divorce), such sum as could be allowed under the said scale 4.

(3) In this rule " matrimonial proceedings " does not include proceedings for or incidental to the enforcement of an order for the payment of money, unless the costs of the proceedings are to be allowed on scale 4 pursuant to any judgment or order or any provision of the County Court Rules 1936.

(a) S.R. & O. 1936/626 (1936 I, p. 282).

Further modifications of County Court Rules

6.—(1) Except where the judge has otherwise directed, the registrar may, if he thinks fit, allow on taxation of the costs of matrimonial proceedings in a divorce county court such larger sum as he thinks fit in respect of all or any of the items specified in C.C.R. Order 47, rule 21(3) (which deals with the allowance of increased charges), and in relation to matrimonial proceedings those items shall include items 21 and 26 in scale 4 (divorce).

(2) For the purposes of C.C.R. Order 47, rule 29 and 31, a witness or party who has attended the hearing of an ancillary application, or a party who has attended for medical examination under rule 30 of the principal rules, shall be treated as having attended the hearing of an action or matter.

(3) In relation to matrimonial proceedings Appendix C to the County Court Rules 1936 shall have effect as if inquiry agents were included in class (*a*).

Fixed costs

7.—(1) In this rule—

" assisted person " means a person in respect of whom a certificate is in force under Part I of the Act of 1949 entitling him to legal aid in a cause from its commencement;

" consent order for maintenance " means an order for alimony pending suit, a maintenance order, a permanent alimony order, a lump sum order, or a child maintenance order, made or to be made in terms agreed upon by the parties or under rule 82 of the principal rules;

" higher rate case " means a cause in which the petitioner prays for divorce or judicial separation on the ground of cruelty or constructive desertion or on two or more different grounds.

(2) Where in an undefended cause for divorce or judicial separation the petitioner is granted a decree with costs, the costs shall, if his solicitor so elects, be fixed in accordance with the provisions of this rule instead of being taxed:

Provided that where the petitioner is an assisted person for whom counsel has acted, the costs shall not be fixed unless counsel elects that the sums payable to him under section 6(5) of the Act of 1949 shall be as provided by paragraph (4)(*b*).

(3) Where costs are fixed, there shall be allowed as between party and party such of the following items as are applicable:—

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

(i) if counsel was briefed at the hearing, £40 or, in a higher rate case, £43;

(ii) if counsel was not briefed at the hearing, £50 or, in a higher rate case, £53; and

(iii) in either case, if the petitioner's solicitor so requests, a further sum of £5 in respect of any ancillary application on which a consent order for maintenance has been made;

(*b*) in respect of counsel's fees—

(i) for settling the petition, £3 5*s.* 6*d.* or, in a higher rate case, £4 6*s.* 6*d*;

(ii) for giving written advice on evidence, £3 5*s.* 6*d*;

(iii) with brief on hearing, £9 14*s.* 0*d.* and, where there is no local Bar in the court town or within 25 miles thereof, a further sum of £2 4*s.* 6*d*; and

(iv) on conference, £2 7*s.* 0*d*;

(*c*) in respect of other disbursements—

(i) the court fees paid on the petitioner's behalf, and

(ii) such sums in respect of witnesses' allowances and inquiry agents' fees as would have been allowed if the costs had been taxed, not exceeding, in the case of inquiry agents' fees, the sum of £15.

(4) If a petitioner whose costs are to be fixed is an assisted person, then, notwithstanding that the costs have been ordered to be taxed for the purposes of the Third Schedule to the Act of 1949—

(*a*) the sums payable under section 6(5) of that Act to the solicitor acting for him shall be such of the fixed amounts specified in paragraph (3)(*a*) and (*c*) as are applicable, together with the following further sums—

(i) £5, and

(ii) if the decree was granted in the exercise of the court's discretion notwithstanding the petitioner's adultery, £3;

(*b*) the sums payable under the said section 6(5) to counsel acting for the assisted person shall be such of the fixed amounts specified in paragraph (3)(*b*) as are applicable, together with a further sum of £2 4*s*. 6*d*. if a discretion statement has been settled by counsel on the petitioner's behalf.

