
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART I

PRELIMINARY

Citation and commencement

1.1 These rules may be cited as the Family Proceedings Rules 1991 and shall come into force on 14th October 1991.

Interpretation

1.2.—(1) In these rules, unless the context otherwise requires—

“the Act of 1973” means the Matrimonial Causes Act 1973**(1)**;

“the Act of 1984” means the Matrimonial and Family Proceedings Act 1984**(2)**;

“the Act of 1986” means the Family Law Act 1986**(3)**;

“the Act of 1989” means the Children Act 1989**(4)**;

“ancillary relief” means—

- (a) an avoidance of disposition order,
- (b) a financial provision order,
- (c) an order for maintenance pending suit,
- (d) a property adjustment order, or
- (e) a variation order;

“avoidance of disposition order” means an order under section 37(2)(b) or (c) of the Act of 1973;

“business day” has the meaning assigned to it by rule 1.5(6);

“cause” means a matrimonial cause as defined by section 32 of the Act of 1984 or proceedings under section 19 of the Act of 1973**(5)** (presumption of death and dissolution of marriage);

“child” and “child of the family” have, except in Part IV, the meanings respectively assigned to them by section 52(1) of the Act of 1973**(6)**;

“consent order” means an order under section 33A of the Act of 1973**(7)**;

(1) 1973 c. 18.

(2) 1984 c. 42.

(3) 1986 c. 55.

(4) 1989 c. 41.

(5) Section 19 was repealed in part by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), section 17(2) and Schedule 6.

(6) Section 52(1) was applied by section 27 of the Matrimonial and Family Proceedings Act 1984 (c. 42). No other applications, or any other repeals or amendments are relevant to these rules.

(7) Section 33A was inserted by section 7 of the Matrimonial and Family Proceedings Act 1984 (c. 42).

- “court” means a judge or the district judge;
- “court of trial” means a divorce county court designated by the Lord Chancellor as a court of trial pursuant to section 33(1) of the Act of 1984 and, in relation to matrimonial proceedings pending in a divorce county court, the principal registry shall be treated as a court of trial having its place of sitting at the Royal Courts of Justice;
- “defended cause” means a cause not being an undefended cause;
- “district judge”, in relation to proceedings in the principal registry, a district registry or a county court, means the district judge or one of the district judges of that registry or county court, as the case may be;
- “district registry” means any district registry having a divorce county court within its district;
- “divorce county court” means a county court so designated by the Lord Chancellor pursuant to section 33(1) of the Act of 1984;
- “divorce town”, in relation to any matrimonial proceedings, means a place at which sittings of the High Court are authorised to be held outside the Royal Courts of Justice for the hearing of such proceedings or proceedings of the class to which they belong;
- “document exchange” means any document exchange for the time being approved by the Lord Chancellor;
- “family proceedings” has the meaning assigned to it by section 32 of the Act of 1984;
- “financial provision order” means any of the orders mentioned in section 21(1) of the Act of 1973 except an order under section 27(6) of that Act⁽⁸⁾;
- “financial relief” has the same meaning as in section 37 of the Act of 1973;
- “judge” does not include a district judge;
- “notice of intention to defend” has the meaning assigned to it by rule 10.8;
- “order for maintenance pending suit” means an order under section 22 of the Act of 1973;
- “person named” includes a person described as “passing under the name of A.B.”;
- “the President” means the President of the Family Division or, in the case of his absence or incapacity through illness or otherwise or of a vacancy in the office of President, the senior puisne judge of that Division;
- “principal registry” means the Principal Registry of the Family Division;
- “proper officer” means—
- (a) in relation to the principal registry, the chief clerk of the family proceedings department, and
 - (b) in relation to any other court or registry, the chief clerk,
- or other officer of the court or registry acting on his behalf in accordance with directions given by the Lord Chancellor;
- “property adjustment order” means any of the orders mentioned in section 21(2) of the Act of 1973;
- “registry for the divorce town” shall be construed in accordance with rule 2.32(6);
- “Royal Courts of Justice”, in relation to matrimonial proceedings pending in a divorce county court, means such place, being the Royal Courts of Justice or elsewhere, as may be specified in directions given by the Lord Chancellor pursuant to section 42(2)(a) of the Act of 1984;
- “senior district judge” means the senior district judge of the Family Division or, in his absence from the principal registry, the senior of the district judges in attendance at the registry;

(8) The only relevant amendment is made by section 63(3) of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

“special procedure list” has the meaning assigned to it by rule 2.24(3);

“undefended cause” means—

- (i) a cause in which no answer has been filed or any answer filed has been struck out, or
- (ii) a cause which is proceeding only on the respondent’s answer and in which no reply or answer to the respondent’s answer has been filed or any such reply or answer has been struck out, or
- (iii) a cause to which rule 2.12(4) applies and in which no notice has been given under that rule or any notice so given has been withdrawn, or
- (iv) a cause in which an answer has been filed claiming relief but in which no pleading has been filed opposing the grant of a decree on the petition or answer or any pleading or part of a pleading opposing the grant of such relief has been struck out, or
- (v) any cause not within (i) to (iv) above in which a decree has been pronounced;

“variation order” means an order under section 31 of the Act of 1973(9).

(2) Unless the context otherwise requires, a cause begun by petition shall be treated as pending for the purposes of these rules notwithstanding that a final decree or order has been made on the petition.

(3) Unless the context otherwise requires, a rule or Part referred to by number means the rule or Part so numbered in these rules.

(4) In these rules a form referred to by number means the form so numbered in Appendix 1 to these rules with such variation as the circumstances of the particular case may require.

(5) In these rules any reference to an Order and rule is—

- (a) if prefixed by the letters “CCR”, a reference to that Order and rule in the County Court Rules 1981(10), and
- (b) if prefixed by the letters “RSC”, a reference to that Order and rule in the Rules of the Supreme Court 1965(11).

(6) References in these rules to a county court shall, in relation to matrimonial proceedings, be construed as references to a divorce county court.

(7) In this rule and in rule 1.4, “matrimonial proceedings” means proceedings of a kind with respect to which divorce county courts have jurisdiction by or under section 33, 34 or 35 of the Act of 1984.

Application of other rules

1.3.—(1) Subject to the provisions of these rules and of any enactment the County Court Rules 1981 and the Rules of the Supreme Court 1965 shall apply, with the necessary modifications, to family proceedings in a county court and the High Court respectively.

(2) For the purposes of paragraph (1) any provision of these rules authorising or requiring anything to be done in family proceedings shall be treated as if it were, in the case of proceedings pending in a county court, a provision of the County Court Rules 1981 and, in the case of proceedings pending in the High Court, a provision of the Rules of the Supreme Court 1965.

County court proceedings in principal registry

1.4.—(1) Subject to the provisions of these rules, matrimonial proceedings pending at any time in the principal registry which, if they had been begun in a divorce county court, would be pending

(9) Section 31 was amended by section 8(2) of the Matrimonial Homes and Property Act 1981 (c. 24), section 51 of the Administration of Justice Act 1982 (c. 53) and section 6 of the Matrimonial and Family Proceedings Act 1984 (c. 42).

(10) S.I.1981/1687.

(11) S.I. 1965/1776.

at that time in such a court, shall be treated, for the purposes of these rules and of any provision of the County Court Rules 1981 and the County Courts Act 1984(12), as pending in a divorce county court and not in the High Court.

(2) Unless the context otherwise requires, any reference to a divorce county court in any provision of these rules which relates to the commencement or prosecution of proceedings in a divorce county court, or the transfer of proceedings to or from such a court, includes a reference to the principal registry.

Computation of time

1.5.—(1) Any period of time fixed by these rules, or by any rules applied by these rules, or by any decree, judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

(2) Where the act is required to be done not less than a specified period before a specified date, the period starts immediately after the date on which the act is done and ends immediately before the specified date.

(3) Where the act is required to be done within a specified period after or from a specified date, the period starts immediately after that date.

(4) Where, apart from this paragraph, the period in question, being a period of seven days or less, would include a day which is not a business day, that day shall be excluded.

(5) Where the time so fixed for doing an act in the court office expires on a day on which the office is closed, and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which the office is open.

(6) In these rules “business day” means any day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday under the Banking and Financial Dealings Act 1971(13), in England and Wales.

PART II

MATRIMONIAL CAUSES

Application of Part II

2.1 This Part applies—

- (a) to causes;
- (b) to applications under Part II of the Act of 1973, except sections 27, 32, 33, 35, 36 and 38; and
- (c) for specifying the procedure for complying with the requirements of section 41 of the Act of 1973(14).

(12) 1984 c. 28.

(13) 1971 c. 80.

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

Commencement etc of proceedings

Cause to be begun by petition

2.2.—(1) Every cause shall be begun by petition.

(2) Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the family who is under 16 or who is over that age and is receiving instruction at an educational establishment or undergoing training for a trade or profession, the petition shall be accompanied by a statement, signed by the petitioner personally and if possible agreed with the respondent, containing the information required by Form M4, to which shall be attached a copy of any medical report mentioned therein.

Contents of petition

2.3 Unless otherwise directed, every petition shall contain the information required by Appendix 2 to these rules.

Petitioner relying on section 11 or 12 of the Civil Evidence Act 1968(15)

2.4.—(1) A petitioner who, in reliance on section 11 or 12 of the Civil Evidence Act 1968, intends to adduce evidence that a person—

- (a) was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, or
- (b) was found guilty of adultery in matrimonial proceedings or to be the father of a child in relevant proceedings before any court in England and Wales, or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom,

must include in his petition a statement of his intention with particulars of—

- (i) the conviction, finding or adjudication and the date thereof,
- (ii) the court or court-martial which made the conviction, finding or adjudication and, in the case of a finding or adjudication, the proceedings in which it was made, and
- (iii) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

(2) In this rule “matrimonial proceedings”, “relevant proceedings” and “affiliation proceedings” have the same meanings as in the said section 12.

Signing of petition

2.5 Every petition shall be signed by counsel if settled by him or, if not, by the petitioner’s solicitor in his own name or the name of his firm, or by the petitioner if he sues in person.

Presentation of petition

2.6.—(1) A petition may be presented to any divorce county court.

(2) Unless otherwise directed on an application made ex parte, a certificate of the marriage to which the cause relates shall be filed with the petition.

(3) Where a solicitor is acting for a petitioner for divorce or judicial separation, a certificate in Form M3 shall be filed with the petition, unless otherwise directed on an application made ex parte.

(15) **1968 c. 64. Section 11 was amended by the Powers of Criminal Courts Act 1973 (c. 62), Schedule 5, paragraph 31 and section 12 was amended by the Family Law Reform Act 1987 (c. 42), section 29.**

(4) Where there is before a divorce county court or the High Court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of one year from the date of the marriage, to present a petition for divorce alleging such of the facts mentioned in section 1(2) of the Act of 1973 as were alleged in a petition for judicial separation presented before the expiration of that period.

(5) The petition shall be presented by filing it, together with any statement and report required by rule 2.2(2) in the court office, with as many copies of the petition as there are persons to be served and a copy of the statement and report required by rule 2.2(2) for service on the respondent.

(6) CCR Order 3, rule 4(2) (which, as applied by rule 5 of that Order, deals with the filing and service of petitions) shall not apply, but on the filing of the petition the proper officer shall annex to every copy of the petition for service a notice in Form M5 with Form M6 attached and shall also annex to the copy petition for service on a respondent the copy of any statement and report filed pursuant to paragraph (5) of this rule.

Parties

2.7.—(1) Subject to paragraph (2), where a petition alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the cause unless—

- (a) that person is not named in the petition, or
- (b) the court otherwise directs.

(2) Where a petition alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1) that person shall not be made a co-respondent in the cause unless the court so directs.

(3) Where a petition alleges that the respondent has been guilty of an improper association (other than adultery) with a person named, the court may direct that the person named be made co-respondent in the cause, and for that purpose the district judge may require the proper officer to give notice to the petitioner and to any other party who has given notice of intention to defend of a date, time and place at which the court will consider giving such a direction.

(4) An application for directions under paragraph (1) may be made *ex parte* if no notice of intention to defend has been given.

(5) Paragraphs (1) and (3) of this rule do not apply where the person named has died before the filing of the petition.

Discontinuance of cause before service of petition

2.8 Before a petition is served on any person, the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

Service of petition etc

Service of petition

2.9.—(1) Subject to the provisions of this rule and rules 9.3 and 10.6, a copy of every petition shall be served personally or by post on every respondent or co-respondent.

(2) Service may be effected—

- (a) where the party to be served is a person under disability within the meaning of rule 9. 1, through the petitioner, and
 - (b) in any other case, through the court or, if the petitioner so requests, through the petitioner.
- (3) Personal service shall in no case be effected by the petitioner himself.
- (4) A copy of any petition which is to be served through the court shall be served by post by an officer of the court or, if on a request by the petitioner the district judge so directs, by a bailiff delivering a copy of the petition to the party personally.
- (5) For the purposes of the foregoing paragraphs, a copy of a petition shall be deemed to be duly served if—
- (a) an acknowledgement of service in Form M6 is signed by the party to be served or by a solicitor on his behalf and is returned to the court office, and
 - (b) where the form purports to be signed by the respondent, his signature is proved at the hearing or, where the cause is undefended, in the affidavit filed by the petitioner under rule 2.24(3).
- (6) Where a copy of a petition has been sent to a party and no acknowledgement of service has been returned to the court office, the district judge, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.
- (7) Where a copy of a petition has been served on a party personally and no acknowledgement of service has been returned to the court office, service shall be proved by filing an affidavit of service (or, in the case of service by bailiff, an indorsement of service under CCR Order 7, rule 6) showing, in the case of a respondent, the server's means of knowledge of the identity of the party served.
- (8) Where an acknowledgement of service is returned to the court office, the proper officer shall send a photographic copy thereof to the petitioner.
- (9) An application for leave to substitute some other mode of service for the modes of service prescribed by paragraph (1) or to substitute notice of the proceedings by advertisement or otherwise, shall be made *ex parte* by lodging an affidavit setting out the grounds on which the application is made; and the form of any advertisement shall be settled by the district judge:
- Provided that no order giving leave to substitute notice of the proceedings by advertisement shall be made unless it appears to the district judge that there is a reasonable probability that the advertisement will come to the knowledge of the person concerned.
- (10) CCR Order 7, rule 8 shall apply in relation to service by bailiff under this rule as it applies to service of a summons by bailiff in accordance with rule 10 of that Order.
- (11) Where in the opinion of the district judge it is impracticable to serve a party in accordance with any of the foregoing paragraphs or it is otherwise necessary or expedient to dispense with service of a copy of a petition on the respondent or on any other person, the district judge may make an order dispensing with such service.
- An application for an order under this paragraph shall be made in the first instance *ex parte* by lodging an affidavit setting out the grounds of the application, but the district judge may, if he thinks fit, require the attendance of the petitioner on the application.

Consent to grant of decree

2.10.—(1) Where, before the hearing of a petition alleging two years, separation coupled with the respondent's consent to a decree being granted, the respondent wishes to indicate to the court that he consents to the grant of a decree, he shall do so by filing a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgement of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgement is signed—

- (a) in the case of a respondent acting in person, by the respondent, or
- (b) in the case of a respondent represented by a solicitor, by the respondent as well as by the solicitor.

(2) A respondent to a petition which alleges any such fact as is mentioned in paragraph (1) may give notice to the court either that he does not consent to a decree being granted or that he withdraws any consent which he has already given.

Where any such notice is given and none of the other facts mentioned in section 1(2) of the Act of 1973 is alleged, the proceedings on the petition shall be stayed and the proper officer shall thereupon give notice of the stay to all parties.

Pleadings and amendment

Supplemental petition and amendment of petition

2.11.—(1) Subject to rule 2.14—

- (a) a supplemental petition may be filed without leave at any time before an answer is filed but thereafter only with leave; and
- (b) a petition may be amended without leave at any time before an answer is filed but thereafter only with leave.

(2) Subject to paragraph (3) an application for leave under this rule—

- (a) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made by lodging in the court office the supplemental petition or a copy of the petition as proposed to be amended; and
- (b) shall, in any other case, be made on notice (or in the High Court by summons) to be served, unless otherwise directed, on every opposite party.

(3) The district judge may, if he thinks fit, require an application for leave to be supported by an affidavit.

(4) An order granting leave shall—

- (a) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;
- (b) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.

(5) An amendment authorised to be made under this rule shall be made by filing a copy of the amended petition.

(6) Rules 2.5 and 2.7 shall apply to a supplemental or amended petition as they apply to the original petition.

(7) Unless otherwise directed, a copy of a supplemental or amended petition, together with a copy of the order (if any) made under this rule shall be served on every respondent and co-respondent named in the original petition or in the supplemental or amended petition.

(8) The petitioner shall file the documents required by paragraph (7) to be served on any person and thereupon, unless otherwise directed, rules 2.6(6) and 2.9 shall apply in relation to that person as they apply in relation to a person required to be served with an original petition.

Filing of answer to petition

2.12.—(1) Subject to paragraph (2) and to rules 2.10, 2.14 and 2.37, a respondent or co-respondent who—

- (a) wishes to defend the petition or to dispute any of the facts alleged in it,
- (b) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief, or
- (c) being the respondent to a petition to which section 5(1) of the Act of 1973 applies, wishes to oppose the grant of a decree on the ground mentioned in that subsection,

shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the petition.

(2) An answer may be filed notwithstanding that the person filing the answer has not given notice of intention to defend.

(3) Any reference in these rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.

(4) Where in a cause in which relief is sought under section 12(d) of the Act of 1973⁽¹⁶⁾ the respondent files an answer containing no more than a simple denial of the facts stated in the petition, he shall, if he intends to rebut the charges in the petition, give the court notice to that effect when filing his answer.

Filing of reply and subsequent pleadings

2.13.—(1) A petitioner may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 2.17.

(2) If the petitioner does not file a reply to an answer, he shall, unless the answer prays for a decree, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

Filing and amendment of pleadings after directions for trial

2.14 No pleading shall be filed or amended without leave after directions for trial have been given.

Contents of answer and subsequent pleadings

2.15.—(1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the petition, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required in the case of a petition by paragraph 1(k) of Appendix 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs 1(f), (g) and (h) of Appendix 2 to be included in the petition shall contain full particulars of the facts relied on.

(3) Paragraph 4(a) of Appendix 2 shall, where appropriate, apply with the necessary modifications, to a respondent's answer as it applies to a petition:

⁽¹⁶⁾ Section 12(d) was amended by the Mental Health Act 1983 (c. 20), Schedule 4, paragraph 34.

Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.

(4) Where an answer to any petition contains a prayer for relief, it shall contain the information required by paragraph 1(j) of Appendix 2 in the case of the petition in so far as it has not been given by the petitioner.

(5) Where a party's pleading includes such a statement as is mentioned in rule 2.4, then if the opposite party—

- (a) denies the conviction, finding or adjudication to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(6) Rules 2.4 and 2.5 shall apply, with the necessary modifications, to a pleading other than a petition as they apply to a petition.

Allegation against third person in pleading

2.16.—(1) Rules 2.7 and 2.9 shall apply, with the necessary modifications, to a pleading other than a petition as they apply to a petition, so however that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

(2) Rule 2.12 shall apply, with the necessary modifications, to a party cited as it applies to a co-respondent.

Service of pleadings

2.17 A party who files an answer, reply or subsequent pleading shall at the same time file a copy for service on every opposite party, and thereupon the proper officer shall annex to every copy for service on a party cited in the pleading a notice in Form M5 with Form M6 attached and shall send a copy to every other opposite party.

Supplemental answer and amendment of pleadings

2.18 Rule 2.11 shall apply, with the necessary modifications, to the filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as it applies to the filing of a supplemental petition and the amendment of a petition.

Particulars

2.19.—(1) A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

(3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

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(17)

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 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.

Evidence

Evidence at trial of cause

2.28.—(1) Subject to the provisions of this rule and rules 2.29, 2.36 and 10. 14 and of the Civil Evidence Act 1968(18) and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of a cause begun by petition shall be proved by the examination of the witnesses orally and in open court.

(2) Nothing in this rule and rules 2.29 and 10. 14 shall affect the power of the judge at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

(3) The court may order—

- (a) that the affidavit of any witness may be read at the trial on such conditions as the court thinks reasonable;
- (b) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular—
 - (i) by statement on oath of information or belief, or
 - (ii) by the production of documents or entries in books, or
 - (iii) by copies of documents or entries in books, or
 - (iv) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper containing a statement of that fact; and
- (c) that not more than a specified number of expert witnesses may be called.

