STATUTORY INSTRUMENTS

1968 No. 219 (L. 4)

MATRIMONIAL CAUSES

PROCEDURE

The Matrimonial Causes Rules 1968

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THE MATRIMONIAL CAUSES RULES 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 :—

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) The Interpretation Act 1889(b) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

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

" the Act of 1965 " means the Matrimonial Causes Act 1965(c) ;

" the Act of 1967 " means the Matrimonial Causes Act 1967 ;

" adopted " means adopted in pursuance of an adoption order made under the Adoption Act 1958(d), any previous enactment relating to the adoption of children or any corresponding enactment of the Parliament of Northern Ireland, or made in the Isle of Man or any of the Channel Islands ;

" ancillary relief " means—

(*a*) an avoidance of disposition order,

(*b*) a child maintenance order,

(*c*) a lump sum order,

(*d*) a maintenance order,

(*e*) a modification order,

(*f*) an order for alimony pending suit.

(*g*) an order securing periodical payments,

(*h*) a periodical payments order,

(*i*) a permanent alimony order,

(*j*) a secured provision order,

(*k*) a variation of settlements order, or

(*l*) a wife's property settlement order ;

(a) 1967 c. 56. (b) 1889 c. 63. (c) 1965 c. 72. (d) 1958 c. 5.

"avoidance of disposition order" means an order under section 32 of the Act of 1965 setting aside a disposition;

"cause" means a matrimonial cause as defined by section 10(1) of the Act of 1967;

"child maintenance order" means an order under section 34 of the Act of 1965 making provision for the maintenance of any child of the family;

"child of the family" means a child who is—

(*a*) a child (including an illegitimate or adopted child) of both parties to the marriage, other than a child who has been adopted by some other person; or

(*b*) a child (including an illegitimate or adopted child) of one party to the marriage who has been accepted as one of the family by the other party;

"court of trial" means a divorce county court designated by the Lord Chancellor as a court of trial pursuant to section 1(1) of the Act of 1967 and, in relation to matrimonial proceedings pending in a divorce county court, the divorce registry shall be treated as a court of trial having its place of sitting at the Royal Courts of Justice;

"defended cause" means a cause not being an undefended cause;

"directions for trial" means directions for trial given under rule 33;

"district registry" means any district registry having a divorce county court within its district;

"divorce county court" means a county court so designated by the Lord Chancellor pursuant to section 1(1) of the Act of 1967;

"divorce registry" means the principal probate registry;

"divorce town" means a town mentioned in Appendix I;

"financial relief" has the same meaning as in section 32 of the Act of 1965;

"judge"—

(*a*) in relation to proceedings pending in a divorce county court means one of the county court judges assigned by the Lord Chancellor to exercise the jurisdiction conferred by the Act of 1967 on divorce county courts,

(*b*) in relation to proceedings pending in the High Court, includes the President, any judge of the Probate, Divorce and Admiralty Division, any judge of the High Court exercising jurisdiction in matrimonial proceedings and any commissioner exercising jurisdiction in such proceedings under or by virtue of section 70(5) of the Supreme Court of Judicature (Consolidation) Act 1925(a) and any order made thereunder;

"long cause" means a cause which has been included in the long cause list by virtue of a direction given by the registrar under rule 34(8);

"lump sum order" means—

(*a*) an order under section 16(1) of the Act of 1965, or under that subsection as applied by section 19, or under section 20(1)(*a*), requiring the payment of a lump sum to the wife; or

(*b*) an order under section 16(3) or 20(1)(*b*) of the Act of 1965 requiring the payment of a lump sum to the husband;

(a) 1925 c. 49.

" maintenance order " means—

(*a*) an order under section 16(1) of the Act of 1965, or under that subsection as applied by section 19, requiring the husband to pay to the wife a monthly or weekly sum for her maintenance ; or

(*b*) an order under section 16(3) of the Act of 1965 requiring the wife to pay to the husband a monthly or weekly sum for his maintenance;

" matrimonial proceedings " means any proceedings with respect to which rules may be made under section 7(1) of the Act of 1967 ;

" modification order " means an order under section 31 of the Act of 1965, or an order under section 34 modifying a child maintenance order ;

" notice of intention to defend " has the meaning assigned to it by rule 15 ;

" order for alimony pending suit " means an interim order for the payment of alimony under section 15 of the Act of 1965 ;

" order securing periodical payments " means an order under section 21(2) of the Act of 1965 that the husband shall secure to the wife the payments to the wife ordered by a periodical payments order made under section 21(1)(*b*) of that Act ;

" periodical payments order " means—

(*a*) an order under section 21(1)(*b*) of the Act of 1965 for the payment by the husband to the wife of periodical payments ; or

(*b*) an order under section 21(3)(*b*) of the Act of 1965 for the payment by the wife to the husband for his own benefit, or to him or another person for the benefit of the children of the marriage (including any child adopted by both parties to the marriage), or either or any of them, of any part of any profits of trade or earnings received by the wife ;

" permanent alimony order " means an order under section 20(1)(*a*) or 21(1)(*a*) of the Act of 1965 for the payment of alimony to the wife or an order under section 20(1)(*b*) for the payment of alimony to the husband ;

" person named " includes a person described as " passing under the name of A.B." ;

" the President " means the President of the Probate, Divorce and Admiralty Division or, in the case of his incapacity through illness or otherwise or of a vacancy in the office of President, the senior puisne judge of that Division ;

" registrar " means—

(*a*) in relation to proceedings pending in a divorce county court, the registrar of that court,

(*b*) in relation to proceedings pending in the divorce registry, one of the registrars of that registry,

(*c*) in relation to proceedings in a district registry, the registrar of that district registry ;

" registry for the divorce town " shall be construed in accordance with rule 44(4) ;

" Royal Courts of Justice ", in relation to matrimonial proceedings pending in a divorce county court, means such place, being the Royal Courts of Justice or elsewhere, as may be specified in directions given by the Lord Chancellor pursuant to section 4(2)(*a*) of the Act of 1967 ;

" secured provision order " means—

(*a*) an order under section 16(1) of the Act of 1965, or under that subsection as applied by section 19, requiring the husband to secure a lump or annual sum to the wife ; or

(*b*) an order under section 16(3) of the Act of 1965 requiring the wife to secure such a sum to the husband ; or

(*c*) an order under section 34(3) of the Act of 1965 requiring the husband or wife to secure such a sum for the benefit of the children of the family ;

" senior registrar " means the senior registrar of the divorce registry ;

" short cause " means a cause which has been included in the short cause list by virtue of a direction given by the registrar under rule 34(8) ;

" undefended cause " means—

(*a*) in the case of an application under section 2 of the Act of 1965, a cause in which the respondent has not given notice of intention to defend within the time limited ;

(*b*) in any other case—

(i) a cause in which no answer has been filed or any answer filed has been struck out, or

(ii) a cause which is proceeding only on the respondent's answer and in which no reply or answer to the respondent's answer has been filed or any such reply or answer has been struck out, or

(iii) a cause to which rule 18(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn ;

" variation of settlements order " means an order under section 17(1) of the Act of 1965, or under that subsection as applied by section 19, as respects the application, for the benefit of the children of the marriage (including a child adopted by both parties to the marriage) or the parties to the marriage, of the whole or any part of the property settled by an ante-nuptial or post-nuptial settlement ;

" wife's property settlement order " means an order under section 17(2) of the Act of 1965, or under that subsection as applied by section 20(2), or under section 21(3), for the settlement of any property to which the wife is entitled, either in possession or reversion, for the benefit of the husband and of the children of the marriage (including a child adopted by both parties to the marriage) or either or any of them.

(3) Unless the context otherwise requires, a cause begun by petition shall be treated as pending for the purposes of these rules notwithstanding that a final decree or order has been made on the petition.

(4) Unless the context otherwise requires, any reference in these rules to a numbered rule or Appendix is a reference to the rule or Appendix so numbered in these rules.

(5) In these rules a form referred to by number means the form so numbered in Appendix II, or a form substantially to the like effect, with such variations as the circumstances of the particular case may require.

(6) In these rules any reference to an Order and rule is—

(*a*) if prefixed by the letters " C.C.R. ", a reference to that Order and rule in the County Court Rules 1936(**a**), and

(*b*) if prefixed by the letters " R.S.C.", a reference to that Order and rule in the Rules of the Supreme Court 1965(**b**).

(**a**) S.R. & O. 1936/626 (1936 I, p. 282). (**b**) S.I. 1965/1776 (1965 III, p. 4995).

(7) Unless the context otherwise requires, any reference in these rules to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

Application of other rules

3. Subject to the provisions of these rules and of any enactment, the County Court Rules 1936 and the Rules of the Supreme Court 1965 shall apply with the necessary modifications to the commencement of matrimonial proceedings in, and to the practice and procedure in matrimonial proceedings pending in, a divorce county court and the High Court respectively.

County court proceedings in divorce registry

4.—(1) Subject to the provisions of these rules, matrimonial proceedings pending at any time in the divorce registry which, if they had been begun in a divorce county court, would be pending at that time in such a court shall be treated, for the purposes of these rules and of any provision of the County Court Rules 1936 and the County Courts Act 1959(a), as pending in a divorce county court and not in the High Court.

In this paragraph "matrimonial proceedings" includes proceedings for the exercise of any power under Part II or III of the Act of 1965 if but only if the power is exercisable in connection with any petition, decree or order pending in or made by, or treated as pending in or made by, a divorce county court.

(2) Unless the context otherwise requires, any reference to a divorce county court in any provision of these rules, or of the County Court Rules 1936 as applied by these rules, which relates to the commencement or prosecution of proceedings in a divorce county court, or the transfer of proceedings to or from such a court, includes a reference to the divorce registry.

COMMENCEMENT ETC. OF PROCEEDINGS

Application under section 2 of Act of 1965

5.—(1) An application under section 2 of the Act of 1965 for leave to present a petition for divorce before the expiration of 3 years from the date of the marriage shall be made by originating application.

(2) The application shall be filed in the divorce county court to which the proposed petition is to be presented, together with—

(*a*) an affidavit by the applicant exhibiting a copy of the proposed petition and stating—

(i) the grounds of the application ;

(ii) particulars of the hardship or depravity alleged ;

(iii) whether there has been any previous application under the said section 2 ;

(iv) whether any, and if so what, attempts at reconciliation have been made ;

(v) particulars of any circumstances which may assist the court in determining whether there is a reasonable probability of reconciliation between the parties ;

(vi) the date of birth of each of the parties or, if it be the case, that he or she has attained 21 ;

(a) 1959 c. 22.

(*b*) a copy of the application and of the supporting affidavit for service on the respondent ; and

(*c*) unless otherwise directed on an application made ex parte, a certificate of the marriage.

(3) 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 the registrar shall annex to the copy of the application for service a copy of the supporting affidavit and a notice in Form 1 with Form 4 attached.

(4) If, within the time limited, the respondent gives notice of intention to defend, the registrar shall order that the application be transferred to the High Court.

(5) Where the application is filed in a divorce county court which is not a court of trial or has been transferred to the High Court and is proceeding in a district registry which is not in a divorce town, the hearing shall be fixed to take place at such court of trial or divorce town as in the opinion of the registrar is the nearest or most convenient.

For the purposes of this paragraph the Royal Courts of Justice shall be treated as a divorce town.

(6) The application shall be heard by a judge and shall, unless otherwise directed, be heard in chambers.

(7) Subject to the provisions of this rule, these rules shall, so far as applicable, apply with the necessary modifications to the application as if the originating application were a petition and the applicant a petitioner.

Application to court to consider agreement made in contemplation etc. of divorce

6.—(1) On an application made, before the presentation of a petition for divorce or judicial separation, to the divorce county court to which the proposed petition is to be presented, or on an application made, after the presentation of a petition, to the court in which proceedings for divorce or judicial separation are pending, the court may take into consideration for the purposes of section 5 of the Act of 1965 any agreement or arrangement made or proposed to be made between the parties and give such directions in the matter as the court thinks fit.

(2) Where an application is made before the presentation of a petition—

(*a*) it shall be made by originating application ;

(*b*) every party to the agreement or arrangement other than the applicant and, unless otherwise directed on an application made ex parte, any other person whom it is intended to make a party to the proceedings for divorce or judicial separation shall be made a respondent ;

(*c*) there shall be filed with the originating application a copy thereof and a copy of the affidavit mentioned in paragraph (4) for service on each respondent ;

(*d*) C.C.R. Order 6, rule 4(2)(*c*)(ii) (which deals with the service of an originating application), shall apply with the modification that the documents required to be served on each respondent shall, unless otherwise directed, be served by an officer of the court sending them to him by post ;

(*e*) paragraph (5) of rule 5 shall apply to the application as if it were an application under that rule ;

(*f*) subject to the provisions of this rule, these rules shall, so far as applicable, apply with the necessary modifications to the application as if it were a cause and as if the originating application were a petition and the applicant a petitioner.

(3) An application made after the presentation of a petition shall—

(*a*) if the proceedings for divorce or judicial separation are pending in a divorce county court, be made on notice in accordance with C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings), and

(*b*) in any other case, be made by summons in the proceedings.

(4) At the time of the filing of an originating application or notice of application or the issue of a summons under this rule, there shall be filed an affidavit by the applicant setting out particulars of the agreement or arrangement in question and the grounds on which the application is made, and a copy of the affidavit shall accompany every copy of the originating application, notice or summons for service.

(5) An application under this rule shall be heard by a judge and, unless otherwise directed, shall be heard in chambers.

(6) A respondent to an application under this rule may be heard without filing an affidavit in answer to the application.

Discontinuance of cause before service of petition

7. Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

Stay of proceedings for restitution of conjugal rights

8. At any time after proceedings for restitution of conjugal rights have been begun the respondent may apply for an order to stay the proceedings on the ground that he is willing to resume or return to cohabitation with the petitioner.

Cause to be begun by petition

9.—(1) Every cause other than an application under section 2 of the Act of 1965 shall be begun by petition.

(2) Unless otherwise directed, every petition, other than a petition for jactitation of marriage, shall contain the information required by Form 2 and any further or other information required by such of the following paragraphs of this rule as may be applicable.

(3) A wife's petition in which the court is alleged to have jurisdiction by virtue of section 40(1)(*a*) of the Act of 1965 shall state the domicile of the husband immediately before the desertion or deportation and the date when and the circumstances in which the alleged desertion began or, as the case may be, the date of the deportation order.

(4) A wife's petition for divorce or nullity of marriage in which the court is alleged to have jurisdiction by virtue of section 40(1)(*b*) of the Act of 1965 shall state—

(*a*) (in lieu of a statement as to the domicile of the parties) the addresses at which the petitioner has resided during the 3 years immediately preceding the presentation of the petition and the length of her residence at each address and that the husband is not domiciled in the United Kingdom or in the Channel Islands or the Isle of Man ; and

(*b*) whether proceedings for divorce, nullity of marriage, judicial separation or other relief in respect of the marriage are, to the knowledge of the petitioner, pending in any other country and, if so, the nature of those proceedings so far as known to the petitioner.

(5) A petition for a decree of nullity under section 9(1)(*b*), (*c*) or (*d*) of the Act of 1965 shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of grounds for a decree.

(6) A petition for a decree of presumption of death and dissolution of marriage shall state—

(*a*) the last place at which the parties to the marriage cohabited, the circumstances in which the parties ceased to cohabit, the date when and the place where the respondent was last seen or heard of, and the steps which have been taken to trace the respondent ; and

(*b*) (in lieu of a statement as to the domicile and residence of the parties and, in the case of a wife's petition, the occupation of the husband) the residence and domicile of the petitioner or, in the case of a petition presented by virtue of section 14(2)(*b*) of the Act of 1965, the addresses at which the petitioner has resided during the 3 years immediately preceding the presentation of the petition and the length of her residence at each address.

(7) A petition for restitution of conjugal rights shall state the date when and the circumstances in which the respondent refused or ceased to render conjugal rights to the petitioner, the desire of the petitioner for a restitution of conjugal rights and the willingness of the petitioner to render them to the respondent.

Petition for jactitation of marriage

10. A petition for jactitation of marriage shall state—

(*a*) the residence and domicile of the petitioner and the respondent at the date of the institution of the cause ;

(*b*) the dates, times and places of the alleged boastings and assertions ;

(*c*) that the alleged boastings and assertions are false and that the petitioner has not acquiesced therein.

Signing of petition

11. Every petition shall be signed by counsel if settled by him and, if not, by the petitioner's solicitor in his own name or the name of his firm, or by the petitioner if he sues in person.

Presentation of petition

12.—(1) A petition may be presented to any divorce county court.

(2) Unless otherwise directed on an application made ex parte, a certificate of the marriage to which the cause relates shall be filed with the petition.

(3) Where there is before a divorce county court or the High Court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of 3 years from the date of the marriage, to present a petition for divorce on the same ground as a petition for judicial separation presented before the expiration of that period.

(4) The petition shall be presented by filing it in the court office together with as many copies as there are persons to be served.

(5) C.C.R. Order 6, rule 4(2) (which, as applied by rule 5 of that Order, deals with the filing and service of petitions), shall not apply but on the filing of the petition the registrar shall—

(*a*) enter the cause in the books of the court, and

(*b*) annex to every copy of the petition for service a notice in Form 3 with Form 4 attached.

