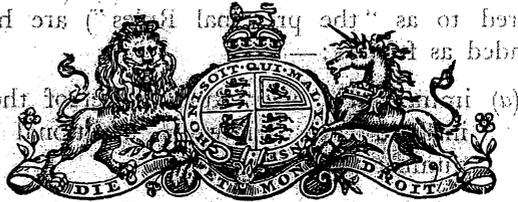


Orders of the Royal Court.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 13th day of February, 1973, before Sir William Arnold, Kt., C.B.E., Bailiff, present:—Bertram Guy Blampied, Esquire, O.B.E., Claude Fortesque, Nason, Stanley, Walter, Gavey, Esquires, D'Arcy, George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe and Richard Oliver Symons, Esquires, Jurats.

No. 1 Order, 1973

ENTITLED

The Matrimonial Causes (Amendment) Rules, 1973

THE ROYAL COURT, in exercise of the powers conferred upon it by Article 6 of the Matrimonial Causes Law (Guernsey) 1939^(a), by Article 64 of the Reform (Guernsey) Law, 1948^(b), and of all other powers enabling it in that behalf, hereby orders:—

(a) Ordres en Conseil, Vol. XI, p. 318; Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XV, p. 422; Vol. XVII, p. 249; Vol. XXII, p. 102 and No. XIX of 1972.

(b) Ordres en Conseil, Vol. XIII, p. 288.

I
1973

Amend-
ments to
Rules of
1952.

1. The Rules of Court set out in the Schedule to the Matrimonial Causes Rules, 1952(c), (hereinafter referred to as "the principal Rules") are hereby amended as follows:—

- (a) immediately after Rule 1 thereof there is inserted the following additional Rule numbered "1A"—

"Rule 1A—Application to Court to consider Agreement made in Contemplation, etc., of Divorce or Judicial Separation"

(1) On application made either before or after the presentation of a petition for divorce or judicial separation, the parties to the marriage or either of them may refer to the Court any agreement or arrangement made or proposed to be made between them which relates to, arises out of or is connected with, the proceedings which are contemplated or have begun.

(2) Unless otherwise directed on an application made ex parte, every party to the agreement or arrangement (other than the applicant or applicants) and any other party to the proceedings or, where application is made before the presentation of the petition any person whom it is intended to make a party to those proceedings, shall be made a respondent to the application.

(3) An application under this Rule shall be accompanied by an affidavit by the applicant or applicants setting out particulars of the agreement or arrangement in question and the grounds on which the application is made and a copy of the appli-

ication and of the affidavit shall be served on each respondent.

(4) Subject to the provisions of this Rule, these Rules shall, so far as applicable, apply with the necessary modifications to the application as if it were a cause and as if the notice were a petition and the applicant a petitioner.

(5) The hearing of an application under this Rule shall be heard in camera unless otherwise directed by the Court.

(6) On the hearing of an application under this Rule the Court may express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and may give such directions, if any, in the matter as the Court thinks fit.

(7) A respondent to an application under this Rule may be heard without filing an affidavit in answer to the application.”;

(b) in Rule 3 thereof—

(i) sub-paragraph (i) of paragraph (1) is repealed and the following sub-paragraph is substituted therefor—

“(i) the facts alleged upon which relief is sought, set out specifically, in a separate paragraph for every such fact;”;

(ii) in paragraph (3)—

(a) sub-paragraphs (a) and (e) are repealed;

(b) in sub-paragraph (d), the semi-colon and the word “and” are repealed

and a full stop is substituted therefor;

- (c) immediately after Rule 3 thereof there are inserted the following additional Rules numbered "3A" and "3B"—

Rule 3A—Petitioner's Statement as to Arrangements for Children

Where a petition for divorce, nullity or judicial separation discloses that there is a minor child of the marriage who is under the age of sixteen years 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 separate written statement in accordance with Form 2B containing the information set out therein to which shall be attached a copy of any medical report mentioned therein.

Rule 3B—Respondent's Statement as to Arrangements for Children

A respondent spouse on whom there is served a statement in accordance with Rule 3A of these Rules may, at any time before the Court makes an order under paragraph (1) of Article 12B of the Law, file a written statement of his views on the present and proposed arrangements for the children and shall serve a copy thereof on the petitioner.”;

- (d) in Rule 5 thereof—
- (i) sub-paragraph (a) of paragraph (2) is repealed;
 - (ii) immediately after paragraph (6) there is inserted the following additional paragraph numbered "(7)"—

(7) Where a petition for divorce alleging any such fact as is mentioned in sub-paragraph (e) of paragraph (1) of Article 16A of the Law contains a proposal by the petitioner (not being a proposal agreed between the petitioner and the respondent) to make financial provision for the respondent, the petition shall be accompanied by an affidavit by the petitioner giving brief particulars of his means and commitments.”;