(4) An application to the district judge for an order under paragraph (3) shall—

- (a) if no notice of intention to defend has been given, or
- (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought, or
- (c) if the cause is undefended and directions for trial have been given, be made ex parte by filing an affidavit stating the grounds on which the application is made.

(5) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the proposed affidavit or a draft thereof shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the ground on which the application is made, no other affidavit shall be required under paragraph (4).

Evidence by deposition

2.29 The court may, on the application of any party to a cause begun by petition, make an order under CCR Order 20, rule 18, or (if the cause is pending in the High Court) under RSC Order 39, rule 1, for the examination on oath of any person; and CCR Order 20, rule 18 or (if the cause is pending in the High Court) RSC Order 38, rule 9, and Order 39, rules I to 14 (which regulate the procedure where evidence is to be taken by deposition) shall have effect accordingly with the appropriate modifications.

Issue of witness summons or subpoena

2.30.—(1) A witness summons in a cause pending in a divorce county court may be issued in that court or in the court of trial at which the cause is to be tried.

- (2) A writ of subpoena in a cause pending in the High Court may issue out of—
- (a) the registry in which the cause is proceeding, or
 - (b) if the cause is to be tried at the Royal Courts of Justice, the principal registry; or
 - (c) if the cause is to be tried at a divorce town, the registry for that town.

Hearsay and expert evidence in High Court

2.31 RSC Order 38, rule 2(1), shall have effect in relation to a defended cause in the High Court as if—

- (a) for the reference in paragraph (4) to Order 38, rule 3, there were substituted a reference to rules 2.28, 2.29 and 10.12 of these rules; and
- (b) paragraph (5) were omitted.

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⁽¹⁹⁾.

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

⁽¹⁹⁾ 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.

Decrees and orders

Decrees and orders

2.43.—(1) Except in a case to which rule 2.61 (consent orders) applies, every decree, every order made in open court and every other order which is required to be drawn up shall be drawn up

- (a) in the case of a decree or order made at a divorce county court, by the proper officer of that court;
- (b) in the case of a decree or order made at the Royal Courts of Justice, by the proper officer of the principal registry;
- (c) in the case of a decree or order made at a divorce town, by the proper officer of the registry for that town.

(2) CCR Order 22, rule 7 (which deals among other things with the settlement of judgments) shall not apply to a decree made in a cause pending in a divorce county court.

Application for rescission of decree

2.44.—(1) An application by a respondent under section 10(1) of the Act of 1973 for the rescission of a decree of divorce shall be made to a judge and shall be heard in open court, save that where the decree was pronounced by a district judge the application shall be made to a district judge.

(2) Paragraphs (3) and (5) of rule 2.42 shall apply to an application under this rule as they apply to an application under that rule.

(3) Unless otherwise directed, the notice of the application shall be served on the petitioner not less than 14 days before the day fixed for the hearing of the application.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the petitioner.

Application under section 10(2) of Act of 1973

2.45.—(1) An application by a 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 M12.

(2) Where a petitioner is served with a notice in Form M 1 2, then unless he has already filed an affidavit under rule 2.58(2) he shall, within 14 days after service of the notice upon him, file an affidavit in answer to the application containing full particulars of his property and income and, in default, the court may order him to do so.

(3) Within 14 days after service upon him 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, unless already given in an affidavit filed by him under rule 2.58(3).

(4) The powers of the court on hearing the application may be exercised by the district judge.

(5) Where the petitioner has relied on the fact of two or five years' separation and the court has granted a decree nisi without making any finding as to any other fact mentioned in section 1(2) of the Act of 1973, the proper officer shall fix an appointment for the hearing; and rules 2.62(3) to (7) and 10.10 shall apply as if the application were an application for ancillary relief.

(6) A statement of any of the matters mentioned in section 10(3) of the Act of 1973 with respect to which the court is satisfied, or, where the court has proceeded under section 10(4), a statement

that the conditions for which that subsection provides have been fulfilled, shall be entered in the records of the court.

Intervention to show cause by Queen's Proctor

2.46.—(1) If the Queen's Proctor wishes to show cause against a decree nisi being made absolute, he shall give notice to that effect to the court and to the party in whose favour it was pronounced.

(2) Within 21 days after giving notice under paragraph (1) the Queen's Proctor shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on the party in whose favour the decree was pronounced and every other party affected by the decree.

(3) The proper officer shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

(4) Subject to the following provisions of this rule, these rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were a petition by which a cause is begun.

(5) If no answer to the plea is filed within the time limited or, if an answer is filed and struck out or not proceeded with, the Queen's Proctor may apply forthwith by motion for an order rescinding the decree and dismissing the petition.

(6) Rule 2.24 shall apply to proceedings in respect of a plea by the Queen's Proctor as it applies to the trial of a cause, so however that if all the charges in the plea are denied in the answer the application for directions shall be made by the Queen's Proctor and in any other case it shall be made by the Queen's Proctor and in any other case it shall be made by the party in whose favour the decree nisi has been pronounced.

Intervention to show cause by person other than Queen's Proctor

2.47.—(1) If any person other than the Queen's Proctor wishes to show cause under section 9 of the Act of 1973 against a decree nisi being made absolute, he shall file an affidavit stating the facts on which he relies and a copy shall be served on the party in whose favour the decree was pronounced.

(2) A party on whom a copy of the affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, a copy thereof shall be served on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, a copy shall be served on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be served without leave.

(5) Any person who files an affidavit under paragraphs (1), (2) or (3) shall at the same time file a copy for service on each person required to be served therewith and the proper officer shall thereupon serve the copy on that person.

(6) A person showing cause shall apply to the judge (or, where a district judge has pronounced the decree nisi, a district judge) for directions with 14 days after expiry of the time allowed for filing an affidavit in reply or, where an affidavit in answer has been filed, within 14 days after the expiry of the time allowed for filing such an affidavit.

(7) If the person showing cause does not apply under paragraph (6) within the time allowed, the person in whose favour the decree was pronounced may do so.

Rescission of decree nisi by consent

2.48.—(1) Where a reconciliation has been effected between the petitioner and the respondent—

(a) after a decree nisi has been pronounced but before it has been made absolute, of

(b) after a decree of judicial separation has been pronounced, either party may apply for an order rescinding the decree by consent.

(2) Where the cause is pending in a divorce county court, the application shall be made on notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise affected by the decree, and where the cause is pending in the High Court a copy of the summons by which the application is made shall be served on every such person.

(3) The application shall be made to a district judge and may be heard in chambers.

Decree absolute on lodging notice

2.49.—(1) Subject to rule 2.50(1) an application by a spouse to make absolute a decree nisi pronounced in his favour may be made by lodging with the court a notice in Form M8.

(2) On the lodging of such a notice, the district judge shall cause the records of the court to be searched, and if he is satisfied—

- (a) that no application for rescission of the decree or for re-hearing of the cause and no appeal against the decree or the dismissal of an application for re-hearing of the cause is pending;
- (b) that no order has been made by the court extending the time for making an application for re-hearing of the cause or by the Court of Appeal extending the time for appealing against the decree or the dismissal of an application for re-hearing of the cause or, if any such order has been made, that the time so extended has expired;
- (c) that no application for such an order as is mentioned in sub-paragraph (b) is pending;
- (d) that no intervention under rule 2.46 or 2.47 is pending;
- (e) that the court has complied with section 41(1) of the Act of 1973 and has not given any direction under section 41(2)(20);
- (f) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(21) in respect of the decree—
 - (i) that no application for leave to appeal directly to the House of Lords is pending;
 - (ii) that no extension of the time to apply for leave to appeal directly to the House of Lords has been granted or, if any such extension has been granted, that the time so extended has expired; and
 - (iii) that the time for any appeal to the Court of Appeal has expired; and
- (g) that the provisions of section 10(2) to (4) of the Act of 1973 do not apply or have been complied with,

the district judge shall make the decree absolute:

Provided that if the notice is lodged more than 12 months after the decree nisi there shall be lodged with the notice an explanation in writing:

- (a) giving reasons for the delay;
- (b) stating whether the parties have lived with each other since the decree nisi and, if so, between what dates; and
- (c) stating whether the applicant being the wife has, or being the husband has reason to believe that his wife has, given birth to any child since the decree nisi and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the family;

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

(21) 1969 c. 58, section 12(2)(b) and 8 were repealed in part by the Courts Act 1971 (c. 23), Schedule 11, Part IV. Section 12(2)(a) was repealed in part by the Supreme Court Act 1981 (c. 54), Schedule 7.

and the district judge may require the applicant to file an affidavit verifying the said explanation and may make such order on the application as he thinks fit.

Decree absolute on application

2.50.—(1) In the following cases an application for a decree nisi to be made absolute shall be made to a judge, that is to say—

- (a) where the Queen’s Proctor gives to the court and to the party in whose favour the decree was pronounced a notice that he requires more time to decide whether to show cause against the decree being made absolute and the notice has not been withdrawn, or
- (b) where there are other circumstances which ought to be brought to the attention of the court before the decree nisi is made absolute.

Unless otherwise directed, the summons by which the application is made (or, where the cause is pending in a divorce county court, notice of the application) shall be served on every party to the cause (other than the applicant) and, in a case to which sub-paragraph (a) applies, on the Queens Proctor.

(2) An application by a spouse for a decree nisi pronounced against him to be made absolute may be made to a judge or the district judge, and the summons by which the application is made (or, where the cause is pending in a divorce county court, notice of the application) shall be served on the other spouse not less than four clear days before the day on which the application is heard.

(3) An order granting an application under this rule shall not take effect until the district judge has caused the records of the court to be searched and is satisfied as to the matters mentioned in rule 2.49(2).

Indorsement and certificate of decree absolute

2.51.—(1) Where a decree nisi is made absolute, the proper officer shall made an indorsement to that effect on the decree, stating the precise time at which it was made absolute.

(2) On a decree nisi being made absolute, the proper officer shall send to the petitioner and the respondent a certificate in Form M9 or M10 whichever is appropriate, authenticated by the seal of the divorce county court or registry from which is issued.

(3) A central index of decrees absolute shall be kept under the control of the principal registry and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.

(4) A certificate in Form M9 or M10 that a decree nisi has been made absolute shall be issued to any person requiring it on payment of the prescribed fee.

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 **(22)** 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;

(22) 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).

(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.

(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.

PART III

OTHER MATRIMONIAL ETC PROCEEDINGS

Application in case of failure to provide reasonable maintenance

3.1.—(1) Every application under section 27 of the Act of 1973(**23**) shall be made by originating application in Form M19.

(2) The application may be made to any divorce county court and there shall be filed with the application an affidavit by the applicant and also a copy of the application and of the affidavit for service on the respondent.

(3) The affidavit shall state—

- (a) the same particulars regarding the marriage, the court's jurisdiction, the children and the previous proceedings as are required in the case of a petition by sub-paragraphs (a), (c), (d), (f) and (i) of paragraph 1 of Appendix 2;
- (b) particulars of the respondent's failure to provide reasonable maintenance for the applicant, or, as the case may be, of the respondent's failure to provide, or to make a proper contribution towards, reasonable maintenance for the children of the family; and
- (c) full particulars of the applicant's property and income and of the respondent's property and income, so far as may be known to the applicant.

(4) A copy of the application and of the affidavit referred to in paragraph (2) shall be served on the respondent, together with a notice in Form M20 with Form M6.

(5) Subject to paragraph (6), the respondent shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit stating—

- (a) whether the alleged failure to provide, or to make proper contribution towards, reasonable maintenance is admitted or denied, and, if denied, the grounds on which he relies;
- (b) any allegation which he wishes to make against the applicant; and
- (c) full particulars of his property and income, unless otherwise directed.

(6) Where the respondent challenges the jurisdiction of the court to hear the application he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit setting out the grounds of the challenge; and the obligation to file an affidavit under paragraph (5) shall not arise until 14 days after the question of jurisdiction has been determined and the court has decided that the necessary jurisdiction exists.

(7) Where the respondent's affidavit contains an allegation of adultery or of an improper association with a person named, the provisions of rule 2.60 (which deal with service on, and intervention by, a named person) shall apply.

(8) If the respondent does not file an affidavit in accordance with paragraph (5), the court may order him to file an affidavit containing full particulars of his property and income, and in that case the respondent shall serve a copy of any such affidavit on the applicant.

(9) Within 14 days after being served with a copy of any affidavit filed by the respondent, the applicant may file a further affidavit as to means and as to any fact in the respondent's affidavit which is disputed, and in that case the applicant shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

(23) Section 27 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), sections 6(1), the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 89 and Schedule 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 4 and 46(1) and Schedule 1, paragraph 12 and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 52.

(10) Rules 2.61 to 2.66 and rule 10.10 shall apply, with such modifications as may be appropriate, to an application for an order under section 27 of the Act of 1973 as if the application were an application for ancillary relief.

Application for alteration of maintenance agreement during lifetime of parties

3.2.—(1) An application under section 35 of the Act of 1973 **(24)** for the alteration of a maintenance agreement shall be made by originating application containing, unless otherwise directed, the information required by Form M21.

(2) The application may be made to any divorce county court and may be heard and determined by the district judge.

(3) There shall be filed with the application an affidavit by the applicant exhibiting a copy of the agreement and verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(4) A copy of the application and of the affidavit referred to in paragraph (3) shall be served on the respondent, together with a notice in Form M20 with Form M6 attached.

(5) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, 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.

(6) A respondent who files an affidavit under paragraph (5) shall at the same time file a copy which the proper officer shall serve on the applicant.

Application for alteration of maintenance agreement after death of one party

3.3.—(1) An application under section 36 of the Act of 1973 **(25)** for the alteration of a maintenance agreement after the death of one of the parties shall be made—

(a) in the High Court, by originating summons out of the principal registry or any district registry, or

(b) in a county court, by originating application,

in Form M22.

(2) There shall be filed in support of the application an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(a) whether the deceased died domiciled in England and Wales;

(b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and—

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18) and the place where and the person with whom any such minor child is residing,

(ii) the date of death of any such child who has died since the agreement was made;

(d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or any other

(24) Section 35 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 13.

(25) Section 36 was amended by section 26(1) of the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63) and S.I. 1981/1636.

children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;

- (e) whether there have been in any court any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependents) Act 1975⁽²⁶⁾ or any Act repealed by that Act and the date and effect of any order made in such proceedings;
- (f) in the case of an application by the surviving party, the applicant's means;
- (g) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicant, and the information mentioned in sub-paragraphs (a), (b) and (c) of rule 3.4(4);
- (h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;
- (i) if the application is made after the end of the period of six months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(3) CCR Order 48, rules 3(1), 7 and 9 shall apply to an originating application under the said section 36 as they apply to an application under section 1 of the Inheritance (Provision for Family and Dependents) Act 1975.

(4) In this rule and the next following rule "the deceased" means the deceased party to the agreement to which the application relates.

Further proceedings on application under rule 3.3

3.4.—(1) Without prejudice to his powers under RSC Order 15⁽²⁷⁾(which deals with parties and other matters), the district judge may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 3.3.

(2) RSC Order 15, rule 13 (which enables the court to make representation orders in certain cases) shall apply to the proceedings as if they were mentioned in paragraph (1) of the said rule 13.

(3) Where the application is in a county court, the references in paragraphs (1) and (2) to RSC Order 15 and Order 15, rule 13 shall be construed as references to CCR Order 5 and Order 5, rule 6 respectively.

(4) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating—

- (a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout, including the amount of the estate duty and interest thereon;
- (b) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained, and
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of rule 9.1.

(5) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (4) the district judge may order him to do so.

⁽²⁶⁾ 1975 c. 63.

⁽²⁷⁾ amended by S.I. 1966/1055, 1970/1861, 1975/911, 1977/960 and 1955, 1979/402, and 1716, 1986/1187 and 1990/1689.

(6) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.

(7) Every respondent who files an affidavit in answer to the application shall at the same time lodge a copy, which the proper officer shall serve on the applicant.

Application of other rules to proceedings under section 35 or 36 of Act of 1973

3.5.—(1) The following rules shall apply, with the necessary modifications, to an application under section 35 or 36 of the Act of 1973, as if it were an application for ancillary relief—

- (a) in the case of an application under either section, rules 2.60, 2.62(4) to (6), 2.63, 2.64, 2.65 and 10.10;
- (b) in the case of an application under section 35, rule 2.66;
- (c) in the case of an application under section 36, rule 2.66(1) and (2).

(2) Subject to paragraph (1) and to the provisions of rules 3.2 to 3.4, these rules shall, so far as applicable, apply with the necessary modifications to an application under section 35 or section 36 (as the case may be) of the Act of 1973, as if the application were a cause, the originating application or summons a petition, and the applicant the petitioner.

Married Women’s Property Act 1882

3.6.—(1) Subject to paragraph (2) below, an application under section 17 of the Married Women’s Property Act 1882 **(28)**(in this and the next following rule referred to as “section 17”) shall be made—

- (a) in the High Court, by originating summons, which may be issued out of the principal registry or any district registry, or
- (b) in a county court, by originating application,

in Form M23 and shall be supported by affidavit.

(2) An order under section 17 may be made in any ancillary relief proceedings upon the application of any party thereto in Form M11 by notice of application or summons.

(3) An application under section 17 to a county court shall be filed—

- (a) subject to sub-paragraph (b), in the court for the district in which the applicant or respondent resides, or
- (b) in the divorce county court in which any pending matrimonial cause has been commenced by or on behalf of either the applicant or the respondent, or in which any matrimonial cause is intended to be commenced by the applicant.

(4) Where the application concerns the title to or possession of land, the originating summons or application shall—

- (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.

(5) The application shall be served on the respondent, together with a copy of the affidavit in support and an acknowledgement of service in Form M6.

(6) Where particulars of a mortgage are given pursuant to paragraph (4), the applicant shall file a copy of the originating summons or application, which shall be served on the mortgagee; and any

(28) 1882 c. 75; section 17 was amended by section 43 of the Matrimonial and Family Proceedings Act 1984 (c. 42) and repealed in part by the Statute Law (Repeals) Act 1969 (c. 52).

person so served may apply to the court in writing, within 14 days after service, for a copy of the affidavit in support; and within 14 days of receiving such affidavit may file an affidavit in answer and shall be entitled to be heard on the application.

(7) If the respondent intends to contest the application, he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit in answer to the application setting out the grounds on which he relies, and lodge in the court office a copy of the affidavit for service on the applicant.

(8) If the respondent fails to comply with paragraph (7), the applicant may apply for directions; and the district judge may give such directions as he thinks fit, including a direction that the respondent shall be debarred from defending the application unless an affidavit is filed within such time as the district judge may specify.

(9) A district judge may grant an injunction in proceedings under section 17 if, but only so far as, the injunction is ancillary or incidental to any relief sought in those proceedings.

(10) Rules 2.62(4) to (6) and 2.63 to 2.66 shall apply, with the necessary modifications, to an application under section 17 as they apply to an application for ancillary relief.

(11) Subject to the provisions of this rule, these rules shall apply, with the necessary modifications, to an application under section 17 as if the application were a cause, the originating summons or application a petition, and the applicant a petitioner.

Exercise in principal registry of county court jurisdiction under section 17 of Married Women's Property Act 1882

3.7.—(1) Where any proceedings for divorce, nullity or judicial separation which are either pending in the principal registry, or are intended to be commenced there by the applicant, are or will be treated as pending in a divorce county court, an application under section 17 by one of the parties to the marriage may be made to the principal registry as if it were a county court.

(2) In relation to proceedings commenced or intended to be commenced in the principal registry under paragraph (1) of this rule or transferred from the High Court to the principal registry by an order made under section 38 of the Act of 1984⁽²⁹⁾—

- (a) section 42 of the Act of 1984 and the rules made thereunder shall have effect, with the necessary modifications, as they have effect in relation to proceedings commenced in or transferred to the principal registry under that section; and
- (b) CCR Order 4, rule 8 and rule 3.6(3) (which relate to venue) shall not apply.

(3) Rule 1.4(1) shall apply, with the necessary modifications, to proceedings in, or intended to be commenced in, the principal registry under paragraph (1) of this rule as it applies to matrimonial proceedings.

Proceedings under sections 1 and 9 of and Schedule 1 to Matrimonial Homes Act 1983⁽³⁰⁾

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.