Parties

13.—(1) Unless otherwise directed—

(*a*) where a husband's petition alleges adultery, the alleged adulterer shall be made a co-respondent in the cause ;

(*b*) where a wife's petition alleges adultery with a woman named, the alleged adulteress shall be made a respondent in the cause ;

(*c*) where a wife's petition alleges sodomy with a person named, that person shall be made a respondent in the cause.

(2) Where a petition alleges that the other party to the marriage has been guilty of an improper association (other than adultery or sodomy) with a person named or of rape upon a person named, the petitioner shall, as soon as practicable after the filing of the petition, apply to the court for directions as to whether that person shall be made a respondent in the cause.

(3) An application for directions under paragraph (1) or (2) may be made ex parte if no notice of intention to defend has been given.

(4) This rule does not apply where the alleged adulterer, adulteress or person named has died before the filing of the petition.

SERVICE OF PETITION, ETC.

Service of petition

14.—(1) Subject to the provisions of this rule, a copy of every petition shall be served personally or by post on every respondent or co-respondent.

(2) Service may be effected—

(*a*) where the party to be served is a person under disability within the meaning of rule 105, through the petitioner, and

(*b*) in any other case, through the court or, if the petitioner so requests, through the petitioner.

(3) Personal service shall in no case be effected by the petitioner himself.

(4) A copy of any petition which is to be served through the court shall be served by post by an officer of the court.

(5) For the purposes of the foregoing paragraphs, a copy of a petition shall be deemed to be duly served if—

(*a*) an acknowledgement of service in Form 4 is signed by the party to be served or by a solicitor on his behalf and is returned to the court office, and

(*b*) where the form purports to be signed by a respondent spouse, his signature is proved at the hearing.

(6) Where a copy of a petition has been sent to a party and no acknowledgement of service has been returned to the court office, the registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.

(7) Where a copy of a petition has been served on a party personally and no acknowledgement of service has been returned to the court office, service shall be proved by filing an affidavit of service showing the server's means of knowledge of the identity of the party served.

(8) Where an acknowledgement of service is returned to the court office, the registrar shall send a photographic copy thereof to the petitioner.

(9) An application for leave to substitute some other mode of service for the modes of service prescribed by paragraph (1), or to substitute notice of the proceedings by advertisement or otherwise, shall be made ex parte by lodging an affidavit setting out the grounds on which the application is made ; and the form of any advertisement shall be settled by the registrar.

(10) Where it appears necessary or expedient to do so—

(*a*) a judge may by order dispense with service of a copy of a petition on a respondent spouse, and

(*b*) a registrar may by order dispense with service of a copy of a petition on any other person.

An application to a registrar for an order under sub-paragraph (*b*) may, if no notice of intention to defend has been given, be made ex parte by lodging an affidavit setting out the grounds of the application.

Notice of intention to defend

15.—(1) In these rules any reference to a notice of intention to defend is a reference to an acknowledgement of service in Form 4 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgement relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the court office.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgement of service to be returned to the court office, references in these rules to the time limited for giving notice of intention to defend are references to 8 days after service of the document, inclusive of the day of service, or such other time as may be fixed.

(3) Notice of intention to defend a cause begun by petition may be given at any time before directions for trial are given, notwithstanding that the time limited for giving the notice has expired.

(4) Subject to paragraphs (2) and (3), a person may give notice of intention to defend notwithstanding that he has already returned to the court office an acknowledgement of service not constituting such a notice.

Pleadings and Amendment

Supplemental petition and amendment of petition

16.—(1) A supplemental petition may be filed only with leave.

(2) A petition may be amended without leave before it is served but only with leave after it has been served.

(3) Subject to paragraph (4), an application for leave under this rule—

(*a*) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made ex parte by

lodging in the court office the supplemental petition or a copy of the petition as proposed to be amended, and

(*b*) shall, in any other case, be made on notice (or in the High Court by summons), to be served, unless otherwise directed, on every opposite party.

(4) The registrar may, if he thinks fit, require an application for leave to be supported by an affidavit.

(5) An order granting leave shall—

(*a*) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;

(*b*) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.

(6) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(7) Rules 11 and 13 shall apply to a supplemental or amended petition as they apply to the original petition.

Service of supplemental or amended petition

17.—(1) Unless otherwise directed, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under rule 16, shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(2) The petitioner shall file the documents required by paragraph (1) to be served on any person and thereupon, unless otherwise directed, rules 12(5) (except sub-paragraph (*a*)) and 14 shall apply in relation to that person as they apply in relation to a person required to be served with an original petition.

Filing of answer to petition

18.—(1) Subject to paragraph (2) and to rule 20, a respondent or co-respondent who wishes to defend all or any of the charges made in the petition or who, notwithstanding that he does not wish to defend any such charge, wishes to make against the petitioner any allegation which might be a defence to the petition shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed at any time before directions have been given for the trial of the cause, notwithstanding that the time for filing the answer has expired or that the person filing the answer has not given notice of intention to defend.

(3) Any reference in these rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.

(4) Where in a cause in which relief is sought under section 1(1)(*a*)(iv) or 9(1)(*b*) of the Act of 1965 the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the allegations in the petition, give the registrar notice to that effect when filing his answer.

(5) On the filing of an answer the registrar shall order the cause to be transferred to the High Court, unless in a case to which paragraph (4) applies the respondent has not given such a notice as is mentioned in that paragraph.

Filing of reply and subsequent pleadings

19.—(1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 23.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

Filing of pleading after directions for trial

20. No pleading shall be filed without leave after directions for trial have been given.

Contents of answer and subsequent pleadings

21.—(1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required in the case of a petition by paragraphs (6), (7) and (8) of Form 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs (9), (10) or (11) of Form 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph (14) of Form 2 and so much of that form as requires the petition to conclude with a prayer giving details of the relief claimed shall, where appropriate, apply with the necessary modifications to a respondent spouse's answer as they apply to a petition:

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) An answer which contains a claim for custody of a child of the family under 16 shall include full particulars of the arrangements proposed by the respondent for the child's care and upbringing.

(5) Rule 11 shall apply with the necessary modifications to a pleading other than a petition as it applies to a petition.

Allegation against third person in pleading

22.—(1) Rules 13 and 14 shall apply with the necessary modifications to a husband's or wife's pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent or respondent there shall be substituted references to a party cited.

(2) Rule 18 shall apply with the necessary modifications to a party cited in a pleading as it applies to a respondent or co-respondent to a petition.

Service of pleadings

23. A party who files an answer, reply or subsequent pleading shall at the same time file a copy for service on every opposite party and thereupon the registrar shall annex to every copy for service on a party cited in the pleading a notice in Form 3 with Form 4 attached and shall send a copy to every other opposite party.

Supplemental answer and amendment of pleadings

24. Rules 16 and 17 shall apply with the necessary modifications to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as they apply to the filing of a supplemental petition and the amendment of a petition.

Service and amendment of pleadings in Long Vacation

25. R.S.C. Order 3, rule 3, R.S.C. Order 18, rule 5, and R.S.C. Order 20, rule 6, (which restrict the service and amendment of pleadings in the Long Vacation) shall not apply to any matrimonial proceedings pending in the High Court.

Particulars

26.—(1) A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

(3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

Re-transfer of cause to divorce county court

27.—(1) Where a cause begun by petition has been transferred to the High Court under rule 18(5) and subsequently becomes undefended, the registrar shall order it to be re-transferred to a divorce county court, unless (because of the proximity of the probable date of trial or otherwise) he thinks it desirable that the cause should be heard and determined in the High Court.

(2) Nothing in paragraph (1) shall require a cause to be re-transferred at the time when it becomes undefended if in the opinion of the registrar the question whether it is desirable to retain it in the High Court cannot conveniently be considered until later.

PREPARATIONS FOR TRIAL

Discovery of documents in defended cause

28.—(1) Subject to paragraph (4) of this rule, R.S.C. Order 24 (which deals with the discovery and inspection of documents) shall apply to a defended cause begun by petition as it applies to an action begun by writ, with the following modifications:—

(*a*) rule 1(2), the second paragraph of rule 2(1), rule 2(2) to (4), rules 4(2) and 6, and in rule 16(1) the words from "including" to the end, shall be omitted,

(*b*) in rule 2(7) for the words "the summons for directions is taken out" there shall be substituted the words "directions for trial are given".

(2) For the purposes of R.S.C. Order 24, rule 2(1), as applied by paragraph (1) of this rule, pleadings shall be deemed to be closed at the expiration of 14 days after the service of the reply or, if there is no reply, at the expiration of 14 days after service of the answer, and are deemed to be closed then notwithstanding that any request or order for particulars previously made has not been complied with.

(3) The petitioner and any party who has filed an answer shall be entitled to have a copy of any list of documents served on any other party under R.S.C. Order 24 as applied by paragraph (1) of this rule, and such copy shall, on request, be supplied to him free of charge by the party who served the list.

In this paragraph " list of documents " includes an affidavit verifying the list.

(4) No party shall be compelled by virtue of this rule or any order made thereunder to make discovery of, or to produce for inspection by any other party, any document which tends to show that he has been guilty of adultery.

Discovery by interrogatories in defended cause

29.—(1) Subject to paragraph (2) of this rule, R.S.C. Order 26 (which deals with discovery by interrogatories) shall apply to a defended cause begun by petition as it applies to a cause within the meaning of that Order, but with the omission of—

(*a*) in rule 1(2), the words " or the notice under Order 25, rule 7 ",

(*b*) rule 2, and

(*c*) in rule 6(1), the words from " including " to the end.

(2) Leave shall not be given to serve on a party any interrogatory the answer to which might tend to show that he has been guilty of adultery.

(3) A copy of the proposed interrogatories shall be filed when the summons for an order under R.S.C. Order 26, rule 1, is issued.

Medical examination in proceedings for nullity

30.—(1) In proceedings for nullity on the ground of impotence or incapacity the petitioner shall, subject to paragraph (2), apply to the registrar to determine whether medical inspectors should be appointed to examine the parties.

(2) An application under paragraph (1) shall not be made in an undefended cause—

(*a*) if the husband is the petitioner, or

(*b*) if the wife is the petitioner and—

(i) it appears from the petition that she was either a widow or divorced at the time of marriage in question, or

(ii) it appears from the petition or otherwise that she has borne a child, or

(iii) a statement by the wife that she is not a virgin is filed,

unless, in any such case, the petitioner is alleging his or her own impotence or incapacity.

(3) References in paragraphs (1) and (2) to the petitioner shall, where the cause is proceeding only on the respondent's answer or where the allegation of impotence or incapacity is made only in the respondent's answer, be construed as references to the respondent.

(4) An application under paragraph (1) by the petitioner shall be made—

(*a*) where the respondent has not given notice of intention to defend, after the time limited for giving the notice has expired ;

(*b*) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed ;

and an application under paragraph (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under paragraph (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the cause, make an application under that paragraph.

(6) In proceedings for nullity on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the registrar for the appointment of medical inspectors to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the petitioner under paragraph (1) or (6) may be made ex parte.

(8) If the registrar hearing an application under paragraph (1) or (6) considers it expedient to do so, he shall appoint a medical inspector or, if he thinks it necessary, two medical inspectors to examine the parties and report to the court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in paragraph (1) the court may, if it thinks fit, appoint a medical inspector or two medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under paragraph (8) is made or who has the conduct of proceedings in which an order under paragraph (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

Conduct of medical examination

31.—(1) Every medical examination under rule 30 shall be held at the consulting room of the medical inspector or, as the case may be, of one of the medical inspectors appointed to conduct the examination:

Provided that the registrar may, on the application of a party, direct that the examination of that party shall be held at the court office or at such other place as the registrar thinks convenient.

(2) Every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined.

(3) Every report made in pursuance of rule 30 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

Order for transfer of cause

32.—(1) A judge may order that a cause pending in a divorce county court be transferred to the High Court, where, having regard to all the circumstances including the difficulty or importance of the cause or of any issue arising therein, he thinks it desirable that the cause should be heard and determined in the High Court.

(2) Where on or after the presentation of the petition in a cause pending in a divorce county court it appears to the registrar that there is before the High Court another petition in respect of the same marriage which has not been dismissed or otherwise disposed of by final order, the registrar may order that the cause be transferred to the High Court.

(3) The registrar of a divorce county court in which any cause is pending or a judge may order that the cause be transferred to another divorce county court.

(4) Where a cause has been transferred to the High Court, the registrar of the registry in which it is proceeding or a judge may order that the cause be transferred to another registry.

(5) An order under any of the foregoing paragraphs may be made by the judge or registrar, as the case may be, of his own motion or on the application of a party, but before making an order of his own motion the judge or registrar shall give the parties an opportunity of being heard on the question of transfer and for that purpose the registrar may give the parties notice of a date, time and place at which the question will be considered.

Directions for trial

33.—(1) On the written request of the petitioner or of any party who is defending a cause begun by petition, the registrar shall give directions for the trial of the cause if he is satisfied—

(*a*) that any application for directions required by rule 13(2), or by that rule as applied by rule 16(7) or 22(1), has been made ;

(*b*) that a copy of the petition (including any supplemental or amended petition) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, that any affidavit required by rule 106(2) has been filed ;

(*c*) if no notice of intention to defend has been given by any party entitled to give it, that the time limited for giving such notice has expired ;

(*d*) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired ;

(*e*) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired ;

(*f*) in proceedings for nullity—

(i) that any application required by rule 30(1) has been made, and

(ii) where an order for the examination of the parties has been made on an application under rule 30, that the notice required by paragraph (10) of that rule has been served and that the report of the inspector or inspectors has been filed.

(2) Where the cause is pending in a divorce county court other than the divorce registry and is to be tried at that court, the registrar shall, if he considers it practicable to do so, give directions for trial by fixing the date, place and, as nearly as may be, the time of the trial and giving notice thereof to every party to the cause.

(3) In any other case the registrar shall give directions for trial by setting the cause down for trial and giving notice that he has done so to every party to the cause.

Determination of place of trial

34.—(1) Directions for trial shall determine the place of trial.

(2) In the case of an undefended cause, the request for directions shall state—

(*a*) the place of trial desired,

(*b*) the place where the witnesses whom it is proposed to call at the trial reside,

(*c*) an estimate of the probable length of the trial, and

(*d*) any other fact which may be relevant for determining the place of trial.

(3) In the case of a defended cause, the party intending to make a request for directions shall, not less than 8 days before making his request, give notice of the place of trial desired to every other party who has given notice of intention to defend and, if the party intending to make the request is the respondent, to the petitioner.

The notice shall state the number of witnesses to be called on behalf of the party giving the notice and the places where he and his witnesses reside.

(4) If any party to whom notice is given under paragraph (3) does not consent to the place of trial specified in the notice, he may, within 8 days after receiving it, apply to the registrar to direct trial at some other place; and if he does consent to the place so specified, he shall within that period send to the party by whom the notice was given a statement signed by his solicitor (or by him, if he is acting in person) indicating that the notice has been received and specifying the number of witnesses to be called on his behalf and the places where he and his witnesses reside.

(5) Where no application for trial at some other place is made under paragraph (4) within the period specified in that paragraph, the party making the request for directions shall state in his request—

(*a*) the place of trial desired;

(*b*) the number of witnesses to be called on his behalf and the places where he and his witnesses reside;

(*c*) if it be the case, that no statement has been received from any party (naming him) to whom notice was given under paragraph (3); and

(*d*) an estimate of the probable length of the trial;

and shall file with the request any statement sent to him by any other party in accordance with paragraph (4).

(6) If circumstances arise tending to show that the estimate of the probable length of the trial given under paragraph (2) or (5)(*d*) or made on an application under paragraph (4) is inaccurate, a further estimate shall be filed.

(7) In determining the place of trial of a defended cause the registrar shall have regard to all the circumstances of the case so far as it is possible for him to do so on the basis of the information available to him, including the convenience of the parties and their witnesses, the costs likely to be incurred, the date on which the trial can take place, the estimated length of the trial and the respective facilities for trial at the Royal Courts of Justice and a divorce town.

(8) Where a defended cause is directed to be tried at a divorce town, the registrar shall direct whether the cause is to be included in the long cause list or the short cause list referred to in rule 46 according to the estimated length of the trial, and the registrar of the registry for the divorce town may vary any such direction and give such consequential directions as may be necessary.

(9) Directions determining the place of trial of any cause may be varied by the registrar of the court or registry in which the cause is proceeding on the application of any party to the cause.

Directions as to allegations of cruelty

35.—(1) In a defended cause in which it is alleged that either spouse has treated the other with cruelty, the registrar may, of his own motion or on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter-allegations of cruelty made in the pleadings or particulars.

(2) Where such an order is made or authority given, the allegations and counter-allegations shall, unless otherwise directed, be listed concisely in chronological order, each counter-allegation being set out against the allegation to which it relates, and the party filing the schedule shall serve a copy of it on any other party to the cause who has filed a pleading.

Discretion statement

36.—(1) Every party to a matrimonial cause praying that the court will exercise its discretion to grant a decree notwithstanding his adultery shall file a statement (in this rule referred to as a "discretion statement") signed and dated by him or his solicitor, setting out particulars of the acts of adultery committed by him and of the facts which it is material for the court to know for the purpose of the exercise of its discretion.

