

Orders of the Royal Court.



II
1973

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of October, 1973, before John Henry Loveridge, Esquire, C.B.E., Bailiff; present:— Bertram Guy Blampied, Esquire, O.B.E., Stanley Walter Gavay, Esquire, Gilbert Carey de Jersey, Esquire, C.B., 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. 2 Order, 1973

ENTITLED

The Matrimonial Causes (Amendment) (No. 2) Rules, 1973

THE ROYAL COURT, in exercise of the powers conferred upon it by Article 6 of the Matrimonial Causes Law (Guernsey) 1939(a), and by Article 64 of the Reform (Guernsey) Law, 1948(b), and of all

(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.

other powers enabling it in that behalf, hereby orders:—

Amendment
o Rules
if 1952.

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

(a) Rule 3 thereof is repealed and the following Rule is substituted therefor—

" *Rule 3—Contents of Petition*

(1) Every petition in a matrimonial suit shall, in so far as the case requires, be in accordance with Form 1A and shall contain the information required therein as near as may be in the order there set out and any further or other information required by the succeeding paragraphs of this Rule as may be applicable.

(2) Where it is material under the provisions of Article 15 of the Law (which relates to conditions for the exercise of jurisdiction with regard to divorce) a petition shall state the total number of days for which the party whose presence within the Bailiwick is relied upon to give jurisdiction, was actually present within the Bailiwick during the period of three years immediately preceding the presentation of the petition.

(3) A wife's petition in which the Court is alleged to have jurisdiction by virtue of the provisions of paragraph (5) of Article 2 of the Law (which relates to certain cases of desertion and deportation) shall state the

(c) Orders of the Royal Court Vol. I, p. 64 and No. I of 1973.

domicile of the husband immediately before the desertion or deportation and the date when and the circumstances in which the alleged desertion began or the date and place of the deportation order.

(4) Where it is material in the case of a petition for judicial separation a petition shall state the place in the Island of Guernsey at which the parties had their matrimonial home at the time when their cohabitation ceased, and when that cohabitation ceased.

(5) A petition for a decree of presumption of death and dissolution of the marriage shall state the last place of cohabitation of the parties, the circumstances in which the petitioner and the other party ceased to cohabit, and the date when and the place where that other party was last seen or heard of.

(6) A petition for divorce or judicial separation, or an application to the Ordinary Court or the Court for Matrimonial Causes for the granting of a judicial separation by consent shall state—

- (a) whether any, and if so what, attempt has been made to reconcile the parties to the marriage;
- (b) whether the petitioner is willing that a member of the Panel of Mediators shall, at the request of the Court, endeavour to reconcile the petitioner and respondent, and, if the petitioner is not so willing, the reasons for refusing such mediation.

(7) Where in a petition for divorce, judicial separation or nullity of marriage a wife petitioner asks for an interim order directing her husband to make payments for or towards her support, or with respect to the custody, maintenance or education of, or access to, the children of the marriage, the petition shall contain a statement in general terms of her husband's income and property in so far as they are within her knowledge or belief.

(8) A petition shall conclude with a prayer setting out particulars of the relief claimed, including—

- (a) any claim for custody of the children of the marriage;
- (b) any claim for an award of payments to be made, pending suit, by the husband for or towards the support of his wife, or the maintenance or education of the children of the marriage; and
- (c) any claim for costs.

(9) Subject to the provisions of the next succeeding paragraph, every petition shall be signed—

- (a) by the petitioner; or
- (b) where the petitioner is an infant, by the petitioner and his guardian ad litem; or
- (c) where the petitioner is a person of unsound mind, by his guardian ad litem.

(10) If, when the petition is ready for signature, and it is desired to file the

petition, it is impossible, for a reason other than the petitioner's unsoundness of mind, to obtain his signature thereto, his Advocate may, with the permission of the Court, sign the petition on his behalf:

Provided that, before the trial of the suit, an identical petition signed by the petitioner, and accompanied by an affidavit by the petitioner verifying the facts in support thereof, shall be filed.

(11) Except by leave of the Court, every petition, when filed, shall have annexed thereto a certified copy of the marriage certificate of the parties to the marriage.”;

(b) paragraph (1) of Rule 5 thereof is repealed and the following paragraph is substituted therefor—

“(1) With every petition in a matrimonial suit shall be filed an affidavit by the petitioner verifying the facts alleged so far as he has personal cognizance thereof and deposing as to his belief in the truth of the rest thereof.”;

(c) in the Appendix thereto—

(i) immediately after Form 1 there is inserted the following additional Form numbered “1A”—

“ FORM 1A
 Rule 3 (1), 17 (6).
 GENERAL FORM OF PETITION
 IN THE ROYAL COURT OF
 GUERNSEY
 MATRIMONIAL CAUSES
 DIVISION

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

TO THE COURT FOR
 MATRIMONIAL CAUSES:

THE PETITION OF SHOWS
 THAT

(1) On the day of 19
 the Petitioner was lawfully
 married to (hereinafter
 called "the Respondent") at .