(5) A petitioner's solicitor who elects to have his costs fixed under paragraph (2) shall give notice to that effect to the registrar, stating the sums which he claims should be allowed, and he shall at the same time lodge all necessary papers and vouchers including, in a case to which the proviso to paragraph (2) applies, counsel's election under that proviso.

(6) Except as provided in paragraph (3)(*a*)(iii), nothing in paragraph (2) shall apply to the costs of an ancillary application and accordingly the petitioner's costs of any such application may be taxed notwithstanding anything done under this rule.

Payment of costs

8.—(1) Where in any matrimonial proceedings, the costs payable by a party are required to be taxed, they shall be payable within such time as may be specified in an order for payment made on or after the signature of the taxing officer's certificate of the result of the taxation and, unless otherwise directed, the time so specified shall be 7 days after the making of the order.

(2) Where costs are fixed under rule 7 of these rules instead of being taxed, paragraph (1) of this rule shall have effect as if for the reference to the taxing officer's certificate of the result of the taxation there were substituted a reference to the registrar's certificate of the amount of fixed costs allowed.

(3) Section 99(3) of the County Courts Act 1959(**a**) shall not apply to costs payable under an order made in proceedings pending in a divorce county court.

Personal liability of solicitor for costs

9. Paragraphs (1) to (6) of R.S.C. Order 62, rule 8 (which deals with the personal liability of a solicitor for costs), shall apply to proceedings in a divorce county court as they apply to proceedings in the High Court, subject to the following modifications:—

(*a*) " the Court " shall have the same meaning as in the County Court Rules 1936, and

(*b*) " taxing officer " shall mean the registrar.

County court proceedings in divorce registry

10.—(1) Paragraphs 1 to 4 of the Third Schedule to the Act of 1949 and section 73(4) of the Solicitors Act 1957(**b**) shall apply to matrimonial proceedings

(**a**) 1959 c. 22. (**b**) 1957 c. 27.

in the divorce registry which are treated as pending in a divorce county court.

(2) A principal clerk of the divorce registry authorised by the President under R.S.C. Order 62, rule 12(7), to tax the costs of or arising out of a matrimonial cause or matter in the High Court shall have the like authority to tax the costs of or arising out of matrimonial proceedings in the divorce registry which are treated as pending in a divorce county court, and accordingly, unless the context otherwise requires, any reference in these rules (except rule 9) or the principal rules, or in any rules applied by the principal rules, to the registrar of a divorce county court in relation to the taxation of any costs shall, where the costs are to be or have been taxed by a principal clerk in the exercise of the authority conferred by this paragraph, be construed as a reference to him.

Savings

11.—(1) Rule 3 of these rules shall not apply to any costs which are to be taxed by virtue of a judgment, direction or order given or made before the coming into operation of these rules.

(2) Where part of any matrimonial proceedings has taken place in the High Court, whether before or after the coming into operation of these rules, nothing in these rules or in section 76 of the County Courts Act 1959 shall authorise the costs of that part of the proceedings to be awarded or taxed on any of the county court scales.

Dated 21st February 1968.

Gardiner, C.
J. E. S. Simon, P.
John Latey, J.
Ifor Lloyd
H. G. Talbot
W. D. S. Caird
J. L. Williams
K. Bruce Campbell
Bryan Anns

APPENDIX

Rule 5(2) SCALE 4 (DIVORCE)

Item No.		£ *s. d.*
	Taking instructions	
1	(i) To file or oppose originating application or petition or application for re-hearing; (ii) to prepare any document to which Item 3(*b*) applies or to make or oppose any application to which Item 7(ii) or 9 applies, where in the opinion of the registrar the instructions were necessary; (iii) to appeal or oppose an appeal to the judge from a decision of the registrar; (iv) to interplead or to claim or oppose claim in interpleader proceedings; (v) to take or oppose garnishee proceedings	15 0 to 1 10 0
	Preparation of petition, etc.	
2	Preparing originating application, petition, answer or supplemental pleading	1 10 0 to 7 10 0
	Note 1.—This item includes copy for service on opposite	