(2) The discretion statement of a wife who is the petitioner or respondent in the cause shall give the name and date of birth of every living child under 21 who has been born to her during the marriage and is not referred to in the petition or answer.

(3) Where directions for trial are requested by the party praying for the exercise of discretion, the discretion statement shall be filed in a sealed envelope with the request, and where the directions are requested by any other party, the discretion statement shall be filed in a sealed envelope within 10 days after the receipt of notice that the cause has been set down for trial.

(4) A discretion statement shall be open to inspection by the Queen's Proctor but, except by the direction of a judge, shall not be open to inspection by any other person until it has been put in evidence at the trial:

Provided that where a party who has filed a discretion statement applies to the registrar for leave to give his own evidence by affidavit, the discretion statement shall be open to inspection by the registrar.

(5) Where a discretion statement contains an allegation of adultery or other matrimonial offence on the part of the other spouse which is not referable to a specific allegation in the pleadings, the party filing the statement shall forthwith give notice of the allegation to that spouse:

Provided that the judge may at the trial dispense with the notice if he is satisfied that failure to give it was justified.

(6) Neither the fact that a discretion statement has been filed or that notice under paragraph (5) has been given, nor the contents of the discretion statement or notice, shall be given in evidence against the party who filed the statement or gave the notice except where that party has put the discretion statement or notice or the contents thereof in evidence in open court.

Security for costs

37.—(1) After directions for trial have been given or, with leave, at an earlier stage of the cause, a wife who is a petitioner or who has filed an answer may apply for security for her costs up to the trial and of and incidental to the trial, or for any part of such costs.

(2) Where an application for security has been made under paragraph (1), the registrar shall ascertain what is a sufficient sum of money to cover the costs to which the application relates, and if, after taking all the circumstances into account (including the means of the husband and the wife), the registrar considers that the husband should provide security for all or some of such costs, he may order the husband to pay the sum so ascertained, or some part of it, into court or to give security within such time as he may fix and may direct a stay of the proceedings until the order is complied with.

(3) In a cause pending in the High Court the bond taken to secure a wife's costs under this rule shall be given to the senior registrar by the name of the principal probate registrar and shall be filed and shall not be delivered out or sued upon without the leave of the registrar of the registry in which the cause is proceeding.

(4) Where the wife is the petitioner, an application by her for the removal of a stay of the proceedings may be made to the registrar ex parte if the husband has not given notice of intention to defend.

(5) C.C.R. Order 3, rule 1 (which requires a person bringing proceedings to give security for costs if he is not resident in England or Wales), shall not apply to matrimonial proceedings.

EVIDENCE

Evidence generally to be taken orally

38. Subject to the provisions of rules 39 and 40 and of the Evidence Act 1938(a) and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally and in open court.

Power to order evidence by affidavit, etc.

39.—(1) A judge or registrar may order—

(*a*) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable;

(*b*) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—

(i) by statement on oath of information or belief, or

(ii) by the production of documents or entries in books, or

(iii) by copies of documents or entries in books, or

(iv) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper containing a statement of that fact; and

(*c*) that not more than a specified number of expert witnesses may be called.

(2) An application to the registrar for an order under paragraph (1) shall—

(*a*) if no notice of intention to defend has been given, or

(*b*) if the petitioner and every party who has given notice of intention to defend consents to the order sought,

be made ex parte by filing an affidavit stating the grounds on which the application is made.

(3) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a

(a) 1938 c. 28.

particular fact may be given at the trial by affidavit, the proposed affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under paragraph (2).

(4) The registrar may, on the application of any party to a cause begun by petition, make an order under C.C.R. Order 20, rule 18, or (if the cause is pending in the High Court) under R.S.C. Order 39, rule 1, for the examination on oath of any person, and C.C.R. Order 20, rule 18, or (if the cause is pending in the High Court) R.S.C. Order 38, rule 9, and Order 39, rules 1 to 14, (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

Evidence by affidavit without order

40.—(1) Where—

(*a*) in proceedings for divorce in which relief is sought under section 1(1)(*a*)(iv) of the Act of 1965 the respondent's guardian ad litem consents to the medical evidence being given by affidavit, or

(*b*) in an undefended cause it is necessary to prove that marital intercourse did not take place between the parties during any period in which one of them was a member of Her Majesty's forces and it is proposed to prove the absence of that party from Great Britain during the whole of that period by the evidence of an officer of the Ministry of Defence, or

(*c*) in any cause it is necessary, notwithstanding the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(a), to prove the undisputed validity of a marriage celebrated outside the United Kingdom and it is proposed to give expert evidence of such validity,

such evidence may be given at the trial by reading the affidavit of the witness by whom the evidence is to be given unless the judge at the trial otherwise directs.

(2) An affidavit which is to be read at the trial under paragraph (1) shall be filed at least 7 days before the trial, together with the written consent of the guardian ad litem in a case to which sub-paragraph (*a*) of that paragraph applies.

(3) On any application made—

(*a*) in a divorce county court, by originating application or in accordance with C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings), or

(*b*) in the High Court, by originating summons, summons, notice or motion,

evidence may be given by affidavit unless these rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the court.

(4) C.C.R. Order 20, rule 19(6) (which enables the opposite party by notice to require the attendance of a deponent), shall not apply to an affidavit made in matrimonial proceedings.

(a) 1933 c. 4.

Saving for judge's powers

41. Nothing in rules 39 or 40 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interests of justice he thinks fit to do so.

Issue of witness summons or subpoena

42.—(1) A witness summons in a cause pending in a divorce county court may be issued in that court or in the court of trial at which the cause is to be tried.

(2) A writ of subpoena in a cause pending in the High Court may issue out of—

(*a*) the registry in which the cause is proceeding, or

(*b*) if the cause is to be tried at the Royal Courts of Justice, the divorce registry, or

(*c*) if the cause is to be tried at a divorce town, the registry for that town.

TRIAL, ETC.

Places where causes may be tried

43.—(1) Any cause begun by petition which is pending in a divorce county court may be tried at any court of trial.

(2) Any cause begun by petition which is pending in the High Court may be tried at the Royal Courts of Justice or at any divorce town except that—

(*a*) a long cause may be fixed for trial only at the Royal Courts of Justice or at a town marked " A " in Appendix I ; and

(*b*) no cause other than a long cause may be fixed for trial at Bury St. Edmunds.

(3) Where in pursuance of sections 4(2)(*a*) and 5 of the Act of 1967 a judge for a county court district is directed by the Lord Chancellor to exercise the jurisdiction of a divorce county court at the Royal Courts of Justice, the Royal Courts of Justice shall, for the purposes of section 17(1) of the County Courts Act 1959 be treated as a place at which the court for that district is held.

Transmission of file etc. on setting down cause

44.—(1) Where a cause pending in a divorce county court is set down for trial at another divorce county court, the registrar of the court in which the cause is pending shall send the file of the cause to the registrar of the court of trial.

(2) As soon as practicable after a cause pending in a divorce county court has been set down for trial, the registrar of the court of trial shall fix the date, place and, as nearly as may be, the time of the trial and give notice thereof to every party to the cause.

(3) On setting down for trial a cause pending in the High Court, the registrar of the registry in which the cause is proceeding shall—

(*a*) if the cause is to be tried at the Royal Courts of Justice and is not proceeding in the divorce registry, send the file of the cause to that registry, and

(*b*) if the cause is to be tried at a divorce town and is not proceeding in the registry for that town, send the file of the cause to that registry.

(4) In these rules the references to the registry for the divorce town at which a cause is to be tried shall, in relation to a cause set down for trial at Bodmin, Bury St. Edmunds, Lewes or Ryde, be construed as references to the registry at Truro, Ipswich, Brighton and Newport (Isle of Wight) respectively.

Trial of issue

45. Where directions are given for the separate trial of any issue, the registrar shall, after those directions have been complied with, set down the issue for trial and thereupon rule 44 shall apply as if the issue were a cause.

Entry in lists of causes at divorce towns

46.—(1) The registrar of the registry for each divorce town shall prepare and keep up to date a short cause list and a long cause list, containing respectively the short causes and the long causes which are for the time being set down for trial at that divorce town.

(2) Causes shall be entered in each of the lists in the order in which they were set down for trial and for the purpose of this paragraph—

(*a*) a cause proceeding in another registry shall, subject to sub-paragraph (*b*), be treated as having been set down for trial when the file of the cause is received in the registry for the divorce town at which it is to be tried;

(*b*) a cause remitted for trial from another divorce town shall be treated as having been set down for trial at the end of the day on which it was originally set down for trial.

(3) No cause for trial at assizes (except at Birmingham, Leeds, Liverpool and Manchester) shall be entered in the long cause list kept pursuant to paragraph (1) less than 14 days before the appropriate day fixed for the assize town at which the cause is to be tried, except by order of a judge to be obtained on motion.

(4) Not less than 12 days before the appropriate day for a divorce town at which assizes are held, the registrar who keeps the list of long causes for trial at those assizes shall supply the senior registrar and the associate of the circuit with a copy of the list and, in the case of assizes held at Birmingham, Leeds, Liverpool or Manchester, shall, at convenient intervals, supply the senior registrar and the associate with copies of lists of long causes set down for trial at the assizes later than 14 days before the appropriate day.

(5) Any application on which the decision may affect the date of trial of a cause entered in the list for trial at an assize town shall be made to a judge going the circuit if—

(*a*) in the case of a cause entered for trial at Birmingham, Leeds, Liverpool or Manchester, the application is made on or after the first day of the week during which the cause has been listed for trial, and

(*b*) in the case of a cause entered for trial at any other town, the application is made on or after the day on which the judge sits at that town.

(6) In this rule "appropriate day" means—

(*a*) in the case of any assizes at which the trial of matrimonial causes is to be begun on a date specified in an order made under Article 6 of the Assizes Order 1964(a) and that date falls after the later of the days mentioned in sub-paragraph (*b*), the date so specified;

(a) S.I. 1964/279 (1964 I, p. 493).

(*b*) in any other case, the commission day or the day fixed for the commencement of any adjourned assizes held after an interval of not less than 14 days.

Further provisions as to date of trial

47.—(1) Not less than 10 days before the date fixed for the trial of a short cause at a divorce town, the registrar of the registry for that town shall give notice of the date, place and, as nearly as may be, the time of the trial to every party to the cause.

(2) Except with the consent of the parties or by leave of a judge, no cause, whether defended or undefended, shall be tried until after the expiration of 10 days from the date on which directions for trial were given.

Mode of trial

48. Unless otherwise directed, every cause and any issue arising therein shall be tried by a judge without a jury.

Right to be heard on ancillary questions

49.—(1) A respondent spouse may, without filing an answer, be heard on—

(*a*) any question of custody of, or access to, any child of the family,

(*b*) any question whether any such child should be committed to the care of a local authority under section 36 of the Act of 1965,

(*c*) any question whether a supervision order should be made as respects any such child under section 37 of that Act, and

(*d*) any question of ancillary relief.

(2) A co-respondent or party cited shall not be heard on any question as to damages unless he has filed an answer setting out any matter on which he relies in mitigation of the damages.

(3) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs but no allegation shall be made against a party claiming costs unless the party making the allegation has filed an answer.

(4) A party shall be entitled to be heard on any question pursuant to paragraph (1) or (3) whether or not he has returned to the court office an acknowledgement of service stating his wish to be heard on that question.

(5) In proceedings after a decree nisi of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the decree shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

Offer of payment in satisfaction of claim for damages

50.—(1) A co-respondent against whom damages are claimed may, before the trial of the cause, make, without prejudice to his defence, a written offer to the petitioner to pay a specified sum of money in satisfaction of the claim, and reserve the right to bring the offer to the attention of the judge at the trial.

(2) Unless such an offer is accepted, it shall not be brought to the attention of the judge until after all questions of liability and amount of the damages have been decided.

(3) The judge, in exercising his discretion as to costs, may take into account, to such an extent as may be appropriate in the circumstances, any offer which is brought to his attention in pursuance of paragraph (1).

Investigation of arrangements for children under 16

51. Where at the hearing of proceedings for divorce, nullity of marriage or judicial separation it appears that there is a child of the family who is under 16, there shall be entered in the court minutes a statement recording the matters mentioned in section 33(1) of the Act of 1965 with respect to which the judge is satisfied or, where the judge has proceeded under section 33(2) of that Act, a statement that the conditions for which that sub-section provides have been fulfilled.

Restoration of matters adjourned etc. at the hearing

52.—(1) Where at the trial of a cause any application is adjourned by the judge for hearing in chambers, it may be restored—

(*a*) in the High Court, by notice without a summons, or

(*b*) in a divorce county court, on notice under C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings),

(*c*) in the High Court or a divorce county court, by notice given by the registrar when in his opinion the matter ought to be further considered,

and the notice shall state the place and time for the hearing of the restored application and be served on every party concerned.

(2) Where in proceedings for divorce, nullity of marriage or judicial separation the judge has not stated, as respects any child of the family under 16, that he is satisfied with respect to the matters mentioned in section 33(1) of the Act of 1965, paragraph (1) shall, unless the judge otherwise directs, apply as if an application with respect to the arrangements for the care and upbringing of any such child had been adjourned for hearing in chambers.

Payment of damages

53.—(1) Where damages are awarded in any cause pending in the High Court—

(*a*) the judge shall order the damages to be paid into court unless he is satisfied that it would not be expedient to do so;

(*b*) if an order made under sub-paragraph (*a*) is not complied with, the party in whose favour it was made may apply to a judge to vary the order by directing payment of the damages to a person specified in the application, and the judge, if satisfied that it is just and equitable to do so, may vary the order accordingly on an undertaking by that person to pay the damages into court or otherwise deal with them as the judge may direct;

(*c*) if an application under sub-paragraph (*b*) is made after decree absolute or final decree, the judge, if satisfied that it is just and equitable to do so, may dispense with the undertaking mentioned in that sub-paragraph.

(2) Damages paid into court—

(*a*) pursuant to an order made under paragraph (1)(*a*) or an undertaking given under paragraph (1)(*b*) in a cause pending in the High Court, or

(*b*) pursuant to section 99(3) of the County Courts Act 1959 in a cause pending in a divorce county court,

shall not be paid out except by order of a judge.

(3) In proceedings for divorce an order for payment out under paragraph (2) may be made when the decree nisi is pronounced or subsequently but shall not take effect until the decree is made absolute.

Shorthand note etc. of proceedings at trial

54.—(1) Official shorthand writers shall be appointed by the Lord Chancellor for the purpose of trials of causes:

Provided that if at any divorce town or court of trial no shorthand writer has been appointed under this paragraph or the person so appointed is not available, a shorthand writer may be appointed by the judge hearing causes at that town or court.

(2) Unless the judge otherwise directs, a shorthand note shall be taken of the proceedings at the trial of every cause in open court.

(3) The shorthand writer shall sign the note and certify it to be a correct shorthand note of the proceedings and shall retain the note unless he is directed by the registrar to forward it to him.

(4) On being so directed the shorthand writer shall furnish the registrar with a transcript of the whole or such part as may be directed of the shorthand note.

(5) Any party, any person who has intervened in a cause or the Queen's Proctor shall be entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer shall, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the shorthand writer's charges at such rate as may be fixed by the Treasury.

(6) Except as aforesaid, the shorthand writer shall not, without the permission of the judge or registrar, furnish the shorthand note or a transcript of the whole or any part thereof to anyone.

(7) In these rules references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer shall have effect as if they were references to the person responsible for transcribing the record.

Application for re-hearing

55.—(1) An application for re-hearing of a cause tried by a judge alone (whether in the High Court or a divorce county court), where no error of the court at the hearing is alleged, shall be made to a judge.

(2) Unless otherwise directed, the application shall be made to the judge by whom the cause was tried and shall be heard in open court.

(3) The application shall be made—

(*a*) in the High Court, by a notice to attend before the judge on a day specified in the notice, and

(*b*) in the county court, on notice in accordance with C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings),

and the notice shall state the grounds of the application.

(4) Unless otherwise directed, the notice must be issued within 6 weeks after the judgment and served on every other party to the cause not less than 14 days before the day fixed for the hearing of the application.

(5) The applicant shall file a certificate that the notice has been duly served on each person required to be served therewith.

(6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any pleading which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the cause.

(7) Not less than 7 days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of the official shorthand note of the proceedings at the trial.

(8) Any other application for re-hearing shall be made by way of appeal to the Court of Appeal.

DECREES AND ORDERS

Decrees and orders

56.—(1) Every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up—

(*a*) in the case of a decree or order made at a divorce county court, by the registrar of that court;

(*b*) in the case of a decree or order made at the Royal Courts of Justice, by a registrar of the divorce registry;

(*c*) in the case of a decree or order made at a divorce town, by the registrar of the registry for that town.

(2) C.C.R. Order 24, rule 5 (which deals with the preparation of a decree), shall not apply to a decree made in a cause pending in a divorce county court.

Return of cause file

57. The registrar to whom the file of a cause has been sent under Rule 44 shall, as soon as practicable after the cause has been tried, return the file to the registrar from whom he received it, together with any documentary evidence produced during the trial which has not been ordered to be returned to the party who produced it and the decree or order pronounced or made in the cause.

Copies of decrees and orders

58.—(1) A copy of every decree shall be sent by the registrar to every party to the cause.

