
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART II

MATRIMONIAL CAUSES

Decrees and orders

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2.43.—(1) Except in a case to which rule 2.61 (consent orders) applies, 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 proper officer of that court;
- (b) in the case of a decree or order made at the Royal Courts of Justice, by the proper officer of the principal registry;
- (c) in the case of a decree or order made at a divorce town, by the proper officer of the registry for that town.

(2) CCR Order 22, rule 7 (which deals among other things with the settlement of judgments) shall not apply to a decree made in a cause pending in a divorce county court.

Application for rescission of decree

2.44.—(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, save that where the decree was pronounced by a district judge the application shall be made to a district judge.

(2) Paragraphs (3) and (5) of rule 2.42 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

2.45.—(1) An application by a 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 M12.

(2) Where a petitioner is served with a notice in Form M 1 2, then unless he has already filed an affidavit under rule 2.58(2) he shall, within 14 days after service of the notice upon him, file an affidavit in answer to the application containing full particulars of his property and income and, in default, the court may order him to do so.

(3) Within 14 days after service upon him 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 2.58(3).

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

(5) Where the petitioner has relied on the fact of two or five years' separation and the court has granted a decree nisi without making any finding as to any other fact mentioned in section 1(2) of the Act of 1973, the proper officer shall fix an appointment for the hearing; and rules 2.62(3) to (7) and 10.10 shall apply as if the application were an application for ancillary relief.

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

Intervention to show cause by Queen's Proctor

2.46.—(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 court and to the party in whose favour it was pronounced.

(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 proper officer 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 2.24 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 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

2.47.—(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 the 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 served without leave.

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

(6) A person showing cause shall apply to the judge (or, where a district judge has pronounced the decree nisi, a district judge) for directions with 14 days after expiry of the time allowed for filing an affidavit in reply or, where an affidavit in answer has been filed, within 14 days after the 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 allowed, the person in whose favour the decree was pronounced may do so.

Rescission of decree nisi by consent

2.48.—(1) Where a reconciliation has been effected between the petitioner and the respondent—

- (a) after a decree nisi has been pronounced but before it has been made absolute, of
- (b) after a decree of judicial separation has been pronounced,

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 district judge and may be heard in chambers.

Decree absolute on lodging notice

2.49.—(1) Subject to rule 2.50(1) an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the court a notice in Form M8.

(2) On the lodging of such a notice, the district judge shall cause the records of the court to be searched, and if he is satisfied—

- (a) that no application for rescission of the decree or for re-hearing of the cause and no appeal against the decree or the dismissal of an application for re-hearing of the cause is pending;
- (b) that no order has been made by the court extending the time for making an application for re-hearing of the cause or by the Court of Appeal extending the time for appealing against the decree or the dismissal of 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 2.46 or 2.47 is pending;
- (e) that the court has complied with section 41(1) of the Act of 1973 and has not given any direction under section 41(2)(1);
- (f) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(2) 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,

(1) Section 41 was substituted by the Children Act 1989 (c. 41), Schedule 12, paragraph 31.

(2) 1969 c. 58, section 12(2)(b) and 8 were repealed in part by the Courts Act 1971 (c. 23), Schedule 11, Part IV. Section 12(2)(a) was repealed in part by the Supreme Court Act 1981 (c. 54), Schedule 7.

the district judge shall make the decree absolute:

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

- (a) giving reasons for the delay;
- (b) stating whether the parties have lived with each other since the decree nisi and, if so, between what dates; and
- (c) stating whether the applicant being the wife has, or being the husband has reason to believe that his wife has, given birth to any child since the decree nisi and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the family;

and the district judge may require the applicant to file an affidavit verifying the said explanation and may make such order on the application as he thinks fit.

Decree absolute on application

2.50.—(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 the Queen’s Proctor gives to the court 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 the 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 Queens Proctor.

(2) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to a judge or the district judge, 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 district judge has caused the records of the court to be searched and is satisfied as to the matters mentioned in rule 2.49(2).

Indorsement and certificate of decree absolute

2.51.—(1) Where a decree nisi is made absolute, the proper officer shall made 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 proper officer shall send to the petitioner and the respondent a certificate in Form M9 or M10 whichever is appropriate, authenticated by the seal of the divorce county court or registry from which is issued.

(3) A central index of decrees absolute shall be kept under the control of the principal 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 M9 or M10 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.