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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART II**

**MATRIMONIAL CAUSES**

*Ancillary relief*

**Right to be heard on ancillary questions**

**2.52** A respondent may be heard on any question of ancillary relief without filing an answer and whether or not he has returned to the court office an acknowledgement of service stating his wish to be heard on that question.

**Application by petitioner or respondent for ancillary relief**

**2.53.**—(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 M11 or at the trial, or
- (b) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form M11.

(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 M11.

**Application by parent, guardian etc for ancillary relief in respect of children**

**2.54.**—(1) Any of the following persons, namely—

- (a) a parent or guardian of any child of the family,
- (b) any person in whose favour a residence order has been made with respect to a child of the family, and any applicant for such an order,
- (c) any other person who is entitled to apply for a residence order with respect to a child,
- (d) a local authority, where an order has been made under section 30(1)(a) of the Act of 1989 placing a child in its care,

- (e) the Official Solicitor, if appointed the guardian ad litem of a child of the family under rule 9.5, and
- (f) a child of the family who has been given leave to intervene in the cause for the purpose of applying for ancillary relief,

may apply for an order for ancillary relief as respects that child by notice in Form M11.

- (2) In this rule “residence order” has the meaning assigned to it by section 8(1) of the Act of 1989.

### **Application in Form M11 or M12**

**2.55** Where an application for ancillary relief is made by notice in Form M11 or an application under rule 2.45 is made by notice in Form M12 the notice shall be filed—

- (a) if the case 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**

**2.56** 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**

**2.57.—(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**

**2.58.—(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 district judge shall, subject to rule 2.6 7, file a notice in Form M 1 3 and within four days after doing so serve a copy on the other spouse.

(2) Where an application is made for ancillary relief, not being an application to which rule 2.61 applies, the notice in Form M I I or M 1 3, as the case may be, shall unless otherwise directed be supported by an affidavit by the applicant containing full particulars of his property and income, and stating the facts relied on in support of the application.

(3) Within 28 days after the service of an affidavit under paragraph (2) or within such other time as the court may fix, the respondent to the application shall file an affidavit in answer containing full particulars of his property and income.

### **Evidence on application for property adjustment or avoidance of disposition order**

**2.59.**—(1) Where an application is made for a property adjustment order or an avoidance of disposition order, 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 person 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.

(2) Where an application for a property adjustment order or an avoidance of disposition order relates to land, the notice in Form M11 or M13 shall identify the land and—

- (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.

(3) A copy of Form M11 or M13 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;

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

(4) In the case of an application to which paragraph (3) refers, a copy of Form M11 or M13 as the case may be, shall be served on any mortgagee of whom particulars are given pursuant to that paragraph; any person so served may apply to the court in writing, within 14 days after service, for a copy of the applicant's affidavit.

(5) Any person who—

- (a) is served with an affidavit pursuant to paragraph (3), or
- (b) receives an affidavit following an application made in accordance with paragraph (4),

may, within 14 days after service or receipt, as the case may be, file an affidavit in answer.

### **Service of affidavit in answer or reply**

**2.60.**—(1) A person who files an affidavit for use on an application under rule 2.58 or 2.59 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, if the court so directs, it shall be endorsed with a notice in Form M14 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 2.62(5) within seven days of service of the affidavit on him.

(2) Rule 2.37(3) shall apply to a person served with an affidavit under paragraph (1) of this rule as it applies to a co-respondent.

### **Information on application for consent order for financial relief**

**2.61.**—(1) Subject to paragraphs (2) and (3), there shall be lodged with every application for a consent order under any of sections 23, 24 or 24A of the Act of 1973(1) two copies of a draft of the order in the terms sought, one of which shall be indorsed with a statement signed by the respondent to the application signifying his agreement, and a statement of information (which may be made in more than one document) which shall include—

- (a) the duration of the marriage, the age of each party and of any minor or dependent child of the family;
- (b) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;
- (c) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;
- (d) whether either party has remarried or has any present intention to marry or to cohabit with another person;
- (e) where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee of that property has been served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and
- (f) any other especially significant matters.