(2) A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on payment of the prescribed fee.

Service of order

59.—(1) Where an order made in matrimonial proceedings has been drawn up, the registrar shall, unless otherwise directed, send a copy of the order to every party affected by it.

(2) Where a party against whom the order is made is acting by a solicitor, a copy may, if the registrar thinks fit, be sent to that party as if he were acting in person, as well as to his solicitor.

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to R.S.C. Order 45, rule 7 (which deals with the service of an order to do or abstain from doing an act), C.C.R. Order 25, rule 68 (which deals with orders enforceable by attachment), and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

Service of decree or order requiring act to be done

60. Where a decree or order requires a person to do or abstain from doing an act, the copy required by R.S.C. Order 45, rule 7, or C.C.R. Order 25, rule 68, to be served on the person mentioned in those rules may either be served on him personally or delivered to his solicitor.

Intervention to show cause by Queen's Proctor

61.—(1) If the Queen's Proctor wishes to show cause against a decree nisi being made absolute, he shall give notice to that effect to the registrar and to the party in whose favour it was pronounced, and, if the cause is pending in a divorce county court, the registrar shall thereupon order it to be transferred to the High Court.

(2) Within 21 days after giving notice under paragraph (1) the Queen's Proctor shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on each of the following persons—

(*a*) the party in whose favour the decree was pronounced,

(*b*) every other party affected by the decree, and

(*c*) if the plea alleges that the party in whose favour the decree has been pronounced has committed adultery with a person named, that person.

The copy for service on a person mentioned in sub-paragraph (*c*) shall omit any part of the plea containing an allegation in which he is not named.

(3) The registrar shall—

(*a*) serve a copy of the plea on each of the persons mentioned in paragraph (2)(*a*) and (*b*), and

(*b*) annex to every copy of the plea for service on a person mentioned in paragraph (2)(*c*) a notice in Form 3 with Form 4 attached.

Unless otherwise directed, rule 14 shall apply with the necessary modifications to a person mentioned in paragraph (2)(*c*) as it applies to a co-respondent.

(4) Subject to the following provisions of this rule, these rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition by which a cause is begun.

(5) If no answer to the plea is filed within the time limited or, if an answer is filed and struck out or not proceeded with, the Queen's Proctor may apply forthwith by motion for an order rescinding the decree and dismissing the petition.

(6) Rule 33 shall apply to proceedings in respect of a plea by the Queen's Proctor as it applies to the trial of a cause, so however that if all the charges in the plea are denied in the answer the application for directions shall be made by the Queen's Proctor and in any other case it shall be made by the party in whose favour the decree nisi has been pronounced.

Intervention to show cause by person other than Queen's Proctor

62.—(1) If any person other than the Queen's Proctor wishes to show cause under section 7 of the Act of 1965 against a decree nisi being made absolute, he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced and, if the affidavit alleges collusion, on the other party or parties to the alleged collusion.

(2) A party on whom a copy of an affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be filed without leave.

(5) Any person who files an affidavit under paragraph (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the registrar shall thereupon serve the copy on that person.

(6) A person showing cause shall apply to the judge for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where no affidavit in answer has been filed, within 14 days after expiry of the time allowed for filing such an affidavit.

(7) If the person showing cause does not apply under paragraph (6) within the time limited, the person in whose favour the decree was pronounced may do so.

(8) If directions are given for the trial of an intervention in a cause pending in a divorce county court, the registrar shall thereupon order the cause to be transferred to the High Court.

Intervention to show cause to be tried in London

63. The trial of any intervention under rule 61 or 62, whether the cause is proceeding in the divorce registry or a district registry, shall take place at the Royal Courts of Justice, unless the President otherwise directs.

Rescission of decree nisi by consent

64.—(1) Where, after a decree nisi has been pronounced but before it has been made absolute, a reconciliation has been effected between the petitioner and the respondent, either party may apply for an order rescinding the decree by consent.

(2) Where the cause is pending in a divorce county court, the application shall be made on notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise affected by the decree, and where the cause is pending in the High Court, a copy of the summons by which the application is made shall be served on every such person.

(3) The application shall be made to a judge and may be heard in chambers.

Decree absolute

65.—(1) Subject to paragraph (3), an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the registrar a notice in Form 5.

(2) On the lodging of such a notice, the registrar shall search the court minutes and if he is satisfied—

(*a*) that no appeal against the decree and no application for re-hearing of the cause is pending;

(*b*) that no order has been made by the Court of Appeal extending the time for appealing against the decree or by a judge extending the time for making an application for re-hearing of the cause or, if any such order has been made, that the time so extended has expired;

(*c*) that no application for such an order as is mentioned in sub-paragraph (*b*) is pending ;

(*d*) that no intervention under rule 61 or 62 is pending ; and

(*e*) that the provisions of section 33 of the Act of 1965 do not apply or have been complied with,

the registrar shall make the decree absolute:

Provided that if the notice is lodged more than 12 months after the decree nisi, the registrar may require the applicant to file an affidavit accounting for the delay and may make such order on the application as he thinks fit or refer the application to a judge.

(3) Where there are circumstances which ought to be brought to the notice of the court before a decree nisi is made absolute, an application for the decree to be made absolute shall be made to a judge.

Unless otherwise directed, the summons by which the application is made (or, where the cause is pending in a divorce county court, notice of the application) shall be served on every party to the cause (other than the applicant) and on any other person with whom adultery is alleged, and the application shall be heard in open court.

(4) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to a judge or the registrar, and the summons by which the application is made (or, where the cause is pending in a divorce county court, notice of the application) shall be served on the other spouse not less than 4 clear days before the day on which the application is heard.

(5) An order granting an application under paragraph (3) or (4) shall not take effect until the registrar has searched the court minutes and is satisfied as to the matters mentioned in paragraph (2).

(6) Where a decree nisi is made absolute, the registrar shall make an indorsement to that effect on the decree, stating the precise time at which it was made absolute.

Certificate of decree absolute

66.—(1) On a decree nisi being made absolute, the registrar shall—

(*a*) send to the petitioner and the respondent spouse a certificate in Form 6 or 7, whichever is appropriate, authenticated by the seal of the divorce county court or registry from which it is issued, and

(*b*) if the cause is proceeding in a district registry or a divorce county court other than the divorce registry, send to the divorce registry an index card relating to the cause.

(2) A central index of decrees absolute shall be kept at the divorce registry and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

(3) A certificate in Form 6 or 7 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

Rescission of decree of judicial separation

67.—(1) A petition for the rescission of a decree of judicial separation shall set out particulars of the decree and the grounds for rescission relied on by the petitioner.

(2) The party in whose favour the decree was pronounced may file an answer within 14 days after service of a copy of the petition on him.

(3) Except as provided in paragraph (2), all proceedings on the petition shall be carried on in the same manner, so far as practicable, as proceedings on a petition for judicial separation.

ANCILLARY RELIEF

Application by petitioner or respondent for ancillary relief

68.—(1) Any application by a petitioner, or by a respondent spouse who files an answer claiming relief, for—

(*a*) an order for alimony pending suit,

(*b*) a child maintenance order,

(*c*) a maintenance order,

(*d*) a secured provision order,

(*e*) a permanent alimony order, or

(*f*) a lump sum order,

shall be made in the petition or answer, as the case may be.

(2) Notwithstanding anything in paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently—

(*a*) by leave of a judge, either by notice in Form 8 or at the trial, or

(*b*) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 8.

(3) An application by a petitioner or respondent spouse for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form 8.

Application by guardian etc. for maintenance of children

69. Any of the following persons, namely—

(*a*) the guardian of any child of the family,

(*b*) any person who has the custody or the care and control of a child of the family under an order of the High Court or a divorce county court,

(*c*) without prejudice to rule 93(2), a local authority to whom the care of a child of the family has been committed by an order made under section 36 of the Act of 1965,

(*d*) any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a child of the family,

(*e*) the Official Solicitor if appointed the guardian ad litem of a child of the family under rule 108, and

(*f*) any other person in whose care a child of the family is and who has obtained leave to intervene in the cause for the purpose of applying for maintenance for that child,

may apply for a child maintenance order as respects that child by notice in Form 8.

Application in Form 8

70. Where an application for ancillary relief is made by notice in Form 8, the notice shall be filed—

(*a*) if the cause is pending in a divorce county court, in that court, or

(*b*) if the cause is pending in the High Court, in the registry in which it is proceeding,

and the applicant shall serve a copy of the notice on the respondent to the application.

Application for ancillary relief after order of magistrates' court

71. Where an application for ancillary relief is made while there is in force an order of a magistrates' court for maintenance of a spouse or child, the applicant shall file a copy of the order on or before the hearing of the application.

Children to be separately represented on certain applications

72.—(1) Where an application is made to the High Court or a divorce county court for a wife's property settlement order or for a variation of settlements order, the court shall, unless it is satisfied that the settlement makes adequate provision for any children concerned or, as the case may be, that the proposed variation does not adversely affect the rights or interests of such children, direct that the children be separately represented on the application, either by a solicitor or by a solicitor and counsel, and may appoint the Official Solicitor or other fit person to be guardian ad litem of the children for the purpose of the application.

(2) Where an application is made for a secured provision order, the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (1).

(3) Before a person other than the Official Solicitor is appointed guardian ad litem under this rule there shall be filed a certificate by the solicitor acting for the children that the person proposed as guardian has no interest in the matter adverse to that of the children and that he is a proper person to be such guardian.

Evidence on application for alimony, etc.

73.—(1) A petitioner or respondent spouse who has applied for ancillary relief in his petition or answer and who intends to proceed with the application before a registrar shall, subject to rule 82, file a notice in Form 9 and serve a copy on the other spouse.

(2) Where a respondent spouse or a petitioner is served—

(*a*) with a notice in Form 8 of an application for ancillary relief, not being an application to which rule 74 or 75 applies, or

(*b*) with a notice in Form 9,

then, unless the parties are agreed upon the terms of the proposed order, he shall, within 14 days after service of the notice, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(3) An affidavit in reply may be filed within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix.

Evidence on application for settlement of wife's property, etc.

74.—(1) An application for a wife's property settlement order or for a variation of settlements order or an avoidance of disposition order shall state the nature of the settlement or variation proposed or the disposition to be set aside and shall, unless otherwise directed, be supported by an affidavit by the applicant stating the facts relied on in support of the application and the names and dates of birth of any children of the marriage (including any child adopted by both parties to the marriage).

(2) The affidavit in support of an application for a wife's property settlement order shall contain full particulars of the property to which the wife is entitled either in possession or reversion; and the affidavit in support

of an application for a variation of settlements order shall contain full particulars of all settlements, whether ante-nuptial or post-nuptial, made on the spouses and of the funds brought into settlement by each spouse.

(3) A copy of the notice by which any such application is made, 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 a variation of settlements order, the trustees of the settlement,

(*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.

(4) Any person served with notice of an application to which this rule applies may, within 14 days after service, file an affidavit in answer.

Evidence on application for modification order

75.—(1) An application for a modification order shall be supported by an affidavit by the applicant setting out full particulars of his property and income and the grounds on which the application is made.

(2) The respondent to the application may, within 14 days after service of the affidavit, file an affidavit in answer.

Service of affidavit in answer or reply

76. A person who files an affidavit for use on an application under rule 73, 74 or 75 shall at the same time serve a copy on the opposite party.

Preliminary investigation by registrar of application for ancillary relief

77.—(1) On or after the filing of a notice in Form 8 or 9 an appointment shall be fixed for the hearing of the application by the registrar.

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

(3) Notice of the appointment, unless given in Form 8 or 9, as the case may be, shall be given by the registrar to every party to the application.

(4) Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the registrar for directions.

(5) At the hearing of an application for ancillary relief the registrar shall, subject to rule 80(3), investigate the allegations made in support of and in answer to the application and may take evidence orally and may order the attendance of any person for the purpose of being examined or cross-examined, and may at any stage of the proceedings order the discovery and production of any document or require further affidavits.

(6) Where any party to such an application intends on the day appointed for the hearing to apply only for directions, he shall file and serve on every other party a notice to that effect.

Applications heard by registrar

78. Except in a case to which rule 79 applies, the registrar shall, after completing his investigation under rule 77, either make such order as he thinks just or refer the application, or any question arising thereon, to a

judge for his decision; and, pending the final determination of the application, the registrar may make an interim order upon such terms as he thinks just.

Applications heard by judge

79.—(1) In the case of—

(*a*) an application for a wife's property settlement order or a variation of settlements order, where there are infant children of the marriage (including any infant child adopted by both parties to the marriage), or

(*b*) an application for an avoidance of disposition order and any related application for financial relief which is being heard at the same time,

the registrar shall, after completing his investigation under rule 77, report the result thereof in writing to a judge, to whom the application shall be adjourned:

Provided that if, in the case of such an application as is mentioned in sub-paragraph (*a*), the registrar is satisfied that any order proposed to be made by consent will be for the benefit of the infant children concerned, he may make the order without reporting to a judge.

(2) In the case of an application for an avoidance of disposition order, the registrar's report shall contain an estimate of the financial relief to which, in his opinion, the applicant is entitled (if he has not already obtained an order for financial relief) and of the relief to which, in the registrar's opinion, the applicant would be entitled if the application were granted.

(3) The registrar's report shall be filed and any party shall be entitled to inspect the report and to be supplied with a copy on payment of the prescribed fee.

(4) On the hearing of the application the judge may confirm or vary the registrar's report or make such other order as he thinks just.

Transfer of application for ancillary relief

80.—(1) Without prejudice to rule 32, where an application for ancillary relief is pending in a divorce county court, a judge may, if it appears to him to be desirable, order that the application be transferred to the High Court.

(2) Where an application for ancillary relief is pending in a divorce county court, the registrar or a judge may order that the application be transferred to another divorce county court:

Provided that no order for the transfer of an application to the divorce registry shall be made except by a judge, who shall, before making the order, consider whether it is desirable that the application, instead of being treated as pending in a divorce county court, should be transferred to the High Court and proceed in the divorce registry.

(3) Where an application for ancillary relief is pending in a divorce county court and it appears to the registrar that the question whether the application should be transferred to the High Court or the divorce registry ought to be considered by a judge, the registrar shall not proceed with his investigation under rule 77 but shall refer the question to a judge.

(4) Where an application for ancillary relief is pending in the High Court, the registrar of the registry in which the application is proceeding or a judge may order that the application be transferred to another registry.

(5) An order under paragraph (1), (2) or (4) may be made by a judge or the registrar, as the case may be, of his own motion or on the application of

a party, but before making an order of his own motion the judge or registrar shall give the parties an opportunity of being heard on the question of transfer and for that purpose the registrar may give the parties notice of a date, time and place at which the question will be considered.

Arrangements for hearing of application etc. by judge

81.—(1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to a judge, the registrar shall fix a date and time for the hearing of the application or the consideration of the question and give notice thereof to all parties.

(2) The hearing or consideration shall, unless otherwise directed, take place in chambers.

(3) Where the application is proceeding in a divorce county court which is not a court of trial or is pending in the High Court and proceeding in a district registry which is not in a divorce town, the hearing or consideration shall take place at such court of trial or divorce town as in the opinion of the registrar is the nearest or most convenient.

For the purposes of this paragraph the Royal Courts of Justice shall be treated as a divorce town.

Request for maintenance order at same rate as order for alimony pending suit

82.—(1) Where at the date of a decree nisi of divorce or nullity of marriage an order for alimony pending suit is in force, the party in whose favour the order was made may, if he has made an application for a maintenance order in his petition or answer, as the case may be, request the registrar in writing to make a maintenance order (in this rule referred to as a "corresponding order") providing for payments at the same rate as those provided for by the order for alimony pending suit.

(2) Where such a request is made, the registrar shall serve on the other spouse a notice in Form 10 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the registrar and to the applicant within 14 days after service of the notice in Form 10.

(3) If the other spouse does not give notice of objection within the time aforesaid, the registrar may make a corresponding order without further notice to that spouse and without requiring the attendance of the applicant or his solicitor, and shall in that case serve a copy of the order on the applicant as well as on the other spouse.

Section 99 of County Courts Act 1959 not to apply to orders for ancillary relief

83. Section 99 of the County Courts Act 1959 (satisfaction of money judgments) shall not apply to an order made on an application for ancillary relief in proceedings pending in a divorce county court:

Provided that subsections (1) and (2) of the said section 99 shall apply to a lump sum order.

Application for order under section 32(1)(a) of Act of 1965

84.—(1) An application under section 32(1)(*a*) of the Act of 1965, or under that section as applied by section 34, for an order restraining any person from attempting to defeat a claim for financial relief or otherwise for protecting the claim shall be made to a judge.

(2) Rule 81 (except paragraph (2)) shall apply with the necessary modifications to the application as if it were an application for ancillary relief.

County court decrees and orders not to be registrable

85. Section 101 of the County Courts Act 1959 (register of judgments and orders) shall not apply to any decree or order made in proceedings pending in a divorce county court.

ENFORCEMENT OF ORDERS

Enforcement of order for payment of money, etc.

86.—(1) Before any process is issued for the enforcement of an order made in matrimonial proceedings for the payment of money to any person, an affidavit shall be filed verifying the amount due under the order and showing how that amount is arrived at.

