STATUTORY INSTRUMENTS

1973 No. 2016 (L.29)

MATRIMONIAL CAUSES
SUPREME COURT OF JUDICATURE, ENGLAND
COUNTY COURTS

The Matrimonial Causes Rules 1973

Made - - - - 29*th November* 1973
Laid before Parliament 18*th December* 1973
Coming into Operation 11*th January* 1974

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We, the authority having power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(a), hereby exercise that power and all other powers enabling us in that behalf as follows:—

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Matrimonial Causes Rules 1973 and shall come into operation on 11th January 1974.

Interpretation

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

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

"the Act of 1882" means the Married Women's Property Act 1882(c);

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

"the Act of 1967" means the Matrimonial Causes Act 1967(e);

"the Act of 1973" means the Matrimonial Causes Act 1973;

"ancillary relief" means—

(*a*) an avoidance of disposition order,

(*b*) a financial provision order,

(*c*) an order for maintenance pending suit,

(*d*) a property adjustment order, or

(*e*) a variation order;

"avoidance of disposition order" means an order under section 37(2)(*b*) or (*c*) of the Act of 1973;

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

"court" means a judge or the registrar;

"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 registry of the Family Division;

(a) 1973 c. 18. (b) 1889 c. 63. (c) 1882 c. 75.
(d) 1965 c. 72. (e) 1967 c. 56.

"divorce town", in relation to any matrimonial proceedings, means a town at which sittings of the High Court are authorised to be held outside the Royal Courts of Justice for the hearing of those proceedings or proceedings of the class to which they belong;

"financial provision order" means any of the orders mentioned in section 21(1) of the Act of 1973 except an order under section 27(6) of that Act;

"financial relief" has the same meaning as in section 37 of the Act of 1973;

"judge", in relation to proceedings pending in a divorce county court, means one of the circuit judges assigned by the Lord Chancellor to exercise the jurisdiction conferred by the Act of 1967 on divorce county courts;

"matrimonial proceedings" means any proceedings with respect to which rules may be made under section 50 of the Act of 1973;

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

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

"the President" means the President of the Family 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", in relation to proceedings pending in a divorce county court, the divorce registry or a district registry, means the registrar or one of the registrars of that county court or registry, as the case may be;

"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;

"senior registrar" means the senior registrar of the divorce registry or, in his absence, the senior of the registrars in attendance at the divorce registry;

"special procedure list" has the meaning assigned to it by rule 33(3);

"undefended cause" means—

(*a*) in the case of an application under section 3 of the Act of 1973, 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 order" means an order under section 31 of the Act of 1973;

"welfare" has the same meaning as in section 41 of the Act of 1973.

(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, a rule referred to by number means the rule so numbered in these Rules.

(5) In these Rules a form referred to by number means the form so numbered in the Appendix to these Rules, 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)**.

(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.—(1) 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.

(2) For the purposes of paragraph (1) any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were, in the case of proceedings pending in a divorce county court, a provision of the County Court Rules 1936 and, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court 1965.

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**(c)**, 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 1973 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.

(a) S.R. & O. 1936/626 (1936 I, p. 282). **(b)** S.I. 1965/1776 (1965 III, p. 4995).
(c) 1959 c. 22.

COMMENCEMENT ETC. OF PROCEEDINGS

Application under section 3 of Act of 1973

5.—(1) An application under section 3 of the Act of 1973 for leave to present a petition for divorce before the expiration of three 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 it is proposed to present the petition, 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 for leave,

(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 18;

(*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 6 attached.

Proceedings after service of application under section 3 of Act of 1973

6.—(1) If, within the time limited, the respondent gives notice of intention to defend an application under section 3 of the Act of 1973, the registrar shall order that the application be transferred to the High Court.

(2) 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.

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

(4) 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.

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.

Cause to be begun by petition

8.—(1) Every cause other than an application under section 3 of the Act of 1973 shall be begun by petition.

(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under 16 or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade or profession, the petition shall be accompanied by a separate written statement containing the information required by Form 4, to which shall be attached a copy of any medical report mentioned therein.

(3) Where a petition for divorce alleging five years' separation contains a proposal by the petitioner (not being a proposal agreed between the petitioner and the respondent) to make financial provision for the respondent, the petition shall be accompanied by an affidavit by the petitioner giving brief particulars of his means and commitments.

Contents of petition

9.—(1) Unless otherwise directed, every petition, other than a petition for jactitation of marriage or under rule 109 or 110, shall contain the information required by Form 2 as near as may be in the order there set out and any further or other information required by such of the following paragraphs of this rule and by rule 108 as may be applicable.

(2) A petition for divorce, nullity or judicial separation—

(*a*) shall state whether or not there are to the knowledge of the petitioner any proceedings continuing in any country outside England and Wales which are in respect of the marriage to which the petition relates or are capable of affecting its validity or subsistence, and

(*b*) if there are any such proceedings, shall give particulars of them including—

(i) the court in or tribunal or authority before which they were begun,

(ii) the date when they were begun,

(iii) the names of the parties,

(iv) the date, or as the case may be, the expected date of any trial in the proceedings, and

(v) such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973**(a)**.

In this paragraph "proceedings continuing in any country outside England and Wales" includes any proceedings which are not instituted in a court of

(a) 1973 c. 45.

law in that country, if those proceedings are instituted before a tribunal or other authority in that country having power under the law having effect there to determine questions of status, and proceedings shall be treated as continuing in a country outside England and Wales if they have been begun and have not been finally disposed of.

(3) A petition for a decree of nullity under section 12(*e*) or (*f*) of the Act of 1973 shall state whether the petitioner was at the time of the marriage ignorant of the facts alleged.

(4) A petition for a decree of presumption of death and dissolution of marriage shall state 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.

(5) A petitioner who, in reliance on section 11 or 12 of the Civil Evidence Act 1968**(a)**, intends to adduce evidence that a person—

(*a*) was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, or

(*b*) was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom,

must include in his petition a statement of his intention with particulars of—

(i) the conviction, finding or adjudication and the date thereof,

(ii) the court or court-martial which made the conviction, finding or adjudication and, in the case of a finding or adjudication, the proceedings in which it was made, and

(iii) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

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, other than a petition under rule 109 or 110, may be presented to any divorce county court.

(a) 1968 c. 64.

(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 a solicitor is acting for a petitioner for divorce or judicial separation, a certificate in Form 3 shall be filed with the petition, unless otherwise directed on an application made *ex parte*.

(4) 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 three years from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in section 1(2) of the Act of 1973 as were alleged in a petition for judicial separation presented before the expiration of that period.

(5) The petition shall be presented by filing it, together with any statement, report and affidavit required by rule 8(2) and (3), in the court office, with as many copies of the petition as there are persons to be served and a copy of the statement, report and affidavit required by rule 8(2) and (3) for service on the respondent.

(6) 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 5 with Form 6 attached and shall also annex to the copy petition for service on a respondent the copy of any statement, report and affidavit filed pursuant to paragraph (5) of this rule.

Parties

13.—(1) Subject to paragraph (2), where a petition alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the cause unless—

(*a*) that person is not named in the petition and, if the adultery is relied on for the purpose of section 1(2)(*a*) of the Act of 1973, the petition contains a statement that his or her identity is not known to the petitioner, or

(*b*) the court otherwise directs.

(2) Where a petition alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1), that person shall not be made a co-respondent in the cause unless the court so directs.

(3) Where a petition alleges that the respondent has been guilty of an improper association (other than adultery) with a person named, the petitioner

shall, as soon as practicable after the time limited for the respondent to give notice of intention to defend has expired, apply to the court for directions as to whether the person named shall be made a co-respondent in the cause.

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

(5) Paragraphs (1) and (3) of this rule do not apply where the 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 and rules 113 and 117, 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 112, 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 acknowledgment of service in Form 6 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 the respondent, his signature is proved at the hearing.

(6) Where a copy of a petition has been sent to a party and no acknowledgment 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 acknowledgment of service has been returned to the court office, service shall be proved by filing an affidavit of service showing, in the case of a respondent, the server's means of knowledge of the identity of the party served.

(8) Where an acknowledgment 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 the registrar may by order dispense with service of a copy of a petition on the respondent or on any other person, and an application to a registrar for an order under this paragraph 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 acknowledgment of service in Form 6 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 acknowledgment 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 acknowledgment 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 eight 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 acknowledgment of service not constituting such a notice.

Consent to the grant of a decree

16.—(1) Where, before the hearing of a petition alleging two years' separation coupled with the respondent's consent to a decree being granted, the respondent wishes to indicate to the court that he consents to the grant of a decree, he must do so by giving the registrar a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgment of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgment is signed—

(*a*) in the case of a respondent acting in person, by the respondent, or

(*b*) in the case of a respondent represented by a solicitor, by the respondent as well as by the solicitor.

(2) A respondent to a petition which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

Where any such notice is given and none of the other facts mentioned in section 1(2) of the Act of 1973 is alleged, the proceedings on the petition shall be stayed and the registrar shall thereupon give notice of the stay to all parties.

Pleadings and Amendment

Supplemental petition and amendment of petition

17.—(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.

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

(9) The petitioner shall file the documents required by paragraph (8) to be served on any person and thereupon, unless otherwise directed, rules 12(6)

(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 rules 16, 20 and 49, a respondent or co-respondent who—

(*a*) wishes to defend the petition or to dispute any of the facts alleged in it,

(*b*) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief, or

(*c*) being the respondent to a petition to which section 5(1) of the Act of 1973 applies, wishes to oppose the grant of a decree on the ground mentioned in that subsection,

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 12(*d*) of the Act of 1973 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 charges 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 pleadings 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 (11) and (12) of Form 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs (4), (5) and (6) of Form 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph (8) 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'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) Where an answer to any petition to which rule 9(2) applies contains a prayer for relief, it shall contain the information required by that paragraph in the case of the petition in so far as it has not been given by the petitioner.