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	spouse but not copy for service on any other party and it is only to be allowed where the document is signed by the solicitor or his clerk duly authorised in that behalf. *Note* 2.—Where the document is settled by counsel, Items 3(*a*) and 4 are allowable and not this item.	
	Preparation of documents	
3	(*a*) Preparing instructions to counsel to settle any pleading or other document or to advise on evidence or to advise on merits where counsel's fee is allowed under Item 31	15 0 to 3 0 0
	(*b*) Preparing any necessary document not otherwise provided for and all necessary copies thereof	5 0
	and per folio beyond five	1 0
	Note. Item 3(*b*) is not to be allowed for preparing a praecipe.	
	Copies	
4	For copies of documents (including brief) not otherwise provided for which the registrar considers necessary— (*a*) for photographic copies, the actual and reasonable cost; (*b*) for carbon copies, per folio	3
	(*c*) in any other case, per folio	6
	Perusing	
5	Any document not otherwise provided for which the registrar is satisfied justifies a charge for perusal ...	5 0
	and per folio beyond five	1 0
	Preparing for trial	
6	(*a*) Preparing for trial or cause or matter	Such sum as is fair and reasonable in all the circumstances not exceeding £40 0 0
	(*b*) Preparing for hearing of ancillary application, such sum as is fair and reasonable.	
	Note 1.—These items are intended to cover the work of preparing for trial or hearing not otherwise provided for, including considering facts, evidence and law, preparation of notes of facts or argument, interviewing witnesses and taking proofs of their evidence, preparing and serving notices to produce and admit documents, and to admit facts, perusing such notices and correspondence, making necessary searches, negotiating any settlement and, where counsel is instructed, instructions for and drawing brief, and attending counsel therewith. *Note* 2.—Item 6(*a*) may only be allowed once in the same cause or matter, but Item 6(*b*) may be allowed in respect of each ancillary application.	

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	Attendances	
7	(i) At court on trial of cause or matter, for each day or part of a day—	
	(*a*) without counsel	3 0 0 to 20 0 0
	(*b*) with counsel	2 0 0 to 4 0 0
	(ii) At court or in chambers on hearing of ancillary application, for each day or part of a day—	
	(*a*) without counsel	1 0 0 to 20 0 0
	(*b*) with counsel	2 0 0 to 4 0 0
8	(i) At court where trial of cause or matter is adjourned for want of time or upon payment of the costs of the day—	
	(*a*) without counsel	2 0 0 to 5 0 0
	(*b*) with counsel	1 0 0 to 3 0 0
	(ii) At court or in chambers where hearing of ancillary application is adjourned for want of time or upon payment of the costs of the day—	
	(*a*) without counsel	1 0 0 to 5 0 0
	(*b*) with counsel	1 0 0 to 3 0 0
9	At court or in chambers on any other application to judge or registrar in the course of or relating to the proceedings, including notice and service, and brief where counsel is instructed—	
	(*a*) without counsel	1 0 0 to 7 10 0
	(*b*) with counsel	1 0 0 to 3 0 0
10	[*Not applicable*]	
11	On examination of witness under Order 14, Rule 1(10), Order 20, Rule 18(1), or Order 25, Rule 2, for each hour	1 0 0
12	Where in consequence of anything done by the opposite party during the proceedings, attendance on the client is necessary to advise or receive instructions, for each attendance not otherwise provided for	10 0 to 1 0 0

