

1973 No. 1413 (L. 24)

**MATRIMONIAL CAUSES
SUPREME COURT OF JUDICATURE, ENGLAND
COUNTY COURTS**

The Matrimonial Causes (Amendment No. 2) Rules 1973

Made - - - - - 30th July 1973

Laid before Parliament 16th August 1973

Coming into Operation 1st December 1973

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

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment No. 2) Rules 1973 and shall come into operation on 1st December 1973.

(2) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1971(b), as amended (c), and a form referred to by number means the form so numbered in Appendix 2 to those Rules.

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

2. Rule 33 shall be amended as follows:

(1) At the beginning of paragraph (2) there shall be inserted the words “Subject to paragraph (2A)”.

(2) After paragraph (2) there shall be inserted the following paragraph:

“(2A) 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 2(1) of the Act of 1969 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 17 of the Act of 1970 applies, and

(c) the respondent has returned to the court office an acknowledgment 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

(a) 1967 c. 56.

(b) S.I. 1971/953 (1971 II, p. 2713).

(c) S.I. 1971/1923, 1972/1095, 1973/777 (1971 III, p. 5243; 1972 II, p. 3248; 1973 I, p. 2459).

(d) 1889 c. 63.

Form 24 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."

3. Rule 34 shall be amended as follows:—

- (1) In paragraph (1) after the words "for trial" there shall be inserted the words "except where given under rule 33(2A)".
- (2) In paragraph (2) after the word "cause" there shall be inserted the words "to which rule 33(2A) does not apply".

4. In rule 37 for the words "rules 38 and 39" there shall be substituted the words "rules 38, 39 and 42A".

5. Before rule 43 there shall be inserted the following rule:—

"Disposal of causes in special procedure list

42A.—(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 17 of the Act of 1970 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(2A) 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(2A) and may bespeak copies on payment of the prescribed fee."

6. In rule 43(1) after the word "petition" there shall be inserted the words "(except one entered in the special procedure list)".

7. The following paragraph shall be added to rule 47:—

"Nothing in this rule shall apply to a cause entered in the special procedure list."

8. In rule 48 after the word "directed" there shall be inserted the words "and subject to rule 42A".

9. At the end of rule 54 there shall be added the following paragraph:—

"(9) This rule shall apply with the necessary modifications to a cause disposed of under rule 42A as it applies to a cause tried by a judge alone."

10. For rule 57 there shall be substituted the following rule:—

“Application under section 6 of the Act of 1969

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 11.

(2) Where a petitioner is served with a notice in Form 11, 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.

(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 and the court has held that the only fact mentioned in section 2(1) on which the petitioner was entitled to rely in support of his petition was that mentioned in paragraph (d) or (e) of that subsection, the registrar by whom an application under section 6 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 (2) of section 6 of the Act of 1969 with respect to which the court is satisfied, or, where the court has proceeded under subsection (3) of the said section, a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the court minutes.”

11. At the end of rule 86 there shall be added the following paragraph:—

“(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.”

12. In rule 122(2) for the words “rule 95(3)” there shall be substituted the words “rules 42A(3) and 95(3)”.

13. In Form 11 for the second paragraph there shall be substituted the following paragraph:

"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 on day, the day of 19 , at o'clock]."

14. The following form shall be added after Form 23:

"Form 24

Rule 33(2A)

AFFIDAVIT BY PETITIONER IN SUPPORT OF PETITION UNDER SECTION 2(1)(d)
OF DIVORCE REFORM ACT 1969

[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:													
<table border="1"> <thead> <tr> <th colspan="2"><i>Petitioner's Address</i></th><th colspan="2"><i>Respondent's Address</i></th></tr> <tr> <th>From</th><th></th><th>From</th><th></th></tr> </thead> <tbody> <tr> <td>to</td><td></td><td>to</td><td></td></tr> </tbody> </table>		<i>Petitioner's Address</i>		<i>Respondent's Address</i>		From		From		to		to	
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From		From											
to		to											

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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 acknowledgement 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]"

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

Dated 30th July 1973.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make a number of amendments in the Matrimonial Causes Rules 1971.

Rules 2-9, 12 and 14 prescribe a simplified procedure for dealing with petitions for divorce or judicial separation based on two years' separation where the respondent has consented in writing to a decree and there are no children of the family under 18. In such a case the petitioner, when requesting directions for trial, must file an affidavit of evidence in a prescribed form together with any corroborative evidence on which he intends to rely. The cause will then be entered in a "special procedure list" for the registrar to consider the evidence which has been filed. If the registrar is satisfied that the case has been proved, he will give a certificate to that effect and fix a day for the pronouncement of a decree by a judge in open court. The evidence will remain open to public inspection during the next 14 days. If the registrar is not so satisfied, he may either call for further evidence or remove the cause from the special procedure list and leave it to be tried in the usual way.

Rules 10 and 13 enable applications under section 6 of the Divorce Reform Act 1969 (c. 55) to be disposed of by a registrar instead of being referred to him for investigation and report. The registrar may, however, refer the application or any question arising therein to a judge and he must do so on the request of either party. The respondent's affidavit in reply is now required to contain full particulars of his or her property and income.

Rule 11 requires an application for the oral examination of a judgment debtor under an order made by a divorce county court to be made to the divorce county court nearest to where the debtor lives. The proceedings need not be transferred to that court but an affidavit of default and a copy of the order must be lodged there.

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