(5) Rule 9(5) shall apply, with the necessary modifications, to a pleading other than a petition as it applies to a petition.

(6) Where a party's pleading includes such a statement as is mentioned in rule 9(5), then if the opposite party—

(*a*) denies the conviction, finding or adjudication to which the statement relates, or

(*b*) alleges that the conviction, finding or adjudication was erroneous, or

(*c*) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(7) 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 pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

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

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 5 with Form 6 attached and shall send a copy to every other opposite party.

Supplemental answer and amendment of pleadings

24. Rule 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 court 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) the court 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 court 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) 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.

Discovery by interrogatories in defended cause

29.—(1) 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) 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 incapacity to consummate the marriage 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 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 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.

(4) In an undefended cause it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial unless so directed.

(5) In a defended cause, if the report made in pursuance of rule 30 is accepted by both parties, notice to that effect shall be given by the parties to the registrar and to the inspector or inspectors not less than seven clear days before the date fixed for the trial; and where such notice is given, it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial.

(6) Where pursuant to paragraph (4) or (5) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the court by a court expert and be given such weight as the court thinks fit.

Order for transfer of cause

32.—(1) The court 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, the court thinks it desirable that the cause should be heard and determined in the High Court.

(2) The court may order that any cause pending in a divorce county court shall be transferred to another divorce county court.

(3) 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.

(4) 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(3), or by that rule as applied by rule 17(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 113(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) Subject to paragraph (3), 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) Where in the case of a petition for divorce or judicial separation pending in a divorce county court—

(*a*) the only fact mentioned in section 1(2) of the Act of 1973 on which the petitioner relies in support of the petition is that specified in paragraph (*d*) of that subsection,

(*b*) there are no children of the family to whom section 41 of the Act of 1973 applies, and

(*c*) the respondent has returned to the court office an acknowledgement of service containing a statement to the effect that he consents to a decree being granted or a statement to that effect signed by the respondent has been lodged in the court office,

then, unless otherwise directed,—

(i) there shall be filed with the request for directions for trial an affidavit by the petitioner containing the information required by Form 7, as near as may be in the order there set out, together with any corroborative evidence on which the petitioner intends to rely; and

(ii) the registrar shall give directions for trial by entering the cause in a list to be known as the special procedure list.

(4) 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, except where given under rule 33(3), shall determine the place of trial.

(2) In the case of an undefended cause to which rule 33(3) does not apply, 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 trial, and

(*d*) any other fact which may be relevant for determing 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 eight 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 eight 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)(*c*) 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 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 elsewhere.

(8) 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 under section 1(2)(*b*) *of Act of* 1973

35.—(1) Where in a defended cause the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, the registrar may, of his own motion 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 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.

Stay under Domicile and Matrimonial Proceedings Act 1973

36.—(1) An application to the court by the petitioner or respondent in proceedings for divorce for an order under paragraph 8 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (in this rule referred to as "Schedule 1") shall be made to the registrar, who may determine the application or refer the application, or any question arising thereon, to a judge for his decision as if the application were an application for ancillary relief.

(2) An application for an order under paragraph 9 of Schedule 1 shall be made to a judge.

(3) Where, on giving directions for trial, it appears to the registrar from any information given pursuant to rule 9(2) or 21(4) or paragraph (4) of this rule that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in any country outside England and Wales and he considers that the question whether the proceedings on the petition should be stayed under paragraph 9 of Schedule 1 ought to be determined by the court, he shall fix a date and time for the consideration of that question by a judge and give notice thereof to all parties.

In this paragraph "proceedings continuing in any country outside England and Wales" has the same meaning as in rule 9(2).

(4) Any party who makes a request for directions for trial in matrimonial proceedings within the meaning of paragraph 2 of Schedule 1 shall, if there has been a change in the information given pursuant to rules 9(2) and 21(4), file a statement giving particulars of the change.

(5) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 may be made to the registrar, and he may determine the application or may refer the application, or any question arising thereon, to a judge as if the application were an application for ancillary relief.

EVIDENCE

Evidence generally

37.—(1) Subject to the provisions of rules 39, 40 and 48 and of the Civil Evidence Act 1968 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.

(2) Nothing in rules 39 and 40 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

Taking of affidavit in county court proceedings

38. In relation to matrimonial proceedings pending or treated as pending in a divorce county court, section 87(1) of the County Courts Act 1959 shall have effect as if after paragraph (*c*) there were inserted the following words:—

"or

(*d*) a registrar of the divorce registry; or

(*e*) any officer of the divorce registry authorised by the President under section 2 of the Commissioners for Oaths Act 1889**(a)**; or

(*f*) any clerk in the Central Office of the Royal Courts of Justice authorised to take affidavits for the purpose of proceedings in the Supreme Court.

Evidence by affidavit, etc.

39.—(1) The court 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.

(a) 1889 c. 10.

(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, or

(*c*) if the cause is undefended and directions for trial have been given,

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 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 court 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.

(5) 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.

(6) 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.

Evidence of marriage outside England and Wales

40.—(1) The celebration of a marriage outside England and Wales and its validity under the law of the country where it was celebrated may, in any matrimonial proceedings in which the existence and validity of the marriage is

not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

(*a*) a marriage certificate or similar document issued under the law in force in that country; or

(*b*) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of a marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933**(a)** or in any other manner authorised apart from this rule.

Issue of witness summons or subpoena

41.—(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.

Hearsay evidence

42.—(1) R.S.C. Order 38, rules 20 to 33 (which deal with hearsay evidence), shall apply in relation to a defended cause as if in rule 21—

(*a*) for the reference in paragraph (4) to Order 38, rule 3, there were substituted a reference to rule 39 of these Rules;

(*b*) paragraph (5) were omitted.

(2) Unless in any particular case the court otherwise directs—

(*a*) R.S.C. Order 38, rule 21(1) shall not apply in relation to an undefended cause pending in the High Court;

(*b*) C.C.R. Order 20, rule 21(1), shall not apply in relation to an undefended cause pending in a divorce county court,

(a) 1933 c. 4.

and where the court otherwise directs, then—

(i) if the cause is pending in the High Court, paragraph (1) shall apply as it applies in the case of a defended cause;

(ii) if the cause is pending in a divorce county court, C.C.R. Order 20, rules 20 to 30, shall apply as if paragraph (2) of rule 21 were omitted.

TRIAL, ETC.

Mode and place of trial

43.—(1) Unless otherwise directed and subject to rule 48, every cause and any issue arising therein shall be tried by a judge without a jury.

(2) Any cause begun by petition (except one entered in the special procedure list) 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.

(3) A judge or the district registrar of the registry for the divorce town at which any cause has been set down for trial may, where it appears to him that the cause cannot conveniently be tried at that town, change the place of trial to some other divorce town.

The power conferred by this paragraph may be exercised by the judge or district registrar of his own motion or on the application of a party, but before acting of his own motion the judge or district registrar shall give the parties an opportunity of being heard on the question of change, and for that purpose the district registrar may give the parties notice of a date, time and place at which the question will be considered.

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 any reference to the registry for the divorce town at which a cause is to be tried shall, in relation to a divorce town in which there is no district registry, be construed as a reference to such district registry as the Lord Chancellor may designate for the purpose.

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.

Lists at divorce towns and exercise of registrar's jurisdiction

46.—(1) The registrar of the registry for each divorce town shall prepare and keep up to date a list of the 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) The district registrar of the registry for the divorce town at which a cause has been set down for trial or, in the case of a cause set down for trial at the Royal Courts of Justice, a registrar of the divorce registry may, if it appears to him to be desirable having regard to the proximity of the date of the trial or otherwise, exercise in the cause any jurisdiction of the registrar of the registry in which the cause is proceeding.

Further provisions as to date of trial

47. 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:

Provided that nothing in this rule shall apply to a cause entered in the special procedure list.

Disposal of causes in special procedure list

48.—(1) As soon as practicable after a cause has been entered in the special procedure list, the registrar shall consider the evidence filed by the petitioner and—

(*a*) if he is satisfied that the petitioner has sufficiently proved the contents of the petition and is entitled to a decree and any costs for which he prays and that there are no children of the family to whom section 41 of the Act of 1973 applies, the registrar shall make and file a certificate to that effect;

(*b*) if he is not so satisfied he may either give the petitioner an opportunity of filing further evidence or remove the cause from the special procedure list whereupon rule 33(3) shall cease to apply.

(2) On the filing of a certificate under paragraph (1) a day shall be fixed for the pronouncement of a decree by a judge in open court at a court of trial and the registrar shall send to each party notice of the day and place so fixed and a copy of the certificate but it shall not be necessary for either party to appear on that day.

(3) Within 14 days after the pronouncement of a decree in accordance with a certificate under paragraph (1), any person may inspect the certificate and the evidence filed under rule 33(3) and may bespeak copies on payment of the prescribed fee.

Right to be heard on ancillary questions

49.—(1) A respondent 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 43 of the Act of 1973,

(*c*) any question whether a supervision order should be made as respects any such child under section 44 of that Act, and

(*d*) any question of ancillary relief.

(2) 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.

(3) A party shall be entitled to be heard on any question pursuant to paragraph (1) or (2) whether or not he has returned to the court office an acknowledgement of service stating his wish to be heard on that question.

(4) 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.

Respondent's statement as to arrangements for children

50. A respondent on whom there is served a statement in accordance with rule 8(2) may, at any time before the judge makes an order under section 41

of the Act of 1973, file in the court office a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the registrar shall send a copy to the petitioner.

Order as to arrangements for children to be drawn up

51. Any order made pursuant to section 41(1) or (4) of the Act of 1973 shall be drawn up.

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 made an order pursuant to section 41(1) of the Act of 1973, 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.

Shorthand note etc. of proceedings at trial

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

Provided that if at any divorce town 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.

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

(3) A shorthand note may be taken of any other proceedings before a judge if directions for the taking of such a note are given by or on behalf of the Lord Chancellor.