⁽²⁹⁾ Section 38 was amended by the Matrimonial Proceedings (Transfers) Act 1988 (c. 18), section 1(1) and the Children Act 1989 (c. 41), Schedule 13, paragraph 51.

⁽³⁰⁾ 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).

(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⁽³¹⁾ 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.

(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.

Domestic Violence and Matrimonial Proceedings Act 1976⁽³²⁾

3.9.—(1) In this rule a section referred to by number means the section so numbered in the Domestic Violence and Matrimonial Proceedings Act 1976.

(2) Subject to paragraph (3), an application under section 1 may be made by originating summons in Form No. 10 in Appendix A to the Rules of the Supreme Court ⁽³³⁾ in the High Court or by originating application to the county court for the district in which either the applicant or the respondent resides or the matrimonial home is situated, and shall be dealt with in chambers unless the court otherwise directs.

(3) Where a cause, or proceedings under this Part, are pending, an application under section 1 made by a party to those proceedings may be made as an application in those proceedings.

⁽³¹⁾ 1967 (c. 75), Schedule 17, paragraph 33.

⁽³²⁾ 1976 c. 50.

⁽³³⁾ S.I. 1965/1776.

(4) Where an application under section 1 is pending the court shall (on the application of either party or of its own motion) consider whether to exercise its powers under rule 10.10 to transfer the hearing of that application to another court and shall order such transfer if it seems necessary or expedient to do so.

(5) The application shall be served on the respondent not less than two days before the date upon which the application is to be heard, unless the court orders otherwise.

(6) Where an injunction contains one or more provisions of the kind described in section 2(1) (in this paragraph and paragraph (7) referred to as “the relevant provisions”) and a power of arrest is attached to the injunction—

- (a) the relevant provisions shall be set out in separate clauses of the injunction and those clauses shall not refer to any form of molestation which would not entitle a constable to arrest the respondent under section 2(3); and
- (b) a copy of the relevant provisions shall be delivered to the officer for the time being in charge of any police station for the applicant’s address.

(7) Where an order is made varying or discharging the relevant provisions of an injunction to which a power of arrest has been attached under section 2, the proper officer shall immediately inform the officer for the time being in charge of the police station at which a copy of the injunction was delivered pursuant to paragraph (6) and, if the applicant’s address has since changed, any police station for the new address; and a copy of the order shall be delivered to any officer so informed.

(8) The judge before whom a person is brought pursuant to section 2(4) may adjourn the proceedings and, where such an order is made, the arrested person shall be released and—

- (a) be dealt with (whether by the same or another judge) within 14 days of the day on which he was arrested; and
- (b) be given not less than two days' notice of the adjourned hearing,

but nothing in this paragraph shall prevent the issue of a notice under CCR Order 29, rule 1(4) if the arrested person is not dealt with within the period mentioned in sub-paragraph (a) above.

(9) In relation to a person who is in custody under such an order and warrant of a county court, CCR Order 29, rule 3, shall have effect as if the order and warrant were issued at the instance of the person who made the application under section 2(1).

Domestic Proceedings and Magistrates' Courts Act 1978(34)

3.10 Where a direction is given under section 28 of the Domestic Proceedings and Magistrates' Courts Act 1978(35) that a magistrates' court order to which a power of arrest is attached shall cease to have effect the court giving the direction shall immediately inform the officer for the time being in charge of the police station to which a copy of the magistrates' court order was sent and, if the applicant’s address has since changed, any police station for the new address; and a copy of the direction shall be delivered to any officer so informed.

Proceedings in respect of polygamous marriage

3.11.—(1) The provisions of this rule shall have effect where a petition, originating application or originating summons asks for matrimonial relief within the meaning of section 47(2) of the Act of 1973(36) in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(34) 1978 c. 22.

(35) Section 28 was amended by the Matrimonial Homes Act 1983 (c. 19), section 12 and Schedule 2.

(36) 1973 c. 18 section 47(2) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Schedule 2, paragraph 39 and the Family Law Act 1986 (c. 55), Schedule 1, paragraph 14.

- (2) The petition, originating application or originating summons—
- (a) shall state that the marriage in question is polygamous;
 - (b) shall state whether or not there is, to the knowledge of the petitioner or applicant, any living spouse of his or hers additional to the respondent or, as the case may be, any living spouse of the respondent additional to the petitioner or applicant (in this rule referred to as an additional spouse); and
 - (c) if there is any additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the petitioner or applicant or, as the case may be, to the respondent, or state, so far as may be applicable, that such information is unknown to the petitioner or applicant.
- (3) Without prejudice to its powers under RSC Order 15 (which deals with parties) or CCR Order 15 (which deals with amendment) the court may order that any additional spouse—
- (a) be added as a party to the proceedings; or
 - (b) be given notice of—
 - (i) the proceedings; or
 - (ii) of any application in the proceedings for any such order as is mentioned in section 47(2)(d) of the Act of 1973.
- (4) Any order under paragraph (3) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in a petition or an acknowledgement of service of a petition, the petitioner shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on making a request for directions for trial, ask for directions as to whether an order should be made under paragraph (3).
- (5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

Application under section 55 of Act of 1986 for declaration as to marital status

3.12.—(1) Unless otherwise directed, a petition by which proceedings are begun under section 55 of the Act of 1986 for a declaration as to marital status shall state—

- (a) the names of the parties to the marriage to which the application relates and the residential address of each of them at the date of the presentation of the petition;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) the grounds on which the application is made and all other material facts alleged by the petitioner to justify the making of the declaration;
- (d) whether there have been or are continuing any proceedings in any court, tribunal or authority in England and Wales or elsewhere between the parties which relate to, or are capable of affecting, the validity or subsistence of the marriage, divorce, annulment or legal separation to which the application relates, or which relate to the matrimonial status of either of the parties, and, if so—
 - (i) the nature, and either the outcome or present state of those proceedings,
 - (ii) the court, tribunal or authority before which they were begun,
 - (iii) the date when they were begun,
 - (iv) the names of the parties to them,
 - (v) the date or expected date of the trial,

(vi) any other facts relevant to the question whether the petition should be stayed under Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973⁽³⁷⁾;

and any such proceedings shall include any which are instituted otherwise than in a court of law in any country outside England and Wales, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status, and shall be treated as continuing if they have begun and have not been finally disposed of,

- (e) where it is alleged that the court has jurisdiction based on domicile, which of the parties to the marriage to which the application relates is domiciled in England and Wales on the date of the presentation of the petition, or died before that date and was at death domiciled in England and Wales.
- (f) where it is alleged that the court has Jurisdiction based on habitual residence, which of the parties to the marriage to which the application relates has been habitually resident in England and Wales, or died before that date and had been habitually resident in England and Wales throughout the period of one year ending with the date of death;
- (g) where the petitioner was not a party to the marriage to which the application relates, particulars of his interest in the determination of the application.

(2) Where the proceedings are for a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside England or Wales in respect of the marriage either is or is not entitled to recognition in England and Wales, the petition shall in addition state the date and place of the divorce, annulment or legal separation.

(3) There shall be annexed to the petition a copy of the certificate of any marriage to which the application relates, or, as the case may be, a certified copy of any decree of divorce, annulment or order for legal separation to which the application relates.

(4) Where a document produced by virtue of paragraph (3) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(5) The parties to the marriage in respect of which a declaration is sought shall be petitioner and respondent respectively to the application, unless a third party is applying for a declaration, in which case he shall be the petitioner and the parties to the marriage shall be respondents to the application.

Application under section 56(1)(a) of Act of 1986 (38) for declaration of parentage

3.13.—(1) Unless otherwise directed, a petition by which proceedings are begun under section 56(1)(a) of the Act of 1986 for a declaration of parentage shall state—

- (a) the name (including forenames and surname) of the petitioner, and if the petitioner is known by a name other than that which appears in the certificate of his birth, that other name shall be stated in the petition and in any decree made thereon;
- (b) the sex of the petitioner;
- (c) the date and place of birth of the petitioner;
- (d) if it is known, the name (including forenames and surname) of the father of the petitioner, his place and date of birth, residential address and occupation;
- (e) if they are known, the place and date of birth, the residential address and occupation of the mother of the petitioner and her names (including forenames and surname) at the following times—

⁽³⁷⁾ 1973 c. 45, Schedule 1, paragraph 11 was amended by section 8(3) of the Matrimonial Homes and Property Act 1981 (c. 24).

⁽³⁸⁾ Section 56(1)(a) was substituted by section 22 of the Family Law Reform Act 1987 (c. 42).

- (i) at the date of her birth;
 - (ii) if it is different, at the date of her first marriage;
 - (iii) if it is different, at the date of birth of the petitioner;
 - (iv) if it is different, at the date of her most recent marriage;
 - (v) if it is different, at the time of the presentation of the petition;
- (f) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration;
- (g) whether there are or have been any other proceedings in any court, tribunal or authority in England and Wales or elsewhere relating to the parentage of the petitioner, and, if so—
- (i) particulars of the proceedings, including the court, tribunal or authority before which they were begun, and their nature, outcome or present state,
 - (ii) the date they were begun,
 - (iii) the names of the parties, and
 - (iv) the date or expected date of any trial in the proceedings;
- (h) either that the petitioner is domiciled in England and Wales on the date of the presentation of the petition or that he has been habitually resident in England and Wales throughout the period of one year ending with that date; and
- (i) the nationality, citizenship or immigration status of the petitioner and any person named in the petition as his parent, and the effect which the granting of a declaration of parentage would have upon the petitioner's status as regards his nationality, citizenship or right to be in the United Kingdom.
- (2) Unless otherwise directed, there shall be annexed to the petition a copy of the petitioner's birth certificate.
- (3) The petitioner's parents shall both, if alive, be respondents to the application.
- (4) The prescribed officer for the purposes of section 56(4) of the Act of 1986 shall be the chief clerk of the family proceedings department of the principal registry.
- (5) Within 21 days after a declaration of parentage has been made the prescribed officer shall send to the Registrar General a copy of the declaration in the form prescribed in Form M26 and the petition.

Application under section 56(1)(b) and (2) of Act of 1986 for declaration of legitimacy or legitimation

- 3.14.—**(1) Unless otherwise directed, a petition by which proceedings are begun under section 56(1)(b) and (2) of the Act of 1986 for a declaration of legitimacy or legitimation shall state—
- (a) the name of the petitioner, and if the petitioner is known by a name other than that which appears in the certificate of his birth, that other name shall be stated in the petition and in any decree made thereon;
 - (b) the date and place of birth of the petitioner;
 - (c) if it is known, the name of the petitioner's father and the maiden name of the petitioner's mother and, if it is different, her current name, and the residential address of each of them at the time of the presentation of the petition;
 - (d) the grounds on which the petitioner relies and all other material facts alleged by him to justify the making of the declaration; and

- (e) either that the petitioner is domiciled in England and Wales on the date of the presentation of the petition or that he has been habitually resident in England and Wales throughout the period of one year ending with that date.
- (2) Unless otherwise directed, there shall be annexed to the petition a copy of the petitioner's birth certificate.
- (3) The petitioner's father and mother, or the survivor of them, shall be respondents to the application.

Application under section 57 of Act of 1986 for declaration as to adoption effected overseas

3.15.—(1) Unless otherwise directed, a petition by which proceedings are begun under section 57 of the Act of 1986 for a declaration as to an adoption effected overseas shall state—

- (a) the names of those persons who are to be respondents pursuant to paragraph (4) and the residential address of each of them at the date of the presentation of the petition;
- (b) the date and place of the petitioner's birth;
- (c) the date and place of the adoption order and the court or other tribunal or authority which made it;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which the application is made;
- (e) either that the petitioner is domiciled in England and Wales on the date of the presentation of the petition or that he has been habitually resident in England and Wales throughout the period of one year ending with that date.

(2) There shall be annexed to the petition a copy of the petitioner's birth certificate (if it is available this certificate should be the one made after the adoption referred to in the petition) and, unless otherwise directed, a certified copy of the adoption order effected under the law of any country outside the British Islands.

(3) Where a document produced by virtue of paragraph (2) is not in English, it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(4) The following shall, if alive, be respondents to the application, either—

- (a) those whom the petitioner claims are his adoptive parents for the purposes of section 39 of the Adoption Act 1976⁽³⁹⁾; or
- (b) those whom the petitioner claims are not his adoptive parents for the purposes of that section.

General provisions as to proceedings under rules 3.12, 3.13, 3.14 and 3.15

3.16.—(1) A petition under rule 3.12, 3.13, 3.14 or 3.15 shall be supported by an affidavit by the petitioner verifying the petition and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the petitioner.

Provided that if the petitioner is under the age of 18, the affidavit shall, unless otherwise directed, be made by his next friend.

(2) Where the jurisdiction of the court to entertain a petition is based on habitual residence the petition shall include a statement of the addresses of the places of residence of the person so resident and the length of residence at each place either during the period of one year ending with the date of the presentation of the petition or, if that person is dead, throughout the period of one year ending with the date of death.

(39) 1976 c. 36.

(3) An affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.

(4) A copy of the petition and every document accompanying it shall be sent by the petitioner to the Attorney General at least one month before the petition is filed and it shall not be necessary thereafter to serve these documents upon him.

(5) The proper officer shall send a copy of any answer to the Attorney General if he has notified the court that he wishes to intervene in the proceedings.

(6) When all answers to the petition have been filed the petitioner shall issue and serve on all respondents to the application a request for directions as to any other persons who should be made respondents to the petition or given notice of the proceedings.

(7) When giving directions in accordance with paragraph (6) the court shall consider whether it is necessary that the Attorney General should argue before it any question relating to the proceedings, and if it does so consider, the Attorney General need not file an answer and the court shall give directions requiring him to serve on all parties to the proceedings a summary of his argument.

(8) Persons given notice of proceedings pursuant to directions given in accordance with paragraph (6) shall within 21 days after service of the notice upon them be entitled to apply to the court to be joined as parties.

(9) The Attorney General may file an answer to the petition within 21 days after directions have been given under paragraph (7) and no directions for trial shall be given until that period and the period referred to in paragraph (8) have expired.

(10) The Attorney General, in deciding whether it is necessary or expedient to intervene in the proceedings, may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court offices which relates to any other family proceedings referred to in proceedings.

(11) Declarations made in accordance with section 55, section 56(1)(a), section 56(1)(b) and (2) and section 57 of the Act of 1986 shall be in the forms prescribed respectively in Forms M29, M30, M31 and M32.

(12) Subject to rules 3.12, 3.13, 3.14 and 3.15 and this rule, these rules shall, so far as applicable and with the exception of rule 2.6(1), apply with the necessary modifications to the proceedings as if they were a cause.

Application for leave under section 13 of Act of 1984

3.17.—(1) An application for leave to apply for an order for financial relief under Part III of the Act of 1984 shall be made ex parte by originating summons issued in Form M25 out of the principal registry and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in section 16(2) of that Act.

(2) The affidavit in support shall give particulars of the judicial or other proceedings by means of which the marriage to which the application relates was dissolved or annulled or by which the parties to the marriage were legally separated and shall state, so far as is known to the applicant:

- (a) the names of the parties to the marriage and the date and place of the marriage;
- (b) the occupation and residence of each of the parties to the marriage;
- (c) whether there are any living children of the family and, if so, the number of such children and the full names (including surname) of each and his date of birth or, if it be the case, that he is over 18;
- (d) whether either party to the marriage has remarried;
- (e) an estimate in summary form of the appropriate amount or value of the capital resources and net income of each party and of any minor child of the family;

(f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for an order for financial relief under Part 111 of the Act of 1984.

(3) The proper officer shall fix a date, time and place for the hearing of the application by a judge in chambers and give notice thereof to the applicant.

Application for order for financial relief or avoidance of transaction order under Part III of Act of 1984

3.18.—(1) An application for an order for financial relief under Part III of the Act of 1984 shall be made by originating summons issued in Form M26 out of the principal registry and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the summons giving full particulars of his property and income.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgement of service in Form M28, and rule 10.8 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form M6 and in paragraph (2) of that rule to seven days were, respectively, references to Form M28 and 31 days.

(3) Rules 2.57, 2.59, 2.61, 2.62(5) and (6), 2.63 and 2.66(1) and (2) shall apply, with the necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for ancillary relief made by notice in Form M11 and the court may order the attendance of any person for the purpose of being examined or cross-examined and the discovery and production of any document.

(4) An application for an interim order for maintenance under section 14 or an avoidance of transaction order under section 23 of the Act of 1984 may be made, unless the court otherwise directs, in the originating summons under paragraph (1) or by summons in accordance with rule 10.9(1) and an application for an order under section 23 shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

(5) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(6) In respect of any application for an avoidance of transaction order the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (3), and rule 2.59 shall apply, with the necessary modifications, to an application for an avoidance of transaction order as it applies to an application for an avoidance of disposition order.

(7) Where the originating summons contains an application for an order under section 22 of the Act of 1984⁽⁴⁰⁾ the applicant shall serve a copy on the landlord of the dwelling house and he shall be entitled to be heard on the application.

(8) An application for an order for financial relief under Part III of the Act of 1984 or for an avoidance of transaction order shall be determined by a judge.

Application for order under section 24 of Act of 1984 preventing transaction

3.19.—(1) An application under section 24 of the Act of 1984 for an order preventing a transaction shall be made by originating summons issued in Form M27 out of the principal registry and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant shall serve a sealed copy of the originating summons on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgement of service in Form M28 and rule 10.8 shall apply to such an acknowledgement of service as if the

⁽⁴⁰⁾ Section 22 was amended by the Housing Act 1988 (c. 50), Schedule 17, paragraph 36.

references in paragraph (1) of that rule to Form M6 and in paragraph (2) of that rule to seven days were, respectively, references to Form M28 and 31 days.

(3) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(4) The application shall be determined by a judge.

(5) Rule 2.66 (except paragraph (3)) shall apply, with the necessary modifications, to the application as if it were an application for ancillary relief.

Consent to marriage of minor

3.20.—(1) An application under section 3 of the Marriage Act 1949 (**41**)(in this rule referred to as “section 3”) for the consent of the court to the marriage of a minor shall be dealt with in chambers unless the court otherwise directs.

(2) The application may be heard and determined by a district judge.

(3) An application under section 3 may be brought without the intervention of the applicant’s next friend, unless the court otherwise directs.

(4) Where an application under section 3 follows a refusal to give consent to marriage every person who has refused consent shall be made a defendant to the summons or a respondent to the application, as appropriate.

(5) The application shall, unless the court orders otherwise, be served not less than seven days before the date upon which the application is to be heard.

PART IV

PROCEEDINGS UNDER THE CHILDREN ACT 1989

Interpretation and application

4.1.—(1) In this Part of these rules, unless a contrary intention appears—

a section or schedule referred to means the section or schedule so numbered in the Act of 1989;

“a section 8 order” has the meaning assigned to it by section 8(2);

“application” means an application made under or by virtue of the Act of 1989 or under these rules, and “applicant” shall be construed accordingly;

“child”, in relation to proceedings to which this Part applies—

(a) means, subject to sub-paragraph (b), a person under the age of 18 with respect to whom the proceedings are brought, and

(b) where the proceedings are under Schedule 1, also includes a person who has reached the age of 18;

“directions appointment” means a hearing for directions under rule 4.14(2);

“emergency protection order” means an order under section 44;

“guardian ad litem” means a guardian ad litem, appointed under section 41, of the child with respect to whom the proceedings are brought;

(41) 1949 c. 76; section 3 was amended by sections 2(2) and 2(3) of the Family Law Reform Act 1969 (c. 46), the Children Act 1975 (c. 72), Schedule 3, paragraph 7, the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 9, and the Children Act 1989 (c. 41), Schedule 12, paragraph 5.

- “leave” includes permission and approval;
- “note” includes a record made by mechanical means;
- “parental responsibility” has the meaning assigned to it by section 3;
- “recovery order” means an order under section 50;
- “specified proceedings” has the meaning assigned to it by section 41(6) and rule 4.2(2); and
- “welfare officer” means a person who has been asked to prepare a welfare report under section 7.

(2) Except where the contrary intention appears, the provisions of this Part apply to proceedings in the High Court and the county courts—

- (a) on an application for a section 8 order;
- (b) on an application for a care order or a supervision order;
- (c) on an application under section 4(1)(a), 4(3), 5(1), 6(7), 13(1), 16(6), 33(7), 34(2), 34(3), 34(4), 34(9), 36(1), 38(8)(b), 39(1), 39(2), 39(3), 39(4), 43(1), 43(12), 44, 45, 46(7), 48(9), or 50(1);
- (d) under Schedule 1, except where financial relief is also sought by or on behalf of an adult,
- (e) on an application under paragraph 19(1) of Schedule 2;
- (f) on an application under paragraph 6(3), 15(2) or 17(1) of Schedule 3;
- (g) on an application under paragraph 11(3) or 16(5) of Schedule 14; or
- (h) under section 25.