(2) Where an application is made for a consent order varying an order for periodical payments paragraph (1) shall be sufficiently complied with if the statement of information required to be lodged with the application includes only the information in respect of net income mentioned in paragraph (1)(b), and an application for a consent order for interim periodical payments pending the determination of an application for ancillary relief may be made in like manner.

(3) Where all or any of the parties attend the hearing of an application for financial relief the court may dispense with the lodging of a statement of information in accordance with paragraph (1) and give directions for the information which would otherwise be required to be given in such a statement to be given in such a manner as it sees fit.

### **Investigation by district judge of application for ancillary relief**

**2.62.**—(1) On or after the filing of a notice in Form M11 or M13 an appointment shall be fixed for the hearing of the application by the district judge.

(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 M11 or M13 (as the case may be), shall be given by the proper officer to every party to the application.

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(1) Section 23 was amended by section 16 of the Administration of Justice Act 1982 (c. 53) and extended by section 21(a) of the Matrimonial and Family Proceedings Act 1984 (c. 42). Section 24 was amended by section 46(1) and Schedule 1, paragraph 11, and extended by section 21(b) of the Matrimonial and Family Proceedings Act 1984. Section 24A was added by section 7 of the Matrimonial Homes and Property Act 1981 (c. 24).

(4) At the hearing of an application for ancillary relief the district judge shall, subject to rules 2.64, 2.65 and I 0. I 0 investigate the allegations made in support of and in answer to the application, and may take evidence orally and may at any stage of the proceedings, whether before or during the hearing, order the attendance of any person for the purpose of being examined or cross-examined and order the discovery and production of any document or require further affidavits.

(5) The district judge 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.

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

(7) Any party may apply to the court for an order that any person do attend an appointment (a “production appointment”) before the court and produce any documents to be specified or described in the order, the production of which appears to the court to be necessary for disposing fairly of the application for ancillary relief or for saving costs.

(8) No person shall be compelled by an order under paragraph (7) to produce any document at a production appointment which he could not be compelled to produce at the hearing of the application for ancillary relief.

(9) The court shall permit any person attending a production appointment pursuant to an order under paragraph (7) above to be represented at the appointment.

#### **Request for further information etc**

**2.63** 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 district judge for directions.

#### **Order on application for ancillary relief**

**2.64.**—(1) Subject to rule 2.65 the district judge shall, after completing his investigation under rule 2.62, make such order as he thinks just.

(2) Pending the final determination of the application, the district judge may make an interim order upon such terms as he thinks just.

(3) RSC Order 31, rule 1 (power to order sale of land) shall apply to applications for ancillary relief as it applies to causes and matters in the Chancery Division.

#### **Reference of application to judge**

**2.65** The district judge may at any time refer an application for ancillary relief or any question arising thereon, to a judge for his decision.

#### **Arrangements for hearing of application etc by judge**

**2.66.**—(1) Where an application for ancillary relief or any question arising thereon has been referred or adjourned to a judge, the proper officer shall fix a date, time and place 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 the court otherwise directs, 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 district judge is the nearest or most convenient.

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

(4) In respect of any application referred to him under this rule, a judge shall have the same powers as a district Judge has under rule 2.62(5).

#### **Request for periodical payments order at same rate as order for maintenance pending suit**

**2.67.**—(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 district judge 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 proper officer shall serve on the other spouse a notice in Form M15 requiring him, if he objects to the making of a corresponding order, to give notice to that effect to the court and to the applicant within 14 days after service of the notice on Form M15.

(3) If the other spouse does not give notice of objection within the time aforesaid, the district Judge 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**

**2.68.**—(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 may be made to the district judge.

(2) Rules 2.65 and 2.66 shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.