(4) 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.

(5) 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.

(6) 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 Minister for the Civil Service.

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

(8) 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

54.—(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 six 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 seven days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of any 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.

(9) This rule shall apply, with the necessary modifications, to a cause disposed of under rule 48 as it applies to a cause tried by a judge alone.

DECREES AND ORDERS

Decrees and orders

55.—(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.

(3) 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.

Application for rescission of decree

56.—(1) An application by a respondent under section 10(1) of the Act of 1973 for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court.

(2) Paragraphs (3) and (5) of rule 54 shall apply to an application under this rule as they apply to an application under that rule.

(3) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed for the hearing of the application.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

Application under section 10(2) *of Act of* 1973

57.—(1) An application by the respondent to a petition for divorce for the court to consider the financial position of the respondent after the divorce shall be made by notice in Form 12.

(2) Where a petitioner is served with a notice in Form 12, then, unless he has already filed an affidavit under rule 8(3) or rule 73(2), he shall, within 14

days after the 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) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the respondent shall file an affidavit in reply containing full particulars of his property and income unless already given in an affidavit filed by him under rule 73(3).

(4) The powers of the court on the hearing of the application may be exercised by the registrar.

(5) If a decree nisi has been granted on the basis of a finding that the petitioner was entitled to rely in support of his petition on the fact of two years' or five years' separation and has made no such finding as to any other fact mentioned in section 1(2) of the Act of 1973, the registrar by whom an application under section 10(2) is to be heard shall fix an appointment for the hearing, and rules 77(3) to (7), 80 and 81 shall apply to the application as if it were an application for ancillary relief.

(6) At any time before the hearing of the application is concluded (and without prejudice to any right of appeal), the registrar may, and if so requested by either party shall, refer the application, or any question arising thereon, to a judge.

(7) A statement of any of the matters mentioned in subsection (3) of section 10 of the Act of 1973 with respect to which the court is satisfied, or, where the court has proceeded under subsection (4) of the said section, a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the court minutes.

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 the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The registrar shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

(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 9 of the Act of 1973 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.

(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 on lodging notice

65.—(1) Subject to rule 66(1), 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 8.

(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 or for rescission of the decree 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;

(*e*) that the judge has made an order under section 41(1) of the Act of 1973;

(*f*) where a certificate has been granted under section 12 of the Administration of Justice Act 1969**(a)** in respect of the decree—

(i) that no application for leave to appeal directly to the House of Lords is pending;

(ii) that no extension of the time to apply for leave to appeal directly to the House of Lords has been granted or, if any such extension has been granted, that the time so extended has expired; and

(iii) that the time for any appeal to the Court of Appeal has expired; and

(*g*) that the provisions of section 10(2) to (4) of the Act of 1973 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.

Decree absolute on application

66.—(1) In the following cases an application for a decree nisi to be made absolute shall be made to a judge, that is to say—

(*a*) where, within six weeks after a decree nisi has been pronounced, the Queen's Proctor gives to the registrar and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or

(*b*) where there are other circumstances which ought to be brought to the attention of the court before a decree nisi is made absolute.

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, in a case to which sub-paragraph (*a*) applies, on the Queen's Proctor.

(2) An application by a spouse for a decree nisi pronounced against him to

(a) 1969 c. 58.

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 four clear days before the day on which the application is heard.

(3) An order granting an application under this rule shall not take effect until the registrar has searched the court minutes and is satisfied as to the matters mentioned in rule 65(2).

Indorsement and certificate of decree absolute

67.—(1) 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.

(2) On a decree nisi being made absolute, the registrar shall—

(*a*) send to the petitioner and the respondent a certificate in Form 9 or 10, 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.

(3) 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.

(4) A certificate in Form 9 or 10 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

ANCILLARY RELIEF

Application by petitioner or respondent for ancillary relief

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

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

(*b*) a financial provision order,

(*c*) a property adjustment 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 the court, either by notice in Form 11 or at the trial, or

(*b*) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 11.

(3) An application by a petitioner or respondent 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 11.

Application by guardian etc. for ancillary relief in respect 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*) a local authority to whom the care of a child of the family has been committed by an order made under section 43 of the Act of 1973,

(*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 115, 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 ancillary relief in respect of that child,

may apply for an order for ancillary relief as respects that child by notice in Form 11.

Application in Form 11 *or* 12

70. Where an application for ancillary relief is made by notice in Form 11 or an application under rule 57 is made by notice in Form 12, 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 within four days after filing the notice the applicant shall serve a copy 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 an order for a variation of settlement, the court shall, unless it is satisfied that the proposed variation does not adversely affect the rights or interests of any children concerned, 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) On any other application for ancillary relief 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.

General provisions as to evidence etc. on application for ancillary relief

73.—(1) A petitioner or respondent 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 83, file a notice in Form 13 and within four days after doing so serve a copy on the other spouse.

(2) Where a respondent or a petitioner is served with a notice in Form 11 or 13 in respect of an application for ancillary relief, not being an application to which rule 74 or 75 applies, 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) Within 14 days after service of any affidavit under paragraph (2) or within such other time as the court may fix, the applicant shall file an affidavit in reply containing full particulars of his property and income.

Evidence on application for property adjustment or avoidance of disposition order

74.—(1) Where an application is made for a property adjustment order or an avoidance of disposition order, the application shall state briefly the nature of the adjustment proposed or the disposition to be set aside and the notice in Form 11 or 13, as the case may be, shall, unless otherwise directed, be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The affidavit in support shall contain, so far as known to the applicant, full particulars—

(*a*) in the case of an application for a transfer or settlement of property—

(i) of the property in respect of which the application is made,

(ii) of the property to which the party against whom the application is made is entitled either in possession or reversion;

(*b*) in the case of an application for an order for a variation of settlement—

(i) of all settlements, whether ante-nuptial or post-nuptial, made on the spouses, and

(ii) of the funds brought into settlement by each spouse;

(*c*) in the case of an application for an avoidance of disposition order—

(i) of the property to which the disposition relates,

(ii) of the persons in whose favour the disposition is alleged to have been made, and in the case of a disposition alleged to have been made by way of settlement, of the trustees and the beneficiaries of the settlement.

(3) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the affidavit in support shall, in addition to containing any particulars required by paragraph (2)—

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

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

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

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

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

(*c*) in the case of an application to which paragraph (3) refers, any mortgagee of whom particulars are given pursuant to that paragraph,

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

(5) 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 variation order

75.—(1) An application for a variation 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.—(1) 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 and, where the affidavit contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 14 and a copy of the affidavit or of such part thereof as the court may direct, indorsed as aforesaid, shall be served on

that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under rule 77(6) within eight days of service of the affidavit on him, inclusive of the day of service.

(2) Rule 49(4) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

Investigation by registrar of application for ancillary relief

77.—(1) On or after the filing of a notice in Form 11 or 13 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 11 or 13 (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 rules 78, 80 and 81, 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) The registrar may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

(7) 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.—(1) Except in a case to which rule 79 applies and subject to paragraph (2), the registrar shall, after completing his investigation under rule 77, make such order as he thinks just.

(2) The registrar may at any time refer the application, or any question arising thereon, to a judge for his decision.

(3) 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 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.

(2) 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.

(5) Where the parties come to an agreement as to the terms of the order to be made on the application, an order in those terms may be made by the registrar and the foregoing provisions of this rule shall not apply.

Transfer of application for ancillary relief: general provisions

80.—(1) If the court considers that an application for ancillary relief pending in a divorce county court gives rise to a contested issue of conduct of a nature which is likely materially to affect the question whether any, or what, order should be made therein and for that reason the application should be transferred to the High Court, the court shall, subject to paragraph (5) of this rule, make an order for transfer accordingly and, where an application is transferred to the High Court under this paragraph, it shall be heard by a judge of that Court.

(2) Where an application for ancillary relief is pending in a divorce county court and the parties to the proceedings consent to the making of an order for the transfer of the application to the High Court, an application for that purpose may be made to a judge or the registrar who shall, subject to paragraph (5) of this rule, order the transfer unless he is of opinion that it would not be justified.

(3) Without prejudice to paragraphs (1) and (2) of this rule, the court in which an application for ancillary relief is pending may, if it is a divorce county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a divorce county court, where the transfer appears to the court to be desirable.

(4) The judge before hearing and the registrar before investigating under rule 77 an application for ancillary relief pending in a divorce county court shall consider whether the case is one in which the court should exercise its powers under paragraph (1) or (3) of this rule.

(5) In considering whether an application should be transferred from a divorce county court to the High Court or from the High Court to a divorce county court, the court shall have regard to all relevant considerations, including the nature and value of the property involved, the relief sought and the financial limits for the time being relating to the jurisdiction of county courts in other matters.

(6) Where a decree nisi has been pronounced in the cause, the court shall, before making an order for the transfer of the application to the High Court, consider whether it would be more convenient to transfer the cause to the High Court under rule 32.

(7) Where pursuant to the provisions of this rule an application for ancillary relief or the cause is transferred to the High Court, the court may, on making the order for transfer, give directions as to the further conduct of the proceedings.

(8) Where an application for ancillary relief is pending in a divorce county court, the court may order that the application be transferred to another divorce county court.

(9) 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.

(10) An order under paragraph (1), (3), (8) or (9) may be made by the court of its own motion or on the application of a party, but before making an order of its own motion the court 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.

Transfer to High Court for purpose of expedition

81. Without prejudice to the last foregoing rule, a judge or the registrar may, on the application of a party or of his own motion, order that an application for ancillary relief pending in a divorce county court shall be transferred to the High Court if he is of opinion that the transfer is desirable for the purpose of expediting the hearing of the application ; but where a transfer is ordered under this rule, the costs of the application for ancillary relief shall be on the county court scale unless the judge or registrar who hears the application considers that a transfer would have been justified otherwise than for expediting the hearing and for that reason directs that the costs incurred after the transfer of the application shall be on the High Court scale.