In a case to which C.C.R. Order 25, rule 13A (which deals with the execution of a High Court judgment in the county court), applies, the information required to be given in an affidavit under this paragraph may be given in the affidavit filed pursuant to that rule.

(2) Except with the leave of the registrar, no writ of fieri facias or warrant of execution shall be issued to enforce payment of any sum due under an order for alimony pending suit, a maintenance order, a periodical payments order or a permanent alimony order where an application for a modification order is pending.

(3) For the purposes of R.S.C. Order 46, rule 6 (which deals with the issue of a writ of execution), the divorce registry shall be the appropriate office for the issue of a writ of execution to enforce an order made in matrimonial proceedings in the High Court which are proceeding in that registry.

(4) Where a warrant of execution has been issued to enforce an order made in matrimonial proceedings pending in the divorce registry which are treated as pending in a divorce county court, the goods and chattels against which the warrant has been issued shall, wherever they are situate, be treated for the purposes of section 138 of the County Courts Act 1959 as being out of the jurisdiction of the divorce registry.

Judgment summonses: general provisions

87.—(1) In this rule and in rules 88 and 89, unless the context otherwise requires—

" order " means an order made in matrimonial proceedings for the payment of money;

" judgment creditor " means a person entitled to enforce an order under section 5 of the Debtors Act 1869(a);

" debtor " means a person liable under an order;

" judgment summons " means a summons under the said section 5 requiring a debtor to appear and be examined on oath as to his means.

(2) An application for the issue of a judgment summons may be made—

(*a*) in the case of an order of the High Court, to the divorce registry, a district registry or a divorce county court, whichever in the opinion of the judgment creditor is most convenient,

(*b*) in the case of an order of a divorce county court, to whichever divorce county court is in the opinion of the judgment creditor most convenient,

(a) 1869 c. 62.

having regard (in either case) to the place where the debtor resides or carries on business and irrespective of the court or registry in which the order was made.

(3) The application shall be made by filing a praecipe in Form 11 together with the affidavit required by rule 86(1) and, except where the application is made to the registry or divorce county court in which the order was made, a copy of the order shall be exhibited to the affidavit.

(4) A judgment summons shall not be issued without the leave of a judge if the debtor is in default under an order of commitment made on a previous judgment summons in respect of the same order.

(5) Every judgment summons shall be in Form 12 and shall be served on the debtor personally not less than 10 clear days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court at which he is summoned to appear.

(6) C.C.R. Order 25, rule 41 (which deals with the issue of successive judgment summonses), shall apply to a judgment summons, whether issued in the High Court or a divorce county court, as if for the words " within the district " in paragraph (2) of that rule there were substituted the words " at the address stated in Form 11 ".

(7) Where the order was made in a different registry or divorce county court from that in which the judgment summons is issued, the registrar of the first-mentioned registry or court shall, if so requested by the registrar of the registry or court in which the summons is issued, send him the file of the matrimonial proceedings for the purpose of the hearing of the summons.

(8) On the hearing of the judgment summons the judge may—

(*a*) where the order is for the payment of damages, a lump sum or costs, or

(*b*) where the order is for alimony, maintenance or other periodical payments and it appears to him that the order would have been varied or suspended if the debtor had made an application for that purpose,

make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, either at a specified time or by instalments.

(9) If the judge makes an order of commitment, he may direct its execution to be suspended on terms that the debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, either at a specified time or by instalments, in addition to any sums accruing due under the original order.

(10) All payments under a new order or an order of commitment shall be made to the judgment creditor unless the judge otherwise directs.

(11) Where an order of commitment is suspended on such terms as are mentioned in paragraph (9)—

(*a*) all payments thereafter made under the said order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of the debt in respect of which the judgment summons was issued and the costs of the summons ;

(*b*) C.C.R. Order 25, rule 54(4) and (5) (which deal with an application for a further suspension), shall apply to the said order, whether it was made in the High Court or a divorce county court ; and

(*c*) the said order shall not be issued until the judgment creditor has filed an affidavit of default on the part of the debtor.

Special provisions as to judgment summonses in the High Court

88.—(1) R.S.C. Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases), shall apply to a judgment summons issued in the High Court as if it were an originating summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for that purpose be issued out of the registry in which the judgment summons is issued.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of commitment is made, the judge may allow to the debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

(4) Where a new order or an order of commitment is made, the registrar of the registry in which the judgment summons was issued shall send notice of the order to the debtor and, if the original order was made in another registry, to the registrar of that registry.

(5) An order of commitment shall be directed to the tipstaff, for execution by him, or to the registrar of the county court within the district of which the debtor is to be found, for execution by a deputy tipstaff.

(6) Unless the judge otherwise directs, the judgment creditor's costs of and incidental to the judgment summons shall be fixed without taxation in accordance with the following provisions:—

(*a*) Subject to sub-paragraph (*c*), where the amount in respect of which the judgment summons is issued is paid before the hearing, there may be allowed—

(i) the court fees paid by the judgment creditor,
(ii) any travelling expenses paid to the judgment debtor, and
(iii) if the judgment creditor is represented by a solicitor, £2 in respect of the solicitor's charges.

(*b*) Where an order is made on the hearing and the judgment creditor is awarded costs, there may be allowed—

(i) the court fees paid by the judgment creditor,

(ii) subject to paragraph (3), any travelling expenses paid to the judgment debtor,

(iii) the fees paid to the commissioner on any affidavit of service and any affidavit of the debtor's means,

(iv) if the judgment creditor is represented by a solicitor without counsel, £5 in respect of the solicitor's charges, and

(v) if the judgment creditor is represented by solicitor and counsel, £3 10*s*. in respect of the solicitor's charges, and such sum, not being less than £2 4*s*. 6*d*. or more than £7 12*s*., as the registrar thinks reasonable in respect of counsel's fees.

(*c*) Where the amount in respect of which the judgment summons is issued is paid too late to prevent the attendance of the judgment creditor or, as the case may be, his solicitor or counsel, at the hearing, the sums specified in sub-paragraph (*b*) may, if the judge so orders, be allowed instead of the sums specified in sub-paragraph (*a*).

(*d*) Where the costs of and incidental to a judgment summons are directed to be taxed, R.S.C. Order 62 (which deals generally with the costs of proceedings in the High Court) shall have effect in relation to those costs with such modifications as may be necessary.

Special provisions as to judgment summonses in divorce county courts

89.—(1) C.C.R. Order 25, rules 33, 37, 38, 39, 40(4), 48, 49(2), 54(1) and (3) and 55 (which deal with the issue of a judgment summons in a county court and the subsequent procedure), shall not apply to a judgment summons issued in a divorce county court.

(2) C.C.R. Order 25, rule 49(1) (which relates to a judgment summons heard in a county court on the order of another court), shall apply to such a summons as if for the words " any court other than a county court " there were substituted the words " any other court ".

(3) C.C.R. Order 25, rule 54(2) (which relates to the suspension of an order of commitment), shall apply to such a summons subject to rule 87(9) and (10) of these rules.

Committal and injunction

90.—(1) Notwithstanding anything in R.S.C. Order 52, rule 4(1) (which requires an application for an order of committal to be made by motion), but subject to rule 6 of that Order (which, except in certain cases, requires such an application to be heard in open court), an application for an order of committal in matrimonial proceedings pending in the High Court shall be made by summons.

(2) Where by reason of illness, the existence of any vacation or otherwise, no judge is conveniently available to hear the application, then, without prejudice to C.C.R. Order 25, rule 70(3) (which in certain circumstances gives jurisdiction to a county court registrar), an application for—

(*a*) the discharge of any person committed, or

(*b*) the discharge by consent of an injunction granted by a judge,

may be made to the registrar who may, if satisfied of the urgency of the matter and that it is expedient to do so, make any order on the application which a judge could have made.

(3) Where an order or warrant for the committal of any person to prison has been made or issued in matrimonial proceedings pending in the divorce registry which are treated as pending in a divorce county court, that person shall, wherever he may be, be treated for the purposes of section 161 of the County Courts Act 1959 as being out of the jurisdiction of the divorce registry.

(4) For the purposes of section 157 of the County Courts Act 1959 in its application to the hearing of matrimonial proceedings at the Royal Courts of Justice, the tipstaff shall be deemed to be an officer of the court.

Removal of county court order into High Court

91.—(1) Any order made by a divorce county court in matrimonial proceedings may, on an application made ex parte by affidavit by the person entitled to enforce the order, be removed into the High Court by direction of a registrar of the divorce registry or the registrar of the nearest district registry, if he is satisfied that the order cannot conveniently be enforced in the county court.

(2) Where an order is so removed, it shall have the same force and effect and the same proceedings may be taken on it as if it were an order of the High Court.

APPLICATIONS RELATING TO CHILDREN

Custody, care and supervision of children

92.—(1) Subject to paragraph (2), an application for an order relating to the custody or education of a child, or for 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, shall be made to a judge.

(2) An application by the petitioner or the respondent spouse for access to a child of the family, where the other party consents to give access and the only question for determination is the extent to which access is to be given, may be made to the registrar.

(3) Without prejudice to the right of any other person entitled to apply for an order as respects a child, the guardian of any child of the family and any other person who, by virtue of an order of a court, has the custody or control of such a child or his care or supervision in pursuance of section 36 or 37 of the Act of 1965 may, without obtaining leave to intervene in the cause, apply by summons or (where the cause is proceeding in a divorce county court) by notice under C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings), for such an order as is mentioned in paragraph (1).

(4) If on any application to a judge relating to a child there is a dispute as to the care and control of, or access to, the child, then, without prejudice to his powers under rules 40(3) and 41, the judge may refuse to admit any affidavit unless the party by whom or on whose behalf it was made is available at the hearing to give oral evidence.

Further provisions as to orders under sections 36 *and* 37 *of Act of* 1965

93.—(1) Before an order is made committing a child to the care of a local authority under section 36 of the Act of 1965, the registrar shall fix a date, time and place for the hearing of any representations by the local authority and shall send notice in Form 13 to the authority not less than 14 days before the date so fixed.

(2) If the local authority wish to represent that, in the event of an order being made under section 36, the court should make a child maintenance order as respects that child, the authority shall, within 7 days after receipt of the notice, file an affidavit setting out such facts relevant to the means of the person against whom the child maintenance order is sought as are known to the authority and shall at the same time serve a copy of the affidavit on that person.

(3) A person on whom a copy of the local authority's affidavit is served under paragraph (2) may, within 4 days after service, file an affidavit in answer and, if he does so, he shall at the same time serve a copy of the affidavit on the local authority.

(4) An application by a local authority or by an officer appointed under section 37 of the Act of 1965 for the variation or discharge of an order made under section 36 or 37 of that Act or for directions as to the exercise of the powers of the authority or officer under the order may, in case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the court and the authority or officer shall, if practicable, notify any interested party of the intention to make the application.

(5) In proceedings under section 36 or 37 a local authority may be represented by the children's officer or other officer employed by the authority in connection with their functions under section 39(1) of the Children Act 1948.

Removal of child out of England and Wales, etc.

94.—(1) An application for leave to remove a child permanently out of England and Wales shall be made to a judge unless the application is unopposed, in which case it may be made to the registrar.

(2) A petitioner may, at any time after filing his petition and notwithstanding that it has not been served, apply ex parte to a judge for an injunction restraining the respondent or any other person from removing any child of the family under 18 out of England and Wales or out of the custody, care or control of any person named in the application.

Reference to court welfare officer

95.—(1) A judge or the registrar may at any time refer to a court welfare officer for investigation and report any matter arising in matrimonial proceedings which concerns the welfare of a child.

(2) Without prejudice to paragraph (1), any party to an application to which rule 92 applies may, before the application is heard, request the registrar to call for a report from a court welfare officer on any matter arising on the application, and if the registrar is satisfied that the other parties to the application consent and that sufficient information is available to enable the officer to carry out the investigation, the registrar may refer the matter to a court welfare officer for investigation and report before the hearing.

(3) Where a reference is made under this rule—

(*a*) the court welfare officer may inspect the court file ;

(*b*) after completing his investigation, the officer shall file his report and the registrar shall thereupon notify the parties that they may inspect it and may bespeak copies on payment of the prescribed fee ;

(*c*) the registrar shall give notice to the officer of the date of hearing of the application or other proceeding.

Statement of other proceedings on application relating to child

96. If, at the time when an application relating to a child is made in any cause, any proceedings relating to the same child and brought after the cause was begun are pending in the High Court, a county court or a magistrates' court, the applicant shall file a statement of the nature of these proceedings when he makes his application.

Transfer of proceedings relating to children

97. Rule 80 shall apply to proceedings for the exercise of any power under Part III of the Act of 1965 as it applies to an application for ancillary relief.

OTHER APPLICATIONS

Application in case of wilful neglect to maintain

98.—(1) Every application by a wife for an order under section 22 of the Act of 1965 shall be made by originating application, which must, unless otherwise directed, contain the information required by Form 14.

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

(3) 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 15 with Form 4 attached.

(4) If the registrar does not consider it practicable to fix a day for the hearing of the application at the time when it is issued, he may do so subsequently and in that case he shall forthwith give notice of the day to all parties.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application, setting out any grounds on which he intends to contest the application and containing in a schedule full particulars of his property and income, and the registrar shall serve a copy of the affidavit on the applicant.

(6) Where the respondent's affidavit alleges adultery, the alleged adulterer shall be made a party cited and shall be served with a copy of the affidavit (but omitting the schedule referred to in paragraph (5)) and rules 12(5) and 14 shall apply with the necessary modifications as if the affidavit were a petition and the party cited were a co-respondent.

(7) A party cited who wishes to defend all or any of the charges made against him shall, within 21 days after the time limited for giving notice of intention to defend, file an answer to the affidavit, and the registrar shall serve a copy of the answer on the respondent.

(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 the respondent's affidavit the applicant may file an affidavit in reply, and in that case the registrar shall serve a copy on the respondent and on any party cited in the respondent's affidavit.

No further affidavits shall be filed without leave.

(10) An applicant, respondent or party cited who files an affidavit or answer under paragraph (5), (7), (8) or (9) shall at the same time file a copy for service on every party required to be served therewith.

Transfer and hearing of applications under rule 98

99.—(1) Where it appears to a judge that the respondent intends to contest an application under the last foregoing rule on the ground—

(*a*) that by reason of the applicant's conduct or otherwise he is not liable to maintain her, or

(*b*) that no court in England or Wales has jurisdiction to entertain the application,

the judge shall order that the application be transferred to the High Court.

(2) Without prejudice to paragraph (1), a judge may, if it appears to him to be desirable, order that any application under the last foregoing rule be transferred to the High Court.

(3) Rule 80 shall apply with the necessary modifications to an application for an order under section 22 of the Act of 1965 as if the application were an application for ancillary relief and as if paragraphs (1) and (2) of this rule were substituted for paragraph (1) of that rule.

(4) The application shall be heard by a judge in court, and where the application is proceeding in a divorce county court which is not a court of trial or where it has been transferred to the High Court and is proceeding in a district registry which is not in a divorce town, the hearing shall be fixed to take place at such court of trial or divorce town as in the opinion of the registrar is the nearest or most convenient.

For the purpose of this paragraph the Royal Courts of Justice shall be treated as a divorce town.

(5) On the hearing of the application the judge may make such order as he thinks just or may refer the application (except any claim for custody) to the registrar for him to investigate the means of the parties to the marriage and, if the judge finds that there has been wilful neglect to maintain, he may, pending the final determination of the application, make an interim order on such terms as he thinks just.

(6) Where an application is referred to the registrar under paragraph (5), he shall fix an appointment for the hearing of the application and rules 77(3) to (6), 78 and 79 shall apply as if the application were an application for ancillary relief and as if for sub-paragraphs (*a*) and (*b*) of rule 79(1) there were substituted the words "an application in which the judge has not made a finding as to the respondent's wilful neglect to maintain".

(7) An application to discharge, vary or suspend an order made under this rule (except an order for custody) shall be made to and dealt with by the registrar in the same manner as an application for a modification order.

(8) Subject to the provisions of this and the last foregoing rule, these rules shall, so far as applicable, apply with the necessary modifications to an application under section 22 of the Act of 1965 as if—

(*a*) the application were a cause,

(*b*) the originating application were a petition and the applicant the petitioner, and

(*c*) any reference to child of the family were a reference to a child of the marriage.

(9) In this rule and in Form 14 any reference to a child of the marriage includes a reference to an illegitimate or adopted child of both parties to the marriage.

Application for alteration of maintenance agreement during lifetime of parties

100.—(1) An application under section 24 of the Act of 1965 for the alteration of a maintenance agreement shall be made by originating application containing, unless otherwise directed, the information required by Form 16.

(2) The application may be filed in any divorce county court and may be heard and determined by the registrar.

(3) There shall be filed with the application an affidavit by the applicant exhibiting a copy of the agreement and verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(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 15 with Form 4 attached.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application containing full particulars of his property and income, and if he does not do so, the court may order him to file an affidavit containing such particulars.

(6) A respondent who files an affidavit under paragraph (5) shall at the same time file a copy, which the registrar shall serve on the applicant.

(7) Rules 77(4) to (6), 78, 80 and 81 shall apply with the necessary modifications to an application under section 24 of the Act of 1965 as if it were an application for ancillary relief.

