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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**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(1) 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.

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(1) 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.

(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.

(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<sup>(2)</sup> 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<sup>(3)</sup> 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;

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

(3) 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.

- (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 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(4) 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(5)(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—

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(4) 1975 c. 63.

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

- (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.
- (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 (6)(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.

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(6) 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).

(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 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(7)—

- (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.

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(7) 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.

### **Proceedings under sections 1 and 9 of and Schedule 1 to Matrimonial Homes Act 1983(8)**

**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.

(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(9) 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(10)**

**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.

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(8) **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).**

(9) **1967 (c. 75), Schedule 17, paragraph 33.**

(10) **1976 c. 50.**

(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 (11) 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.

(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(12)**

**3.10** Where a direction is given under section 28 of the Domestic Proceedings and Magistrates' Courts Act 1978(13) 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.

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(11) S.I. 1965/1776.

(12) 1978 c. 22.

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

### **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<sup>(14)</sup> in respect of a marriage entered into under a law which permits polygamy (in this rule referred to as a polygamous marriage).

(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

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<sup>(14)</sup> 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.



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<sup>(15)</sup>;

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 (16) 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;

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<sup>(15)</sup> 1973 c. 45, Schedule 1, paragraph 11 was amended by section 8(3) of the Matrimonial Homes and Property Act 1981 (c. 24).  
<sup>(16)</sup> Section 56(1)(a) was substituted by section 22 of the Family Law Reform Act 1987 (c. 42).

- (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—
    - (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(17); 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.

(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~~(18)~~ the applicant shall serve a copy on the land]ord 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.

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

### **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 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 (**19**)(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.

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**(19)** 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.