Arrangements for hearing of application etc. by judge

82.—(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 periodical payments order at same rate as order for maintenance pending suit

83.—(1) Where at or after the date of a decree nisi of divorce or nullity of marriage an order for maintenance pending suit is in force, the party in whose favour the order was made may, if he has made an application for an order for periodical payments for himself in his petition or answer, as the case may be, request the registrar in writing to make such an 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 maintenance pending suit.

(2) Where such a request is made, the registrar shall serve on the other spouse a notice in Form 15 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 15.

(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.

Application for order under section 37(2)(*a*) *of Act of* 1973

84.—(1) An application under section 37(2)(*a*) of the Act of 1973 for an order restraining any person from attempting to defeat a claim for financial provision or otherwise for protecting the claim shall be made to a judge.

(2) Rule 82 (except paragraph (2)) shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

Exclusion of sections 99 *and* 101 *of County Courts Act* 1959

85.—(1) 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.

(2) 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 ancillary relief or an order made under the provisions of section 27 of the Act of 1973 where an application for a variation 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.

(5) The Attachment of Earnings Act 1971(**a**) and Part VII of C.C.R. Order 25 (which deals with attachment of earnings) shall apply to the enforcement of an order made in matrimonial proceedings in the divorce registry which are treated as pending in a divorce county court as if the order were an order made by such a court.

(6) Where an application under C.C.R. Order 25, rule 2 (which deals with the oral examination of a judgment debtor), relates to an order made by a divorce county court—

(*a*) the application shall be made to such divorce county court as in the opinion of the applicant is nearest to the place where the debtor resides or carries on business, and

(*b*) there shall be filed with the application the affidavit required by paragraph (1) of this rule and, except where the application is made to the court in which the order sought to be enforced was made, a copy of the order shall be exhibited to the affidavit;

and accordingly paragraph (2) of the said rule 2 shall not apply.

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(**b**);

"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,

(**a**) 1971 c. 32. (**b**) 1869 c. 62.

(*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,

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 request in Form 16 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 17 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 16".

(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 lump sum provision or costs, or

(*b*) where the order is for maintenance pending suit 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,

(iii) the fee paid to the commissioner on the affidavit filed under rule 86(1), and

(iv) if the judgment creditor is represented by a solicitor, £3 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 necessary affidavit,

(iv) if the judgment creditor is represented by a solicitor without counsel, £8 in respect of the solicitor's charges, and

(v) if the judgment creditor is represented by solicitor and counsel, £6 in respect of the solicitor's charges and £9 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 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; but if the committal is for failure to comply with the terms of an injunction, the order or warrant may, if a judge so directs, be executed by the tipstaff within any county court district.

(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 43 of the Act of 1973 or providing for his supervision under section 44 of that Act, shall be made to a judge.

(2) An application by the petitioner or the respondent 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 43 or 44 of the Act of 1973 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) On any application to a judge relating to the custody, care and control of, or access to, a child—

(*a*) neither the applicant nor the respondent shall be entitled to be heard in support of or, as the case may be, in opposition to the application unless he is available at the hearing to give oral evidence or the judge otherwise directs;

(*b*) the judge may refuse to admit any affidavit by any person (other than the applicant or respondent) who is or is proposed to be responsible for the child's care and upbringing or with whom the child is living or is proposed to live unless that person is available at the hearing to give oral evidence;

(*c*) a witness summons or writ of subpoena to compel the attendance of any such person as is mentioned in sub-paragraph (*b*) may issue in accordance with rule 41 without (in the case of a writ of subpoena) the production of the note from a judge or registrar mentioned in R.S.C. Order 32, rule 7;

(*d*) no witness summons or writ of subpoena shall be issued to compel the attendance of any other witness except with the production of such a note and accordingly in any such case R.S.C. Order 32, rule 7, shall apply, with such modifications as may be appropriate, to a witness summons as it applies to a writ of subpoena.

(5) Where an affidavit filed for use in proceedings relating to a child contains an allegation of adultery or of an improper association with a named person, then, unless otherwise directed, it shall be indorsed with a notice in Form 14 and a copy of the affidavit, or of such part thereof as the court may direct, indorsed as aforesaid, shall be served on that person by the person who files the affidavit, and the person against whom the allegation is made shall be entitled to intervene in the proceedings by applying for directions under paragraph (7) within eight days of service of the affidavit on him, inclusive of the day of service.

(6) Rule 49(4) shall apply to a person served with an affidavit under paragraph (5) of this rule as it applies to a co-respondent.

(7) The court may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Further provisions as to orders under sections 43 *and* 44 *of Act of* 1973

93.—(1) Before an order is made committing a child to the care of a local authority under section 43 of the Act of 1973, 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 18 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 43, the court should make a financial provision order in favour of the child, the authority shall, within seven days after receipt of the notice, file an affidavit setting out such facts relevant to the property and income of the person against whom the financial provision 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 four 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 44 of the Act of 1973 for the variation or discharge of an order made under section 43 or 44 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 43 or 44 a local authority may be represented by their director of social services or other officer employed by them for the

purposes of their social services functions under the Local Authority Social Services Act 1970**(a)**.

Removal of child out of England and Wales

94.—(1) In any cause begun by petition the petitioner or the respondent may apply at any time for an order prohibiting the removal of any child of the family under 18 out of England and Wales without the leave of the court except on such terms as may be specified in the order.

Unless otherwise directed, an application under this paragraph may be made *ex parte*.

(2) Unless otherwise directed, any order relating to the custody or care and control of a child shall provide for the child not to be removed out of England and Wales without the leave of the court except on such terms as may be specified in the order.

(3) Subject to rule 97(2), an application for leave to remove a child out of England and Wales shall be made to a judge except in the following cases when it may be made to the registrar, namely—

(*a*) where the application is unopposed, or

(*b*) where the application is for the temporary removal of the child and is opposed on a ground which in the opinion of the registrar relates only to the arrangements for the care of the child during the removal or any other incidental matter.

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.

Notice of other proceedings relating to children

96. If, while a cause is pending, proceedings relating to any child of the family are begun in the High Court, a county court or a magistrates' court,

(a) 1970 c. 42.

a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the cause, by the petitioner.

Transfer of proceedings relating to children

97.—(1) Rules 80 and 81 shall, so far as applicable, apply to proceedings for the exercise of any power under Part III of the Act of 1973 as they apply to an application for ancillary relief with the following modifications:—

(*a*) for the words "The judge before hearing and the registrar before investigating under rule 77 an application for ancillary relief" in paragraph (4) of rule 80 there shall be substituted the words "The court before hearing an application";

(*b*) paragraph (5) of rule 80 shall be omitted.

(2) Where it appears to the court that an application pending in a divorce county court for leave to remove a child permanently out of England and Wales or for an order under section 43 of the Act of 1973 is contested, or that any such proceedings pending in a divorce county court as are mentioned in paragraph (1) of this rule relate to a child who is a ward of court, the court shall order that the proceedings be transferred to the High Court:

Provided that, if a decree nisi has been pronounced in the cause, the court shall, before ordering a transfer as aforesaid, consider whether it would be more convenient to transfer the cause to the High Court under rule 32.

(3) Where in any cause it appears to the court that an application pending in a divorce county court for a declaration under section 42(3) of the Act of 1973 is contested, the court shall make an order that the cause be transferred to the High Court.

OTHER APPLICATIONS

Application in case of wilful neglect to maintain

98.—(1) Every application under section 27 of the Act of 1973 shall be made by originating application, which must, unless otherwise directed, contain the information required by Form 19.

(2) The application may be made to any divorce county court and there shall be filed with the application an affidavit by the applicant 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 20 with Form 6 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) Within 14 days after the time limited for giving notice of intention to defend, the respondent shall, if he intends to contest the application, file an answer setting out the grounds on which he relies (including any allegation which he wishes to make against the applicant), and shall in any case, unless

otherwise directed, file an affidavit containing full particulars of his property and income, and the registrar shall serve a copy of the answer, if any, and of the affidavit on the applicant.

(6) Where an answer is filed alleging adultery the alleged adulterer shall, unless otherwise directed, be made a party cited and be served with a copy of the answer, and rules 12(6) and 14 shall apply, with the necessary modifications, as if the answer 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 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 any answer filed by the respondent, the applicant may file a reply, and in that case the registrar shall serve a copy on the respondent and on any party cited.

(10) Within 14 days after being served with a copy of the respondent's affidavit, the applicant may file a further affidavit as to means and as to any fact stated in the respondent's affidavit which he wishes to dispute, and in that case the registrar shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

(11) An applicant, respondent or party cited who files an answer, affidavit or reply under any of the preceding paragraphs of this rule 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 the court that the respondent intends to contest an application under the last foregoing rule on the ground that—

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

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

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

(2) Without prejudice to the provisions of paragraph (1) of this rule, rules 80 (except paragraphs (5) and (7) thereof) and 81 shall apply with the necessary modifications to an appplication for an order under section 27 of the Act of 1973 as if the application were an application for ancillary relief.

(3) 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.

(4) 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), or

any application for an order under section 27(5) of the Act of 1973, to the registrar for him to investigate the means of the parties to the marriage.

(5) Where an application is referred to the registrar under paragraph (4) he shall fix an appointment for the hearing of the application and the provisions of these Rules relating to ancillary relief shall apply subject to the modification that in rule 79(1) for the words from "In the case of" to "the same time" there shall be substituted the words "Except where the application is for an order made under section 27(5) of the Act of 1973 or the judge has made a finding that there has been wilful neglect to maintain".

(6) Where a person has been made a party cited, the judge may, if after the close of the evidence on the part of the respondent he is of opinion that there is not sufficient evidence against the party cited, dismiss him from the proceedings.