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	Note 2.—Where two or more parties have been or could have been served together, one charge only for service is to be allowed. *Note* 3.—These items are not to be allowed where Item 21 or 33(*d*) is applicable.	
21	Drawing any document, attending on any application and doing any other work necessary to obtain, and to carry out the terms of, an order for substituted service of any document	2 0 0 to 10 0 0
22	Of process out of England and Wales, to include drawing, copying, attending to swear and file all affidavits and to obtain order, and the fees paid for oaths, such sum as the registrar thinks reasonable.	
	Letters, etc.	
23	[*Not applicable*]	
24	Letters in lieu of attendances which could properly be allowed under items 12, 13, 17 and 18	5 0
25	Circular letters	2 0
	Taxation of costs	
26	(*a*) For taxation of the costs of the cause or matter	1 10 0 to 5 0 0
	(*b*) For taxation of the costs of [redacted]ancillary application	1 10 0 to 5 0 0
	(*c*) For any other taxation	15 0 to 1 10 0
	Note 1.—These items include preparing bill and all necessary copies, correspondence and attendances. *Note* 2.—Items 26(*b*) and (*c*) are not to be allowed where the costs to which they relate have been or could have been included in the bill of costs of the cause or matter.	
	Disbursements *Fees to Counsel*	
27	(*a*) With brief on trial of cause or matter	7 12 0 to 27 0 0
	(*b*) With brief on hearing of ancillary application	5 10 0 to 27 0 0
28	Where there is no local Bar in the court town or within 25 miles thereof, if in the opinion of the registrar the maximum fee allowable with the brief is insufficient, a further fee may be allowed, not exceeding for each day on which the trial or hearing takes place	2 4 6
	Note 1.—For the purpose of this item there shall be	

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13	(*a*) To obtain or give any necessary and proper consent or admission	10 0
	(*b*) Upon the opposite party, for each attendance not otherwise provided for	10 0
	(*c*) To arrange for attendance of a witness without subpoena	5 0
	(*d*) On counsel in conference where counsel's fee allowed under item 29 (to include appointing conference), for the first hour or part thereof	2 0 0
	and for each subsequent hour or part thereof	1 0 0
	Note to Items 12 *and* 13(*a*) *and* (*b*).—If the attendance is by telephone, half of the charge is to be allowed. *Note to Item* 13(*c*).—Only one charge is to be allowed where only one attendance is necessary to arrange for more than one witness.	
14	At court to hear a deferred judgment—	
	(*a*) without counsel	1 0 0 to 5 0 0
	(*b*) with counsel	1 0 0 to 2 0 0
15	At court, on hearing of judgment summons if costs allowed by judge and for each attendance where the hearing is not concluded on the day on which it is commenced—	
	(*a*) without counsel [redacted].	1 0 0
	(*b*) with counsel	10 0
	Note.—This item includes attending to enter and service (unless allowed under Order 25, Rule 66(2)).	
16	On deponent being sworn to an affidavit, including an affidavit of service	5 0
	Note.—This charge may be allowed where the solicitor or his clerk is the deponent.	
17	To deliver any document pursuant to any County Court Rule or Matrimonial Causes Rule	5 0
18	Any attendance at the court office not otherwise provided for which the registrar is satisfied justifies a charge ...	5 0
	Service	
19	Of any document required to be served personally, other than a judgment summons (unless allowed under Order 25, Rule 66(2)), including copy	10 0 to 1 0 0
20	Of any document authorised to be served by post, including copy	2 0
	Notes to Items 19 *and* 20— *Note* 1.—Where any two or more documents to be served on the same party have been or could have been served together, one charge only for service is to be allowed.	

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	deemed to be a local Bar only in such places as may from time to time be specified in a certificate of the General Council of the Bar published in their Annual Statement. *Note* 2.—This item is not to be allowed in any court within 25 miles of Charing Cross.	
29	On conference in chambers or elsewhere, if the fee was marked on the brief when delivered, or in the opinion of the registrar the conference was necessary	2 7 0
	and, in addition, for every hour or part thereof after the first hour	2 7 0
	and for leading counsel if case certified fit for more counsel than one	3 8 0
	and, in addition, for every hour or part thereof after the first hour	3 8 0
30	(*a*) Where trial of a cause or matter or hearing of an ancillary application is not concluded on day on which it is commenced or is adjourned for want of time or on payment of the costs of the day, for each day or part of day on which it is continued	3 5 6 to 13 2 0
	(*b*) With brief to hear a deferred judgment; with brief on application in the course of or relating to proceedings (other than an ancillary application); with brief on an examination of witnesses under Order 14, Rule 1(10), Order 20, Rule 18(1), or Order 25, Rule 2; with brief on hearing of judgment summons	2 4 6 to 7 12 0
31	(*a*) For settling any document which in the opinion of the registrar is proper to be settled by counsel	2 4 6 to 7 12 0
	(*b*) For advising in writing on any question in the proceedings on which in the opinion of the registrar it was proper to obtain counsel's advice, including advising on evidence and advising on merits before proceedings brought or answer filed	2 4 6 to 7 12 0
	Note to Items 27 *to* 31 Fees to counsel are not to be allowed unless the payment of them is vouched by the signature of counsel.	
	Plans, Photographs, etc.	
32	For plans, drawings, charts, photographs or models for use at the trial, which in the opinion of the registrar it was reasonable to obtain, the sum actually and reasonably paid.	
	Miscellaneous	
33	(*a*) For obtaining any documentary evidence (including translations) or police reports or statements from the police which in the opinion of the registrar it was reasonably necessary to obtain for the purpose of the proceedings, (*b*) for an advertisement in pursuance of an order for substituted service by advertisement,	