Matters prescribed for the purposes of the Act of 1989

4.2.—(1) The parties to proceedings in which directions are given under section 38(6), and any person named in such a direction, form the prescribed class for the purposes of section 38(8) (application to vary directions made with interim care or interim supervision order).

(2) The following proceedings are specified for the purposes of section 41 in accordance with subsection (6)(i) thereof—

- (a) proceedings under section 25;
- (b) applications under section 33(7);
- (c) proceedings under paragraph 19(1) of Schedule 2;
- (d) applications under paragraph 6(3) of Schedule 3.

(3) The applicant for an order that has been made under section 43(1) and the persons referred to in section 43(11) may, in any circumstances, apply under section 43(12) for a child assessment order to be varied or discharged.

(4) The following persons form the prescribed class for the purposes of section 44(9) (application to vary directions)—

- (a) the parties to the application for the order in respect of which it is sought to vary the directions;
- (b) the guardian ad litem;
- (c) the local authority in whose area the child concerned is ordinarily resident;
- (d) any person who is named in the directions.

Application for leave to commence proceedings

4.3.—(1) Where the leave of the court is required to bring any proceedings to which this Part applies, the person seeking leave shall file—

- (a) a written request for leave setting out the reasons for the application; and
- (b) a draft of the application for the making of which leave is sought in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing, together with sufficient copies for one to be served on each respondent.

(2) On considering a request for leave filed under paragraph (1), the court shall—

- (a) grant the request, whereupon the proper officer shall inform the person making the request of the decision, or
- (b) direct that a date be fixed for the hearing of the request, whereupon the proper officer shall fix such a date and give such notice as the court directs to the person making the request and to such other persons as the court requires to be notified, of the date so fixed.

(3) Where leave is granted to bring proceedings to which this Part applies the application shall proceed in accordance with rule 4.4; but paragraph (1)(a) of that rule shall not apply.

(4) In the case of a request for leave to bring proceedings under Schedule 1, the draft application under paragraph (1) shall be accompanied by a statement setting out the financial details which the person seeking leave believes to be relevant to the request and containing a declaration that it is true to the maker's best knowledge and belief, together with sufficient copies for one to be served on each respondent.

Application

4.4.—(1) Subject to paragraph (4), an applicant shall—

- (a) file the application in respect of each child in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing, together with sufficient copies for one to be served on each respondent, and
- (b) serve a copy of the application, endorsed in accordance with paragraph (2)(b), on each respondent such number of days prior to the date fixed under paragraph (2)(a) as is specified for that application in column (ii) of Appendix 3 to these rules.

(2) On receipt of the documents filed under paragraph (1)(a) the proper officer shall—

- (a) fix the date for a hearing or a directions appointment, allowing sufficient time for the applicant to comply with paragraph (1)(b),
- (b) endorse the date so fixed upon the copies of the application filed by the applicant, and
- (c) return the copies to the applicant forthwith.

(3) The applicant shall, at the same time as complying with paragraph (1)(b), give written notice of the proceedings, and of the date and place of the hearing or appointment fixed under paragraph (2) (a), to the persons set out for the relevant class of proceedings in column (iii) of Appendix 3 to these rules.

(4) An application for—

- (a) a prohibited steps order, or a specific issue order, under section 8,
- (b) an emergency protection order,
- (c) a warrant under section 48(9), or
- (d) a recovery order,

may be made *ex parte* in which case the applicant shall—

- (i) file the application in respect of each child in the appropriate form in Appendix 1 to these rules—
 - (a) where the application is made by telephone, within 24 hours after the making of the application, or
 - (b) in any other case, at the time when the application is made, and
 - (ii) in the case of an application for a prohibited steps order, or a specific issue order, under section 8 or an emergency protection order, serve a copy of the application on each respondent within 48 hours after the making of the order.
- (5) Where the court refuses to make an order on an ex parte application it may direct that the application be made inter partes.
- (6) In the case of proceedings under Schedule 1, the application under paragraph (1) shall be accompanied by a statement setting out the financial details which the applicant believes to be relevant to the application and containing a declaration that it is true to the maker's best knowledge and belief, together with sufficient copies for one to be served on each respondent.

Withdrawal of application

- 4.5.—**(1) An application may be withdrawn only with leave of the court.
- (2) Subject to paragraph (3), a person seeking leave to withdraw an application shall file and serve on the parties a written request for leave setting out the reasons for the request.
- (3) The request under paragraph (2) may be made orally to the court if the parties and either the guardian ad litem or the welfare officer are present.
- (4) Upon receipt of a written request under paragraph (2) the court shall—
- (a) if—
 - (i) the parties consent in writing,
 - (ii) the guardian ad litem has had an opportunity to make representations, and
 - (iii) the court thinks fit,
 grant the request, in which case the proper officer shall notify the parties, the guardian ad litem and the welfare officer of the granting of the request, or
 - (b) direct that a date be fixed for the hearing of the request in which case the proper officer shall give at least 7 days' notice to the parties, the guardian ad litem and the welfare officer, of the date fixed.

Transfer from magistrates' court to county court and from county court to High Court

- 4.6.—**(1) Where an application is made, in accordance with the provisions of any Order made under Part I of Schedule 11 to the Act of 1989, to a county court for an order transferring proceedings from a magistrates' court following the refusal of the magistrates' court to order such a transfer, the applicant shall—
- (a) file the application in Form CHA58, together with a copy of the certificate issued by the magistrates' court, and
 - (b) serve a copy of the documents mentioned in sub-paragraph (a) personally on all parties to the proceedings which it is sought to have transferred,
- within 2 days after receipt by the applicant of the certificate.
- (2) Within 2 days after receipt of the documents served under paragraph (1)(b), any party other than the applicant may file written representations.
- (3) The court shall, not before the fourth day after the filing of the application under paragraph (1), unless the parties consent to earlier consideration, consider the application and either—

- (a) grant the application, whereupon the proper officer shall inform the parties of that decision, or
 - (b) direct that a date be fixed for the hearing of the application, whereupon the proper officer shall fix such a date and give not less than 1 day's notice to the parties of the date so fixed.
- (4) Where proceedings are transferred from a magistrates' court to a county court in accordance with the provisions of any Order under Part I of Schedule 11 to the Act of 1989, the county court shall consider whether to transfer those proceedings to the High Court in accordance with that Order and either—
- (a) determine that such an order need not be made,
 - (b) make such an order,
 - (c) order that a date be fixed for the hearing of the question whether such an order should be made, whereupon the proper officer shall give such notice to the parties as the court directs of the date so fixed, or
 - (d) invite the parties to make written representations, within a specified period, as to whether such an order should be made; and upon receipt of the representations the court shall act in accordance with sub-paragraph (a), (b) or (c).
- (5) The proper officer shall notify the parties of an order transferring the proceedings from a county court or from the High Court made in accordance with the provisions of any Order under Part I of Schedule 11 to the Act of 1989.

Parties

- 4.7.—**(1) The respondents to proceedings to which this Part applies shall be those persons set out in the relevant entry in column (iv) of Appendix 3 to these rules.
- (2) In proceedings to which this Part applies, a person may file a request in writing that he or another person—
- (a) be joined as a party, or
 - (b) cease to be a party.
- (3) On considering a request under paragraph (2) the court shall, subject to paragraph (4)—
- (a) grant it without a hearing or representations, save that this shall be done only in the case of a request under paragraph (2)(a), whereupon the proper officer shall inform the parties and the person making the request of that decision, or
 - (b) order that a date be fixed for the consideration of the request, whereupon the proper officer shall give notice of the date so fixed, together with a copy of the request—
 - (i) in the case of a request under paragraph (2)(a), to the applicant, and
 - (ii) in the case of a request under paragraph (2)(b), to the parties, or
 - (c) invite the parties or any of them to make written representations, within a specified period, as to whether the request should be granted; and upon the expiry of the period the court shall act in accordance with sub-paragraph (a) or (b).
- (4) Where a person with parental responsibility requests that he be joined under paragraph (2)(a), the court shall grant his request.
- (5) In proceedings to which this Part applies the court may direct—
- (a) that a person who would not otherwise be a respondent under these rules be joined as a party to the proceedings, or
 - (b) that a party to the proceedings cease to be a party.

Service

4.8.—(1) Subject to the requirement in rule 4.6(1)(b) of personal service, where service of a document is required under this Part (and not by a provision to which section 105(8) (Service of notice or other document under the Act) applies) it may be effected—

- (a) if the person to be served is not known by the person serving to be acting by solicitor—
 - (i) by delivering it to him personally, or
 - (ii) by delivering it at, or by sending it by first-class post to, his residence or his last known residence, or
- (b) if the person to be served is known by the person serving to be acting by solicitor—
 - (i) by delivering the document at, or sending it by first-class post to, the solicitor’s address for service,
 - (ii) where the solicitor’s address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents on every business day to that document exchange, or
 - (iii) by sending a legible copy of the document by facsimile transmission to the solicitor’s office.

(2) In this rule “first-class post” means first-class post which has been pre-paid or in respect of which pre-payment is not required.

(3) Where a child who is a party to proceedings to which this Part applies is required by these rules or other rules of court to serve a document, service shall be effected by—

- (a) the solicitor acting for the child, or
- (b) where there is no such solicitor, the guardian ad litem, or
- (c) where there is neither such a solicitor nor a guardian ad litem, the court.

(4) Service of any document on a child shall, subject to any direction of the court, be effected by service on—

- (a) the solicitor acting for the child, or
- (b) where there is no such solicitor, the guardian ad litem, or
- (c) where there is neither such a solicitor nor a guardian ad litem, with leave of the court, the child.

(5) Where the court refuses leave under paragraph (4)(c) it shall give a direction under paragraph (8).

(6) A document shall, unless the contrary is proved, be deemed to have been served—

- (a) in the case of service by first-class post, on the second business day after posting, and
- (b) in the case of service in accordance with paragraph (1)(b)(ii), on the second business day after the day on which it is left at the document exchange.

(7) At or before the first directions appointment in, or hearing of, proceedings to which this Part applies the applicant shall file a statement that service of—

- (a) a copy of the application has been effected on each respondent, and
- (b) notice of the proceedings has been effected under rule 4.4(3);

and the statement shall indicate—

- (i) the manner, date, time and place of service, or
- (ii) where service was effected by post, the date, time and place of posting.

(8) In proceedings to which this Part applies, the court may direct that a requirement of these rules or other rules of court to serve a document shall not apply or shall be effected in such manner as the court directs.

Answer to application

4.9.—(1) Within 14 days of service of an application for a section 8 order, each respondent shall file, and serve on the parties, an answer to the application in Form CHA10A.

(2) Within 14 days after service of an application under Schedule 1, each respondent shall file, and serve on the parties, an answer to the application in Form CHA13A.

(3) Following service of an application to which this Part applies, other than an application under rule 4.3 or for a section 8 order, a respondent may, subject to paragraph (4), file a written answer, which shall be served on the other parties.

(4) An answer under paragraph (3) shall, except in the case of an application under section 25, 31, 34, 38, 43, 44, 45, 46, 48 or 50, be filed, and served, not less than 2 days before the date fixed for the hearing of the application.

Appointment of guardian ad litem

4.10.—(1) As soon as practicable after the commencement of specified proceedings, or the transfer of such proceedings to the court, the court shall appoint a guardian ad litem, unless—

- (a) such an appointment has already been made by the court which made the transfer and is subsisting, or
- (b) the court considers that such an appointment is not necessary to safeguard the interests of the child.

(2) At any stage in specified proceedings a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a guardian ad litem.

(3) The court shall grant an application under paragraph (2) unless it considers such an appointment not to be necessary to safeguard the interests of the child, in which case it shall give its reasons; and a note of such reasons shall be taken by the proper officer.

(4) At any stage in specified proceedings the court may, of its own motion, appoint a guardian ad litem.

(5) The proper officer shall, as soon as practicable, notify the parties and any welfare officer of an appointment under this rule or, as the case may be, of a decision not to make such an appointment.

(6) Upon the appointment of a guardian ad litem the proper officer shall, as soon as practicable, notify him of the appointment and serve on him copies of the application and of documents filed under rule 4.17(1).

(7) A guardian ad litem appointed from a panel established by regulations made under section 41(7) shall not—

- (a) be a member, officer or servant of a local authority which, or an authorised person (within the meaning of section 31(9)) who, is a party to the proceedings, unless he is employed by such an authority solely as a member of a panel of guardians ad litem and reporting officers;
- (b) be, or have been, a member, officer or servant of a local authority or voluntary organisation (within the meaning of section 105(1)) who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings;

- (c) be a serving probation officer (except that a probation officer who has not in that capacity been previously concerned with the child or his family and who is employed part-time may, when not engaged in his duties as a probation officer, act as a guardian ad litem).
- (8) When appointing a guardian ad litem the court shall consider the appointment of anyone who has previously acted as guardian ad litem of the same child.
- (9) The appointment of a guardian ad litem under this rule shall continue for such time as is specified in the appointment or until terminated by the court.
- (10) When terminating an appointment in accordance with paragraph (9), the court shall give its reasons in writing for so doing.
- (11) Where the court appoints a guardian ad litem in accordance with this rule or refuses to make such an appointment, the court or the proper officer shall record the appointment or refusal in Form CHA30.

Powers and duties of guardian ad litem

4.11.—(1) In carrying out his duty under section 41(2), the guardian ad litem shall have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) as if for the word “court” in that section there were substituted the words “guardian ad litem”.

- (2) The guardian ad litem shall—
 - (a) appoint a solicitor to represent the child unless such a solicitor has already been appointed, and
 - (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 4.12(1)(a), instruct the solicitor representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of the proceedings.
- (3) Where it appears to the guardian ad litem that the child—
 - (a) is instructing his solicitor direct, or
 - (b) intends to, and is capable of, conducting the proceedings on his own behalf,
 he shall so inform the court and thereafter—
 - (i) shall perform all of his duties set out in this rule, other than duties under paragraph (2)(a) and such other duties as the court may direct,
 - (ii) shall take such part in the proceedings as the court may direct, and
 - (iii) may, with leave of the court, have legal representation in his conduct of those duties.
- (4) The guardian ad litem shall, unless excused by the court, attend all directions appointments in and hearings of the proceedings and shall advise the court on the following matters—
 - (a) whether the child is of sufficient understanding for any purpose including the child’s refusal to submit to a medical or psychiatric examination or other assessment that the court has power to require, direct or order;
 - (b) the wishes of the child in respect of any matter relevant to the proceedings, including his attendance at court;
 - (c) the appropriate forum for the proceedings;
 - (d) the appropriate timing of the proceedings or any part of them;
 - (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application;
 - (f) any other matter concerning which the court seeks his advice or concerning which he considers that the court should be informed.

(5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the court or the proper officer.

(6) The guardian ad litem shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the guardian ad litem's opinion, to safeguard the interests of the child, of that person's right to apply to be joined under rule 4.7(2) and shall inform the court—

- (a) of any such notification given,
- (b) of anyone whom he attempted to notify under this paragraph but was unable to contact, and
- (c) of anyone whom he believes may wish to be joined to the proceedings.

(7) The guardian ad litem shall, unless the court otherwise directs, not less than 7 days before the date fixed for the final hearing of the proceedings, file a written report advising on the interests of the child; and the proper officer shall, as soon as practicable, serve a copy of the report on the parties.

(8) The guardian ad litem shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.

(9) The guardian ad litem shall make such investigations as may be necessary for him to carry out his duties and shall, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs,
- (b) if he inspects records of the kinds referred to in section 42, bring to the attention of the court and such other persons as the court may direct all such records and documents which may, in his opinion, assist in the proper determination of the proceedings, and
- (c) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.

(10) In addition to his duties under other paragraphs of this rule, the guardian ad litem shall provide to the court such other assistance as it may require.

(11) A party may question the guardian ad litem about oral or written advice tendered by him to the court under this rule.

Solicitor for child

4.12.—(1) A solicitor appointed under section 41(3) or in accordance with rule 4.11(2)(a) shall represent the child—

- (a) in accordance with instructions received from the guardian ad litem (unless the solicitor considers, having taken into account the views of the guardian ad litem and any direction of the court under rule 4.11(3), that the child wishes to give instructions which conflict with those of the guardian ad litem and that he is able, having regard to his understanding, to give such instructions on his own behalf in which case he shall conduct the proceedings in accordance with instructions received from the child), or
- (b) where no guardian ad litem has been appointed for the child and the condition in section 41(4)(b) is satisfied, in accordance with instructions received from the child, or
- (c) in default of instructions under (a) or (b), in furtherance of the best interests of the child.

(2) A solicitor appointed under section 41(3) or in accordance with rule 4.11(2)(a) shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(a) and (4)(a) and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

(3) Where the child wishes an appointment of a solicitor under section 41(3) or in accordance with rule 4.11(2)(a) to be terminated, he may apply to the court for an order terminating the appointment; and the solicitor and the guardian ad litem shall be given an opportunity to make representations.

(4) Where the guardian ad litem wishes an appointment of a solicitor under section 41(3) to be terminated, he may apply to the court for an order terminating the appointment; and the solicitor and, if he is of sufficient understanding, the child, shall be given an opportunity to make representations.

(5) When terminating an appointment in accordance with paragraph (3) or (4), the court shall give its reasons for so doing, a note of which shall be taken by the court or the proper officer.

(6) Where the court appoints a solicitor under section 41(3) or refuses to make such an appointment, the court or the proper officer shall record the appointment or refusal in Form CHA31.

Welfare officer

4.13.—(1) The welfare officer shall, unless excused by the court, attend a hearing if the proper officer gives him notice that his report will be given or considered at that hearing; and any party may question the welfare officer about his report at such a hearing.

(2) A welfare officer shall file a copy of any written report at or by such time as the court directs or, in the absence of a direction, at least 5 days before a hearing of which he is given notice under paragraph (1); and the proper officer shall, as soon as practicable, serve a copy of the report on the parties and the guardian ad litem.

Directions

4.14.—(1) In this rule, “party” includes the guardian ad litem and, where a request or a direction concerns a report under section 7, the welfare officer.

(2) In proceedings to which this Part applies the court may, subject to paragraph (3), give, vary or revoke directions for the conduct of the proceedings, including—

- (a) the timetable for the proceedings;
- (b) varying the time within which or by which an act is required, by these rules or by other rules or court, to be done;
- (c) the attendance of the child;
- (d) the appointment of a guardian ad litem, whether under section 41 or otherwise, or of a solicitor under section 41(3);
- (e) the service of documents;
- (f) the submission of evidence including experts' reports;
- (g) the preparation of welfare reports under section 7;
- (h) the transfer of the proceedings to another court;
- (i) consolidation with other proceedings.

(3) Directions under paragraph (2) may be given, varied or revoked either—

- (a) of the court’s own motion having given the parties notice of its intention to do so, and an opportunity to attend and be heard or to make written representations,
- (b) on the written request of a party specifying the direction which is sought, filed and served on the other parties, or
- (c) on the written request of a party specifying the direction which is sought, to which the other parties consent and which they or their representatives have signed.

(4) In an urgent case the request under paragraph (3)(b) may, with the leave of the court, be made—

- (a) orally, or
 - (b) without notice to the parties, or
 - (c) both as in sub-paragraph (a) and as in sub-paragraph (b).
- (5) On receipt of a written request under paragraph (3)(b) the proper officer shall fix a date for the hearing of the request and give not less than 2 days' notice to the parties of the date so fixed.
- (6) On considering a request under paragraph (3)(c) the court shall either—
- (a) grant the request, whereupon the proper officer shall inform the parties of the decision, or
 - (b) direct that a date be fixed for the hearing of the request, whereupon the proper officer shall fix such a date and give not less than 2 days' notice to the parties of the date so fixed.
- (7) A party may apply for an order to be made under section 11(3) or, if he is entitled to apply for such an order, under section 38(1) in accordance with paragraph (3)(b) or (c).
- (8) Where a court is considering making, of its own motion, a section 8 order, or an order under section 31, 34 or 38, the power to give directions under paragraph (2) shall apply.
- (9) Directions of a court which are still in force immediately prior to the transfer of proceedings to which this Part applies to another court shall continue to apply following the transfer, subject to any changes of terminology which are required to apply those directions to the court to which the proceedings are transferred, unless varied or discharged by directions under paragraph (2).
- (10) The court or the proper officer shall take a note of the giving, variation or revocation of a direction under this rule and serve, as soon as practicable, a copy of the note on any party who was not present at the giving, variation or revocation.