(7) 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 27 of the Act of 1973 as if—

(*a*) the application were a cause, and

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

Application for alteration of maintenance agreement during lifetime of parties

100.—(1) An application under section 35 of the Act of 1973 for the alteration of a maintenance agreement shall be made by originating application containing, unless otherwise directed, the information required by Form 21.

(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 20 with Form 6 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 76, 77(4) to (7), 78 and 80 to 82 shall apply, with the necessary modifications, to an application under section 35 of the Act of 1973 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 35 of the Act of 1973 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 to the High Court under section 36 of the Act of 1973 for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating summons in Form 22.

(2) The summons may be issued out of 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 place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(*c*) the name of every child of the family 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 18), and the place where and the person with whom any such minor child is residing,

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

(*d*) 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 family 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;

(*e*) 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;

(*f*) in the case of an application by the surviving party, the applicant's means;

(*g*) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicants, and the information mentioned in sub-paragraph (*a*), (*b*) and (*c*) of rule 102(3);

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

(*i*) if the application is made after the end of the period of six 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 6.

(a) 1938 c. 45.

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 a minor or a patient within the meaning of rule 112.

(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:

Provided that where the parties come to an agreement as to the terms of the order to be made on the application, an order in those terms may be made by the registrar.

(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 76, 77(4) to (7), 79(3) and (4), 80(9) and (10) and 82(1) and (2) shall apply, with the necessary modifications, to an application under section 36 of the Act of 1973 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 36 of the Act of 1973 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 23.

(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 issued out of that registry, and in any other case it may be issued out of the divorce registry or out of 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 18), and the place where and the person with whom any such minor 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 such application as is mentioned in section 26(4)(*c*) of the Act of 1965 was made or deemed to be made by the applicant during the lifetime of the deceased and, if so, the date and effect of the order (if any) made on the 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 six 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 in High Court under section 17 of Act of 1882

104.—(1) An application to the High Court under section 17 of the Act of 1882 shall be made by originating summons in Form 24, which may be issued out of the divorce registry or a district registry, and at the same time the applicant shall, unless otherwise directed, file an affidavit in support of the summons and shall lodge in the court office a copy of the summons and of the affidavit for service on the respondent and on any mortgagee mentioned therein pursuant to paragraph (3).

(2) The jurisdiction of a judge of the High Court under the said section 17 may be exercised by a registrar.

(3) Where the application concerns the title to or possession of land, the originating summons or the affidavit in support shall—

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

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

(4) The registrar shall annex to the copy of the originating summons for service on the respondent a copy of the affidavit in support and an acknowledgment of service in Form 6.

(5) Where particulars of a mortgage are given pursuant to paragraph (3), the registrar shall serve on the mortgagee a copy of the originating summons with a copy of the affidavit in support and any person so served shall be entitled to be heard on the application.

(6) No appearance need be entered to the originating summons.

(7) If the respondent intends to contest the application, he shall within 14 days after the time limited for giving notice to defend file an affidavit in answer to the application setting out the grounds on which he relies and lodge in the court office a copy of the affidavit for service by the registrar on the applicant.

(8) If the respondent fails to file an affidavit under paragraph (7), the registrar may by order specify a time within which the respondent must, if he wishes to defend, file an affidavit, and may, on or after making such an order, direct that the respondent shall be debarred from defending the application unless an affidavit is filed within that time.

(9) The registrar may grant an injunction in proceedings under the said section 17 if, but only so far as, the injunction is ancillary or incidental to any relief sought in those proceedings.

(10) Without prejudice to paragraph (7) of this rule, R.S.C. Order 28, rule 7 (which enables a counterclaim to be made in an action begun by originating

summons), shall apply, with the necessary modifications, to a respondent to an originating summons under this rule as it applies to a defendant who has entered an appearance to an originating summons.

(11) Rules 77(4) to (7), 78 and 82 shall apply, with the necessary modifications, to an application under section 17 of the Act of 1882 as they apply to an application for ancillary relief.

(12) Subject to the provisions of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to an application under section 17 of the Act of 1882 as if the application were a cause, the originating summons a petition, and the applicant the petitioner.

Transfer of proceedings under section 17 *of Act of* 1882, *etc.*

105.—(1) The court in which an application under section 17 of the Act of 1882, section 26 of the Act of 1965 or section 36 of the Act of 1973 is pending may, if it is a county court, order the transfer of the application to the High Court or, if it is the High Court, order the transfer of the application to a divorce county court, where the transfer appears to the court to be desirable.

(2) In considering whether an application should be transferred under paragraph (1) from a county court to the High Court or from the High Court to a divorce county court, the court shall have regard to all relevant considerations, including the nature and value of the property involved, and, in the case of an application under section 26 of the Act of 1965 or section 36 of the Act of 1973, the limits for the time being of the jurisdiction of county courts under section 7 of the Family Provision Act 1966**(a)**.

(3) Rule 80(10) shall apply to an order under paragraph (1) of this rule as it applies to an order under paragraph (3) of that rule.

Exercise in divorce registry of county court jurisdiction under section 17 *of Act of* 1882, *etc.*

106.—(1) Where any proceedings for divorce, nullity or judicial separation pending in the divorce registry are treated as pending in a divorce county court, an application under section 17 of the Act of 1882 by one of the parties to the marriage may be made to the divorce registry as if it were a county court.

(2) In relation to proceedings begun in the divorce registry under paragraph (1) of this rule or transferred from the High Court to the divorce registry under rule 105(1)—

(*a*) section 4 of the Act of 1967 and the rules made thereunder shall have effect, with the necessary modifications, as they have effect in relation to proceedings begun in or transferred to the divorce registry under that section;

(*b*) C.C.R. Order 2, rule 13 (which relates to venue), and C.C.R. Order 46, rule 11(2) (which deals with reference to the registrar), shall not apply, and a registrar may exercise the jurisdiction conferred on a circuit judge by the said section 17.

(a) 1966 c. 35.

Proceedings under sections 1 *and* 7 *of Matrimonial Homes Act* 1967

107.—(1) The jurisdiction of the High Court under section 1 of the Matrimonial Homes Act 1967**(a)** may be exercised in chambers and the provisions of rule 104 (except paragraph (2)) shall apply, with the necessary modifications, to proceedings under that section as they apply to an application under section 17 of the Act of 1882.

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

(3) The jurisdiction of the court under section 7 of the said Act of 1967 may be exercised by the registrar.

(4) 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.

Proceedings in respect of polygamous marriage

108.—(1) The provisions of this rule shall have effect where a petition, originating application or originating summons asks for matrimonial relief within the meaning of section 47(2) of the Act of 1973 in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(2) The petition, originating application or originating summons—

(*a*) shall state that the marriage in question is polygamous;

(*b*) shall state whether or not there is, to the knowledge of the petitioner or applicant, any living spouse of his or hers additional to the respondent or, as the case may be, any living spouse of the respondent additional to the petitioner or applicant (in this rule referred to as an additional spouse); and

(*c*) if there is any additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the petitioner or applicant or, as the case may be, to the respondent, or state, so far as may be applicable, that such information is unknown to the petitioner or applicant.

(3) Without prejudice to its powers under R.S.C. Order 15 (which deals with parties) or C.C.R. Order 15 (which deals with amendment), the court may order that any additional spouse be added as a party to the proceedings or be given notice of the proceedings or of any application in the proceedings for any such order as is mentioned in section 47(2)(*d*) of the Act of 1973.

(a) 1967 c. 75.

(4) Any order under paragraph (3) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in a petition or an acknowledgement of service of a petition, the petitioner shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on making a request for directions for trial, ask for directions as to whether an order should be made under paragraph (3).

(5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

Application for declaration affecting matrimonial status

109.—(1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to a person's matrimonial status, the proceedings shall be begun by petition.

(2) The petition shall state—

(*a*) the names of the parties and the residential address of each of them at the date of presentation of the petition;

(*b*) the place and date of any ceremony of marriage to which the application relates;

(*c*) whether there have been any previous proceedings in any court in England and Wales or elsewhere between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them, and, if so, the nature of the proceedings;

(*d*) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the court has jurisdiction to make it;

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

(*a*) as conferring any jurisdiction to make a declaration in circumstances in which the court could not otherwise make it, or

(*b*) as affecting the power of the court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) This rule does not apply to proceedings to which rule 110 applies.

Application under section 45 *of Act of* 1973

110.—(1) A petition by which proceedings in the High Court are begun under section 45 of the Act of 1973 shall, in addition to stating the grounds on which the petitioner relies, set out the date and place of birth of the petitioner and the maiden name of his mother, and, if the petitioner is known by a name other than that which appears in the certificate of his birth, that fact shall be stated in the petition and in any decree made thereon.

(2) The petition shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner:

Provided that if the petitioner is under 16, the affidavit shall, unless otherwise directed, be made by his next friend.

(3) An affidavit for the purposes of paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

(4) On filing the petition the petitioner shall issue and serve on the Attorney-General a summons for directions as to the persons, other than the Attorney-General, who are to be made respondents to the petition.

(5) It shall not be necessary to serve the petition on the Attorney-General otherwise than by delivering a copy of it to him in accordance with sub-section (6) of the said section 45.

(6) The Attorney-General may file an answer to the petition within 21 days after directions have been given under paragraph (4) and no directions for trial shall be given until that period has expired.

(7) A respondent who files an answer shall at the same time lodge in the divorce registry as many copies of the answer as there are other parties to the proceedings and the registrar shall send one of the copies to each of those parties.

General provisions as to proceedings under rule 109 *or* 110

111.—(1) Proceedings to which rule 109 or 110 relates shall be begun in the divorce registry.

(2) Where the proceedings are proceedings for a declaration as to the validity or subsistence of a marriage of the petitioner, rule 9(2) shall apply to the petition as if it were a petition for divorce.

(3) Unless a judge otherwise directs, the trial of the proceedings shall take place at the Royal Courts of Justice.

(4) Subject to rules 109 and 110 and paragraphs (2) and (3) of this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the proceedings as if they were a cause.