(8) Subject to the provisions of this rule, these rules shall, so far as applicable, apply with the necessary modifications to an application under section 24 of the Act of 1965 as if the application were a cause, the originating application a petition and the applicant the petitioner.

Application for alteration of maintenance agreement after death of one party

101.—(1) An application under section 25 of the Act of 1965 for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating summons in Form 17.

(2) The summons may be filed in the divorce registry or any district registry.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(*a*) whether the deceased died domiciled in England and Wales;

(*b*) the residence of the parties to the agreement immediately before the death and, unless both parties were then resident in England or Wales, the domicile of the applicant at that time;

(*c*) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(*d*) the name of every child of the marriage and of any other child for whom the agreement makes financial arrangements, and—

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 21), and the place where and the person with whom any such infant child is residing;

(ii) the date of death of any such child who has died since the agreement was made;

(*e*) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the marriage or to any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;

(*f*) whether there have been in any court any proceedings by the applicant against the deceased's estate under the Inheritance (Family Provision) Act 1938(a) and the date and effect of any order made in such proceedings;

(*g*) the applicant's means;

(*h*) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;

(a) 1938 c. 45.

(*i*) if the application is made after the end of the period of 6 months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(4) There shall be lodged in the court office a copy of the summons and of the affidavit for service on every respondent.

(5) The registrar shall annex to every copy of the summons for service a copy of the affidavit in support and an acknowledgment of service in Form 4.

Further proceedings on application under rule 101

102.—(1) Without prejudice to his powers under R.S.C. Order 15 (which deals with parties and other matters), the registrar may at any stage of the proceedings direct that any person be added as a respondent to an application under the last foregoing rule.

(2) R.S.C. Order 15, rule 13 (which enables the court to make representation orders in certain cases), shall apply to the proceedings as if they were mentioned in paragraph (1) of the said rule 13.

(3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating—

(*a*) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the estate duty and interest thereon;

(*b*) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained, and

(*c*) if such be the case, that any living beneficiary (naming him) is an infant or a patient within the meaning of rule 105.

(4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (3), the registrar may order him to do so.

(5) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall at the same time lodge a copy, which the registrar shall serve on the applicant.

(7) The registrar shall, after investigating the allegations in support of and in answer to the application, report the result of his investigation in writing to a judge and the application shall be determined by a judge at the Royal Courts of Justice.

(8) Paragraph (7) shall not affect the power of the judge under R.S.C. Order 4, rule 3 (which deals with transfer from one Division to another), to order the application to be transferred to the Chancery Division.

(9) Rules 77(4), (5) and (6), 79(3) and (4), 80(4) and (5) and 81(1) and (2) shall apply with the necessary modifications to an application under section 25 of the Act of 1965 as if it were an application for ancillary relief.

(10) Subject to the provisions of this rule, these rules shall, so far as applicable, apply with the necessary modifications to an application under section 25 of the Act of 1965 as if the application were a cause, the originating summons a petition and the applicant the petitioner.

Application for maintenance from deceased's estate

103.—(1) An application under section 26 of the Act of 1965 by the former spouse of a deceased person for an order that reasonable provision for his or her maintenance be made out of the net estate of the deceased shall be made by originating summons in Form 18.

(2) If the decree dissolving or annulling the applicant's marriage with the deceased was made in a cause proceeding in the divorce registry, the summons shall be filed in that registry, and in any other case it may be filed in the divorce registry or in any district registry.

(3) There shall be filed in support of the summons an affidavit by the applicant exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(*a*) the residence of the applicant ;

(*b*) the place and date of the marriage between the applicant and the deceased and the name and status of the wife before the marriage ;

(*c*) the name of any child of the family and—

(i) the date of birth of each such child who is still living (or, if such be the case, that he has attained 21), and the place where and the person with whom any such infant child is residing,

(ii) the date of death of any such child who has died since the marriage was dissolved or annulled ;

(*d*) particulars of all previous proceedings with reference to the marriage or the children of the family, and the date and effect of any order or decree made in those proceedings ;

(*e*) whether any application was made or deemed to be made by the applicant during the lifetime of the deceased—

(i) where the applicant is a former wife of the deceased, for such an order as is mentioned in section 16(1) of the Act of 1965, or that subsection as applied by section 19 ;

(ii) where the applicant is a former husband of the deceased, for such an order as could be made either under the said section 16(1) as applied by subsection (3) of that section, or under section 17(2) of the Act of 1965,

and, if so, the date and effect of the order (if any) made on any such application, or (if no such application was made by the applicant or such an application was made by the applicant and no order was made on the application) the reasons why no such application or order was made, in so far as they are within the applicant's knowledge or belief ;

(*f*) the date of the deceased's death and whether he died domiciled in England and Wales ;

(*g*) the applicant's means ;

(*h*) the nature of the provision which the applicant desires to be made for his or her maintenance out of the deceased's estate ;

(*i*) that the applicant has not remarried ;

(*j*) if the application is made after the end of the period of 6 months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(4) The procedure on an application to which this rule applies shall be the same as on an application to which rule 101 applies and paragraphs (4) and (5) of that rule and rule 102 shall apply accordingly, with any necessary modifications.

(5) On the hearing of the application the personal representatives shall produce to the judge the grant of representation to the deceased's estate and, if an order is made, the grant shall remain in the custody of the court until a memorandum of the order has been indorsed thereon or permanently affixed thereto.

Proceedings under section 7 of the Matrimonial Homes Act 1967

104.—(1) The jurisdiction of the court under section 7 of the Matrimonial Homes Act 1967(a) may be exercised by the registrar.

(2) Where an application is made for an order under the said section 7, 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 subsection (1) of that section 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.

DISABILITY

Person under disability must sue by next friend, etc.

105.—(1) In this rule—

" patient " means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1959(b), is incapable of managing and administering his property and affairs ;

" person under disability " means a person who is an infant or a patient ;

" Part VIII " means Part VIII of the Mental Health Act 1959.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(3) No person's name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (8) have been filed.

(4) Where a person is authorised under Part VIII to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (3), be entitled to be next friend or guardian ad litem of the patient in any matrimonial proceedings to which his authority extends.

(5) Where a person entitled to defend any matrimonial proceedings is a patient and there is no person authorised under Part VIII to defend the proceedings in his name or on his behalf, then—

(*a*) if relief is sought against the patient under section 1(1)(*a*)(iv) of the Act of 1965, the Official Solicitor shall, if he consents, be the patient's guardian ad litem, but at any stage of the proceedings an application may be made, on not less than 4 days' notice to the Official Solicitor, for the appointment of some other person as guardian ;

(a) 1967 c. 75. (b) 1959 c. 72.

(*b*) in any other case, an application may be made on behalf of the patient for the appointment of a guardian ad litem ;

and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (8).

(6) Where a petition, answer, originating application or originating summons or an affidavit under rule 98(6) has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to a registrar for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the registrar may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian ad litem.

(7) No notice of intention to defend shall be given, or answer or affidavit in answer filed, by or on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit—

(*a*) is the Official Solicitor or, in a case to which paragraph (5) applies, is the Official Solicitor or has been appointed by the court to be guardian ad litem ; or

(*b*) in any other case, has filed the documents mentioned in paragraph (8).

(8) The documents referred to in paragraphs (3), (5) and (7) are—

(*a*) a written consent to act by the proposed next friend or guardian ad litem ;

(*b*) where the person under disability is a patient and the proposed next friend or guardian ad litem is authorised under Part VIII to conduct the proceedings in his name or on his behalf, an office copy, sealed with the seal of the Court of Protection, of the order or other authorisation made or given under Part VIII ; and

(*c*) except where the proposed next friend or guardian ad litem is authorised as mentioned in sub-paragraph (*b*), a certificate by the solicitor acting for the person under disability—

(i) that he knows or believes that the person to whom the certificate relates is an infant or patient stating (in the case of a patient) the grounds of his knowledge or belief and, where the person under disability is a patient, that there is no person authorised as aforesaid ; and

(ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

Service on person under disability

106.—(1) Where a document to which rule 6(2)(*c*) or 14 applies is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served—

(*a*) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is ;

(*b*) in the case of a patient—

(i) on the person (if any) who is authorised under Part VIII of the Mental Health Act 1959 to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or

(ii) if there is no person so authorised, on the Official Solicitor if he has consented under rule 105(5) to be the guardian ad litem of the patient, or

(iii) in any other case, on the person with whom the patient resides or in whose care he is:

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (*a*) or (*b*) shall be deemed to be duly served on the person under disability.

(2) Where a document to which rule 14 applies is served in accordance with paragraph (1), it shall be indorsed with a notice in Form 19; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

Petition for nullity on ground of insanity, etc.

107.—(1) Where a petition for nullity of marriage has been presented on the ground that the respondent at the time of the marriage was of unsound mind or suffering from mental disorder within the meaning of the Mental Health Act 1959 of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or was subject to recurrent attacks of insanity or epilepsy, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the registrar.

(2) The registrar by whom an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

Separate representation of children

108.—(1) Without prejudice to rule 72, if in any matrimonial proceedings it appears to the court that any child ought to be separately represented, the court may—

(*a*) of its own motion, appoint the Official Solicitor if he consents, or

(*b*) on the application of any other proper person, appoint that person, to be guardian ad litem of the child with authority to take part in the proceedings on the child's behalf.

(2) The applicant for an order under paragraph (1)(*b*) shall, on making the application, file a certificate by a solicitor certifying that the person named in the certificate as the proposed guardian ad litem has no interest in the proceedings adverse to that of the child and that he is a proper person to be such guardian.

PROCEDURE: GENERAL

Service out of England and Wales

109.—(1) Any document in matrimonial proceedings may be served out of England and Wales without leave either in the manner prescribed by these rules or—

(*a*) where the proceedings are pending in the High Court, in accordance with R.S.C. Order 11, rules 5 and 6 (which relate to the service of a writ abroad); or

(*b*) where the proceedings are pending in a divorce county court, in accordance with C.C.R. Order 8, rules 46 to 48 (which relate to the service of process abroad).

(2) Where the document is served in accordance with R.S.C. Order 11, rules 5 and 6, those rules and rule 8 of the said Order 11 (which deals with the expenses incurred by the Secretary of State) shall have effect in relation to service of the document as they have effect in relation to service of notice of a writ, except that the official certificate of service referred to in paragraph (5) of the said rule 5 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served.

(3) Where the document is served in accordance with C.C.R. Order 8, rules 46 to 48, those rules shall have effect subject to the following modifications:—

(*a*) paragraph (5) of the said rule 46 (which in certain circumstances requires the document to be annexed to a notice of process) shall not apply;

(*b*) the document need not be served personally on the person required to be served so long as it is served in accordance with the law of the country in which service is effected;

(*c*) the official certificate or declaration with regard to service referred to in paragraph (6) of the said rule 48 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served; and

(*d*) in paragraph (7) of the said rule 48 (which deals with the method of service through the court) the words "or in the manner in which default summonses are required to be served" shall be omitted.

(4) Where a petition is to be served on a person out of England and Wales, then—

(*a*) the time within which that person must give notice of intention to defend shall be determined having regard to the practice adopted under R.S.C. Order 11, rule 4(4) (which requires an order for leave to serve a writ out of the jurisdiction to limit the time for appearance), and the notice in Form 3 shall be amended accordingly;

(*b*) if the petition is to be served otherwise than in accordance with R.S.C. Order 11, rules 5 and 6, or C.C.R. Order 8, rules 46 to 48, and there is reasonable ground for believing that the person to be served does not understand English, the petition shall be accompanied by a translation, approved by the registrar, of the notice in Form 3, in the official language of the country in which service is to be effected

or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected:

Provided that this sub-paragraph shall not apply in relation to a document which is to be served in a country in which the official language, or one of the official languages, is English.

(5) Where a document specifying the date of hearing of any proceedings is to be served out of England and Wales, the date shall be fixed having regard to the time which would be limited under paragraph (4)(*a*) for giving notice of intention to defend if the document were a petition.

Service by post

110. Where a document is required by these rules to be sent to any person, it shall, unless otherwise directed, be sent by post to—

(*a*) if a solicitor is acting for him, the solicitor's address;

(*b*) if he is acting in person, the address for service given by him or, if he has not given an address for service, his last known address, but if in the opinion of the registrar the document would be unlikely to reach him if sent to that address, the registrar may dispense with sending the document to him.

Service of documents where no special mode of service prescribed

111. Unless otherwise directed, service of any document in matrimonial proceedings shall, if no other mode of service is prescribed or ordered, be effected—

(*a*) if a solicitor is acting for the person to be served, by leaving the document at, or sending it by post to, the solicitor's address;

(*b*) if the person to be served is acting in person, by delivering the document to him or by leaving it at, or sending it by post to, the address for service given by him or, if he has not given an address for service, his last known address:

Provided that where, in a case to which sub-paragraph (*b*) applies, it appears to the registrar that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in that sub-paragraph, it would be unlikely to reach him, the registrar may dispense with service of the document.

Service by bailiff in proceedings in divorce registry

112. Where, in any proceedings pending in the divorce registry which are treated as pending in a divorce county court, a document is to be served by bailiff, it shall be sent for service to the registrar of the county court within the district of which the document is to be served.

Proof of service by officer of court, etc.

113.—(1) Where a petition is sent to any person by an officer of the court, he shall indorse on a copy of Form 3 the date of posting and the address written on the letter and shall sign the indorsement and add the name of the court or registry to which he is attached.

(2) Without prejudice to section 186 of the County Courts Act 1959, an indorsement made pursuant to paragraph (1) shall be evidence of the facts stated therein.

(3) Where the court has authorised notice by advertisement to be substituted for service and the advertisement has been inserted by some person other than the registrar, that person shall file copies of the newspapers containing the advertisement.

Mode of making applications

114.—(1) Except where these rules, or any rules applied by these rules, otherwise provide, every application in matrimonial proceedings—

(*a*) shall be made to a registrar ;

(*b*) shall, if the proceedings are pending in the High Court, be made by summons or, if the proceedings are pending in a divorce county court, be made in accordance with C.C.R. Order 13, rule 1 (which deals with applications in the course of proceedings).

(2) For the purposes of paragraph (1), C.C.R. Order 13, rule 1, shall have effect as if for the period of one clear day mentioned in paragraph (1)(*b*)(i) of that rule (which prescribes the length of notice to be given) there were substituted a period of 2 clear days.

Place of hearing of application by judge

115.—(1) Any application in a cause which is to be heard by a judge otherwise than at the trial may, except where these rules otherwise provide, be heard—

(*a*) if the cause is pending in the High Court—

(i) at the Royal Courts of Justice, or

(ii) in the case of an application in a cause proceeding in a district registry, at the divorce town in which that registry is situated or, if it is not situated in a divorce town, then at the appropriate divorce town, or

(iii) in the case of an application in a cause which has been set down for trial at a divorce town, at that town ;

(*b*) if the cause is pending in a divorce county court—

(i) at that court if it is a court of trial and otherwise at the appropriate court of trial, or

(ii) in the case of an application in a cause which has been set down for trial at a court of trial, at that court.

(2) In this rule " application " includes an appeal from an order or decision made or given by the registrar and " appropriate divorce town " and " appropriate court of trial " mean such divorce town or court of trial as in the opinion of the registrar is the nearest or most convenient.

Appeal from registrar in county court proceedings

116.—(1) C.C.R. Order 13, rule 1(1)(*h*) (which enables the judge to vary or rescind an order made by the registrar in the course of proceedings), and C.C.R. Order 37, rule 5 (which gives a right of appeal to the judge from a judgment or final decision of the registrar), shall not apply to an order or decision made or given by the registrar in matrimonial proceedings pending in a divorce county court, but any party may appeal from such an order or decision to a judge on notice filed within 5 days after the order or decision was made or given and served not less than 2 clear days before the day fixed for hearing of the appeal, which shall be heard in chambers unless the judge otherwise orders.

(2) Except so far as may be otherwise ordered, an appeal under paragraph (1) shall not operate as a stay of proceedings on the order or decision appealed against.

No notice of intention to proceed after year's delay

117. R.S.C. Order 3, rule 6 (which requires a party to give notice of intention to proceed after a year's delay), shall not apply to any matrimonial proceedings pending in the High Court.

Filing of documents at place of hearing, etc.

118. Where the file of any matrimonial proceedings has been sent from one divorce county court or registry to another for the purpose of a hearing or for some other purpose, any document needed for that purpose and required to be filed shall be filed in the other court or registry.

Mode of giving notice

119. Unless otherwise directed, any notice which is required by these rules to be given to any person shall be in writing and, if it is to be given by the registrar, shall be given by post.

Procedure on transfer of cause or application

120.—(1) Where any cause or application is ordered to be transferred from one court or registry to another, the registrar of the first-mentioned court or registry shall, unless otherwise directed, give notice of the transfer to the parties and send a copy of the notice and (except in a case to which rule 124(2) applies) the file of the proceedings to the registrar of the other court or registry.

(2) Any provision in these rules, or in any order made or notice given pursuant to these rules, for the transfer of proceedings between a divorce county court and the High Court shall, in relation to proceedings which, after the transfer, are to continue in the divorce registry, be construed—

(*a*) in the case of a transfer from the High Court to a divorce county court, as a provision for the proceedings to be treated as pending in a divorce county court, and

(*b*) in the case of a transfer from a divorce county court to the High Court, as a provision for the proceedings no longer to be treated as pending in a divorce county court.