(e) immediately after Rule 5 thereof there is inserted the following additional Rule numbered “5A”—

Rule 5A—Certificate with regard to Reconciliation

Where an advocate is acting for a petitioner for divorce or judicial separation, a certificate in accordance with Form 2A shall be filed with the petition, unless otherwise directed by the Court on an application made ex parte.”;

(f) in sub-paragraph (a) of paragraph (1) of Rule 8 thereof the words “charged with adultery or sodomy” are repealed and the words “with whom such fact as is mentioned in sub-paragraph (a) or (b) of paragraph (1) of Article 16A of the Law is alleged to have been committed” are substituted therefor;

(g) immediately after Rule 15 thereof there is inserted the following additional Rule numbered “15A”—

*“Rule 15A—Notice of Absence or
Withdrawal of Consent*

(1) A respondent to a petition which alleges any such fact as is mentioned in sub-paragraph (d) of paragraph (1) of Article 16A of the Law 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.

(2) Where any such notice is given and none of the other facts mentioned in paragraph (1) of Article 16A of the Law is alleged, the proceedings on the petition shall be stayed and Her Majesty's Greffier shall thereupon give notice of the stay to all parties.”;

(h) paragraph (1) of Rule 18 thereof is repealed and the following paragraph is substituted therefor—

“(1) A respondent, co-respondent or person named who has entered an appearance to a petition and who—

(a) wishes to defend the petition or to dispute any of the facts alleged in it; or

(b) being the respondent spouse, wishes to make in the proceedings any charge against the petitioner in respect of which the respondent spouse prays for relief; or

(c) being the respondent to a petition to which paragraph (1) of Article 18 of the Law applies, wishes to oppose the

grant of a decree on the ground mentioned in that paragraph;

shall, within fourteen days after the expiration of the time limited for the entry of appearance, file an answer to the petition by sending it by pre-paid registered post to, or by leaving it with, Her Majesty's Greffier;

Provided that a co-respondent or person named, whether made a respondent or not, who indicates in the memorandum of appearance that he intends only to deny the charges of adultery or any of them, shall be entitled, without filing an answer, to defend at the trial by denying such charges.”;

- (i) Rule 19 thereof is repealed and the following Rule is substituted therefor—

“Rule 19—Affidavit in Support of Answer

With every answer or subsequent pleading containing more than a simple denial of the facts stated in the petition or answer, as the case may be, there shall be filed an affidavit made by the person who files the answer or subsequent pleading, verifying every allegation in such answer or subsequent pleading so far as he has personal cognizance thereof and deposing as to his belief in the truth of the rest thereof.”;

- (j) Rule 22 thereof is repealed;

- (k) in Rule 30 thereof—

(i) in the heading the words “Custody, Access and Damages” are repealed

and the words: "Custody and Access" are substituted therefor;

(ii) paragraph (2) is repealed;

(l) in paragraph (1) of Rule 33 thereof—

(i) in sub-paragraph (a) immediately after the words "to each of the parties to the suit" there is inserted the words "and to every other party affected by the intervention";

(ii) sub-paragraph (b) is repealed;

(m) paragraph (2) of Rule 41 thereof is repealed and the following paragraph is substituted therefor—

"(2) Where a decree is pronounced on a petition in which any such fact as is mentioned in sub-paragraph (d) or (e) of paragraph (1) of Article 16A of the Law is alleged, the decree shall state whether that fact was the only fact mentioned in the said paragraph (1) of that Article on which the petitioner was entitled to rely in support of his petition.";

(n) in Rule 46 thereof the words "been guilty of" are repealed and the word "committed" is substituted therefor;

(o) immediately after Rule 46 thereof there are inserted the following additional Rules numbered "46A" and "46B"—

"Rule 46A—*Application for Recission of Decree*

(1) An application by a respondent under Article 18C of the Law for the recission of

a decree of divorce shall be accompanied by an affidavit by the applicant setting out the allegations on which the applicant relies and a copy of the application and of the affidavit shall be served on the petitioner.

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

(3) Subject to the provisions of this Rule, these Rules shall, so far as applicable, apply with the necessary modifications to the application as if it were a cause and as if the notice were a petition and the applicant a petitioner.

(4) The hearing of an application under this Rule shall be heard in open court unless otherwise directed by the Court.

Rule 46B—Application under Article 18A of the Law

(1) An application by the respondent to a petition for divorce under Article 18A of the Law for the Court to consider the financial position of the respondent after the divorce shall be made to the Court in accordance with Form 5A.

(2) The hearing of an application under this Rule shall be heard in camera unless otherwise directed by the Court.

