
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART III

OTHER MATRIMONIAL ETC PROCEEDINGS

Proceedings under sections 1 and 9 of and Schedule 1 to Matrimonial Homes Act 1983(1)

3.8.—(1) In this rule, unless the context otherwise requires, a section or schedule referred to by number means the section or schedule so numbered in the Matrimonial Homes Act 1983.

(2) Subject to paragraph (3), the provisions of rule 3.6 shall apply, with necessary modifications, to proceedings under section 1 or section 9 as they apply to an application under section 17 of the Married Women's Property Act 1882.

(3) Where matrimonial proceedings are pending, an application under section 1 or section 9 made by a party to those proceedings shall be made as an application in those proceedings.

(4) An application for an order under section 1 or section 9 may be heard and determined by a district judge.

(5) Where the applicant asks for an order under section 1 or section 9 terminating the respondent's rights of occupation and it appears to the court, upon ex parte application by the applicant, that the respondent is not in occupation of the dwelling-house to which the application relates and his whereabouts cannot after reasonable enquiries be ascertained, the court may dispense with service of the application on the respondent and hear and determine the application.

(6) This rule shall apply to an application for an order vacating the registration of a land charge of Class F or a notice or caution registered under section 2(7) of the Matrimonial Homes Act 1967(2) or a notice registered under section 2(8) of the Matrimonial Homes Act 1983, whether or not it is joined with an application under the relevant sections, as it applies to an application under those sections.

(7) The jurisdiction of the court under Schedule 1 may be exercised by a district judge.

(8) Where an application is made for an order under Schedule 1, 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 paragraph 1 of that Schedule to occupy the dwelling house to which the application relates, and
- (b) the landlord of the dwelling house;

and any person served shall be entitled to be heard on the application.

(9) A divorce county court in which an application for an order under Schedule 1 is pending may order the transfer of the application to another divorce county court; and rule 10.10(4) and (5) shall apply to such an order as it applies to orders under paragraph (2) of that rule.

(1) **1983 c. 19. Section 1 was amended by the Housing (Consequential Provisions) Act 1985 (c. 71), Schedule 2, paragraph 56 and the Housing Act 1988 (c. 50).**

(2) **1967 (c. 75), Schedule 17, paragraph 33.**

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(10) Before making an order for the transfer of an application under paragraph (9) the court shall consider whether it would be more convenient to transfer the cause under rule 10.10(2).

(11) Unless the court otherwise directs, a transfer of the cause in which a decree is sought or granted shall include a transfer of the application.

(12) In this rule “matrimonial proceedings” means—

- (a) a matrimonial cause; or
- (b) proceedings under section 17 of the Married Women’s Property Act 1882 concerning the matrimonial home.