
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART II

MATRIMONIAL CAUSES

Preparations for trial

Discovery of documents in defended cause

2.20.—(1) RSC Order 24 (discovery and inspection of documents) shall apply to a defended cause begun by petition whether pending in the High Court or county court as it applies to an action begun by writ, with the following modifications—

- (a) the second paragraph of rule 2(1) and rules 2(2) to (4), rules 4(2), 6 and 7A shall be omitted,
- (b) in rule 16(1) the words from “including” to the end shall be omitted,
- (c) in rule 2(7) for the words “the summons for directions in the action is taken out” there shall be substituted the words “directions for trial are given”.

(2) For the purposes of RSC 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 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 RSC 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

2.21.—(1) RSC Order 26 (which deals with discovery by interrogatories) shall apply to a defended cause begun by petition and pending in the High Court as it applies to a cause within the meaning of that Order, but with the omission of—

- (a) rule 2(1)(b),
- (b) in rule 4(1) the words “or the notice under Order 25, rule 7,” and
- (c) in rule 6(1) the words from “including” to the end.

(2) A copy of the proposed interrogatories shall be filed when they are served under RSC Order 26, rule 3(1) or when a summons for an order under RSC Order 26, rule 1(2) is issued.

(3) Where a defended cause is pending in a divorce county court RSC Order 26 as applied by CCR Order 14, rule II shall apply, and references in this rule to provisions of the said Order 26 shall be construed as references to those provisions as so applied.

Medical examination in proceedings for nullity

2.22.—(1) In proceedings for nullity on the ground of incapacity to consummate the marriage the petitioner shall, subject to paragraph (2), apply to the district judge 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 the 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 district judge 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 district judge 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 date, time and place appointed for his or her examination.

Conduct of medical examination

2.23.—(1) Every medical examination under rule 2.22 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 district judge 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 district judge 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 2.22 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 2.22 is accepted by both parties, notice to that effect shall be given by the parties to the district judge 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 paragraphs (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.

Directions for trial

2.24.—(1) On the written request of the petitioner or of any party who is defending a cause begun by petition the district judge shall give directions for the trial of the cause if he is satisfied—

- (a) 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 9.3(2) has been filed;
- (b) 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;
- (c) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired;
- (d) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired;
- (e) in proceedings for nullity—
 - (i) that any application required by rule 2.22(1) has been made, and
 - (ii) where an order for the examination of the parties has been made on an application under rule 2.22, 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 principal registry and is to be tried at that court, the district judge shall, if he considers it practicable to do so, give directions for trial.

(3) Where the cause is an undefended cause for divorce or judicial separation and, in a case to which section 1(2)(d) of the Act of 1973 applies, the respondent has filed a notice under rule 2.10(1) that he consents to the grant of a decree, then, unless otherwise directed there shall be filed with the request for directions for trial an affidavit by the petitioner—

- (a) containing the information required by Form M7(a), (b), (c), (d), or (e) (whichever is appropriate) as near as may be in the order there set out, together with any corroborative evidence on which the petitioner intends to rely, and
- (b) verifying, with such amendments as the circumstances may require, the contents of any statement of arrangements filed by the petitioner under rule 2.2(2),

and the district judge shall give directions for trial by entering the cause in a list to be known as the special procedure list.

(4) In the case of a defended cause the district judge may treat the request for directions for trial as a summons or application for directions so as to enable him to give such directions with regard to—

- (a) the future course of the cause,
- (b) any application made therein for ancillary relief or for an order relating to a child, and
- (c) the provision of evidence relating to the arrangements or proposed arrangements for the children of the family,

as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the cause or application; and the proper officer shall give the parties notice of a date, time and place at which the request will be considered.

(5) In any other case the district judge shall give directions for trial by requiring the proper officer to set the cause down for trial and give notice that he has done so to every party to the cause.

(6) Except where evidence has been provided under paragraph (3)(b), directions for trial under this rule shall, unless the court orders otherwise, include a direction to the petitioner to file an affidavit verifying, with such amendments as the circumstances may require, the contents of any statement of arrangements filed by the petitioner under rule 2.2(2).

(7) In the case of an undefended cause proceeding on the respondent's answer, paragraphs (3) and (6) shall have effect as if for the references to the petitioner and respondent there were substituted references to the respondent and the petitioner respectively.

Determination of place of trial

2.25.—(1) Directions for trial, except where given under rule 2.24(3), shall determine the place of trial.

(2) In the case of an undefended cause to which rule 2.24(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 determining 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 district judge 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 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 district judge 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 and the estimated length of the trial.

(8) Directions determining the place of trial of any cause may be varied by the district judge 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

2.26.—(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 district judge 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(1)

2.27.—(1) An application to the court by the petitioner or respondent in proceedings for divorce for an order under paragraph 8 of Schedule I to the Domicile and Matrimonial Proceedings Act 1973 (in this rule referred to as “Schedule 1”) shall be made to the district judge, 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 district judge from any information given pursuant to paragraph 1(j) of Appendix 2 or rule 2.15(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

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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 I ought to be determined by the court, he shall fix a date, time and place 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 paragraph 1(j) of Appendix 2.

(4) Any party who makes a request for directions for trial in matrimonial proceedings within the meaning of paragraph 2 of Schedule I shall, if there has been a change in the information given pursuant to paragraph 1(j) of Appendix 2 and rule 2.15(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 I may be made to the district judge, 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.