(3) A statement of any of the matters mentioned in paragraph (2) of Article 18A of the Law with respect to which the Court is satisfied, or where the Court has proceeded under paragraph (3) of the said

Article, a statement that the conditions for which that paragraph provides have been fulfilled, shall be entered in the Act of Court relating to such proceedings.”;

(p) in the Appendix thereto—

(i) immediately after Form 2 there are inserted the following additional Forms numbered “2A” and “2B”.

“ FORM 2A Rule 5A

CERTIFICATE WITH REGARD TO RECONCILIATION

IN THE ROYAL COURT OF GUERNSEY MATRIMONIAL CAUSES DIVISION

Between A.B. Petitioner

and

C.D. Respondent

and

E.F. Co-Respondent

I, the Advocate acting for the Petitioner in the above cause do hereby certify that I have (or have not) discussed with the Petitioner the possibility of a reconciliation and that I have (or have not) given to the Petitioner the names and addresses of persons qualified to help effect a reconciliation.

Dated this day of , 19 .

(Signed) Advocate for the Petitioner

Advocate for the Petitioner

FORM 2B Rule 3A
 STATEMENT AS TO ARRANGEMENTS FOR CHILDREN
 IN THE ROYAL COURT OF
 GUERNSEY
 MATRIMONIAL CAUSES DIVISION

Between A.B. Petitioner
 and
 C.D. Respondent
 and
 E.F. Co-Respondent

The present arrangements for the minor children of the marriage under 16 years old and those over 16 years old who are receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation are as follows:—

(State in respect of each child)

- (i) residence (state where the child is living and who is at present responsible for his care and upbringing);
- (ii) education, etc. (state the school or other educational establishment which the child is attending or, if he is working, his place of employment, the nature of his work and details of any training he is receiving);
- (iii) financial provision (state who is supporting the child or contributing to his support and the extent thereof);
- (iv) access (state any arrangements which have been agreed for access

by either of the parties and the extent to which access is and has been afforded).

The arrangements proposed for the children in the event of a decree being granted are as follows:—

- (i) residence;
- (ii) education, etc.;
- (iii) financial provision;
- (iv) access.

(In each of these paragraphs state whether the grant of a decree will affect the present arrangement set out above, whether it is proposed that those arrangements should continue, and if not, and to the extent that they are likely to alter, state what alteration is anticipated and what proposals in substitution are proposed. In the case of residence, where it is proposed that for any period a child should be in the immediate care of a person other than the Petitioner, give details of that person's willingness and ability to care for the child. In the case of education state, if possible, any long-term proposals for further education or training. In the case of financial provision give details of any application which will be made for ancillary relief in respect of the children and, where applicable, state the objects of any application which is other than for the day-to-day support of the child.)

The said child(ren) is (are) (not) suffering from (any) serious disability or chronic illness or from the effects of (any) serious illness (namely (state, in respect of each child so suffering, the nature of the disability or illness and attach a copy of any up-to-date medical report which is available)).

The said child(ren) is (are) (not) under the supervision of the States Children Board or a probation officer (namely (state the date of any order for supervision and the circumstances which gave rise to its being made)).

Dated this _____ day of _____, 19 _____.

(Signed)
the Petitioner. ”;

(ii) in Form 5 thereof the words “or by resisting the claim for damages(4),” are repealed;

(iii) immediately after Form 5, there is inserted the following additional Form numbered “5A”—

“ FORM 5A Rule 46B
NOTICE OF APPLICATION
UNDER RULE 46B
IN THE ROYAL COURT OF
GUERNSEY
MATRIMONIAL CAUSES DIVISION

Between A.B. Petitioner
and
C.D. Respondent
and
E.F. Co-Respondent

TAKE NOTICE that the Respondent applies to the Court under Article 18A of the Matrimonial Causes Law (Guernsey), 1939, as amended, for the Court to consider the financial position of the Respondent, after the divorce.

The application will be heard as soon as may be after the decree is pronounced by the Court. Notice will be given to you of the day and time fixed for the hearing of the application.

Dated this day of , 19 .

(Signed)
Advocate for the Respondent.”;

(iv) in Form 6 thereof—

(a) paragraph 6 is repealed; and

(b) paragraphs 7 and 8 are renumbered as paragraphs “6” and “7” respectively.

Savings for petitions presented before the Law of 1972 came into force.

2. These Rules (including the repeals and amendments made by them) shall not have effect in relation to any petition for divorce, judicial separation or nullity of marriage presented before the coming into force of the Matrimonial Causes (Amendment) (Guernsey) Law, 1972.

Citation.

3. These Rules may be cited as the Matrimonial Causes (Amendment) Rules, 1973.

Collective title.

4. These Rules and the principal Rules may be cited together as the Matrimonial Causes Rules, 1952 and 1973.

Commencement.

5. These Rules shall come into force on the sixth day of March, nineteen hundred and seventy-three.

R. H. VIDELO,
Her Majesty's Greffier.