Timing of proceedings

4.15.—(1) Where these rules or other rules of court provide a period of time within which or by which a certain act is to be performed in the course of proceedings to which this Part applies, that period may not be extended otherwise than by direction of the court under rule 4.14.

- (2) At the—
- (a) transfer to a court of proceedings to which this Part applies,
 - (b) postponement or adjournment of any hearing or directions appointment in the course of proceedings to which this Part applies, or
 - (c) conclusion of any such hearing or directions appointment other than one at which the proceedings are determined, or so soon thereafter as is practicable,
- the court or the proper officer shall—
- (i) fix a date upon which the proceedings shall come before the court again for such purposes as the court directs, which date shall, where paragraph (a) applies, be as soon as possible after the transfer, and
 - (ii) give notice to the parties, the guardian ad litem or the welfare officer of the date so fixed.

Attendance at directions appointment and hearing

4.16.—(1) Subject to paragraph (2), a party shall attend a directions appointment of which he has been given notice in accordance with rule 4.14(5) unless the court otherwise directs.

- (2) Proceedings or any part of them shall take place in the absence of any party, including the child, if—
- (a) the court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given, and

(b) the party is represented by a guardian ad litem or solicitor; and when considering the interests of the child under sub-paragraph (a) the court shall give the guardian ad litem, the solicitor for the child and, if he is of sufficient understanding, the child an opportunity to make representations.

(3) Subject to paragraph (4), where at the time and place appointed for a hearing or directions appointment the applicant appears but one or more of the respondents do not, the court may proceed with the hearing or appointment.

(4) The court shall not begin to hear an application in the absence of a respondent unless—

- (a) it is proved to the satisfaction of the court that he received reasonable notice of the date of the hearing; or
- (b) the court is satisfied that the circumstances of the case justify proceeding with the hearing.

(5) Where, at the time and place appointed for a hearing or directions appointment one or more of the respondents appear but the applicant does not, the court may refuse the application or, if sufficient evidence has previously been received, proceed in the absence of the applicant.

(6) Where at the time and place appointed for a hearing or directions appointment neither the applicant nor any respondent appears, the court may refuse the application.

(7) Unless the court otherwise directs, a hearing of, or directions appointment in, proceedings to which this Part applies shall be in chambers.

Documentary evidence

4.17.—(1) Subject to paragraphs (4) and (5), in proceedings to which this Part applies a party shall file and serve on the parties, any welfare officer and any guardian ad litem of whose appointment he has been given notice under rule 4.10(5)—

- (a) written statements of the substance of the oral evidence which the party intends to adduce at a hearing of, or a directions appointment in, those proceedings, which shall—
 - (i) be dated,
 - (ii) be signed by the person making the statement, and
 - (iii) contain a declaration that the maker of the statement believes it to be true and understands that it may be placed before the court; and
- (b) copies of any documents, including experts' reports, upon which the party intends to rely at a hearing of, or a directions appointment in, those proceedings,

at or by such time as the court directs or, in the absence of a direction, before the hearing or appointment.

(2) A party may, subject to any direction of the court about the timing of statements under this rule, file and serve on the parties a statement which is supplementary to a statement served under paragraph (1).

(3) At a hearing or a directions appointment a party may not, without the leave of the court—

- (a) adduce evidence, or
- (b) seek to rely on a document,

in respect of which he has failed to comply with the requirements of paragraph (1).

(4) In proceedings for a section 8 order a party shall—

- (a) neither file nor serve any document other than as required or authorised by these rules, and
- (b) in completing a form prescribed by these rules, neither give information, nor make a statement, which is not required or authorised by that form,

without the leave of the court.

(5) In proceedings for a section 8 order no statement or copy may be filed under paragraph (1) until such time as the court directs.

Expert evidence—examination of child

4.18.—(1) No person may, without the leave of the court, cause the child to be medically or psychiatrically examined, or otherwise assessed, for the purpose of the preparation of expert evidence for use in the proceedings.

(2) An application for leave under paragraph (1) shall, unless the court otherwise directs, be served on all parties to the proceedings and on the guardian ad litem.

(3) Where the leave of the court has not been given under paragraph (1), no evidence arising out of an examination or assessment to which that paragraph applies may be adduced without the leave of the court.

Amendment

4.19.—(1) Subject to rule 4.17(2), a document which has been filed or served in proceedings to which this Part applies, may not be amended without the leave of the court which shall, unless the court otherwise directs, be requested in writing.

(2) On considering a request for leave to amend a document the court shall either—

- (a) grant the request, whereupon the proper officer shall inform the person making the request of that decision, or
- (b) invite the parties or any of them to make representations, within a specified period, as to whether such an order should be made.

(3) A person amending a document shall file it and serve it on those persons on whom it was served prior to amendment; and the amendments shall be identified.

Oral evidence

4.20 The court or the proper officer shall keep a note of the substance of the oral evidence given at a hearing of, or directions appointment in, proceedings to which this Part applies.

Hearing

4.21.—(1) The court may give directions as to the order of speeches and evidence at a hearing, or directions appointment, in the course of proceedings to which this Part applies.

(2) Subject to directions under paragraph (1), at a hearing of, or directions appointment in, proceedings to which this Part applies, the parties and the guardian ad litem shall adduce their evidence in the following order—

- (a) the applicant,
- (b) any party with parental responsibility for the child,
- (c) other respondents,
- (d) the guardian ad litem,
- (e) the child, if he is a party to the proceedings and there is no guardian ad litem.

(3) After the final hearing of proceedings to which this Part applies, the court shall deliver its judgment as soon as is practicable.

(4) When making an order or when refusing an application, the court shall state any findings of fact and the reasons for the court's decision.

(5) An order made in proceedings to which this Part applies shall be recorded, by the court or the proper officer, either in the appropriate form in Appendix 1 to these rules or, where there is no such form, in writing.

(6) Subject to paragraph (7), a copy of an order made in accordance with paragraph (5) shall, as soon as practicable after it has been made, be served by the proper officer on the parties to the proceedings in which it was made on any person with whom the child is living.

(7) Within 48 hours after the making ex parte—

- (a) a prohibited steps order or specific issue order under section 8, or
- (b) an order under section 44, 48(4), 48(9) or 50,

the applicant shall serve a copy of the order in the appropriate form in Appendix 1 to these Rules on—

- (i) each party,
- (ii) any person who has actual care of the child or who had such care immediately prior to the making of the order, and
- (iii) in the case of an order referred to in sub-paragraph (b), the local authority in whose area the child lives or is found.

(8) At a hearing of, or directions appointment in, an application which takes place outside the hours during which the court office is normally open, the court or the proper officer shall take a note of the substance of the proceedings.

Appeals

4.22.—(1) Where an appeal lies—

- (a) to the High Court under section 94, or
- (b) from any decision of a district judge to the judge of the court in which the decision was made,

it shall be made in accordance with the following provisions; and references to “the court below” are references to the court from which, or person from whom, the appeal lies.

(2) The appellant shall file and serve on the parties to the proceedings in the court below, and on any guardian ad litem,

- (a) notice of the appeal in writing, setting out the grounds upon which he relies;
- (b) a certified copy of the summons or application and of the order appealed against, and of any order staying its execution;
- (c) a copy of any notes of the evidence;
- (d) a copy of any reasons given for the decision.

(3) The notice of appeal shall be filed and served in accordance with paragraph (2)(a)—

- (a) within 14 days after the determination against which the appeal is brought, or
- (b) in the case of an appeal against an order under section 38(1), within 7 days after the making of the order, or
- (c) with the leave of the court to which, or judge to whom, the appeal is to be brought, within such other time as that court or judge may direct.

(4) The documents mentioned in paragraph (2)(b) to (d) shall, subject to any direction of the court to which, or judge to whom, the appeal is to be brought, be filed and served as soon as practicable after the filing and service of the notice of appeal under paragraph (2)(a).

- (5) Subject to paragraph (6), a respondent who wishes—
- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
 - (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
 - (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

shall, within 14 days of receipt of notice of the appeal, file and serve on all other parties to the appeal a notice in writing, setting out the grounds upon which he relies.

(6) No notice under paragraph (5) may be filed or served in an appeal against an order under section 38.

- (7) In the case of an appeal mentioned in paragraph (1)(a), an application to—
- (a) withdraw the appeal,
 - (b) have the appeal dismissed with the consent of all the parties, or
 - (c) amend the grounds of appeal,

may be heard by a district judge.

(8) An appeal of the kind mentioned in paragraph (1)(a) shall, unless the President otherwise directs, be heard and determined by a single judge.

Confidentiality of documents

4.23.—(1) Notwithstanding any rule of court to the contrary, no document, other than a record of an order, held by the court and relating to proceedings to which this Part applies shall be disclosed, other than to—

- (a) a party,
- (b) the legal representative of a party,
- (c) the guardian ad litem,
- (d) the Legal Aid Board, or
- (e) a welfare officer,

without leave of the judge or district Judge.

(2) Nothing in this rule shall prevent the notification by the court or the proper officer of a direction under section 37(1) to the authority concerned.

Notification of consent

4.24 Consent for the purposes of—

- (a) section 16(3),
- (b) section 33(7), or
- (c) paragraph 19(3)(c) or (d) of Schedule 2,

shall be given either—

- (i) orally in court, or
- (ii) in writing to the court signed by the person giving his consent.

Secure accommodation—evidence

4.25 In proceedings under section 25, the court shall, if practicable, arrange for copies of all written reports before it to be made available before the hearing to—

- (a) the applicant;
- (b) the parent or guardian of the child;
- (c) any legal representative of the child;
- (d) the guardian ad litem; and
- (e) the child, unless the court otherwise directs;

and copies of such reports may, if the court considers it desirable, be shown to any person who is entitled to notice of the proceedings in accordance with these rules.

Investigation under section 37

4.26.—(1) This rule applies where a direction is given to an appropriate authority by the High Court or a county court under section 37(1).

(2) On giving a direction the court shall adjourn the proceedings and the court or the proper officer shall record the direction in writing.

(3) A copy of the direction recorded under paragraph (2) shall, as soon as practicable after the direction is given, be served by the proper officer on the parties to the proceedings in which the direction is given and, where the appropriate authority is not a party, on that authority.

(4) When serving the copy of the direction on the appropriate authority the proper officer shall also serve copies of such of the documentary evidence which has been, or is to be, adduced in the proceedings as the court may direct.

(5) Where a local authority informs the court of any of the matters set out in section 37(3)(a) to (c) it shall do so in writing.

Direction to local education authority to apply for education supervision order

4.27.—(1) For the purposes of section 40(3) and (4) of the Education Act 1944⁽⁴²⁾ a direction by the High Court or a county court to a local education authority to apply for an education supervision order shall be given in writing.

(2) Where, following such a direction, a local education authority informs the court that they have decided not to apply for an education supervision order, they shall do so in writing.

Transitional provision

4.28 Nothing in any provision of this Part of these rules shall affect any proceedings which are pending (within the meaning of paragraph 1 of Schedule 14 to the Act of 1989) immediately before these rules come into force.

(42) 1944 c. 31 (7 & 8 Geo. 6); relevant amendments are made by paragraphs 8 to 10 of Schedule 13 to the Children Act 1989.

PART V

WARDSHIP

Application to make a minor a ward of court

5.1.—(1) An application to make a minor a ward of court shall be made by originating summons and, unless the court otherwise directs, the plaintiff shall file an affidavit in support of the application when the originating summons is issued.

(2) Rule 4.3 shall, so far as applicable, apply to an application by a local authority for the leave of the court under section 100(3) of the Act of 1989.

(3) Where there is no person other than the minor who is a suitable defendant, an application may be made ex parte to a district judge for leave to issue either an ex parte originating summons or an originating summons with the minor as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

(4) Particulars of any summons issued under this rule in a district registry shall be sent by the proper officer to the principal registry for recording in the register of wards.

(5) The date of the minor's birth shall, unless otherwise directed, be stated in the summons, and the plaintiff shall—

- (a) on issuing the summons or before or at the first hearing thereof lodge in the registry out of which the summons issued a certified copy of the entry in the Register of Births or, as the case may be, in the Adopted Children Register relating to the minor, or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(6) The name of each party to the proceedings shall be qualified by a brief description, in the body of the summons, of his interest in, or relation to, the minor.

(7) Unless the court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of his whereabouts.

(8) Upon being served with the summons, every defendant other than the minor shall forthwith lodge in the registry out of which the summons issued a notice stating the address of the defendant and the whereabouts of the minor or, as the case may be, that the defendant is unaware of his whereabouts and, unless the court otherwise directs, serve a copy of the same upon the plaintiff.

(9) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the court otherwise directs, forthwith lodge notice of the change in the registry out of which the summons issued and serve a copy of the notice on every other party.

(10) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (8) and (9).

(11) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

Enforcement of order by tipstaff

5.2 The power of the High Court to secure, through an officer attending upon the court, compliance with any direction relating to a ward of court may be exercised by an order addressed to the tipstaff.

Where minor ceases to be a ward of court

5.3.—(1) A minor who, by virtue of section 41(2) of the Supreme Court Act 1981⁽⁴³⁾, becomes a ward of court on the issue of a summons under rule 5.1 shall cease to be a ward of court—

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the court hearing it orders that the minor be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the court under section 41(3) of the said Act to order that any minor who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 5.1 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the registry in which the matter is proceeding immediately after the expiration of that period.

Adoption of minor who is a ward of court

5.4.—(1) An application for leave—

- (a) to commence proceedings to adopt a minor who is a ward or
- (b) to commence proceedings to free such a minor for adoption,

may be ex parte to a district judge.

(2) Where a local authority has been granted leave to place a minor who is a ward with foster parents with a view to adoption it shall not be necessary for an application to be made for leave under paragraph (1)(a) or (b) unless the court otherwise directs.

(3) If the applicant for leave under paragraph (1)(a) or (b), or a local authority which has applied for leave as referred to in paragraph (2), or a foster parent so requests, the district judge may direct that any subsequent proceedings shall be conducted with a view to securing that the proposed adopter is not seen by or made known to any respondent or prospective respondent who is not already aware of his identity except with his consent.

(4) In paragraphs (1) and (3) “proceedings” means proceedings in the High Court or in a county court.

PART VI

CHILD ABDUCTION AND CUSTODY ACT 1985

Interpretation

6.1 In this Part, unless the context otherwise requires—

- (a) “the Act” means the Child Abduction and Custody Act 1985⁽⁴⁴⁾ and words or expressions bear the same meaning as in that Act;
- (b) “the Hague Convention” means the convention defined in section 1(1) of the Act and “the European Convention” means the convention defined in section 12(1) of the Act.

⁽⁴³⁾ 1981 c. 54.

⁽⁴⁴⁾ 1985 c. 60.

Mode of application

6.2.—(1) Except as otherwise provided by this Part, every application under the Hague Convention and the European Convention shall be made by originating summons, which shall be in Form No. 10 in Appendix A to the Rules of the Supreme Court 1965(45).

(2) An application in custody proceedings for a declaration under section 23(2) of the Act shall be made by summons in those proceedings.

Contents of originating summons: general provisions

6.3.—(1) The originating summons under which any application is made under the Hague Convention or the European Convention shall state—

- (a) the name and date of birth of the child in respect of whom the application is made;
- (b) the names of the child's parents or guardians;
- (c) the whereabouts or suspected whereabouts of the child;
- (d) the interest of the plaintiff in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to the child, and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Hague Convention or, as the case may be, Article 13 of the European Convention.

Contents of originating summons: particular provisions

6.4.—(1) In applications under the Hague Convention, in addition to the matters specified in rule 6.3—

- (a) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;
- (b) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

(2) In applications under the European Convention, in addition to the matters specified in rule 6.3 the originating summons shall identify the decision relating to custody or rights of access which is sought to be registered or enforced or in relation to which a declaration that it is not to be recognised is sought.

Defendants

6.5 The defendants to an application under the Act shall be—

- (a) the person alleged to have brought into the United Kingdom the child in respect of whom an application under the Hague Convention is made;
- (b) the person with whom the child is alleged to be;
- (c) any parent or guardian of the child who is within the United Kingdom and is not otherwise a party;
- (d) the person in whose favour a decision relating to custody has been made if he is not otherwise a party; and

- (e) any other person who appears to the court to have a sufficient interest in the welfare of the child.

Acknowledgement of service

6.6 The time limited for acknowledging service of an originating summons by which an application is made under the Hague Convention or the European Convention shall be seven days after service of the originating summons (including the day of service) or, in the case of a defendant referred to in rule 6.5(d) or (e), such further time as the Court may direct.

Evidence

6.7.—(1) The plaintiff, on issuing an originating summons under the Hague Convention or the European Convention, may lodge affidavit evidence in the principal registry in support of his application and serve a copy of the same on the defendant with the originating summons.

(2) A defendant to an application under the Hague Convention or the European Convention may lodge affidavit evidence in the principal registry and serve a copy of the same on the plaintiff within seven days after service of the originating summons on him.

(3) The plaintiff in an application under the Hague Convention or the European Convention may within seven days thereafter lodge in the principal registry a statement in reply and serve a copy thereof on the defendant.

Hearing

6.8 Any application under the Act (other than an application (a) to join a defendant, (b) to dispense with service or extend the time for acknowledging service, or (c) for the transfer of proceedings) shall be heard and determined by a judge and shall be dealt with in chambers unless the court otherwise directs.

Dispensing with service

6.9 The court may dispense with service of any summons (whether originating or ordinary) in any proceedings under the Act.

Adjournment of summons

6.10 The hearing of the originating summons under which an application under the Hague Convention or the European Convention is made may be adjourned for a period not exceeding 21 days at any one time.

Stay of proceedings

6.11.—(1) A party to proceedings under the Hague Convention shall, where he knows that an application relating to the merits of rights of custody is pending in or before a relevant authority, file in the principal registry a concise statement of the nature of the application which is pending, including the authority before which it is pending.

(2) A party—

- (a) to pending proceedings under section 16 of the Act, or
- (b) to proceedings as a result of which a decision relating to custody has been registered under section 16 of the Act,

shall, where he knows that such an application as is specified in section 20(2) of the Act⁽⁴⁶⁾ is pending in or before a relevant authority, file a concise statement of the nature of the application which is pending.

(3) The proper officer shall on receipt of such a statement as is mentioned in paragraph (1) or (2) notify the relevant authority in which or before whom the application is pending and shall subsequently notify it or him of the result of the proceedings.

(4) On the court receiving notification under paragraph (3) above or equivalent notification from the Court of Session or the High Court in Northern Ireland—

(a) where the application relates to the merits of rights of custody, all further proceedings in the action shall be stayed unless and until the proceedings under the Hague Convention in the High Court, Court of Session or High Court in Northern Ireland, as the case may, are dismissed, and the parties to the action shall be notified by the proper officer of the stay and of any such dismissal accordingly, and

(b) where the application is such a one as is specified in section 20(2) of the Act, the proper officer shall notify the parties to the action.

(5) In this rule “relevant authority” includes the High Court, a county court, a magistrates' court, the Court of Session, a sheriff court, a children’s hearing within the meaning of Part III of the Social Work (Scotland) Act 1968⁽⁴⁷⁾ the High Court in Northern Ireland, a county court in Northern Ireland, a court of summary jurisdiction in Northern Ireland or the Secretary of State.

Transfer of proceedings

6.12.—(1) At any stage in the proceedings under the Act the court may, of its own motion or on the application by summons of any party to the proceedings issued on two days' notice, order that the proceedings be transferred to the Court of Session or the High Court in Northern Ireland.

(2) Where an order is made under paragraph (1) the proper officer shall send a copy of the order, which shall state the grounds therefor, together with the originating summons, the documents accompanying it and any evidence, to the Court of Session or the High Court in Northern Ireland, as the case may be.

(3) Where proceedings are transferred to the Court of Session or the High Court in Northern Ireland the costs of the whole proceedings both before and after the transfer shall be at the discretion of the Court to which the proceedings are transferred.

(4) Where proceedings are transferred to the High Court from the Court of Session or the High Court in Northern Ireland the proper officer shall notify the parties of the transfer and the proceedings shall continue as if they had begun by originating summons under rule 6.2.