(3) Proceedings transferred from a divorce county court to the High Court pursuant to any provision in these rules shall, unless the order of transfer otherwise directs, proceed in the registry nearest to the divorce county court from which they are transferred, but nothing in this paragraph shall prejudice any power under these rules to order the transfer of the proceedings to a different registry.

MISCELLANEOUS

Inspection etc. of documents retained in court

121.—(1) Subject to rule 36(4), a party to any matrimonial proceedings or his solicitor or the Queen's Proctor may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court office in those proceedings.

(2) Except as provided by rule 95(3) and paragraph (1) of this rule, no document filed or lodged in the court office, other than a decree or order made in open court, shall be open to inspection by any person without the leave of the registrar, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Practice to be observed in district registries and divorce county courts

122.—(1) The President and the senior registrar may, with the concurrence of the Lord Chancellor, issue directions for the purpose of securing in the district registries and the divorce county courts due observance of statutory requirements and uniformity of practice in matrimonial proceedings.

(2) R.S.C. Order 63, rule 11 (which requires the practice of the Central Office to be followed in the district registries) shall not apply to matrimonial proceedings.

Revocations

123.—(1) Subject to paragraph (2), the Rules and Orders specified in Appendix III are hereby revoked.

(2) The revocations made by paragraph (1) shall not—

(*a*) include the following provisions of the Matrimonial Causes Rules 1957(**a**), as amended (**b**), that is to say, rule 73 (appeals from magistrates' courts), rule 74 (legitimacy proceedings), rule 75 (registration of orders under the Maintenance Orders Act 1950(**c**)), rule 76 (registration and transmission of orders under the Maintenance Orders (Facilities for Enforcement) Act 1920(**d**)) and rule 77 (exercise of jurisdiction under Married Women's Property Act 1882(**e**)), or

(*b*) affect the operation of the remaining provisions of those Rules in relation to proceedings under the said rules 73 to 77.

Transitional provisions

124.—(1) These rules shall apply to matrimonial proceedings which are pending when these rules come into operation, subject to such modifications as in the opinion of the court the circumstances may require.

(2) Where, on the coming into operation of these rules, any undefended cause begun by petition has not yet been tried, the registrar shall order it to be transferred to a divorce county court unless he thinks it desirable that the cause should be heard and determined in the High Court:

Provided that—

(*a*) where the registrar's certificate has not been granted under the rules relating to matrimonial causes hitherto in force, the registrar shall not order the transfer of the cause until directions for trial are given under these rules ; and

(*b*) the registrar may postpone the making of an order for the transfer of the cause if in his opinion the question whether it is desirable to retain it in the High Court cannot conveniently be considered until later.

(3) Where a cause has been set down for trial, the registrar for the purposes of paragraph (2) shall be—

(*a*) if the cause is to be tried at the Royal Courts of Justice, a registrar of the divorce registry ;

(*b*) if the cause is to be tried at a divorce town, the registrar of the registry for that town.

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.
J. D. Clarke.
D. E. Morris.

Dated 21st February 1968.

(**a**) S.I. 1957/619 (1957 II, p. 2406).
(**b**) The relevant amending instruments are S.I. 1961/1082, 1963/989 (1961 II, p. 2058; 1963 II, p. 1628).
(**c**) 1950 c. 37. (**d**) 1920 c. 33. (**e**) 1882 c. 75.

APPENDIX I

Rule 2(2)

DIVORCE TOWNS

Aberystwyth	Chester (A)	Oxford
Barrow in Furness	Coventry	Preston
Bedford	Derby (A)	Plymouth
Birmingham (A)	Durham (A)	Portsmouth
Blackburn	Exeter (A)	Reading
Blackpool	Gloucester (A)	Ryde
Bodmin (A)	Ipswich (A)	Sheffield (A)
Bolton	Kingston-upon-Hull	Shrewsbury (A)
Bournemouth	Leeds (A)	Southampton
Bradford	Leicester (A)	Southend
Brighton	Lewes (A)	Stockton-on-Tees
Bristol (A)	Lincoln (A)	Stoke on Trent
Burnley	Liverpool (A)	Sunderland
Bury St. Edmunds (A)	Manchester (A)	Swansea (A)
Caernarvon (A)	Newcastle (A)	Swindon
Cambridge	Newport (Mon.) (A)	Warrington
Cardiff (A)	Northampton	Winchester (A)
Carlisle (A)	Norwich (A)	Worcester
Carmarthen (A)	Nottingham (A)	York (A)

APPENDIX II

FORMS

Form 1

Rule 5(3)

NOTICE OF APPLICATION UNDER RULE 5

In the County Court

[Divorce Registry]

No. of Matter

(Seal)

In the Matter of a proposed petition for dissolution of marriage

Between Applicant

and Respondent

TAKE NOTICE that an application has been made by the above-named Applicant for leave to present a petition for dissolution of his [her] marriage with you before the expiration of the period of three years from the date of the said marriage. If the application is undefended, it will be heard at County Court [*insert address of court-house*] on the day of 19 , at o'clock, and if you do not attend at that time and place, such order will be made as the Court thinks just.

A sealed copy of the application and of the affidavit to be used in support of the application is delivered with this notice.

You must complete and detach the acknowledgment of service and send it so as to reach the Court within 8 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs. If the the reply to Question 4 in the acknowledgment is Yes, the application will be transferred to the High Court and will not be heard at the place and time above-mentioned. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgment to the Court on your behalf.

Dated this day of 19 .

Registrar

To the Respondent

[*Here set out Form* 4]

Rule 9(2)

Form 2

GENERAL FORM OF PETITION

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

THE PETITION OF SHOWS—

(1) That on the day of 19 the petitioner was lawfully married to (hereinafter called the respondent) at , the petitioner [*or* respondent] being then [*state full name and status of wife immediately before the marriage*].

(2) That the petitioner and the respondent have cohabited at [*state the last address at which they have cohabited in England or Wales*] [*or* the petitioner and the respondent have not cohabited in England or Wales].

(3) That both the petitioner and the respondent are domiciled in England and Wales [*or as the case may be*] ; the petitioner resides at and the respondent resides at , and the petitioner [*or* respondent] is [*state husband's occupation at the date of the petition*].

(4) There have been no previous proceedings in the High Court, a county court or a magistrates' court with reference to the marriage [or to any children of the family] [except [*state the nature of the proceedings, the date and effect of any decree or order and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order*]].

(5) That the respondent has committed adultery with [*give particulars, stating, if it be the case, that the person concerned has died before the filing of the petition*] [*or as the case may be, stating the matrimonial offences alleged or other grounds on which relief is sought and setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved*].

(6) [*Where adultery is alleged*] That the petitioner has not in any manner been accessory to or connived at or condoned the adultery [*or as the case may be*].

[*Where cruelty is alleged*] That the petitioner has not condoned the cruelty [*or as the case may be, stating, if the cruelty has been condoned, whether it is alleged that it has been revived*].

(7) That [except as appears from the next following paragraph] this petition is not presented or prosecuted in collusion with the respondent [*or* co-respondent] [*or as the case may be*].

(8) That the petitioner desires the Court to take into consideration the following agreement or arrangement made [*or* proposed to be made] between the parties in contemplation of, or in connection with, the proceedings, namely [*give particulars*].

(9) That there are no children of the family now living [except [*state the name of each child and his date of birth or, if it be the case, that he is over* 21]].

(10) [*In the case of a husband's petition*] That so far as is known to the petitioner there is no other child now living who has been born to the respondent during the marriage [except [*state the name of any such child and his date of birth or, if it be the case, that he is over* 21]].

(11) [*Where there is a dispute whether a living child of one of the parties is a child of the family*] That the petitioner alleges that the said is [not] a child of the family because [*give full particulars of the facts relied on by the petitioner in support of his or her allegation that the child is or, as the case may be, is not a child of the family*].

(12) [*Where appropriate in the case of a child who is under* 18] That the said was, on the day of 19 , received into the care of [*or* is a child with respect to whom a resolution was, on the day of 19 , passed by] [*name of local authority*] under section 1 [*or* 2] of the Children Act 1948.

(13) [*Except where the petition is for restitution of conjugal rights*] That the petitioner's proposals for the care and upbringing of the said are [*give full particulars of the arrangements proposed by the petitioner for the care and upbringing of every child of the family who is under* 16 *or, as the case may be, the reasons why it is impracticable for the petitioner to make any such arrangements*].

(14) [*Where an application is made on a wife's petition for a child maintenance order in respect of a child of whom the respondent is not the father*] That the respondent, on or after the acceptance of the said as a member of the family, assumed responsibility for the child's maintenance to the following extent, namely [*give particulars*] and that no person other than the petitioner is liable to maintain the child [except].

The petitioner therefore prays—

(1) [*Where appropriate*] That the discretion of the Court may be exercised in his [her] favour notwithstanding his [her] adultery during the marriage.

(2) That the said marriage may be dissolved [*or as the case may be*].

(3) That he [she] may be granted the custody of [*state name[s] of the child[ren] and add any application for a declaration under section* 34(2) *of the Matrimonial Causes Act* 1965].

(4) [*Where appropriate*] That the co-respondent be condemned to pay the sum of £ as damages in respect of his said adultery.

(5) [*Where appropriate*] That the [respondent and] co-respondent may be ordered to pay the costs of this suit.

(6) That he [she] may be granted the following ancillary relief, namely [*state particulars of any application for an order for alimony pending suit, a child maintenance order, a maintenance order, a secured provision order, a permanent alimony order or a lump sum order*].

The names and addresses of the persons who are to be served with this petition are [*give particulars, stating if any of them is a person under disability*].

The petitioner's address for service is [*Where the petitioner sues by a solicitor, state the solicitor's name or firm and address, or, where the petitioner sues in person, state his place of residence as given in paragraph* 3 *of the petition 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 documents for him may be delivered or sent*].

Dated this day of 19 .

Note: Under the Matrimonial Causes Rules 1968 *further information is required in certain cases.*

Rule 12(5)

Form 3

NOTICE OF PROCEEDINGS

(1) Amend if the proceedings are pending in High Court.

In the County Court(1)
[Divorce Registry]

No. of Matter

(Seal)

Between Petitioner

and Respondent

[and Co-Respondent]

(2) Or as the case may be.

TAKE NOTICE that a petition [for divorce](2) has been presented to this Court. A sealed copy of it is delivered with this notice.

1. You must complete and detach the acknowledgment of service and send it so as to reach the Court within 8 days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs.

2. If the reply to Question 4 in the acknowledgment is Yes, you must, within 29 days after you receive this notice, inclusive of the day of receipt, file in the Court office an answer to the petition(2), together with a copy for every other party to the proceedings. The case will then be transferred to the High Court.(3)

(3) Delete if case has already been transferred to High Court.

3. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may send the acknowledgment to the Court on your behalf.

Dated this day of 19 .

Registrar.

To

- -

[*Here set out Form* 4]

Form 4 Rule 14(4)

ACKNOWLEDGMENT OF SERVICE

If you intend to instruct a solicitor to act for you, give him this form immediately.

[*Heading as in Form* 3]

1. Have you received the originating application [*or* summons] [and copy of the supporting affidavit] [*or* the petition for [divorce](2) delivered with this form?

(2) Or as the case may be.

2. On what date and at what address did you receive it?

3. Are you the person named as the Respondent in the application [*or* as in the petition](2)?

4. Do you intend to defend the case?

5. (3)Even if you do not intend to defend the case, do you wish to be heard on the claim[s] in the petition for(4)—

(*a*) costs . . .

(*b*) custody of the children . . .

(*c*) maintenance of the children . . .

(*d*) alimony . . .

(*e*) maintenance . . .

(*f*) a lump sum . . .

(*g*) a secured provision . . .

(3) Delete Question 5 except in the case of a petition.

(4) Insert whichever of the following items is applicable.

6. (5)Do you wish to make any application on your own account for—

(*a*) access to the children . . .

(*b*) custody of the children . . .

(*c*) maintenance of the children . . .

(*d*) alimony . . .

(*e*) maintenance . . .

(*f*) a lump sum . . .

(5) Delete Question 6 except in the case of a respondent spouse in proceedings begun by petition.

(If possible, answer Yes or No against each item in Question[s] 5 [and 6]. If you are uncertain, leave a blank.)

Dated this day of 19 .

Signed

Address for service [*Unless you intend to instruct a solicitor, give your place of residence, or if you do not reside in England or Wales, the address of a place in England or Wales to which documents may be sent to you. If you subsequently wish to change your address for service, you must notify the Court.*]

[*Or, if a solicitor is instructed*

I am [We are] acting for the Respondent [*or* the above-named] in this matter.

Signed

Address for service:]

Form 5

Rule 65 (1)

NOTICE OF APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE

[*Heading as in Form* 3]

TAKE NOTICE that the petitioner [*or* respondent] applies for the decree nisi pronounced in his [her] favour on the day of 19 , to be made absolute.

Dated this day of 19 .

Signed

[Solicitor for the] Petitioner
[*or* Respondent]

Form 6

Rule 66(1)

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (DIVORCE)

(Seal)

[*Heading as in Form* 3]

Referring to the decree made in this cause on the day of 19 , whereby it was decreed that the marriage solemnised on the day of 19 at between the petitioner and the respondent be dissolved unless sufficient cause be shown to the court within from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the day of 19 , made final and absolute and that the said marriage was thereby dissolved.

Dated this day of 19 .

Form 7

Rule 66(1)

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (NULLITY)

(Seal)

[*Heading as in Form* 3]

Referring to the decree made in this cause on the day of 19 , whereby it was ordered that the marriage in fact solemnised on the day of 19 , at between the petitioner and the respondent be pronounced and declared to have been by law void and the said petitioner be pronounced to have been and to be free of all bond of marriage with the said respondent unless sufficient cause be shown to the court within from the making thereof why the said decree should not be made absolute, and no such cause having been shown, it is hereby certified that the said decree was on the day of 19 made final and absolute and that the said marriage was by law void and that the said petitioner was and is free from all bond of marriage with the said respondent.

Dated this day of 19 .

Form 8

Rule 68(2)(*a*) and (3)

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

[*Heading as in Form* 3]

TAKE NOTICE that the petitioner [*or* respondent] intends to apply to the Court for [*here set out the ancillary relief claimed, stating the terms of any agreement as to the order which the court is to be asked to make*].

Notice will be given to you of the place and time fixed for the hearing of the application [*or* The application will be heard by the registrar in chambers at on day, the day of 19 , at o'clock].

[*Unless the parties are agreed upon the terms of the proposed order, add in the case of an application for an order for alimony pending suit, a child maintenance order, a maintenance order, a secured provision order, a permanent alimony order, a lump sum order, a periodical payments order or an order securing periodical payments to a wife:* TAKE NOTICE ALSO that you must send to the registrar, so as to reach him within 14 days after you receive this notice, an affidavit giving full particulars of your property and income. You must at the same time send a copy of your affidavit to the [solicitor for] the applicant.

If you wish to allege that the petitioner has property or income, you should say so in your affidavit].

Dated this day of 19 .

Form 9

Rule 73(1)

NOTICE OF INTENTION TO PROCEED WITH APPLICATION FOR ANCILLARY RELIEF MADE IN PETITION OR ANSWER

[*Heading as in Form* 3]

The petitioner [*or* respondent] having applied in his [her] petition [*or answer*] for [*here set out the ancillary relief claimed, stating the terms of any agreement as to the order which the court is to be asked to make*].

[*Add where applicable* TAKE NOTICE that the application will be heard by the registrar in chambers at on day, the day of 19 , at o'clock].

TAKE NOTICE [ALSO] that [*continue as in third paragraph of Form* 8].

Dated this day of 19 .

Form 10

Rule 82(2)

NOTICE OF REQUEST FOR MAINTENANCE ORDER AT SAME RATE AS ORDER FOR ALIMONY PENDING SUIT

[*Heading as in Form* 3]

To of

The petitioner [*or* respondent] having on the day of 19 , obtained an order for payment by you of alimony pending suit at the rate of ,

AND the petitioner [*or* respondent] having applied in his [her] petition [*or* answer] for a maintenance order,

TAKE NOTICE that the petitioner [*or* respondent] has requested the Court to make a maintenance order providing for payments by you at the same rate as those mentioned above.

AND TAKE NOTICE that if you object to the making of such a maintenance order, you must give notice to that effect to the registrar and the petitioner [*or* respondent] within 14 days after service of this notice on you, and if you do not do so, the registrar may make such a maintenance order without further notice to you.

Dated this day of 19 .

Form 11

Rule 87(3)

PRAECIPE FOR ISSUE OF JUDGMENT SUMMONS

In the High Court of Justice [*or* In the County Court
Probate, Divorce and Admiralty Division [Divorce Registry]]
(Divorce)

[District Registry]

No. of { Matter / Judgment Summons

Between Petitioner [*or* Applicant]
and Respondent
[and Co-Respondent]

Judgment creditor's full name and address .....

Debtor's full name and address .....

I apply for the issue of a judgment summons against the above-named debtor in respect of an order made in this Court [*or as the case may be*] on the day of 19 , for [*state nature of order*].

