STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

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(**1**).

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(**2**)

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

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

(**2**) **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.**

(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.

(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(**3**) 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.

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

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:

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 I I 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, given 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(4)

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

(4) 1973 c. 45.

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(**5**) 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

(**5**) 1968 c. 64.

(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 3 8, 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(**6**).

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 districtjudge 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 4 1 (1) of the Act of 197 3 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,

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

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 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)(**7**);

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

(f) where a certificate has been granted under section 12 of the Administration of Justice Act 1969(**8**) 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;

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).

(**8**) 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.

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 MIO 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 Mll 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(**9**) two copies of a draft of the order in the terms sought, one of which shall be indorsed with a statement signed by the respondent to the application signifying his agreement, and a statement of information (which may be made in more than one document) which shall include—

(a) the duration of the marriage, the age of each party and of any minor or dependent child of the family;

(b) an estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;

(c) what arrangements are intended for the accommodation of each of the parties and any minor child of the family;

(d) whether either party has remarried or has any present intention to marry or to cohabit with another person;

(e) where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee of that property has been served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and

(f) any other especially significant matters.

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

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

Investigation by district judge of application for ancillary relief

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

(2) An application for an avoidance of disposition order shall, if practicable, be heard at the same time as any related application for financial relief.

(3) Notice of the appointment, unless given in Form M11 or M13 (as the case may be), shall be given by the proper officer to every party to the application.

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

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

(5) The district judge may at any stage of the proceedings give directions as to the filing and service of pleadings and as to the further conduct of the proceedings.

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

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

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

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

Request for further information etc

2.63 Any party to an application for ancillary relief may by letter require any other party to give further information concerning any matter contained in any affidavit filed by or on behalf of that other party or any other relevant matter, or to furnish a list of relevant documents or to allow inspection of any such document, and may, in default of compliance by such other party, apply to the district judge for directions.

Order on application for ancillary relief

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

(2) Pending the final determination of the application, the districtjudge 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, ajudge 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.