Interim directions

6.13 An application for interim directions under section 5 or section 19 of the Act may where the case is one of urgency be made ex parte on affidavit but shall otherwise be made by summons.

Obtaining authenticated copies of decisions

6.14 Any person who intends to make an application under the Hague Convention in a Contracting State other than the United Kingdom shall on satisfying the court as to that intention be entitled to obtain an office copy sealed with the seal of the Supreme Court of any order made in the High Court relating to the child in respect of whom the application is to be made.

⁽⁴⁶⁾ Section 20(2) was amended by paragraph 21 of Schedule 1 to the Family Law Act 1986 (c. 55).

⁽⁴⁷⁾ 1968 c. 49.

Revocation and variation of registered decisions

6.15.—(1) This rule applies to decisions which have been registered under section 16 of the Act and are subsequently varied or revoked by an authority in the Contracting State in which they were made.

- (2) The court shall, on cancelling the registration of a decision which has been revoked, notify—
- (a) the person appearing to the court to have care of the child,
 - (b) the person on whose behalf the application for registration of the decision was made, and
 - (c) and other party to that application,

of the cancellation.

- (3) The court shall, on being notified of the variation of a decision, notify—
- (a) the person appearing to the court to have care of the child, and
 - (b) any party to the application for registration of the decision

of the variation and any such person may apply by summons in the proceedings for the registration of the decision, for the purpose of making representations to the court before the registration is varied.

(4) Any person appearing to the court to have an interest in the matter may apply by summons in the proceedings for the registration of a decision for the cancellation or variation of the registration.

Orders for disclosure of information

6.16 At any stage in proceedings under the European Convention the court may, if it has reason to believe that any person may have relevant information about the child who is the subject of those proceedings, order that person to disclose such information and may for that purpose order that the person attend before it or file affidavit evidence.

PART VII

ENFORCEMENT OF ORDERS

Chapter 1.

General

Enforcement of order for payment of money, etc

7.1.—(1) Before any process is issued for the enforcement of an order made in family proceedings for the payment of money to any person, an affidavit shall be filed verifying the amount due under the order and showing how that amount is arrived at.

In a case to which CCR Order 25 rule 11 (which deals with the enforcement of a High Court judgement in the county court) applies, the information required to be given in an affidavit under this paragraph may be given in the affidavit filed pursuant to that rule.

(2) Except with the leave of the district judge, no writ of fieri facias or warrant of execution shall be issued to enforce payment of any sum due under an order for ancillary relief or an order made under the provisions of section 27 of the Act of 1973⁽⁴⁸⁾ where an application for a variation order is pending.

⁽⁴⁸⁾ Section 27 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), section 6(1), the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 63 and 89(2) and Schedule 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 41 and 46(1) and Schedule 1, paragraph 12 and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 52.

(3) Where a warrant of execution has been issued to enforce an order made in family proceedings pending in the principal registry which are treated as pending in a divorce county court, the goods and chattels against which the warrant has been issued shall, wherever they are situate, be treated for the purposes of section 103 of the County Courts Act 1984(49) as being out of the jurisdiction of the principal registry.

(4) The Attachment of Earnings Act 1971(50) and CCR Order 27 (which deals with attachment of earnings) shall apply to the enforcement of an order made in family proceedings in the principal registry which are treated as pending in a divorce county court as if the order were an order made by such a court.

(5) Where an application under CCR Order 25, rule 3 (which deals with the oral examination of a judgement 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 3 shall not apply.

Committal and injunction

7.2.—(1) Subject to RSC Order 52, rule 6 (which, except in certain cases, requires an application for an order of committal to be heard in open court) an application for an order of committal in family proceedings pending in the High Court shall be made by summons.

(2) Where no judge is conveniently available to hear the application, then, without prejudice to CCR Order 29, rule 3(2) (which in certain circumstances gives jurisdiction to a district judge) an application for—

- (a) the discharge of any person committed, or
- (b) the discharge by consent of an injunction granted by a judge,

may be made to the district judge who may, if satisfied of the urgency of the matter and that it is expedient to do so, make any order on the application which a judge could have made.

(3) Where an order or warrant for the committal of any person to prison has been made or issued in family proceedings pending in the principal registry which are treated as pending in a divorce county court, that person shall, wherever he may be, be treated for the purposes of section 122 of the County Courts Act 1984(51) as being out of the jurisdiction of the principal registry; but if the committal is a failure to comply with the terms of an injunction, the order or warrant may, if a judge so directs, be executed by the tipstaff within any county court district.

(4) For the purposes of section 118 of the County Courts Act 1984(52) in its application to the hearing of family proceedings at the Royal Courts of Justice, the tipstaff shall be deemed to be an officer of the court.

Transfer of county court order to High Court

7.3.—(1) Any person who desire the transfer to the High Court of any order made by a divorce county court in family proceedings except an order for periodical payments or for the recovery of

(49) 1984 c. 28.

(50) 1971 c. 32.

(51) 1984 c. 28.

(52) Section 118(1)(i) was repealed in part by the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part I.

arrears of periodical payments shall apply to the court ex parte by affidavit stating the amount which remains due under the order, and on the filing of the application the transfer shall have effect.

(2) Where an order is so transferred, it shall have the same force and effect and the same proceedings may be taken on it as if it were an order of the High Court.

Chapter 2.

Judgement summonses

General provisions

7.4.—(1) In this chapter, unless the context otherwise requires—

“order” means an order made in family proceedings for the payment of money;

“judgement creditor” means a person entitled to enforce an order under section 5 of the Debtors Act 1869(53);

“debtor” means a person liable under an order;

“judgement summons” means a summons under the said section 5 requiring a debtor to appear and be examined on oath as to his means.

(2) An application for the issue of a judgement summons may be made—

(a) in the case of an order of the High Court, to the principal registry, a district registry or a divorce county court, whichever in the opinion of the judgement creditor is most convenient,

(b) in the case of an order of a divorce county court, to whichever divorce county court is in the opinion of the judgement creditor most convenient,

having regard (in either case) to the place where the debtor resides or carries on business and irrespective of the court or registry in which the order was made.

(3) The application shall be made by filing a request in Form M 16 together with the affidavit required by rule 7.1(1) and, except where the application is made to the registry or divorce county court in which the order was made, a copy of the order shall be exhibited to the affidavit.

(4) A judgement summons shall not be issued without the leave of a judge if the debtor is in default under an order of commitment made on a previous judgement summons in respect of the same order.

(5) Every judgement summons shall be in Form M 17 and shall be served on the debtor personally not less than 10 days before the hearing and at the time of service there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court at which he is summoned to appear.

(6) CCR Order 28, rule 3 (which deals among other things with the issue of successive judgement summonses) shall apply to a judgement summons, whether issued in the High Court or a divorce county court, but as if the said rule 3 did not apply CCR Order 7, rule 19(2).

(7) Successive judgement summonses may be issued notwithstanding that the judgement debtor has ceased to reside or carry on business at the address stated in Form M 16 since the issue of the original judgement summons.

(8) Where an applicant has obtained one or more orders in the same application but for the benefit of different persons—

(53) 1869 c. 62. Section 5(b) was repealed by the Bankruptcy Act 1883 (c. 52), Schedule 5. Section 5 was extended by section 40 of the Administration of Justice Act 1956 (c. 46) but restricted by section 11 of the Administration of Justice Act 1970 (c. 31).

- (a) he shall be entitled to issue a judgement summons in respect of those orders on behalf of any judgement creditor without (where the judgement creditor is a child) seeking leave to act as his next friend; and
 - (b) only one judgement summons need be issued in respect of those orders.
- (9) On the hearing of the judgement summons the judge may—
- (a) where the order is for lump sum provision or costs, or
 - (b) where the order is for maintenance pending suit or other periodical payments and it appears to him that the order would have been varied or suspended if the debtor had made an application for that purpose,
- make a new order for payment of the amount due under the original order, together with the costs of the judgement summons, either at a specified time or by instalments.
- (10) If the judge makes an order or committal, he may direct its execution to be suspended on terms that the debtor pays to the judgement creditor the amount due, together with the costs of the judgement summons, either at a suspended time or by instalments, in addition to any sums accruing due under the original order.
- (11) All payments under a new order or an order of committal shall be made to the judgement creditor unless the judge otherwise directs.
- (12) Where an order of committal is suspended on such terms as are mentioned in paragraph (10) —
- (a) all payments thereafter made under the said order shall be deemed to be made, first, in or towards the discharge of any sums from time to time accruing due under the original order and, secondly, in or towards the discharge of a debt in respect of which the judgement summons was issued and the costs of the summons;
 - (b) CCR Order 28, rule 7(4) and (5) (which deal with an application for a further suspension) shall apply to the said order, whether it was made in the High Court or a divorce county court; and
 - (c) the said order shall not be issued until the judgement creditor has filed an affidavit of default on the part of the debtor.

Special provisions as to judgement summonses in the High Court

7.5.—(1) RSC Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgement summons issued in the High Court as if it were an originating summons.

(2) Witnesses may be summoned to prove the means of the debtor in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may for that purpose be issued out of the registry in which the judgement summons is issued.

(3) Where the debtor appears at the hearing, the travelling expenses paid to him, if the judge so directs, be allowed as expenses of a witness, but if the debtor appears at the hearing and no order of committal is made, the judge may allow to the debtor, by way of set-off otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

(4) Where a new order or an order of committal is made, the proper officer of the registry in which the judgement summons was issued shall send notice of the order to the debtor and, if the original order was made in another registry, to the proper officer of that registry.

(5) An order of commitment shall be directed to the tipstaff, for execution by him, or to the proper officer of the county court within the district of which the debtor is to be found, for execution by a deputy tipstaff.

(6) Unless the judge otherwise directs, the judgement creditor's costs of and incidental to the judgement summons shall be fixed and allowed without taxation in accordance with RSC Order 62, rule 7(4).

(7) Where the judge directs that the judgement creditor's costs of and incidental to a judgement summons are to be taxed, RSC Order 62 shall have effect in relation to those costs with such modifications as may be necessary.

Special provisions as to judgement summonses in divorce county courts

7.6.—(1) CCR Order 25, rules 3, 4 and 11 (which deal with the oral examination of debtors and the execution of High Court orders in county courts) and Order 28, rules 1, 2, 3(2), 7(3) and 9(2) (which deal with the issue of a judgement summons in a county court and the subsequent procedure) shall not apply to a judgement summons issued in a divorce county court.

(2) CCR Order 28, rule 9(1) (which relates to a judgement summons heard in a county court on a judgement or order of the High Court) shall apply to such a summons as if for the words “the High Court” there were substituted the words “any other court” where they first appear and “that other court” where they next appear.

(3) CCR Order 28, rule 7(1) and (2) (which relates to the suspension of a committal order) shall apply to such a summons subject to rule 7.4(10) and (11) of these Rules.

Chapter 3.

Registration and Enforcement of Custody Orders

Registration under Family Law Act 1986(54)

7.7.—(1) In this Chapter, unless the context otherwise requires—

“the appropriate court”, means in relation to Scotland, the Court of Session and, in relation to Northern Ireland, the High Court in Northern Ireland;

“the Deputy Principal Clerk” means the Deputy Principal Clerk of Session;

“Part I order” means an order under Part I of the Act of 1986;

“the Master” means the Master (Care and Protection) of the High Court in Northern Ireland;

“registration” means registration under Part I of the Act of 1986, and “register” and “registerd” shall be construed accordingly.

(2) The prescribed officer for the purposes of sections 27(4) and 28(1) of the Act shall be the chief clerk of the family proceedings department of the principal registry and the functions of the court under section 27(3) and 28(1) of the Act of 1986 shall be performed by the proper officer.

Application to register English Part I order

7.8.—(1) An application under section 27 of the Act of 1986 for the registration of a Part I order made by the High Court shall be made by lodging in the principal registry or the district registry, as the case may be, a certified copy of the order, together with a copy of any order which has varied any of the terms of the original order and an affidavit by the applicant in support of his application, with a copy thereof.

(2) An application under section 27 of the Act of 1986 for the registration of a Part I order made by a county court shall be made by filing in that court a certified copy of the order, together with a certified copy of any order which has varied any of the terms of the original order and an affidavit in support of the application, with a copy thereof.

- (3) The affidavit in support under paragraphs (1) and (2) above shall state—
- (a) the name and address of the applicant and his interest under the order;
 - (b) the name and date of birth of the child in respect of whom the order was made, his whereabouts or suspected whereabouts and the name of any person with whom he is alleged to be;
 - (c) the name and address of any other person who has an interest under the order and whether it has been served on him;
 - (d) whether the order is to be registered in Scotland or Northern Ireland or in both jurisdictions;
 - (e) that, to the best of the applicant's information and belief, the order is in force;
 - (f) whether, and if so where, the order is already registered; and
 - (g) details of any order known to the applicant which affects the child and is in force in the jurisdiction in which the Part I order is to be registered;

and there shall be exhibited to the affidavit any document relevant to the application.

(4) Where the documents referred to in paragraphs (1) and (3), or (2) and (3), as the case may be are to be sent to the appropriate court, the proper officer shall—

- (a) retain the original affidavit and send the other documents to the Deputy Principal Clerk or to the Master, as the case may be;
- (b) record the fact of transmission in the records of the court; and
- (c) file a copy of the documents.

(5) On receipt of notice of the registration of a Part I order in the appropriate court the proper officer shall record the fact of registration in the records of the court.

(6) If it appears to the proper officer that the Part I order is no longer in force or that the child has attained the age of 16, he shall refuse to send the documents to the appropriate court and shall within 14 days of such refusal give notice of it, and there reason for it, to the applicant.

(7) If the proper officer refuses to send the documents to the appropriate court, the applicant may apply to the judge in chambers for an order that the documents (or any of them) be sent to the appropriate court.

Registration of Scottish and Northern Ireland orders

7.9 On receipt of a certified copy of an order made in Scotland or Northern Ireland for registration, the prescribed officer shall—

- (a) record the order in the register by entering particulars of—
 - (i) the name and address of the applicant and his interest under the order;
 - (ii) the name and whereabouts or suspected whereabouts of the child, his date of birth, and the date on which he will attain the age of 16; and
 - (iii) the terms of the order, its date and the court which made it;
- (b) file the certified copy and accompanying documents; and
- (c) give notice to the court which sent the certified copy and to the applicant for registration that the order has been registered.

Revocation and variation of English order

7.10.—(1) Where a Part I order which is registered in the appropriate court is revoked or varied, the proper officer of the court making the subsequent order shall—

- (a) send a certified copy of that order to the Deputy Principal Clerk or to the Master, as the case may be, and to the court which made the Part I order, if that court is different from the court making the subsequent order, for filing by that court;
- (b) record the fact of transmission in the records of the court; and
- (c) file a copy of the order.

(2) On receipt of notice from the appropriate court of the amendment of its register, the proper officers of the court which made the Part I order and of the court which made the subsequent order shall each record the fact of amendment.

Registration of revoked, recalled or varied Scottish or Northern Ireland order

7.11.—(1) On receipt of a certified copy of an order made in Scotland or Northern Ireland which revokes, recalls or varies a registered Part I order, the proper officer shall enter particulars of the revocation, recall or variation, as the case may be, in the register, and give notice of the entry to—

- (a) the court which sent the certified copy,
- (b) if different, the court which made the Part I order,
- (c) the applicant for registration, and
- (d) if different, the applicant for the revocation, recall or variation of the order.

(2) An application under section 28(2) of the Act of 1986 shall be made by summons and may be heard and determined by a district judge.

(3) If the applicant for the Part I order is not the applicant under section 28(2) of the Act of 1986 he shall be made a defendant to the application.

(4) Where the court cancels a registration of its own motion or on an application under paragraph (2), the proper officer shall amend the register accordingly and shall give notice of the amendment to the court which made the Part I order.

Interim directions

7.12.—(1) An application for interim directions under section 29 of the Act of 1986 may be heard and determined by a district judge.

(2) The parties to the proceedings for enforcement and, if he is not a party thereto, the applicant for the Part I order, shall be made parties to the application.

Staying and dismissal of enforcement proceedings

7.13.—(1) An application under section 30(1) or 31(1) of the Act of 1986 may be heard and determined by a district judge.

(2) The parties to the proceedings for enforcement which are sought to be stayed and, if he is not a party thereto, the applicant for the Part I order shall be made parties to an application under either of the said sections.

(3) Where the court makes an order under section 30(2) or (3) or section 31(3) of the Act of 1986, the proper officer shall amend the register accordingly and shall give notice of the amendment to the court which made the Part I order and to the applicants for registration, for enforcement and for the stay or dismissal of the proceedings for enforcement.

Particulars of other proceedings

7.14 A party to proceedings for or relating to a Part I order who knows of other proceedings (including proceedings out of the jurisdiction and concluded proceedings) which relate to the child concerned shall file an affidavit stating—

- (a) in which jurisdiction and court the other proceedings were instituted;
- (b) the nature and current state of such proceedings and the relief claimed or granted;
- (c) the names of the parties to such proceedings and their relationship to the child; and
- (d) if applicable, and if known, the reasons why the relief claimed in the proceedings for or relating to the Part I order was not claimed in the other proceedings.

Inspection of register

7.15 The following persons, namely—

- (a) the applicant for registration of a registered Part I order,
- (b) any person who satisfies a district judge that he has an interest under the Part I order, and
- (c) any person who obtains the leave of a district judge,

may inspect any entry in the register relating to the order and may bespeak copies of the order and of any document relating thereto.

Chapter 4.

Enforcement of maintenance orders

Interpretation

7.16 In this chapter—

- “the Act of 1920” means the Maintenance Orders (Facilities for Enforcement) Act 1920(**55**);
- “the Act of 1950” means the Maintenance Orders Act 1950(**56**);
- “the Act of 1958” means the Maintenance Orders Act 1958(**57**);
- “the Act of 1965” means the Matrimonial Causes Act 1965(**58**);
- “the Act of 1971” means the Attachment of Earnings Act 1971(**59**);
- “the Act of 1972” means the Maintenance Orders (Reciprocal Enforcement) Act 1972(**60**);
- “English maintenance order” means a maintenance order made in the High Court.

Registration etc. of orders under Act of 1920

7.17.—(1) The prescribed officer for the purposes of section 1(1) of the Act of 1920 shall be the senior district judge, and on receiving from the Secretary of State a copy of a maintenance order made by a court in any part of Her Majesty’s dominions outside the United Kingdom to which the Act of 1920 extends he shall cause the order to be registered in the register kept for the purpose of that Act (in this rule referred to as “the register”).

The copy of the order received from the Secretary of State shall be filed in the principal registry.

(55) 1920 c. 33.
(56) 1950 c. 37.
(57) 1958 c. 39.
(58) 1965 c. 72.
(59) 1971 c. 32.
(60) 1972 c. 18.

(2) An application for the transmission of an English maintenance order under section 2 of the Act of 1920 shall be made to the district judge by lodging in the principal registry a certified copy of the order and an affidavit stating the applicant's reasons for believing that the person liable to make payments under the order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, together with full particulars, so far as known to the applicant, of that person's address and occupation and any other information which may be required by the law of that part of Her Majesty's dominions for the purpose of the enforcement of the order.

(3) If it appears to the district judge mentioned in paragraph (2) that the person liable to make payments under the English maintenance order is resident in some part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends, he shall send the certified copy of the order to the Secretary of State for transmission to the Governor of that part of Her Majesty's dominions.

Particulars of any English maintenance order sent to the Secretary of State under the said section 2 shall be entered in the register and the fact that this has been done shall be noted in the records of the court.

(4) Where an English maintenance order has been made in a cause or matter proceeding in a district registry, an application for the transmission of the order under the said section 2 may be made to the district judge of that registry and paragraphs (2) and (3) of this rule shall have effect as if for reference to the principal registry there were substituted references to the district registry.

The proper officer shall send to the principal registry for entry in the register particulars of any order sent by him to the Secretary of State.

(5) Any person who satisfies a district judge that he is entitled to or liable to make payments under an English maintenance order or a maintenance order made by a court in any part of Her Majesty's dominions outside the United Kingdom to which the Act of 1920 extends or a solicitor acting on behalf of any such person or, with the leave of a district judge, any other person may inspect the register and bespeak copies of any order which has been registered and of any document filed therewith.