DISABILITY

Person under disability must sue by next friend, etc.

112.—(1) In this rule—

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

"person under disability" means a person who is a minor 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.

(a) 1959 c. 72.

(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*) 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 four days' notice to the Official Solicitor, for the appointment of some other person as guardian;

(*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 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 a minor 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

113.—(1) Where a document to which rule 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 a minor 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 112(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 is served in accordance with paragraph (1), it shall be indorsed with a notice in Form 25; 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.

114.—(1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was 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, 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

115.—(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

Security for costs

116. 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 in a county court.

Service out of England and Wales

117.—(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 5 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 5, 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

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

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

(*b*) if he is acting in person, to 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

119. 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

120. 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.

121.—(1) Where a petition is sent to any person by an officer of the court, he shall indorse on a copy of Form 5 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

122.—(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 two clear days.

Place of hearing of application by judge

123.—(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 or the court otherwise directs, 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

124.—(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 five days after the order or decision was made or given and served not less than two 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

125. 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.

126. 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

127. 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.

Removal of proceedings to High Court under section 115 *of County Courts Act* 1959

128.—(1) The power of the High Court or a judge thereof under section 115 of the County Courts Act 1959 to order the removal into the High Court, otherwise than by order of certiorari, of matrimonial proceedings pending in a divorce county court may be exercised by a registrar of the divorce registry or by the registrar of any district registry having that county court within its district, except where a judge of the county court has refused to order the transfer of the proceedings to the High Court.

(2) Proceedings for the exercise of the power shall be begun by originating summons.

No appearance need be entered to the summons.

(3) Rule 129(3) shall have effect in relation to an order for the removal of matrimonial proceedings into the High Court as if it were an order for the transfer of the proceedings to the High Court.

(4) Where by virtue of any provision of these Rules a county court has power to order that any proceedings pending in the court be transferred to the High Court, the High Court shall have power, exercisable in the like circumstances, to order the removal of the proceedings into the High Court, and the foregoing paragraphs of this rule shall apply as if the power conferred by this paragraph were conferred by the said section 115.

Procedure on transfer of cause or application

129.—(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 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

130.—(1) 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 rules 48(3) and 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

131.—(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

132. The rules specified in column 1 of the Schedule to these Rules are hereby revoked to the extent specified in column 2 of the Schedule, so, however, that the provisions of those rules in force immediately before 11th January 1974 shall continue to apply to such extent as may be necessary for giving effect to the transitional provisions and savings in the Act of 1973.

Dated 29th November 1973.

Hailsham of St. Marylebone, C.
George Baker, P.
John Latey, J.
Ifor Lloyd.
Irvon Sunderland.
W. D. S. Caird.
J. L. Williams.
F. B. Purchas.
Margaret Puxon.
J. D. Clarke.
D. E. Morris.

SCHEDULE

Rule 132

RULES REVOKED

Title and Reference	*Extent of Revocation*
The Rules of the Supreme Court 1965 (S.I. 1965/1776 (1965 III, p. 4995), as amended **(a)**)	Order 89, rules 1 and 3 Order 90, rules 13, 14 and 15
The Matrimonial Causes Rules 1971 (S.I. 1971/953 (1971 II, p. 2713))	The whole Instrument
The Matrimonial Causes (Amendment) Rules 1971 (S.I. 1971/1923 (1971 III, p. 5243))	The whole Instrument
The Matrimonial Causes (Amendment) Rules 1972 (S.I. 1972/1095 (1972 II, p. 3248))	The whole Instrument
The Matrimonial Causes (Amendment) Rules 1973 (S.I. 1973/777 (1973 I, p. 2459))	The whole Instrument
The Matrimonial Causes (Amendment No. 2) Rules 1973 (S.I. 1973/1413 (1973 II, p. 4340))	The whole Instrument
The Matrimonial Causes (Amendment No. 3) Rules 1973 (S.I. 1973/1973)	The whole Instrument

(a) The relevant amending instruments are S.I. 1967/1809, 1968/1244, 1971/1269, 1971/1955 (1967 III, p. 4832; 1968 II, p. 3360; 1971 II, p. 3634; III, p. 5274).

APPENDIX

FORMS

Rule 5(3)

Form 1

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 eight days after you receive this notice, inclusive of the day of receipt. Delay in returning the form may add to the costs. If 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* 6]

Rule 9(1)

Form 2

GENERAL FORM OF PETITION

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

THE PETITION OF SHOWS THAT—

(1) On the day of 19 the petitioner was lawfully married to (hereinafter called the respondent) at

(2) 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) [*In the case of a petition for divorce, nullity, judicial separation or presumption of death and dissolution of marriage where it is alleged that the court has jurisdiction based on domicile*] The petitioner is domiciled in England and Wales [*or* The petitioner is domiciled in and the respondent is domiciled in England and Wales] [*or, where it is alleged that*

the court has jurisdiction based on habitual residence] The petitioner has [*or* The respondent has] [*or* The petitioner and the respondent have] been habitually resident in England and Wales throughout the period of one year ending with the date of the presentation of the petition [*or as the case may be*] [*give details of the habitual residence relied on including the addresses of places of residence during the one year period and the length of residence at each place*]; the petitioner is a [*state occupation*] [and resides at], and the respondent is a [*state occupation*] [and resides at].

(4) There is [are] [no [*or state number*] child[ren] of the family now living] [namely [*state the full names (including surname) of each child and his date of birth or, if it be the case, that he is over 18 and in the case of each minor child over the age of 16, whether he is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation*]].

(5) [*In the case of a husband's petition*] No other child now living has been born to the respondent during the marriage so far as is known to the petitioner [*or in the case of a wife's petition*] No other child now living has been born to the petitioner 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 18*]].

(6) [*Where there is a dispute whether a child is a child of the family*] The petitioner alleges that 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*].

(7) [*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.

(8) [*Where an application is made in the petition for an order for the support of a child of whom the respondent is not a parent*] The respondent assumed responsibility for the maintenance of the said to the following extent and for the following time namely [*give details*]. There is no other person liable to maintain the said child [except].

(9) There have been no previous proceedings in any court in England and Wales or elsewhere with reference to the marriage [or to any children of the family] [or between the petitioner and the respondent with reference to any property of either or both of them] [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*]].

(10) There are no proceedings continuing in any country outside England and Wales which are in respect of the marriage or are capable of affecting its validity or subsistence [except [*give particulars of the proceedings, including the court in or tribunal or authority before which they were begun, the date when they were begun, the names of the parties, the date or expected date of any trial in the proceedings and such other facts as may be relevant to the question whether the proceedings on the petition should be stayed under Schedule 1 to the Domicile and Matrimonial Proceedings Act* 1973]].

(11) The following [*or* No] agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent [*or* the petitioner] [and the said children] [namely [*state details*]].

(12) [*In the case of a petition for divorce alleging five years' separation*] The petitioner proposes, if a decree nisi is granted, to make the following financial provision for the respondent [*give details of any proposal not mentioned in paragraph* (11)] [*or* The petitioner makes no proposals for financial provision for the respondent in the event of a decree nisi being granted].

(13) [*In the case of a petition for divorce*] The said marriage has broken down irretrievably.

(14) The respondent has committed adultery with and the petitioner finds it intolerable to live with the respondent [*or* The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent] [*or* The respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of this petition] [*or* The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition and the respondent consents to a decree being granted] [*or* The parties to the marriage have lived apart for a continous period of at least five years immediately preceding the presentation of the petition] [*or, where the petition is not for divorce or judicial separation, set out the ground on which relief is sought, and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved*].

The petitioner therefore prays—

(1) That the said marriage may be dissolved [*or* declared void] [*or* annulled] [*or as the case may be*].

(2) 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* 42(3) *of the Matrimonial Causes Act* 1973].

(3) [*Where appropriate*] That may be ordered to pay the costs of this suit.

(4) That he [she] may be granted the following ancillary relief, namely [*state particulars of any application for ancillary relief which it is intended to claim*].

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 1973 *further information is required in certain cases.*

Rule 12(3)

Form 3

CERTIFICATE WITH REGARD TO RECONCILIATION

[*Heading as in Form* 5]

I, , the solicitor acting for the petitioner in the above cause do hereby certify that I have [*or* have not] discussed with the petitioner the possibility of a reconciliation and that I have [*or* have not] given to the petitioner the names and addresses of persons qualified to help effect a reconciliation.

Dated this day of 19 .

Signed

Solicitor for the Petitioner

Rule 8(2)

Form 4

STATEMENT AS TO ARRANGEMENTS FOR CHILDREN

[*Heading as in Form 5*]

The present arrangements for the minor children of the family under 16 and those over 16 who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:— [*State in respect of each child*]

(i) residence [*state where the child is living, particulars of the accommodation, what other persons (naming them) live there and who looks after the child*]

(ii) education etc. [*state the school or other educational establishment which the child is attending or, if he is working, his place of employment, the nature of his work and details of any training he is receiving*]

(iii) financial provision [*state who is supporting the child or contributing to his support and the extent thereof*]

(iv) access [*state any arrangements which have been agreed for access by either of the parties and the extent to which access is and has been afforded*].

The arrangements proposed for the children in the event of a decree being granted are as follows:—

(i) residence

(ii) education, etc.

(iii) financial provision

(iv) access.

[*In each of these paragraphs state whether the grant of a decree will affect the present arrangements set out above, whether it is proposed that those arrangements should continue, and if not, and to the extent that they are likely to alter, state what alteration is anticipated and what proposals in substitution are proposed. In the case of residence, where it is proposed that for any period a child should be in the immediate care of a person other than the petitioner, give details of that person's willingness and ability to care for the child. In the case of education state, if possible, any long-term proposals for further education or training. In the case of financial provision give details of any application which will be made for ancillary relief in respect of the children and, where applicable, state the object of any application which is other than for the day-to-day support of the child.*]

The said child[ren] is [are] [not] suffering from [any] serious disability or chronic illness or from the effects of [any] serious illness [namely [*state, in respect of each child so suffering, the nature of the disability or illness and attach a copy of any up-to-date medical report which is available*]].

