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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART II**

**MATRIMONIAL CAUSES**

*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.