
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART II

MATRIMONIAL CAUSES

Trial etc

Mode and place of trial

2.32.—(1) Unless otherwise directed and subject to rule 2.36 every cause and any issue arising therein shall be tried by a judge without a jury.

(2) Any cause begun by petition (except one entered in the special procedure list) which is pending in a divorce county court may be tried at any court of trial.

(3) Any cause begun by petition which is pending in the High Court may be tried at the Royal Courts of Justice or at any divorce town.

(4) A judge or the district judge of the registry for the divorce town at which any cause has been set down for trial may, where it appears to him that the cause cannot conveniently be tried at that town, order that it be tried at some other divorce town; and rule 10. 10(4) and (5) shall apply to such an order as it applies to an order under paragraph (1) of that rule.

(5) As soon as practicable after a cause pending in a divorce county court has been set down for trial, the proper officer of the court of trial shall fix the date, place and, as nearly as may be, the time of the trial and give notice thereof to every party to the cause.

(6) In these rules any reference to the registry for the divorce town at which a cause is to be tried shall, in relation to a divorce town in which there is no district registry, be construed as a reference to such district registry as the Lord Chancellor may designate for the purpose or, if the divorce town is not situated within the district of any district registry, as a reference to the principal registry.

Trial of issue

2.33 Where directions are given for the separate trial of any issue and those directions have been complied with, the district judge shall—

- (a) if the issue arises on an application for ancillary relief or an application with respect to any child or alleged child of the family, proceed as if the issue were a question referred to a judge on an application for ancillary relief and rule 2.65 shall apply accordingly;
- (b) in any other case, set the issue down for trial and thereupon rule 2.32(5) and (6) shall apply as if the issue were a cause.

Exercise of district judge's jurisdiction in causes set down for trial

2.34.—(1) The district judge of the registry for the divorce town at which a cause has been set down for trial or, in the case of a cause set down for trial at the Royal Courts of Justice, a district

judge of the principal registry may, if it appears to him to be desirable having regard to the proximity of the date of trial or otherwise, exercise in the cause any jurisdiction of the district judge of the registry in which the cause is proceeding.

(2) RSC Order 34, rule 5(3) shall apply, with the necessary modifications, to a defended cause pending in the High Court as it applies to an action begun by writ.

Further provisions as to date of trial

2.35 Except with the consent of the parties or by leave of a judge, no cause, whether defended or undefended, shall be tried until after the expiration of 10 days from the date on which directions for trial were given:

Provided that nothing in this rule shall apply to a cause entered in the special procedure list.

Disposal of causes in special procedure list

2.36.—(1) As soon as practicable after a cause has been entered in the special procedure list, the district judge 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 the district judge shall so certify;
- (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 2.24(3) shall cease to apply.

(2) On the making of a certificate under paragraph (1) a date shall be fixed for the pronouncement of a decree by a judge or district judge in open court and the proper officer shall send to each party notice of the date and place so fixed and a copy of the certificate, but subject to paragraph (3) it shall not be necessary for any party to appear on that occasion.

(3) Where the district judge makes a certificate under paragraph (1) and the petition contains a prayer for costs, the district judge may—

- (a) if satisfied that the petitioner is entitled to such costs, include in his certificate a statement to that effect;
- (b) if not so satisfied, give to any party who objects to paying such costs notice that, if he wishes to proceed with his objection, he must attend before the court on the date fixed pursuant to paragraph (2).

(4) 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 2.24(3) and may bespeak copies on payment of the prescribed fee.

Right to be heard on question of costs

2.37.—(1) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs, but the court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.

(2) A party shall be entitled to be heard on any question pursuant to paragraph (1) whether or not he has returned to the court office an acknowledgement of service stating his wish to be heard on that question.

(3) In proceedings after a decree nisi of divorce or a decree of judicial separation no order the effect of which would be to make a co-respondent or party cited liable for costs which are not

directly referable to the decree shall be made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

Respondent's statement as to arrangements for children

2.38.—(1) A respondent on whom there is served a statement in accordance with rule 2.2(2) may, whether or not he agreed that statement, file in the court office a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the proper officer shall send a copy to the petitioner.