I am aware that, if I do not prove to the satisfaction of the Court at the hearing that the debtor has, or has had since the date of the said order, the means to pay the sum in respect of which he has made default and that he has refused or neglected, or refuses or neglects, to pay it, I may have to pay the costs of the summons.

[*Add, except where judgment summons is to issue in divorce county court in which order was made:* I certify that the said order has not been modified or discharged and that there is no order of commitment in this matter which remains unsatisfied.

I further certify that no [writ or] warrant of execution has been issued to enforce the said order [*or, if a writ or warrant has been issued, give details and state what return to it has been made*].]

Dated this day of 19 .

[Solicitor for the] Judgment Creditor.

	£	s.	d.
Amount due and unpaid in respect of the order and costs ...			
Costs of this summons			
Travelling expenses to be paid to debtor			

Form 12

Rule 87(5)

JUDGMENT SUMMONS

(Seal)

[*Heading as in Form 11*]

WHEREAS the above-named (hereinafter called "the judgment creditor") obtained an order in this Court [*or as the case may be*] on the day of 19 , against (hereinafter called "the debtor") for [*state nature of order*].

AND WHEREAS default has been made in payment of the sum of £ : : payable under the said order and the judgment creditor has required this judgment summons to be issued against you, the said debtor.

YOU ARE HEREBY SUMMONED to appear personally before one of the Judges sitting in this Division at the Royal Courts of Justice, Strand, London, W.C.2, [*or as the case may be*] on the day of 19 , at o'clock, to be examined on oath touching the means you have or have had since the date of the said order to pay the said sum in payment of which you have made default and also to show cause why you should not be committed to prison for such default.

Dated this day of 19 .

	£	s.	d.
Amount due and unpaid in respect of order and costs ...			
Costs of this summons			
Travelling expenses to be paid to the debtor			
Sum on payment of which this summons will be discharged			

Note: If payment is made too late to prevent the judgment creditor's attendance on the day of hearing, you may be liable for further costs.

[The judgment creditor's solicitor[s] is [are] .]

Form 13

Rule 93(1)

NOTICE OF APPOINTMENT TO HEAR REPRESENTATIONS BEFORE CHILD IS COMMITTED TO CARE OF LOCAL AUTHORITY

[*Heading as in Form 3*]

To

TAKE NOTICE that if you wish to make representation before an order is made committing to the care of the council, you should attend before at on the day of 19 , and that if you do not attend at the time and place mentioned, such order will be made and proceedings taken as the judge thinks fit.

Note: Where a local authority to whose care a child is committed wish to ask for an order for payments for the maintenance and education of the child, they must within 7 days after receiving this notice, file an affidavit as to the means of the party against whom the order is sought and must at the same time send him a copy of the affidavit. Within 4 days after receiving the local authority's affidavit the party against whom the order is sought may file an affidavit in reply, and if he does so, he must send a copy of his affidavit to the local authority.

Dated this day of 19 .

Form 14

Rule 98(1)

ORIGINATING APPLICATION ON GROUND OF WILFUL NEGLECT TO MAINTAIN

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

(Seal)

In the Matter of an Application under section 22 of the Matrimonial Causes Act 1965

Between Applicant

and Respondent

1. I, , of , the wife of of (hereinafter called the respondent) say that the respondent has wilfully neglected to provide reasonable maintenance for me [and the infant child[ren] of our marriage] and I apply for an order that the respondent do make to me such periodical payments as may be just.

2. On the day of 19 , I, being then [*state full name and status of wife before marriage*], was lawfully married to the respondent at .

3. There are no children of the marriage now living [except [*state the name of each child and his date of birth (or, if it be the case, that he is over 21)*] who is now residing at [*state the place*] with [*state the person*]].

4. There have been no previous proceedings in the High Court, a county court or a magistrates' court with reference to the marriage [or the children of the marriage] [except *state the nature of the proceedings, the date and effect of any decree or order and, in the case of proceedings with reference to the marriage, whether there has been any resumption of cohabitation since the making of the decree or order*].

5. [Where appropriate in the case of a child who is under 18] The said was, on the day of 19, received into the care of [*or* is a child with respect to whom a resolution was, on the day of 19 , passed by] [*name of local authority*] under section 1 [*or* 2] of the Children Act 1948.

6. The following are particulars of the wilful neglect by the respondent to provide reasonable maintenance for me [and the infant child[ren] of the marriage]:—

7. The respondent has not made any payments to me by way of maintenance for myself [or the infant child[ren] of the marriage] [except] [*give particulars*]].

8. My means are as follows:—

9. To the best of my knowledge and belief the respondent's means are as follows:—

[10. I apply for an order that the respondent do secure to the satisfaction of the Court the periodical payments which he is ordered to make to me.]

11. I ask that I may be granted the custody of the said [*state name[s] of the child[ren]*]].

12. This Court has jurisdiction to entertain these proceedings by reason of the fact that the respondent and I are resident in England or Wales [*or as the case may be*].

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 in paragraph* 1 *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 documents for her may be delivered or sent*].

Dated this day of 19 .

Form 15

Rules 98(3) and 100(4)

NOTICE OF APPLICATION UNDER RULE 98 OR 100

[*Heading as in Form* 14]

TAKE NOTICE that this application will be heard at County Court [*insert address of court-house*] on the day of 19 , at o'clock [*or* on a day to be fixed], and if you do not attend at that place and time, such order will be made as the Court thinks just.

A sealed copy of the application [and of the affidavit in verification] is delivered with this notice.

You must complete and detach the acknowledgment of service and send it so as to the reach the Court within 8 days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs.

You must also swear an affidavit in answer to the application, setting out any grounds on which you intend to contest the application and containing [*if the application is made under rule* 98, *add :* in a schedule] full particulars of your property and income, and send the affidavit, 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.

If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may take the necessary steps on your behalf.

Dated this day of 19

To the Respondent

Registrar

[*Here set out Form* 4]

Form 16

Rule 100(1)

ORIGINATING APPLICATION FOR ALTERATION OF MAINTENANCE AGREEMENT DURING PARTIES' LIFETIME

In the County Court

[Divorce Registry]

No. of Matter

(Seal)

In the Matter of an Application under section 24 *of the Matrimonial Causes Act* 1965

Between Applicant

and Respondent

1. I , the wife [*or* husband of (hereinafter called the respondent), apply for an order altering the maintenance agreement made between me and the respondent on the day of 19

2. I reside at , and the respondent resides at

[*Add, unless both parties are resident in England or Wales* We are both domiciled in England and Wales [*or as the case may be*]].

3. On the day of 19 , I was lawfully married to the respondent at
I [*or, in the case of an application by the husband* The respondent] was then [*state full name and status of wife before marriage*].

4. There are no children of the marriage [except [*state the name of each child*] who [*if still living*] is over 21 [*or, if he is an infant*] was born on the day of 19 and is residing at [*state place*] with [*state person*]] [*or if the child has died since the agreement was made:* who died on the day of 19]. The agreement also makes financial arrangements for [*give similar particulars of any other child for whom the agreement makes such arrangements*].

5. There have been no previous proceedings in any court with reference to the agreement or to the marriage [or to the child[ren] of the marriage] [or to the other child[ren] for whom the agreement makes financial arrangements] [except *state the nature of the proceedings and the date and effect of any order or decree*].

6. My means are as follows:—

7. I ask for the following alteration[s] to be made in the agreement:—

8. The facts on which I rely to justify the alteration[s] are:—

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 his or her place of residence as given in paragraph 1 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 documents for him or her may be delivered or sent*].

Dated this day of 19

Form 17

Rule 101(1)

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE OF THE PARTIES

In the High Court of Justice
Probate, Divorce and Admiralty Division
(Divorce)
[District Registry]

In the Matter of an Application by under section 25 of the Matrimonial Causes Act 1965

Between Applicant
and Respondent

Let of attend before Mr. Registrar in chambers at the Divorce Registry, Somerset House, London, W.C.2., [*or as the case may be*] on day, the day of 19 , at o'clock, on the hearing of an application by that the agreement made on the day of 19 , between the applicant and who died on the day of 19 , should be altered as shown in the affidavit accompanying this summons so as to make different [*or* contain] financial arrangements.

Dated this day of 19

This summons was taken out by [the solicitor for] the above-named applicant.

To the respondent.

TAKE NOTICE THAT:—

1. A copy of the affidavit to be used in support of the application is delivered herewith.

2. You must complete the accompanying acknowledgment of service and send it so as to reach the Court within 8 days after you receive this summons.

3. [*If the respondent is a personal representative of the deceased:* You must also file an affidavit in answer to the applicant's application containing full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities, including the amount of the estate duty and interest thereon, and the persons or classes of persons beneficially interested in the estate, with the names and addresses of all living beneficiaries and stating whether any beneficiary is an infant or incapable, by reason of mental disorder, of managing and administering his property and affairs.]

[*Or, if the respondent is not a personal representative of the deceased:* You may also file an affidavit in answer to the application.]

[*Add, in either case:* The affidavit must be filed by sending or delivering it so as to reach the Court within 14 days after the time allowed for sending the acknowledgment of service. At the same time you must send a copy of the affidavit to the [solicitor for the] applicant.]

4. If you intend to instruct a solicitor to act for you, you should at once give him all the documents which have been served on you, so that he may take the necessary steps on your behalf.

Form 18

Rule 103(1)

ORIGINATING SUMMONS FOR MAINTENANCE OUT OF ESTATE OF DECEASED FORMER SPOUSE

In the High Court of Justice
Probate, Divorce and Admiralty Division
(Divorce)
[District Registry]

In the Matter of an Application by *under section 26 of the Matrimonial Causes Act* 1965

Between Applicant
and Respondent

Let of attend before Mr. Registrar in chambers at the Divorce Registry, Somerset House, London, W.C.2., [*or as the case may be*] on day, the day of 19 , at o'clock, on the hearing of an application by that provision for her maintenance be made out of the estate of of , who died on the day of 19 , on the ground that he has not made reasonable provision for her maintenance after his death.

Dated this day of 19

This summons was taken out by
[the solicitor for] the above-named applicant.

To the respondent.

TAKE NOTICE THAT:—

[*Continue as in Form* 17]

Form 19

Rule 106(2)

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE WITH RULE 106(1)

To of

TAKE NOTICE that the contents or purport of this document are to be communicated to the respondent [*or as the case may be*], the said , if he is over 16 [*add, if the person to be served is by reason of mental disorder within the meaning of the Mental Health Act 1959 incapable of managing and administering his property and affairs:* unless you are satisfied [after consultation with the responsible medical officer within the meaning of the Mental Health Act 1959 or, if the said is not liable to be detained or subject to guardianship under that Act, his medical attendant]* that communication will be detrimental to his mental condition].

*Delete these words if the document is served on the responsible medical officer or medical attendant.

APPENDIX III

Rule 123

RULES REVOKED

Title	Reference
The Matrimonial Causes (Judgment Summons) Rules 1952	S.I. 1952/2209 (1952 III, p. 3359).
The Matrimonial Causes Rules 1957	S.I. 1957/619 (1957 II, p. 2406).
The Matrimonial Causes (Amendment) (No. 2) Rules 1957	S.I. 1957/1177 (1957 II, p. 2461).
The Matrimonial Causes (Maintenance Agreements) Rules 1957	S.I. 1957/2202 (1957 II, p. 2462).
The Matrimonial Causes (Amendment) Rules 1958	S.I. 1958/2082 (1958 II, p. 2294).
The Matrimonial Causes (District Registries) Order 1960	S.I. 1960/477 (1960 III, p. 3168).
The Matrimonial Causes (Amendment) Rules 1960	S.I. 1960/544 (1960 III, p. 3163).
The Matrimonial Causes (District Registries) (No. 2) Order 1960	S.I. 1960/1213 (1960 III, p. 3169).
The Matrimonial Causes (Amendment) (No. 2) Rules 1960	S.I. 1960/1261 (1960 III, p. 3164).
The Matrimonial Causes (Amendment) Rules 1961	S.I. 1961/1082 (1961 II, p. 2058).
The Matrimonial Causes (Amendment No. 2) Rules 1961	S.I. 1961/2364 (1961 III, p. 4361).
The Matrimonial Causes (Judgment Summons) (Amendment) Rules 1962	S.I. 1962/824 (1962 I, p. 874).
The Matrimonial Causes (Amendment) Rules 1962	S.I. 1962/839 (1962 I, p. 932).

Title	Reference
The Matrimonial Causes (District Registries) Order 1962	S.I. 1962/2615 (1962 III, p. 3522).
The Matrimonial Causes (Amendment) Rules 1963	S.I. 1963/989 (1963 II, p. 1628).
The Matrimonial Causes (Amendment No. 2) Rules 1963	S.I. 1963/1990 (1963 III, p. 4193).
The Matrimonial Causes (District Registries) Order 1964	S.I. 1964/1125 (1964 II, p. 2511).
The Matrimonial Causes (Amendment) Rules 1964	S.I. 1964/1212 (1964 II, p. 2802).
The Matrimonial Causes (Amendment) Rules 1965	S.I. 1965/827 (1965 I, p. 2299).
The Matrimonial Causes (Amendment) (No. 2) Rules 1965	S.I. 1965/2137 (1965 III, p. 6284).
The Matrimonial Causes (Amendment) Rules 1966	S.I. 1966/560 (1966 II, p. 1168).
The Matrimonial Causes (District Registries) Order 1966	S.I. 1966/1302 (1966 III, p. 3616).
The Matrimonial Causes (Amendment) Rules 1967	S.I. 1967/837 (1967 II, p. 2484).
The Matrimonial Causes (Amendment No. 2) Rules 1967	S.I. 1967/1810 (1967 III, p. 4836).

EXPLANATORY NOTE

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

These rules, which apply to proceedings in the High Court as well as in divorce county courts, replace, with a few exceptions, all the previous rules and many of the practice directions relating to matrimonial causes. The following are among the changes made:—

(1) The form of petition prescribed by rule 9(2) may be filed in any divorce county court (rule 12(1)).

(2) Except in the case of a person under disability, service of documents on a party to the proceedings will be effected through the court unless the petitioner otherwise desires (rule 14(2)).

(3) A woman with whom a husband is alleged to have committed adultery must be made a respondent, whether or not costs are claimed against her (rule 13) and she will no longer be treated as a person entitled to intervene.

(4) Appearances will no longer be necessary in matrimonial proceedings. A respondent or co-respondent will be asked to state in his acknowledgment of service whether he intends to defend the case. If he does, the acknowledgment will constitute a "notice of intention to defend" (rule 15), which will prevent the cause being set down as undefended before the time for filing an answer has expired (rule 33(1)(*d*)). A party will also be asked to state in his acknowledgment of service whether he wishes to be heard on any claim made in the petition for custody, ancillary relief etc., but he will be entitled to be heard even though he has not given notice (rule 49).

(5) Where a respondent or co-respondent files an answer, the cause will be treated as defended and transferred to the High Court (rules 2(2) and 18(5)). A judge will also have power to transfer a cause to the High Court where he thinks it desirable that the cause should be heard and determined there (rule 32(1)).

(6) A co-respondent will not be entitled to be heard on any question as to damages unless he has filed an answer (rule 49(2)).

(7) Directions for trial replace the registrar's certificate (rule 33(1)) and where such directions are given it will be unnecessary for a party to set the cause down for trial. In an undefended cause, the registrar of the court of trial will, as soon as practicable, fix a date for the hearing and notify the parties (rules 33(2) and (3) and 44(2)).

(8) Comprehensive provision is made for the use of affidavit evidence in matrimonial proceedings (rules 39 and 40).

(9) An application for rehearing of a cause will in future be made to the judge who tried it and not to the Divisional Court (rule 55).

(10) The procedure for making a decree absolute is simplified (rule 65). It will be unnecessary for the petitioner to file an affidavit accounting for more than 12 months' delay unless the registrar so requires (rule 65(2), proviso).

(11) A number of changes are made with regard to applications for ancillary relief (rules 68 to 81). Except where the application is dealt with at the trial, the applicant must give the respondent notice in the prescribed form requiring him to file evidence of his means (rules 68 and 73). An application pending in a divorce county court may be transferred to the High Court where this appears to a judge to be desirable (rule 80(1)). A new procedure is introduced to enable an order for alimony pending suit to be converted into a maintenance order without any attendance by the parties (rule 82).

(12) It will no longer be necessary for an order for payment of money to be served personally before a writ of fi. fa. or warrant of execution can issue, but the amount due must be verified by affidavit (rule 86(1)).

(13) The previous rules relating to judgment summonses in the High Court are now in substance extended to divorce county courts (rule 87).

(14) The judge may refuse to admit any affidavit on the hearing of a contested application for care and control of, or access to, a child, unless the party on whose behalf the affidavit was made is available to give oral evidence (rule 92(4)).

(15) The procedure on an application for maintenance out of the estate of a deceased former spouse is assimilated to that on an application under the Inheritance (Family Provision) Act 1938 (rule 103).

(16) Aberystwyth, Barrow in Furness, Oxford and Swindon are added to the list of divorce towns in Appendix I at which causes pending in the High Court may be tried (rule 43(2)).

Subject to any directions given by the court, the rules will apply to proceedings begun before as well as after 11th April 1968, when the Matrimonial Causes Act 1967 comes into force. Undefended causes awaiting trial on that date will normally be transferred to the appropriate divorce county court (rule 124).