Proceedings under Part II of Act of 1950

Interpretation of rules 7.18 to 7.21

7.18 In this rule and rules 7.19 to 7.21

“the clerk of the Court of Session” means the deputy principal clerk in charge of the petition department of the Court of Session;

“maintenance order” means a maintenance order to which section 16 of the Act of 1950(61) applies; “Northern Irish order” means a maintenance order made by the Supreme Court of Northern Ireland;

“register” means the register kept for the purposes of the Act of 1950;

“the registrar in Northern Ireland” means the chief registrar of the Queen's Bench Division (Matrimonial) of the High Court of Justice in Northern Ireland;

“registration” means registration under Part 11 of the Act of 1950 and “registered” shall be construed accordingly;

“Scottish order” means a maintenance order made by the Court of Session.

(61) Section 16 was amended by the Matrimonial Causes Act 1973 (c. 18), Schedule 2, paragraph 3(1)(a), the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), Schedule 13, paragraph 13, the Child Care Act 1980 (c. 5), Schedule 5, paragraph 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1, paragraph 1(a) and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 12(b), Schedule 3, paragraph 1 and Schedule 4. Subsection 2(a)(iii) and (v) have been prospectively amended by paragraph 35 of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41), Schedule 16, paragraph 35.

Registration etc of English order

7.19.—(1) An application for the registration of an English maintenance order may be made by lodging with the proper officer a certified copy of the order, together with an affidavit by the applicant (and a copy thereof) stating—

- (a) the address in the United Kingdom, and the occupation, of the person liable to make payments under the order;
- (b) the date of service of the order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected;
- (c) the reason why it is convenient that the order should be enforceable in Scotland or Northern Ireland, as the case may be;
- (d) the amount of any arrears due to the applicant under the order; and
- (e) that the order is not already registered.

(2) If it appears to the district judge that the person liable to make payments under the order resides in Scotland or Northern Ireland and that it is convenient that the order should be enforceable there, the proper officer shall (subject to paragraph (6) below) send a certified copy of the order and the applicant's affidavit to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be.

(3) On receipt of notice of the registration of an English maintenance order in the Court of Session or the Supreme Court of Northern Ireland, the proper officer shall—

- (a) cause particulars of the notice to be entered in the register;
- (b) note the fact of registration in the records of the court; and
- (c) send particulars of the notice to the principal registry.

(4) Where an English order registered in the Court of Session or the Supreme Court of Northern Ireland is discharged or varied the proper officer of the court ordering the discharge or variation shall give notice thereof to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be, by sending him a certified copy of the order discharging or varying the maintenance order.

(5) Where the registration of an English maintenance order registered in the Court of Session or the Supreme Court of Northern Ireland is cancelled under section 24(1) of the Act of 1950(62), notice of the cancellation shall be sent (as required by section 24(3)(a) of that Act) to the proper officer; and on receipt of such notice he shall cause particulars of it to be entered in Part I of the register.

(6) Where the order sought to be registered was made in a county court, this rule shall apply as though references to the Court of Session, the clerk of the Court of Session, the Supreme Court of Northern Ireland and the registrar of Northern Ireland were references to the sheriff court, the sheriff-clerk of the sheriff court, the court of summary jurisdiction and the clerk of the court of summary jurisdiction respectively.

Registration etc of Scottish and Northern Irish orders

7.20.—(1) In relation to a Scottish or Northern Irish order the prescribed officer for the purposes of section 17(2) of the Act of 1950 shall be the proper officer of the principal registry.

(2) On receipt of a certified copy of a Scottish or Northern Irish order for registration, the proper officer shall—

- (a) cause the order to be registered in Part II of the register and notify the clerk of the Court of Session or the registrar in Northern Ireland, as the case may be, that this has been done; and

(62) Section 24(1) was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 9 and the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 12, Part III, paragraph 1(1)(4).

(b) file the certified copy and any statutory declaration or affidavit as to the amount of any arrears due under the order.

(3) An application under section 2(2) of the Act of 1950 by a person liable to make payments under a Scottish order registered in the High Court to adduce before that court such evidence as is mentioned in that section shall be made by lodging a request for an appointment before a district judge of the principal registry; and notice of the date, time and place fixed for the hearing shall be sent by post to the applicant and to the person entitled to payments under the order.

(4) The prescribed officer to whom notice of the discharge or variation of a Scottish or Northern Irish order registered in the High Court is to be given under section 23(1)(a) of the Act of 1950⁽⁶³⁾ shall be the proper officer, and on receipt of the notice he shall cause particulars of it to be registered in Part II of the register.

(5) An application under section 24(1) of the Act of 1950 for the cancellation of the registration of a Scottish or Northern Irish order shall be made ex parte by affidavit to district judge of the principal registry who, if he cancels the registration, shall note the cancellation in Part 11 of the register, whereupon the proper officer shall send notice of the cancellation to the clerk of the Court of Session or the registrar in Northern Ireland, as the case may be, and also to the clerk of any magistrates' court in which the order has been registered in accordance with section 2(5) of the Act of 1958⁽⁶⁴⁾.

(6) A person entitled to payments under a Scottish or Northern Irish order registered in the High Court who wishes to take proceedings for or with respect to the enforcement of the order in a district registry may apply by letter to the senior district judge of the principal registry who may, if satisfied that the order ought to be enforceable in the district registry, make an order accordingly on such terms, if any, as may be just.

Inspection of register

7.21 Any person who satisfies a district judge of the principal registry that he is entitled to or liable to make payments under a maintenance order of a superior court or a solicitor acting on behalf of any such person or, with the leave of the district judge, any other person may inspect the register and bespeak copies of any such order which is registered in the High Court under Part 11 of the Act of 1950 and of any statutory declaration or affidavit filed therewith.

Registration etc of certain orders under the Act of 1958

Application and interpretation of rules 7.22 to 7.29

7.22 Section 21 of the Act of 1958⁽⁶⁵⁾ shall apply to the interpretation of this rule and rules 7.23 to 7.29 as it applies to the interpretation of that Act; and in those rules—

“cause book” includes cause card; and

“the register” means any register kept for the purposes of the Act of 1958.

Application for registration

7.23.—(1) An application under section 2(1) of the Act of 1958 for the registration in a magistrates' court of a maintenance order shall be made by lodging with the proper officer—

(i) a certified copy of the maintenance order, and

⁽⁶³⁾ Section 23(1)(a) was substituted by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 8.

⁽⁶⁴⁾ Section 2(5) was amended by the Administration of Justice Act 1970 (c. 31), section 54(3) and Schedule 11, the Guardianship of Minors Act 1971 (c. 3), section 18(1) and Schedule 1, the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 24 and the Family Law Reform Act 1987 (c. 42), section 33(4) and Schedule 4.

⁽⁶⁵⁾ S.I. 1965/1776.

(ii) two copies of the application in Form No. 115 in Appendix A to the Rules of the Supreme Court 1965⁽⁶⁶⁾.

(2) The period required to be prescribed by rules of court for the purpose of section 2(2) of the Act of 1958 shall be 14 days.

(3) The proper officer shall cause the certified copy of an order required by the said section 2(2) to be sent to the clerk of a magistrates' court to be endorsed with a note that the application for registration of the order has been granted and to be accompanied by a copy of the application lodged under paragraph (1).

(4) On receipt of notice that a maintenance order has been registered in a magistrates' court in accordance with section 2(5) of the Act of 1958, the proper officer shall enter particulars of the registration in the records of the court.

Registration in a magistrates' court of an order registered in the High Court

7.24 On receipt of notice that a maintenance order registered in the High Court in accordance with section 17(4) of the Act of 1950 has been registered in a magistrates' court in accordance with section 2(5) of the Act of 1958, the proper officer shall cause particulars of the registration to be entered in Part II of the register.

Registration of magistrates' court order

7.25 On receipt of a certified copy of a magistrates' court order sent to him pursuant to section 2(4)(c) of the Act of 1958, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register or, where the copy order is received in a district registry, in the cause book and shall send notice to the clerk of the magistrates' court that the order has been duly registered.

Registration in the High Court of an order registered in a magistrates' court

7.26.—(1) This rule applies where a sheriff court in Scotland or a magistrates' court in Northern Ireland has made an order for the registration in the High Court of an order previously registered in a magistrates' court in England and Wales in accordance with section 17(4) of the Act of 1950, and has sent a certified copy of the maintenance order to the proper officer of the High Court, pursuant to section 2(4)(c) of the Act of 1958.

(2) On receipt of the certified copy, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register, and shall send notice of the registration to the clerk of the original court and also to the clerk of the magistrates' court in which the order was registered in accordance with section 17(4) of the Act of 1950.

Variation or discharge of registered order

7.27.—(1) Where the court makes an order varying or discharging an order registered in a magistrates' court under Part I of the Act of 1958, the proper officer shall send a certified copy of the first-mentioned order to the clerk of the magistrates' court.

(2) Where a certified copy of an order varying an order registered in a magistrates' court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall file the copy and enter particulars of the variation on the same documents or in the same records as particulars of registration are required by rule 7.23(4) to be entered.

⁽⁶⁶⁾ Section 4(7) was amended by the Administration of Justice Act 1970 (c. 31), section 32 and Schedule 5, Part IV.

(3) Where a certified copy of an order varying or discharging an order made by a magistrates' court and registered in the High Court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall—

- (a) file the copy,
- (b) enter particulars of the variation or discharge in the register or, where the copy order is received in a district registry, in the cause book, and
- (c) send notice of the variation or discharge to any proper officer of a county court—
 - (i) who has given notice to the proper officer of proceedings taken in that court for the enforcement of the registered order, or
 - (ii) to whom any payment is to be made under an attachment of earnings order made by the High Court for the enforcement of the registered order.

Appeal from variation etc of order by magistrates' court

7.28 An appeal to the High Court under section 4(7) of the Act of 1958~~(66)~~ shall be heard and determined by a Divisional Court of the Family Division, and rule 8.2 shall apply as it applies in relation to an appeal from a magistrates' court under the Domestic Proceedings and Magistrates' Courts Act 1978~~(67)~~.

Cancellation of registration

7.29.—(1) A notice under section 5 of the Act of 1958~~(68)~~ by a person entitled to receive payments under an order registered in the High Court must be given to the proper officer.

(2) Where the High Court gives notice under the said section 5, the proper officer shall endorse the notice on the certified copy mentioned in rule 7.27(1).

(3) Where notice under the said section 5 is given in respect of an order registered in the High Court, the proper officer on being satisfied by an affidavit by the person entitled to receive payments under the order that no process for the enforcement of the order issued before the giving of the notice remains in force, shall—

- (a) cancel the registration by entering particulars of the notice in the register or cause book, as the case may be, and
- (b) send notice of the cancellation to the clerk of the court by which the order was made and, where applicable, to the clerk of the magistrates' court in which the order was registered in accordance with section 17(4) of the Act of 1950 stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section 5.

(4) On receipt of notice from the clerk of a magistrates' court that the registration in that court under the Act of 1958 of an order made by the High Court or a county court has been cancelled, the proper officer shall enter particulars of the cancellation on the same documents or in the same records as particulars of registration are required by rule 7.23(4) to be entered.

(5) On receipt of notice from the clerk of a magistrates' court that the registration in that court under the Act of 1958 of an order registered in the High Court in accordance with section 17(4) of the Act of 1950 has been cancelled, the proper officer shall note the cancellation in Part II of the register.

(66) Section 4(7) was amended by the Administration of Justice Act 1970 (c. 31), section 32 and Schedule 5, Part IV.

(67) 1978 c. 22.

(68) Section 5 was amended by the Administration of Justice Act 1977 (c. 38), Schedule 3, paragraph 4.

Proceedings under Act of 1972

Interpretation of rules 7.31 to 7.39

7.30 Expressions used in rules 7.31 to 7.38 which are used in the Act of 1972 have the same meanings as in that Act.

Application for transmission of maintenance order to reciprocating country

7.31 An application for a maintenance order to be sent to a reciprocating country under section 2 of the Act of 1972**(69)** shall be made by lodging with the court—

- (a) an affidavit by the applicant stating—
 - (i) the applicant’s reason for believing that the payer under the maintenance order is residing in that country, and
 - (ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order fails due;
- (b) a certified copy of the maintenance order;
- (c) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (d) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer) and
- (e) if available to the applicant, a photograph of the payer.

Certification of evidence given on provisional order

7.32 Where the court makes a provisional order under section 5 of the Act of 1972**(70)**, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the district judge.

Confirmation of provisional order

7.33.—(1) On receipt of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5) of the Act of 1972, the proper officer shall fix a date, time and place for the court to consider whether or not the provisional order should be confirmed, and shall send to the payee under the maintenance order notice of the date, time and place so fixed together with a copy of the provisional order and that document.

(2) The proper officer shall send to the court which made the provisional order a certified copy of any order confirming or refusing to confirm that order.

Taking of evidence for court in reciprocating country

7.34.—(1) The High Court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country under section 14 of the Act of 1972**(71)** where—

(69) Section 2 was amended by the Civil Jurisdiction and Judgments Act 1982 (c. 27), Schedule 11, paragraphs 8 and 9.

(70) Section 5 was amended by section 54 of the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).

(71) Section 14 was amended by the Magistrates' Courts Act 1980 (c. 43), Schedule 7, paragraph 105.

- (a) the request for evidence relates to a maintenance order made by a superior court in the United Kingdom, and
- (b) the witness resides in England and Wales.

(2) The evidence may be taken before a judge or officer of the High Court as the court thinks fit, and the provisions of RSC Order 39 shall apply with the necessary modifications as if the evidence were required to be taken pursuant to an order made under rule I of that Order.

(3) The county court shall be the prescribed court for the purposes of taking evidence pursuant to a request by a court in a reciprocating country pursuant to section 14 of the Act of 1972 where the request for evidence relates to a maintenance order made by a county court which has not been registered in a magistrates' court under the Act of 1958.

(4) Paragraph (2) shall apply to the taking of such evidence as though references therein to the High Court and RSC Order 39 were to the county court and CCR Order 20, rule 13 respectively.

Notification of variation or revocation

7.35 Where the court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2 of the Act of 1972, the proper officer shall send a certified copy of the order to the court in the reciprocating country.

Transmission of documents

7.36 Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1) of the Act of 1972 or by rule 7.33(2) or 7.36 shall be sent to the Secretary of State for transmission to that court unless the district judge is satisfied that, in accordance with the law of that country, the document may properly be sent by him direct to that court.

Application of rules 7.30 to 7.36 to Republic of Ireland

7.37.—(1) In relation to the Republic of Ireland rules 7.30 to 7.36 shall have effect subject to the provisions of this rule.

(2) The following paragraphs shall be added to rule 7.31—

- “(f) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of the proceedings was served on the payer;
- (g) a document which establishes that notice of the order was sent to the payer; and
- (h) if the payer received legal aid in the proceedings in which the order was made, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”.

(3) For rule 7.32 there shall be substituted the following rule—

“Certification of evidence given on application for variation or revocation

7.32.—(1) Where an application is made to the court for the variation or revocation of an order to which section 5 of the Act of 1972 applies, the certified copy of the application and the documents required by subsection (2) of that section to set out or summarise the evidence in support of the application shall be authenticated by a certificate signed by the district judge.”.

(4) Rule 7.33 shall not apply.

(5) For rule 7.35 there shall be substituted the following rule—

“Notification of variation or revocation

7.35 Where the High Court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972 applies, the proper officer shall send a certified copy of the order and a statement as to the service on the payer of the documents mentioned in subsection (2) of that section to the court in the Republic of Ireland by which the maintenance order is being enforced.”.

(6) Rule 7.36 shall not apply.

Application of rules 7.30 to 7.36 to the Hague Convention countries

7.38.—(1) In relation to the Hague Convention countries, rules 7.30, 7.31, 7.34, 7.35 and 7.36 shall have effect subject to the provisions of this rule, but rules 7.32 and 7.33 shall not apply.

(2) A reference in rules 7.31 and 7.34 to a reciprocating country shall be construed as a reference to a Hague Convention country.

(3) The following words shall be inserted after paragraph (a)(ii) of rule 7.31—
“and (iii) whether the time for appealing against the order has expired and whether an appeal is pending;”.

(4) The following paragraphs shall be inserted after paragraph (e) of rule 7.31—

“(f) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made, and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of proceedings, including notice of the substance of the claim, was served on the payer;

(g) a document which establishes that notice of the order was sent to the payer;

(h) a written statement as to whether or not the payee received legal aid in the proceedings in which the order was made, or in connection with the application under section 2 of the Act of 1972 and, if he did, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”.

(5) In relation to the Hague Convention countries the following rules shall apply in place of rules 7.35 and 7.36—

“Notification of variation or revocation

7.35.—(1) Where the court makes an order varying or revoking a maintenance order to which section 5 of the Act of 1972, as modified, applies, and the time for appealing has expired without an appeal having been entered, the proper officer shall send to the Secretary of State such documents as are required by subsection (7) of that section, as it applies to Hague Convention countries, including a certificate signed by the district judge that the order of variation or revocation is enforceable and that it is no longer subject to the ordinary forms of review.

(2) Where either party enters an appeal against the order of variation or revocation he shall, at the same time, inform the proper officer thereof by a notice in writing.

Transmission of documents

7.36 Any document required to be sent to a court in a Hague Convention country shall be sent to the Secretary of State for transmission to the court.”.

PART VIII

APPEALS

Appeals from district judges

8.1.—(1) Except where paragraph (2) applies, any party may appeal from an order or decision made or given by the district judge in family proceedings in a county court to a judge on notice; and in such a case—

- (a) CCR Order 13, rule 1(10) (which enables the judge to vary or rescind an order made by the district judge in the course of proceedings), and
- (b) CCR Order 37, rule 6 (which gives a right of appeal to the judge from a judgment or final decision of the district Judge),

shall not apply to the order or decision.

(2) Any order or decision granting or varying an order (or refusing to do so)—

- (a) on an application for ancillary relief, or
- (b) in proceedings to which rules 3.1, 3.2, 3.3, 3.6 or 3.8 apply,

shall be treated as a final order for the purposes of CCR Order 37, rule 6.

(3) On hearing an appeal to which paragraph (2) above applies, the judge may exercise his own discretion in substitution for that of the district judge.

(4) Unless the court otherwise orders, any notice under this rule must be issued within 14 days of the order or decision appealed against and served not less than 14 days before the day fixed for the hearing of the appeal.

(5) Appeals under this rule shall be heard in chambers unless the judge otherwise directs.

(6) Unless the court otherwise orders, an appeal under this rule shall not operate as a stay of proceedings on the order or decision appealed against.

Appeals under Domestic Proceedings and Magistrates' Courts Act 1978(72)

8.2.—(1) Subject to paragraph (9) below, every appeal to the High Court under the Domestic Proceedings and Magistrates' Courts Act 1978 shall be heard by a Divisional Court of the Family Division and shall be entered by lodging three copies of the notice of motion in the principal registry.

(2) The notice must be served, and the appeal entered, within 6 weeks after the date of the order appealed against.

(3) Notice of the motion may be served in accordance with RSC Order 65, rule 5.

(4) On entering the appeal, or as soon as practicable thereafter, the appellant shall, unless otherwise directed, lodge in the principal registry—

- (a) three certified copies of the summons and of the order appealed against, and of any order staying its execution,
- (b) three copies of the clerk's notes of the evidence,
- (c) three copies of the justices' reasons for their decision,
- (d) a certificate that notice of the motion has been duly served on the clerk and on every party affected by the appeal, and

- (e) where the notice of the motion includes an application to extend the time for bringing the appeal, a certificate (and a copy thereof) by the appellant’s solicitor, or the appellant if he is acting in person, setting out the reasons for the delay and the relevant dates.
- (5) If the clerk’s notes of the evidence are not produced, the court may hear and determine the appeal on any other evidence or statement of what occurred in the proceedings before the magistrates’ court as appears to the court to be sufficient.
- (6) The court shall not be bound to allow the appeal on the ground merely of misdirection or improper reception or rejection of evidence unless, in the opinion of the court, substantial wrong or miscarriage of justice has been thereby occasioned.
- (7) A district judge may dismiss an appeal to which this rule applies for want of prosecution or, with the consent of the parties, may dismiss the appeal or give leave for it to be withdrawn, and may deal with any question of costs arising out of the dismissal or withdrawal.
- (8) Any interlocutory application in connection with or for the purpose of any appeal to which this rule applies may be heard and disposed of before a single judge.
- (9) Where an appeal to which this rule applies relates only to the amount of any periodical or lump sum payment ordered to be made, it shall, unless the President otherwise directs, be heard and determined by a single judge, and in that case—
- (a) for the references in paragraphs (1) and (4)(a), (b) and (c) to three copies of the documents therein mentioned there shall be substituted references to one copy;
 - (b) the parties may agree in writing or the President may direct that the appeal be heard and determined at a divorce town.