(2) Any such statement of the respondent's views shall, if practicable, be filed within the time limited for giving notice of intention to defend and in any event before the district judge considers the arrangements or proposed arrangements for the upbringing and welfare of the children of the family under section 41(1) of the Act of 1973(1).

Procedure for complying with section 41 of Act of 1973

2.39.—(1) Where no such application as is referred to in rule 2.40(1) is pending the district judge shall, after making his certificate under rule 2.36(1)(a) or after the provision of evidence pursuant to a direction under rule 2.24(4), as the case may be, proceed to consider the matters specified in section 41(1) of the Act of 1973 in accordance with the following provisions of this rule.

(2) Where, on consideration of the relevant evidence, including any further evidence or report provided pursuant to this rule and any statement filed by the respondent under rule 2.38, the district judge is satisfied that—

- (a) there are no children of the family to whom section 41 of the Act of 1973 applies, or
- (b) there are such children but the court need not exercise its powers under the Act of 1989 with respect to any of them or give any direction under section 41(2) of the Act of 1973,

the district judge shall certify accordingly and, in a case to which sub-paragraph (b) applies, the petitioner and the respondent shall each be sent a copy of the certificate by the proper officer.

(3) Where the district judge is not satisfied as mentioned in paragraph (2) above he may, without prejudice to his powers under the Act of 1989 or section 41(2) of the Act of 1973, give one or more of the following directions—

- (a) that the parties, or any of them, shall file further evidence relating to the arrangements for the children (and the direction shall specify the matters to be dealt with in the further evidence);
- (b) that a welfare report on the children, or any of them, be prepared;
- (c) that the parties, or any of them, shall attend before him at the date, time and place specified in the direction;

and the parties shall be notified accordingly.

(4) Where the court gives a direction under section 41(2) of the Act of 1973, notice of the direction shall be given to the parties.

(5) In this rule “parties” means the petitioner, the respondent and any person who appears to the court to have the care of the child.

Applications relating to children of the family

2.40.—(1) Where a cause is pending, an application by a party to the cause or by any other person for an order under any provision of Part I or Part II of the Act of 1989 in relation to a child of the

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

family shall be made in the cause; and where the applicant is not a party and has obtained such leave as is required under the Act of 1989 to make the application, no leave to intervene in the cause shall be necessary.

(2) If, while a cause is pending, proceedings relating to any child of the family are begun in any other court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the cause, by the petitioner.

Restoration of matters adjourned at the hearing

2.41 Where at the trial of a cause any application is adjourned by the court for hearing in chambers, it may be restored—

- (a) in the High Court, by notice without a summons;
- (b) in a divorce county court, on notice under CCR Order 13, rule 1 (which deals with applications in the course of proceedings); or
- (c) in the High Court or a divorce county court, by notice given by the district judge when in his opinion the matter ought to be further considered;

and the notice shall state the date, time and place for the hearing of the restored application and be served on every party concerned.

Application for re-hearing

2.42.—(1) An application for re-hearing of a cause tried by a judge alone (whether in the High Court or a divorce county court) where no error of the court at the hearing is alleged, shall be made to a judge.

(2) Unless otherwise directed, the application shall be made to the judge by whom the cause was tried and shall be heard in open court.

(3) The application shall be made—

- (a) in the High Court, by a notice to attend before the judge on a day specified in the notice, and
- (b) in the county court, on notice in accordance with CCR Order 13, rule 1 (which deals with applications in the course of proceedings),

and the notice shall state the grounds of the application.

(4) Unless otherwise directed, the notice must be issued within six weeks after the judgment and served on every other party to the cause not less than 14 days before the day fixed for the hearing of the application.

(5) The applicant shall file a certificate that the notice has been duly served on each person required to be served therewith.

(6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any pleading which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the cause.

(7) Not less than seven days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of any official shorthand note of the proceedings at the trial.

(8) Where a party wishes to appeal against a decree absolute of divorce or nullity of marriage, the question whether he has had the time and opportunity to appeal from the decree nisi on which the decree absolute was founded shall be determined on an application for a re-hearing under this rule.

(9) Any other application for re-hearing shall be made by way of appeal to the Court of Appeal.

(10) This rule shall apply, with the necessary modifications, to a cause disposed of under rule 2.36 as it applies to a cause tried by a judge alone, save that where in such a case the decree was pronounced by a district judge the application shall be made to a district judge.