(2) The Petitioner and the Respon-
 dent have cohabited at (*state the last
 address at which they have cohabited
 in the Bailiwick*) (or The Petitioner
 and the Respondent have not cohabited
 in the Bailiwick).

(3) Both the Petitioner and the Res-
 pondent are domiciled in the Bailiwick
 (*or as the case may be*); the Petitioner
 is a (*state occupation*) and resides
 at , and the Respondent
 is a (*state occupation*) and resides
 at

(4) There is (are) (no (*or state num-
 ber*) children of the marriage now
 living) (namely *state the name of each
 child and his date of birth or, if it
 be the case, that he is of full age and
 in the case of each minor child over
 the age of 16, whether he is receiving
 instruction at an educational establish-
 ment or undergoing training for a
 trade, profession or vocation*)).

(5) (*In the case of a husband's petition*) No other child now living has been born to the Respondent during the marriage so far as is known to the Petitioner (*or in the case of a wife's petition*) No other child now living has been born to the Petitioner during the marriage (except (*state the name of any such child and his date of birth, or if it be the case, that he is of full age*)).

(6) (*Where there is a dispute whether a child is a child of the marriage*) The Petitioner alleges that is (not) a child of the marriage because (*give full particulars of the facts relied on by the Petitioner in support of his or her allegation that the child is or, as the case may be, is not, a child of the marriage*).

(7) (*Where appropriate in the case of a child who is a minor*) The said _____ was, on the _____ day of _____ 19____, placed under the supervision of the States Children Board (*or a probation officer, as the case may be*).

(8) (*Where an application is made in the petition for an order for the support of a child of whom the Respondent is not a parent*) The Respondent assumed responsibility for the maintenance of the said _____ to the following extent and for the following time namely (*give details*). There is no other person liable to maintain the said child (except _____).

(9) There have been no previous proceedings in the Bailiwick or elsewhere with reference to the marriage (or to any children of the marriage) (except *(state the nature of the proceedings, the date and effect of any decree or order and, in the case of proceedings with reference to the marriage, whether there has been any resumption or cohabitation since the making of the decree or order)*).

(10) The following (or No) agreement or arrangement has been made or is proposed to be made between the parties for the support of the Respondent (or the Petitioner) (and the said children) (namely *state details*)).

(11) (*In the case of a petition for divorce alleging only any such fact as is mentioned in sub-paragraph (e) of paragraph (1) of Article 16A of the Matrimonial Causes Law (Guernsey), 1939, as amended*) The Petitioner proposes, if a decree of divorce is granted, to make the following financial provision for the Respondent (*give details of any proposal not mentioned in paragraph (10)*) (or The Petitioner makes no proposals for financial provision for the Respondent in the event of a decree of divorce being granted).

(12) (*In the case of a petition for divorce*) The said marriage has broken down irretrievably.

(13) The Respondent has committed adultery with _____ and the Petitioner finds it intolerable to live

with the Respondent (*or* The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent) (*or* The Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of this Petition) (*or* The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of this Petition and the Respondent consents to a decree being granted) (*or* The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition) (*or, where the petition is not for divorce or judicial separation, set out the ground on which relief is sought, and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved*).

(14) The Petitioner therefore prays—

- (1) that the said marriage may be dissolved (*or as the case may be*);
- (2) that he (she) may be granted the custody of (*state name(s) of the child(ren)*);
- (3) that he (she) may be granted the following ancillary relief, namely (*state particulars of any application for ancillary relief which it is intended to claim*);

(4) *(where appropriate)* that
may be ordered to pay the cost
of this suit.

(15) The names and addresses of the
persons who are to be served with this
petition are *(give particulars, stating if
any of them is a person under
disability)*.

THIS PETITION is issued by *(Name
of Petitioner or his or her Advocate)*
of _____,
whose Address for Service is
in the Island of Guernsey.

Dated this _____ day of _____, 19 _____.

(Signed)
The Petitioner. ”;

(ii) Forms 2 and 4 are repealed and the
following Forms are respectively sub-
stituted therefor—

“ FORM 2
Rules 6 (1), 17 (6).

NOTICE OF PETITION
IN THE ROYAL COURT OF
GUERNSEY
MATRIMONIAL CAUSES
DIVISION

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

TO:—

TAKE NOTICE that a Petition for
divorce *(or as the case may be)* has
been presented to the Royal Court of
Guernsey by _____.