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	(*c*) for making any search in the companies register, the business names register or any other public register which in the opinion of the registrar it was reasonably necessary to make for the purpose of the proceedings, (*d*) for employing an inquiry agent to effect personal service of any document or to make inquiries or to obtain evidence which in the opinion of the registrar were or was reasonably necessary for the purpose of the proceedings, (*e*) for obtaining any professional advice or assistance which in the opinion of the registrar it was reasonably necessary to obtain for the purpose of the proceedings, and (*f*) for an examination and report by a medical inspector appointed in proceedings for nullity, the sum actually and reasonably paid. *Note.*—Item 33(*e*) is intended to cover the advice and assistance of such persons as accountants and foreign lawyers.			
34	For oaths, the sum paid, unless included in another item.			
35	(*a*) For postages, carriage and transmission of documents, a sum not exceeding	5	0	0
	(*b*) For telegrams and telephone calls, the sum actually and reasonably paid.			
36	Where solicitor does not reside or carry on business within 2 miles of the court at which the trial takes place, (*a*) the sum actually and reasonably paid for travelling to attend the trial or, (*b*) if an agent was reasonably employed, for correspondence with the agent	1 0 0 to 3 0 0		
37	Where solicitor does not reside or carry on business within 2 miles of the place of inspection of documents— (*a*) the sum actually and reasonably paid for travelling to inspect the documents; or (*b*) if agent employed, for correspondence with agent	1	0	0
38	In addition to Item 26 (taxation) where solicitor does not reside or carry on business within 2 miles of the court office— (*a*) the sum actually and reasonably paid for travelling to attend the taxation; or (*b*) if agent reasonably employed, for correspondence with agent	1	0	0
39	Where solicitor does not reside or carry on business within 2 miles of the court or court office at which the hearing of an ancillary application takes place—			

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	(*a*) the sum actually and reasonably paid for travelling to attend the hearing, or	
	(*b*) if agent employed, for correspondence with agent	1 0 0 to 3 0 0

Note to Items 36(*a*), 37(*a*), 38(*a*) *and* 39(*a*)—
Where in the opinion of the registrar it would have been reasonable to employ a solicitor residing or carrying on business nearer to the court, the place of inspection of documents or the court office, as the case may be, he shall not allow more than he would have allowed to such a solicitor.

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These rules make provision for the costs of matrimonial proceedings on the coming into operation of the Matrimonial Causes Act 1967. Rule 3 prescribes the time for beginning proceedings for taxation. Rule 4 introduces a procedure of provisional taxation in divorce county courts. Rule 5 provides for the costs of matrimonial proceedings in a county court being taxed on county court scale 4, as set out with modifications in the Appendix to the present rules. Rule 7 enables fixed costs to be allowed in an undefended cause at the option of the petitioner's solicitor and, in a legal aid case, any counsel instructed by him. Rule 9 extends to proceedings in a divorce county court the provisions of Order 62, rule 8, of the Rules of the Supreme Court, which relate to a solicitor's personal liability for costs. Rule 10 applies certain statutory provisions about costs to proceedings in the divorce registry which are treated as pending in a divorce county court. The remaining rules contain minor or consequential provisions.