The said child[ren] is [are] [not] under the care or supervision of a welfare officer or officer appointed by a local authority or other person or organisation [namely [*state the date of any order for care or supervision and the circumstances which gave rise to its being made*]].

Dated this day of 19 .

Signed

[Solicitor for the] Petitioner

Rule 12(6)

Form 5

NOTICE OF PROCEEDINGS

In the County Court(1)
[Divorce Registry]
No. of Matter
(Seal)

Between Petitioner

and Respondent

[and Co-Respondent]

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

TAKE NOTICE THAT a petition [for divorce] (2) has been presented to this Court. A sealed copy of it [and a copy of the petitioner's proposals regarding the children] [is] [are] delivered with this notice.

(2) Or as the case may be.

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

2. (3) If you wish to do so, you may send to the Court a statement setting out your views on the proposals regarding the children. If you send a statement it will be placed before the Judge dealing with the arrangements for the child[ren] and a copy of your statement will be sent to the petitioner.

(3) Delete if inapplicable.

3. If the reply to Question 4 [or 6] (3) 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 (4).

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

4. (3) If the reply to Question 5 in the acknowledgment is Yes, the consequences to you are that—

(*a*) provided the petitioner establishes the fact that the parties to the marriage have lived apart for two years immediately preceding the presentation of the petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the Court is satisfied that the marriage has not broken down irretrievably;

(*b*) your right to inherit from the petitioner if he or she dies without having made a will ceases on the grant of a decree of judicial separation or on a decree nisi of divorce being made absolute;

(*c*) in the case of divorce the making absolute of the decree will end the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon your being left a widow; the State widow's pension will not be payable to you when the petitioner dies, and any rights of occupation you may have in the matrimonial home under the Matrimonial Homes Act 1967 will cease unless the Court directs otherwise during the subsistence of the marriage;

(*d*) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances. About these you should obtain legal advice from a solicitor.

5. (3) If after consenting you wish to withdraw your consent you must immediately inform the Court and give notice to the petitioner.

6. (3) The petitioner relies in support of the petition on the fact that the parties to the marriage have lived apart for at least five years. Section 10 of the Matrimonial Causes Act 1973 provides that if in such a case the respondent applies to the Court for it to consider the respondent's financial

position after the divorce, a decree nisi based on five years' separation only cannot be made absolute unless the Court is satisfied that the petitioner has made or will make proper financial provision for the respondent, or else that the petitioner should not be required to make any financial provision for the respondent. Paragraph (12) of the petition will tell you whether the petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 7 in the acknowledgment.

7. (3) If the reply to Question 7 in the acknowledgment is Yes, you must, before the decree is made absolute, make application to the Court by filing and serving on the petitioner a notice in Form 12, which may be obtained from the Court.

8. 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. If you do not intend to instruct a solicitor, you should nevertheless give an address for service in the acknowledgment so that any documents affecting your interests which are sent to you will in fact reach you. Change of address should be notified to the Court.

Dated this day of 19 .

Registrar

To

[*Here set out Form* 6]

Rule 14(5)

Form 6

ACKNOWLEDGMENT OF SERVICE

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

[*Heading as in Form* 5]

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) [*In the case of a petition alleging two years' separation coupled with the respondent's consent to a decree being granted*] Do you consent to a decree being granted?

(3) Delete if inapplicable.

6. (3) [*In the case of a petition asking for divorce and alleging five years' separation*] Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage?

7. (3) In the event of a decree nisi being granted on the basis of two years' separation coupled with the respondent's consent, or five years' separation, do you intend to apply to the Court for it to consider your financial position as it will be after the divorce?

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

(4) Delete Question 8 except in the case of a petition.

(*a*) costs .....
(*b*) custody of the children.....
(*c*) maintenance pending suit.....
(*d*) periodical payments.....
(*e*) secured periodical payments.....

(5) Insert whichever of the following items is applicable.

(*f*) lump sum provision.....
(*g*) settlement or transfer of property.....
(*h*) variation of a settlement.....

9. (6) Do you wish to make any application on your own account for—
(*a*) access to the children.....
(*b*) custody of the children.....
(*c*) periodical payments or secured periodical payments for the children.....
(*d*) maintenance pending suit.....
(*e*) periodical payments or secured periodical payments for yourself.....
(*f*) lump sum provision.....
(*g*) settlement or transfer of property.....
(*h*) variation of a settlement.....

(6) Delete Question 9 (except in the case of a respondent in proceedings begun by petition).

(If possible answer YES or NO against each item in Question[s] 8 [and 9]. If you are uncertain leave a blank).

10. (3) [*In the case of proceedings relating to a polygamous marriage*] If you have any wife [*or* husband] in addition to the petitioner [*or* applicant] who is not mentioned in the petition [*or* originating application [*or* summons]], what is the name and address of each such wife [*or* husband] and the date and place of your marriage to her [*or* him]?

Dated this day of 19 .

[*If a solicitor is instructed, he will sign below on your behalf* [*but if the answer to Question* 5 *is Yes, you must also sign here*]]

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.*]

[I am [We are] acting for the Respondent [*or* the above-named] in this matter.

Signed
Address for service:]

Rule 33(3)

Form 7

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 1(2)(*d*) OF MATRIMONIAL CAUSES ACT 1973

[*Heading as in Form 5*]

QUESTION	ANSWER
1. Have you read your petition dated ?	
2. Do you wish to alter or add to any statement in the petition?	
If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? Indicate which statements are true to your own knowledge and which to the best of your information and belief.	
4. State the date on which you and the respondent separated.	
5. State briefly the reason or main reason for the separation.	
6. When and in what circumstances did you come to the conclusion that the marriage was in fact at an end?	

7. State as far as you know the various addresses at which you and the respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:

	Petitioner's Address		*Respondent's Address*
From to		From to	

8. Since the date given in the answer to Question 6, have you ever lived with the respondent in the same household? If so, state for which period or periods, giving dates.	

I, (*full name*)

of (*full residential address*)
(*occupation*)

make oath and say as follows:—

1. I am the petitioner in this cause.

2. The answers to Questions 1 to 8 above are true.

3. I identify the signature

appearing on the copy acknowledgment of service now produced to me and marked "A" as the signature of my husband [wife], the respondent in this cause.

4. [*Exhibit any other documents on which the petitioner wishes to rely.*]

5. I ask the Court to grant a decree dissolving my marriage with [*or* a decree that I be judicially separated from] the respondent on the grounds stated in my petition [and to order the respondent to pay the costs of this suit *or as the case may be*].

Sworn at

in the County of

this day of , 19 .

Before me,

A Commissioner for Oaths
[*or as the case may be*]

Rule 65(1)

Form 8

NOTICE OF APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE

[*Heading as in Form 5*]

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]

Rule 67(2)

Form 9

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (DIVORCE)

(Seal)

[*Heading as in Form 5*]

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 .

Rule 67(2)

Form 10

CERTIFICATE OF MAKING DECREE NISI ABSOLUTE (NULLITY)

(Seal)

[*Heading as in Form 5*]

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 [*in the case of a void marriage* 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] [*in the case of a voidable marriage* be annulled] 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 [*in the case of a void marriage* 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] [*in the case of a voidable marriage* and that the said petitioner was from that date and is free from all bond of marriage with the said respondent].

Dated this day of 19 .

Rule 68(2) and (3)

Form 11

NOTICE OF APPLICATION FOR ANCILLARY RELIEF

[*Heading as in Form 5*]

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 and, in the case of an application for a property adjustment order or an avoidance of disposition order, stating briefly the nature of the adjustment proposed or the disposition to be set aside*].

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 maintenance pending suit or a financial provision order:*

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 .

Signed

[Solicitor for the] Respondent
[*or* Petitioner]

Rule 57

Form 12

NOTICE OF APPLICATION UNDER RULE 57

[*Heading as in Form 5*]

TAKE NOTICE THAT the respondent applies to the Court under section 10(2) of the Matrimonial Causes Act 1973 for the Court to consider the financial position of the respondent after the divorce.

The application will be heard on a date to be fixed [*or if, in the case of an application made after a decree nisi, a date has been fixed* by the registrar in chambers at on day, the day of 19 , at o'clock].

[*Unless the petitioner has already filed an affidavit with his petition under rule* 8(3) *or in connection with an application for ancillary relief under rule 73(2):*

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] respondent.

If you wish to allege that the respondent has property or income, you should say so in your affidavit].

Dated this day of 19 .

Signed

[Solicitor for the] Respondent

Rule 73(1)

Form 13

NOTICE OF INTENTION TO PROCEED WITH APPLICATION FOR ANCILLARY RELIEF MADE IN PETITION OR ANSWER

[*Heading as in Form 5*]

The petitioner [*or* respondent] having applied in his [her] petition [*or* answer] for [*here set out the ancillary relief claimed and intended to be proceeded with, 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* 11]]

Dated this day of 19 .

Signed

[Solicitor for the] Petitioner [*or* Respondent]

Rules 76 and 92(5)

Form 14

NOTICE OF ALLEGATION IN PROCEEDINGS FOR ANCILLARY RELIEF

[*Heading as in Form 5*]

TAKE NOTICE THAT this affidavit has been filed in proceedings for [*state nature of application*] and that if you wish to be heard on any matter affecting you in the proceedings you may intervene by applying to the Court, within eight days after you receive this notice, inclusive of the day of receipt, for directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

Dated this day of 19 .