PART IX DISABILITY

Interpretation and application of Part IX

9.1.—(1) In this Part—

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1983(73), is incapable of managing and administering his property and affairs;

“person under disability” means a person who is a minor or a patient;

“Part VII” means Part VII of the Mental Health Act 1983.

(2) So far as they relate to minors, the provisions of this Part of these rules shall not apply to proceedings which are specified proceedings within the meaning of section 41(6) of the Children Act 1989(74) and, with respect to proceedings which are dealt with together with specified proceedings, this Part shall have effect subject to the said section 41 and Part IV of these rules.

Person under disability must sue by next friend etc.

9.2.—(1) A person under disability may begin and prosecute any family proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(2) No person’s name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (7) have been filed.

(73) 1983 c. 20.

(74) 1989 c. 41.

(3) Where a person is authorised under Part VII to conduct legal proceedings in the name of a patient or on his behalf, that person shall, subject to paragraph (4), be entitled to be next friend or guardian ad litem of the patient in any family proceedings to which his authority extends.

(4) Where a person entitled to defend any family proceedings is a patient and there is no person authorised under Part VII to defend the proceedings in his name or on his behalf, then—

- (a) the Official Solicitor shall, if he consents, be the patient's guardian ad litem, but at any stage of the proceedings an application may be made on not less than four days' notice to the Official Solicitor, for the appointment of some other person as guardian;
- (b) in any other case, an application may be made on behalf of the patient for the appointment of a guardian ad litem;

and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (7).

(5) Where a petition, answer, originating application or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, on his behalf, the party at whose instance the document was served shall, before taking any further steps in the proceedings, apply to a district judge for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the district judge may, if he considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian ad litem.

(6) No notice of intention to defend shall be given, or answer or affidavit in answer filed, by or on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit—

- (a) is the Official Solicitor or, in a case to which paragraph (4) applies, is the Official Solicitor or has been appointed by the court to be guardian ad litem; or
- (b) in any other case, has filed the documents mentioned in paragraph (7).

(7) The documents referred to in paragraphs (2), (4) and (6) are—

- (a) a written consent to act by the proposed next friend or guardian ad litem;
- (b) where the person under disability is a patient and the proposed next friend or guardian ad litem is authorised under Part VII to conduct the proceedings in his name or on his behalf, an office copy, sealed with the seal of the Court of Protection, of the order or other authorisation made or given under Part VII; and
- (c) except where the proposed next friend or guardian ad litem is authorised as mentioned in sub-paragraph (b), a certificate by the solicitor acting for the person under disability—
 - (i) that he knows or believes that the person to whom the certificate relates is a minor or patient, stating (in the case of a patient) the grounds of his knowledge or belief and, where the person under disability is a patient, that there is no person authorised as aforesaid, and
 - (ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian.

Service on person under disability

9.3.—(1) Where a document to which rule 2.9 applies is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served—

- (a) in the case of a minor who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

- (b) in the case of a patient—
- (i) on the person (if any) who is authorised under Part VII to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served, or
 - (ii) if there is no person so authorised, on the Official Solicitor if he has consented under rule 9.2(4) to be the guardian ad litem of the patient, or
 - (iii) in any other case, on the person with whom the patient resides or in whose care he is:
Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document is served in accordance with paragraph (1) it shall be indorsed with a notice in Form M24; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so.

Petition for nullity on ground of mental disorder

9.4.—(1) Where a petition for nullity has been presented on the ground that at the time of the marriage the respondent was suffering from mental disorder within the meaning of the Mental Health Act 1983 of such a kind or to such an extent as to be unfitted for marriage, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the district judge.

(2) The district judge by whom an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

Separate representation of children

9.5.—(1) Without prejudice to rule 2.57, if in any family proceedings it appears to the court that any child ought to be separately represented, the court may appoint—

- (a) the Official Solicitor, or
- (b) some other proper person,

(provided, in either case, that he consents) to be the guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of a party to the proceedings or of the proposed guardian ad litem.

(3) The court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless otherwise directed, on making an application for an order under paragraph (1) the applicant shall—

- (a) unless he is the proposed guardian ad litem, file a written consent by the proposed guardian to act as such;
- (b) unless the proposed guardian ad litem is the Official Solicitor, file a certificate by a solicitor that the proposed guardian has no interest in the proceedings adverse to that of the child and that he is a proper person to be a guardian.

(5) Unless otherwise directed, a person appointed under this rule or rule 2.57 to be the guardian ad litem of a child in any family proceedings shall be treated as a party for the purpose of any provision of these rules requiring a document to be served on or notice to be given to a party to the proceedings.

PART X

PROCEDURE (GENERAL)

Application

10.1 The provisions of this Part apply to all family proceedings, but have effect subject to the provisions of any other Part of these rules.

Service on solicitors

10.2.—(1) Where a document is required by these rules to be sent to any person who is acting by a solicitor, service shall, subject to any other direction or order, be effected—

- (a) by sending the document by first class post to the solicitor's address for service; or
- (b) where that address includes a numbered box at a document exchange, at that document exchange or at a document exchange which transmits documents every business day to that document exchange; or
- (c) by FAX (as defined by RSC Order 1, rule 4(1)) in accordance with the provisions of RSC Order 65, rule 5(2B)(75).

(2) Any document which is left at a document exchange in accordance with paragraph (1)(b) shall, unless the contrary is proved, be deemed to have been served on the second day after the day on which it is left.

(3) Where no other mode of service is prescribed, directed or ordered, service may additionally be effected by leaving the document at the solicitor's address.

Service on person acting in person

10.3.—(1) Subject to paragraph (3) and to any other direction or order, where a document is required by these rules to be sent to any person who is acting in person, service shall be effected by sending the document by first class post to the address given by him or, if he has not given an address for service, to his last known address.

(2) Subject to paragraph (3), where no other mode of service is prescribed, directed or ordered, service may additionally be effected by delivering the document to him or by leaving it at the address specified in paragraph (1).

(3) Where it appears to the district judge that it is impracticable to deliver the document to the person to be served and that, if the document were left at, or sent by post to, the address specified in paragraph (1) it would be unlikely to reach him, the district judge may dispense with service of the document.

Service by bailiff in proceedings in principal registry

10.4 Where, in any proceedings pending in the principal registry which are treated as pending in a divorce county court, a document is to be served by bailiff, it shall be sent for service to the proper officer of the county court within the district of which the document is to be served.

(75) Rule 5(2B) was inserted by S.I. 1990/2599.

Proof of service by officer of court etc.

10.5.—(1) Where a petition is sent to any person by an officer of the court, he shall note the date of posting in the records of the court.

(2) Without prejudice to section 133 of the County Courts Act 1984(76) (proof of service of summonses etc) a record made pursuant to paragraph (1) shall be evidence of the facts stated therein.

(3) Where the court has authorised notice by advertisement to be substituted for service and the advertisement has been inserted by some person other than the proper officer, that person shall file copies of the newspapers containing the advertisement.

Service out of England and Wales

10.6.—(1) Any document in family proceedings may be served out of England and Wales without leave either in the manner prescribed by these rules or—

- (a) where the proceedings are pending in the High Court, in accordance with RSC Order I 1, rules 5 and 6 (which relate to the service of a writ abroad); or
- (b) where the proceedings are pending in a divorce county court, in accordance with CCR Order 8, rules 8 to 10 (which relate to the service of process abroad).

(2) Where the document is served in accordance with RSC Order 11, rules 5 and 6, those rules and rule 8 of the said Order I I (which deals with expenses incurred by the Secretary of State) shall have effect in relation to service of the document as they have effect in relation to service of notice of a writ, except that the official certificate of service referred to in paragraph (5) of the said rule 5 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served.

(3) Where the document is served in accordance with CCR Order 8, rules 8 to 10, those rules shall have effect subject to the following modifications—

- (a) the document need not be served personally on the person required to be served so long as it is served in accordance with the law of the country in which service is effected;
- (b) the official certificate or declaration with regard to service referred to in paragraph (6) of the said rule 10 shall, if the document was served personally, show the server's means of knowledge of the identity of the person served; and
- (c) in paragraph (7) of the said rule 10 the words “or in the manner in which default summonses are required to be served” shall be omitted.

(4) Where a petition is to be served on a person out of England and Wales, then—

- (a) the time within which that person must give notice of intention to defend shall be determined having regard to the practice adopted under RSC Order 11, rule 4(4) (which requires an order for leave to serve a writ out of the jurisdiction to limit the time for appearance) and the notice in Form M5 shall be amended accordingly;
- (b) if the petition is to be served otherwise than in accordance with RSC Order 11, rules 5 and 6, or CCR Order 8, rules 8 to 10, and there is reasonable ground for believing that the person to be served does not understand English, the petition shall be accompanied by a translation, approved by the district judge, of the notice in Form M5, in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected; but this sub-paragraph shall not apply in relation to a document which is to be served in a country in which the official language, or one of the official languages, is English.

(5) Where a document specifying the date of hearing of any proceedings is to be served out of England and Wales, the date shall be fixed having regard to the time which would be limited under paragraph (4)(a) for giving notice of intention to defend if the document were a petition.

Mode of giving notice

10.7 Unless otherwise directed, any notice which is required by these rules to be given to any person shall be in writing and, may be given in any manner in which service may be effected under RSC Order 65, rule 5.

Notice of intention to defend

10.8.—(1) In these rules any reference to a notice of intention to defend is a reference to an acknowledgment of service in Form M6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgment relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the court office.

(2) In relation to any person on whom there is served a document requiring or authorising an acknowledgment of service to be returned to the court office, references in these rules to the time limited for giving notice of intention to defend are references—

- (a) to seven days after service of the document, in the case of notice of intention to defend a petition under Part 11 of these rules, and
- (b) in any other case, to 14 days or such other time as may be fixed.

(3) Subject to paragraph (2) a person may give notice of intention to defend notwithstanding that he has already returned to the court office an acknowledgment of service not constituting such a notice.

Mode of making applications

10.9 Except where these rules, or any rules applied by these rules, otherwise provide, every application in family proceedings—

- (a) shall be made to a district judge;
- (b) shall, if the proceedings are pending in the High Court, be made by summons or, if the proceedings are pending in a divorce county court, be made in accordance with CCR Order 13, rule I (which deals with applications in the course of proceedings).

Orders for transfer of family proceedings

10.10.—(1) Where a cause is pending in the High Court, the district judge of the registry in which the cause is pending or a judge may order that the cause be transferred to another registry.

(2) Where a cause is pending in a divorce county court, the court may order that the cause be transferred to another divorce county court.

(3) Paragraphs (1) and (2) shall apply to applications in causes as they apply to causes; but before making an order for transfer of an application the court shall consider whether it would be more convenient to transfer the cause under paragraph (1) or (2), as the case may be.

(4) The court shall not, either of its own motion or on the application of any party, make an order under paragraph (1), (2) or (3) unless the parties have either—

- (a) had an opportunity of being heard on the question, or
- (b) consented to such an order.

(5) Where the parties, or any of them, desire to be heard on the question of a transfer, the court shall give the parties notice of a date, time and place at which the question will be considered.

(6) Paragraphs (4) and (5) shall apply with the necessary modifications to an order for the transfer of family proceedings under section 38(77) or 39 of the Act of 1984 as they apply to an order under paragraph (1) or (2) of this rule.

(7) Paragraphs (4) and (5) shall not apply where the court makes an order for transfer under paragraphs (1), (2) or (3) in compliance with the provisions of any Order made under Part I of Schedule 11 to the Children Act 1989(78).

Procedure on transfer of cause or application

10.11.—(1) Where any cause or application is ordered to be transferred from one court or registry to another, the proper officer of the first-mentioned court or registry shall, unless otherwise directed, give notice of the transfer to the parties.

(2) Any provision in these rules, or in any order made or notice given pursuant to these rules, for the transfer of proceedings between a divorce county court and the High Court shall, in relation to proceedings which, after the transfer, are to continue in the principal registry, be construed—

- (a) in the case of a transfer from the High Court to a divorce county court, as a provision for the proceedings to be treated as pending in a divorce county court, and
- (b) in the case of a transfer from a divorce county court to the High Court, as a provision for the proceedings no longer to be treated as pending in a divorce county court.

(3) Proceedings transferred from a divorce county court to the High Court pursuant to any provision in these rules shall, unless the order for transfer otherwise directs, proceed in the registry nearest to the divorce county court from which they are transferred, but nothing in this paragraph shall prejudice any power under these rules to order the transfer of the proceedings to a different registry.

Evidence by affidavit

10.12 On any application made—

- (a) in a county court, by originating application or in accordance with CCR Order 13, rule I (which deals with applications in the course of proceedings), or
- (b) in the High Court, by originating summons, notice or motion,

evidence may be given by affidavit unless these rules otherwise provide or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit; and where, after such an order has been made, that person does not attend, his affidavit shall not be used as evidence without the leave of the court.

Taking of affidavit in county court proceedings

10.13 In relation to family proceedings pending or treated as pending in a divorce county court, section 58(1) of the County Courts Act 1984 (79) shall have effect as if after paragraph (c) there were inserted the following words—

“or

(77) Section 38 was amended by section 1(1) of the Matrimonial Proceedings (Transfers) Act 1988 (c. 18).

(78) 1989 c. 41.

(79) 1984 c. 28 section 58(1) was amended by the Administration of Justice Act 1985 (c. 61), Schedule 7, paragraph 8 and Schedule 8.

- (d) a district judge of the principal registry; or
- (e) any officer of the principal registry authorised by the President under section 2 of the Commissioners for Oaths Act 1889⁽⁸⁰⁾; or
- (f) any clerk in the Central Office of the Royal Courts of Justice authorised to take affidavits for the purposes of proceedings in the Supreme Court.”.

Evidence of marriage outside England and Wales

10.14.—(1) The celebration of a marriage outside England and Wales and its validity under the law of the country where it was celebrated may, in any family proceedings in which the existence and validity of the marriage is not disputed, be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be—

- (a) a marriage certificate or similar document issued under the law in force in that country; or
- (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.

(2) Where a document produced by virtue of paragraph (1) is not in English it shall, unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

(3) This rule shall not be construed as precluding the proof of marriage in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933⁽⁸¹⁾ or in any other manner authorised apart from this rule.

Official shorthand note etc of proceedings

10.15.—(1) Unless the judge otherwise directs, an official shorthand note shall be taken of the proceedings at the trial in open court of every cause pending in the High Court.

(2) An official shorthand note may be taken of any other proceedings before a judge or district judge if directions for the taking of such a note are given by the Lord Chancellor.

(3) The shorthand writer shall sign the note and certify it to be a correct shorthand note of the proceedings and shall retain the note unless he is directed by the district judge to forward it to the court.

(4) On being so directed the shorthand writer shall furnish the court with a transcript of the whole or such part as may be directed of the shorthand note.

(5) Any party, any person who has intervened in a cause, the Queen’s Proctor or, where a declaration of parentage has been made under section 56(1)(a) of the Act of 1986⁽⁸²⁾, the Registrar General shall be entitled to require from the shorthand writer a transcript of the shorthand note, and the shorthand writer shall, at the request of any person so entitled, supply that person with a transcript of the whole or any part of the note on payment of the shorthand writer’s charges authorised by any scheme in force providing for the taking of official shorthand notes of legal proceedings.

(6) Except as aforesaid, the shorthand writer shall not, without the permission of the court, furnish the shorthand note or a transcript of the whole or any part thereof to anyone.

(7) In these Rules references to a shorthand note include references to a record of the proceedings made by mechanical means and in relation to such a record references to the shorthand writer shall have effect as if they were references to the person responsible for transcribing the record.

⁽⁸⁰⁾ 1889 c. 10.

⁽⁸¹⁾ 1933 c. 4.

⁽⁸²⁾ Section 56(1)(a) was substituted by section 22 of the Family Law Reform Act 1987 (c. 42).

Copies of decrees and orders

10.16.—(1) A copy of every decree shall be sent by the proper officer to every party to the cause.

(2) A sealed or other copy of a decree or order made in open court shall be issued to any person requiring it on payment of the prescribed fee.

Service of order

10.17.—(1) Where an order made in family proceedings has been drawn up, the proper officer of the court where the order is made shall, unless otherwise directed, send a copy of the order to every party affected by it.

(2) Where a party against whom the order is made is acting by a solicitor, a copy may, if the district judge thinks fit, be sent to that party as if he were acting in person, as well as to his solicitor.

(3) It shall not be necessary for the person in whose favour the order was made to prove that a copy of the order has reached any other party to whom it is required to be sent.

(4) This rule is without prejudice to RSC Order 45, rule 7 (which deals with the service of an order to do or abstain from doing an act), CCR Order 29, rule I (which deals with orders enforceable by committal) and any other rule or enactment for the purposes of which an order is required to be served in a particular way.

No notice of intention to proceed after year's delay

10.18 RSC Order 3, rule 6 (which requires a party to give notice of intention to proceed after a year's delay) shall not apply to any proceedings pending in the High Court.

Filing of documents at place of hearing etc.

10.19 Where the file of any family proceedings has been sent from one divorce county court or registry to another for the purpose of a hearing or for some other purpose, any document needed for that purpose and required to be filed shall be filed in the other court or registry.

Inspection etc of documents retained in court

10.20.—(1) Subject to rule 10.21, a party to any family proceedings or his solicitor or the Queen's Proctor or a person appointed under rule 2.57 or 9.5 to be the guardian ad item of a child in any family proceedings may have a search made for, and may inspect and bespeak a copy of, any document filed or lodged in the court office in those proceedings.

(2) Any person not entitled to a copy of a document under paragraph (1) above who intends to make an application under the Hague Convention (as defined in section 1(1) of the Child Abduction and Custody Act 1985(83)) in a Contracting State (as defined in section 2 of that Act) other than the United Kingdom shall, if he satisfies the district judge that he intends to make such an application, be entitled to obtain a copy bearing the seal of the court of any order relating to the custody of the child in respect of whom the application is to be made.

(3) Except as provided by rules 2.36(4) and 3.16(1 0) and paragraphs (1) and (2) of this rule, no document filed or lodged in the court office other than a decree or order made in open court shall be open to inspection by any person without the leave of the district judge, and no copy of any such document, or of an extract from any such document, shall be taken by, or issued to, any person without such leave.

Disclosure of addresses

10.21.—(1) Nothing in these rules shall be construed as requiring any party to reveal the address of their private residence (or that of any child) save by order of the court.

(2) Where a party declines to reveal an address in reliance upon paragraph (1) above, he shall give notice of that address to the court 'n Form CHA59 and that address shall not be revealed to any person save by order of the court.

Practice to be observed in district registries and divorce county courts

10.22.—(1) The President and the senior district judge may, with the concurrence of the Lord Chancellor, issue directions for the purpose of securing in the district registries and the divorce county courts due observance of statutory requirements and uniformity of practice in family proceedings.

(2) RSC Order 63, rule 11 (which requires the practice of the Central Office to be followed in the district registries) shall not apply to family proceedings.

Transitional Provisions

10.23.—(1) Subject to paragraph (2) below, these rules shall apply, so far as practicable, to any proceedings pending on the day on which they come into force.

(2) Rule 8.1 shall not apply to an appeal from an order or decision made or given by a district judge in matrimonial proceedings in a divorce county court where notice of appeal has been filed before the day on which these rules come into force.

(3) Where, by reason of paragraph (1) above, these rules do not apply to particular proceedings pending on the day on which they come into force, the rules in force immediately before that day shall continue to apply to those proceedings.

(4) Nothing in this rule shall be taken as prejudicing the operation of the provisions of the Interpretation Act 1978⁽⁸⁴⁾ as regards the effect of repeals.

(5) Without prejudice to the generality of paragraph (1) above (and for the avoidance of doubt) rule 2.39 shall not apply to any proceedings which are pending within the meaning of paragraph 1(1) of Schedule 14 to the Children Act 1989⁽⁸⁵⁾.

Mackay of Clashfern C
Stephen Brown P
Thorpe J
Roy Ward
Marian F. Norrie
Gerald Angel
W. K. Wills
James Holman
Hugh Morgan
Michael Churchouse
John Appleby

Dated 1st May 1991

⁽⁸⁴⁾ 1978 c. 30.

⁽⁸⁵⁾ 1989 c. 41.