Issued by

[Solicitor for the] Petitioner [*or* Respondent]

Rule 83(2)

Form 15

NOTICE OF REQUEST FOR PERIODICAL PAYMENTS ORDER AT SAME RATE AS ORDER FOR MAINTENANCE PENDING SUIT

[*Heading as in Form 5*]

TO of

The petitioner [*or* respondent] having on the day of 19 , obtained an order for payment by you of maintenance pending suit at the rate of

AND the petitioner [*or* respondent] having applied in his [her] petition [*or* answer] for a periodical payments order for himself [*or* herself],

TAKE NOTICE THAT the petitioner [*or* respondent] has requested the Court to make a periodical payments order for himself [*or* herself] 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 periodical payments 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 periodical payments order without further notice to you.

Dated this day of 19 .

Registrar

Rule 87(3)

Form 16

REQUEST FOR ISSUE OF JUDGMENT SUMMONS

In the High Court of Justice [*or* In the County Court
Family 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*].

[*If it be the case* I intend to apply to the Court at the hearing of the proposed judgment summons for leave to enforce arrears which became due more than twelve months before the date of the proposed summons].

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

	£
Amount due and unpaid in respect of the order and costs ...	
Costs of this summons	
Travelling expenses to be paid to debtor	

Rule 87(5)

Form 17

(Seal)

JUDGMENT SUMMONS

[*Heading as in Form* 16]

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, WC2A 2LL [*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.

[AND TAKE NOTICE THAT the judgment creditor intends to apply to the Court at the hearing of this judgment summons for leave to enforce arrears which became due more than twelve months before the date of this summons].

Dated this day of 19 .

	£
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 is].

Rule 93(1)

Form 18

NOTICE OF APPOINTMENT TO HEAR REPRESENTATIONS BEFORE CHILD IS COMMITTED TO CARE OF LOCAL AUTHORITY

[*Heading as in Form 5*]

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 a financial provision order in favour of the child, they must, within seven days after receiving this notice, file an affidavit as to the property and income of the party against whom the order is sought and must at the same time send him a copy of the affidavit. Within four 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 .

Registrar

Rule 98(1)

Form 19

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 27 of the Matrimonial Causes Act 1973

Between Applicant

and Respondent

1. I, , of ,the wife [husband] of of (hereinafter called the "respondent") say that the respondent [*in the case of a wife's application* has wilfully neglected to provide [reasonable maintenance for me] *or in the case of a husband's application* has wilfully neglected to provide [*or* make a proper contribution towards] reasonable maintenance [for me] [and] [the child[ren] of our family]].

2. On the day of 19 , I [*in the case of an application by a wife* being then [*state full name and status before the marriage*]] was lawfully married to the respondent [*in the case of an application by a husband* who was then [*state respondent's full name and status before marriage*]] at .

3. There is [are] [no [*or state number*] children of the family now living] [namely [*state the full name (including surname) of each child and his date of birth or, if it be the case, that he is over* 18 *and, in the case of each minor child over the age of* 16 *whether, he is, or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation*] who is now residing at [*state the place*] with [*state the person*]].

4. There have been no previous proceedings in any court in England and Wales or elsewhere with reference to the marriage [or the children of the family] [or between the applicant and the respondent with reference to any property of either or both of them] [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 [*give particulars adding the name*[*s*] *of the child*[*ren*] *concerned and in the case of a husband's application in respect of himself the matters set out in section* 27(1)(*b*)(i) *of the Act of* 1973 *on which he relies*].

7. The respondent has not made any payments to me by way of maintenance for myself [or the said child[ren] [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 make provision by way of [periodical payments, secured periodical payments, a lump sum *delete as appropriate*] for me [and [*such of the said provisions as may be claimed*] for [*state name*[*s*] *of child*[*ren*] *in respect of whom such claim is made*]].

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 [*in the case of an application based on domicile* I am [*or* the respondent is] [*or* the respondent and I are] domiciled in England and Wales] [*or in the case of an application based on residence* I have been habitually resident in England and Wales throughout the period of one year ending with the date of this application [*or* the respondent is now resident in England and Wales]].

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 .

Rules 98(3) and 100(4)

Form 20

NOTICE OF APPLICATION UNDER RULE 98 OR 100

[*Heading as in Form* 19] *or* [21]

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 reach the Court within eight days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs.

[*Where the application is under rule* 98] If you intend to contest the application, you must file an answer setting out the grounds on which you rely (including any allegation which you wish to make against the applicant), and in any case, unless otherwise directed, you must file an affidavit containing full particulars of your property and income. The affidavit and any answer you wish to file must be sent, together with a copy for the applicant, so as to reach the Court within 14 days after the time allowed for sending the acknowledgment of service. If you file an answer alleging adultery it must be accompanied by a copy for the alleged adulterer.

[*Where the application is under rule* 100] 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 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 .

Registrar

To the Respondent

[*Here set out Form* 6]

Rule 100(1)

Form 21

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 35 *of the Matrimonial Causes Act* 1973

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 is [are] [no [*or state number*] child[ren] of the family [namely [*state the full name (including surname) of each child now living and his date of birth or, if it be the case, that he is over* 18 *and, in the case of each minor child over the age of* 16, *whether he is, or will be, or if an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation*] who is now residing at [*state the place*] with [*state the person*] [and [*state name of any child who has died since the date of the agreement*] 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 family] [or to the other child[ren] for whom the agreement makes financial arrangements] or between the applicant and the respondent with reference to any property of either or both of them [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* 2 *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 .

Rule 101(1)

Form 22

ORIGINATING SUMMONS FOR ALTERATION OF MAINTENANCE AGREEMENT AFTER DEATH OF ONE OF THE PARTIES

In the High Court of Justice
Family Division

(Divorce)
[District Registry]

In the Matter of an Application by *under section* 36 *of the Matrimonial Causes Act* 1973

Between Applicant[s]
and Respondent[s]

Let of
attend before Mr. Registrar in chambers at the Divorce Registry, Somerset House, London, WC2R 1LP, [*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 , [and the respondent] 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 [Solicitor for] the above-named applicant[s].

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 eight 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 a minor 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, 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.]

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.

Rule 103(1)

Form 23

ORIGINATING SUMMONS FOR MAINTENANCE OUT OF ESTATE OF DECEASED FORMER SPOUSE

In the High Court of Justice
Family 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, WC2R 1LP, [*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
[Solicitor for] the above-named applicant.

To the Respondent.

TAKE NOTICE THAT:—

[*Continue as in Form* 22]

Rule104(1)

Form 24

ORIGINATING SUMMONS UNDER SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT 1882 [OR SECTION 1 OF THE MATRIMONIAL HOMES ACT 1967]

In the High Court of Justice
Family Division
[District Registry]

In the Matter of an Application by
under section 17 *of the Married Women's Property Act* 1882 [or *section* 1 *of the Matrimonial Homes Act* 1967]

Between Applicant

and Respondent

Let of
attend before Mr. Registrar in chambers at the Divorce Registry, Somerset House, London WC2R 1LP, [*or as the case may be*] on day, the day of 19 , at o'clock, on the hearing of an application by for an order in the following terms:—
[here set out terms of order sought]

Dated this day of 19 .

This summons was taken out by
[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 eight days after you receive this summons.

3. If you wish to dispute the claim made by the applicant you must file an affidavit in answer within 14 days after the time allowed for sending the acknowledgment of service.

4. If you intend to instruct a solicitor to act for you you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

Rule 113(2)

Form 25

NOTICE TO BE INDORSED ON DOCUMENT SERVED IN ACCORDANCE WITH RULE 113(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.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules consolidate with amendments the Matrimonial Causes Rules 1971 and subsequent amending instruments. Apart from drafting changes and minor changes rendered necessary by the Matrimonial Causes Act 1973, the main alterations are as follows:—

(1) The provisions relating to applications for the consideration of agreements or arrangements between the parties to a marriage are omitted.

(2) Fresh provision is made for the parties to proceedings in which adultery is alleged (Rule 13).

(3) An order to dispense with service of a copy of the petition on the respondent may be made by the registrar instead of only by a judge (Rule 14 (10)).

(4) Applications for evidence to be given on affidavit can be made in undefended cases, despite a notice of intention to defend, without the consent of all the parties concerned (Rule 39(2)).

(5) Time limits are set for service of notices in connection with all applications for ancillary relief (Rules 70 and 73(1)).

(6) It is made plain that any affidavit in reply by an applicant on an application for ancillary relief should contain full particulars of the applicant's property and income (Rule 73(3)).

(7) Details of mortgages have to be given in affidavits in support of certain applications for ancillary relief (Rule 74(3)) and in relation to matrimonial property (Rule 104(3)), and provision is made for service of notice of such applications on mortgagees.

(8) Those making or opposing applications relating to the custody etc. of children and deponents who are responsible for the child's care will now normally have to be available at the hearing to give oral evidence (Rule 92(4)).

(9) Rules for applications in the High Court—

(*a*) under section 17 of the Married Women's Property Act 1882,

(*b*) under section 1 of the Matrimonial Homes Act 1967,

(*c*) for declarations affecting matrimonial status, and

(*d*) for declarations of legitimacy,

are inserted in lieu of the corresponding provisions in the Rules of the Supreme Court which are revoked (Rules 104, 107(1) and (2), 109-111 and the Schedule).

As far as possible, rules and forms have been kept in the same order as in the Matrimonial Causes Rules 1971 as amended. Where there is a divergence in numbering the following tables show the correspondence between the two sets of Rules.

TABLE A

CORRESPONDENCE OF RULES

Matrimonial Causes Rules 1971	1973
5	5-6
6	—
36	116
36A	36
37	37(1)
37A	38
38	39
39	40
40	37(2)
42A	48
43	43(2), (3) and (4)
48	43(1)
65–66	65–67
67	
104	107(3) and (4)
104A	105
104B	106
104C	108
105–108	112–115
109–123	117–131
124	
	104, 107(1) (2), 109–111, 132 } are new.

TABLE B

CORRESPONDENCE OF FORMS

Matrimonial Causes Rules 1971	1973
24	7
7–12	8–13
23	14
13–21	15–23
22	25
	24 is new.

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