A copy of it and (*as the case may be*) a copy of the Petitioner's proposals regarding the children, is/are delivered with this Notice.

1. You must complete the accompanying Form of Acknowledgment of Service and send it to (the Advocate for) (*delete if not applicable*) the Petitioner, at (address).

2. If you do not intend to answer the charges, nor to be heard on the other claims made in the Petition, and if you do not wish to make any application on your own account, you need not do anything more than send the Form of Acknowledgment of Service to the above address. The Court may then, without further notice to you, proceed to hear the Petition and pronounce judgment, notwithstanding your absence.

3. If you wish to be heard on any matter in connection with the Petition you (or your Advocate) must complete the accompanying Memorandum of Appearance *in duplicate* and send or deliver *both* copies (without fee) so as to reach Her Majesty's Greffier, Royal Court House, Guernsey, within fourteen days (*or as the case may be*) after you received this Notice. You (or your Advocate) will receive notice of the case being set down for hearing. When the case is heard, you must attend the hearing if you wish to be heard.

4. (*Delete if not applicable*) If you wish to do so, you may, in addition to sending the Memorandum of Appearance, send or deliver a Statement in writing setting out your views on the proposals regarding the children, so as to reach Her Majesty's Greffier, Royal Court House, Guernsey, within fourteen days after the time allowed for sending the Memorandum of Appearance. You (or your Advocate) must at the same time send a copy of your Statement to (the Advocate for) (*delete if not applicable*) the Petitioner.

5. If the reply to Question 4 (or 7) (*delete if not applicable*) in the Memorandum of Appearance is Yes, you (or your Advocate) must, in addition to sending the Memorandum of Appearance, send or deliver an Answer in writing together with a fee of (*insert prescribed fee*) so as to reach Her Majesty's Greffier, Royal Court House, Guernsey, within fourteen days after the time allowed for sending the Memorandum of Appearance. You (or your Advocate) must at the same time send a copy of your Answer to (the Advocate for) (*delete if not applicable*) the Petitioner.

6. (*Delete or amend this paragraph as may be necessary*) If you wish to oppose the claim for contributions for support, maintenance of the children, maintenance or a secured provision, you (or your Advocate) must, in addition to sending the Memorandum of

Appearance, also send or deliver, so as to reach Her Majesty's Greffier, Royal Court House, Guernsey, within fourteen days after the time allowed for sending the Memorandum of Appearance, an affidavit (which must be sworn before a person authorised to administer oaths) giving full particulars of your property and income, together with a fee of (*insert prescribed fee*). You (or your Advocate) must at the same time send a copy of your affidavit to (the Advocate for) (*delete if not applicable*) the Petitioner. If you wish to allege that your wife has property or income you should say so in your affidavit.

7. (*Delete if not applicable*) If the reply to Question 6 in the Memorandum of Appearance is Yes, the consequences to you are that—

- (a) provided the Petitioner establishes the fact that the parties to the marriage have lived apart for two years immediately preceding the presentation of the Petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the Court is satisfied that the marriage has not broken down irretrievably;
- (b) your rights in the estate of the Petitioner will cease on the making of a Final Order on a decree of divorce;

- (c) in the case of a decree of divorce the Final Order will end the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon you being left a widow;
- (d) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances;

about these you should obtain legal advice from an Advocate.

8. (*Delete if not applicable*) If after consenting you wish to withdraw your consent you must immediately give notice in writing to Her Majesty's Greffier, Royal Court House, Guernsey, and to (the Advocate for) (*delete if not applicable*) the Petitioner.

9. (*Delete if not applicable*) The only fact on which the Petitioner relies in support of the Petition is that the parties to the marriage have lived apart for at least five years. Article 18A of the Matrimonial Causes Law (Guernsey), 1939, as amended, provides that if in such a case the Respondent applies to the Court to consider the Respondent's financial position after the divorce, a Final Order cannot be made on the decree of divorce unless the Court is satisfied that the Petitioner has made or will make proper financial provision for the Respondent, or else that the Petitioner should not be re-

quired to make any financial provision for the Respondent. Paragraph (11) (*or as the case may be*) of the Petition will tell you whether the Petitioner proposes to make any financial provision for you. It is important that you should consider this information carefully before answering Question 8 in the Memorandum of Appearance.

10. (*Delete if not applicable*) If the reply to Question 8 in the Memorandum of Appearance is Yes, you must, before a Final Order is made on the decree of divorce, make application to the Court by notice in accordance with Form 5A by sending or delivering the notice, together with a fee of (*insert prescribed fee*), to Her Majesty's Greffier, Royal Court House, Guernsey. You (or your Advocate) must at the same time send a copy of the notice to (the Advocate for) (*delete if not applicable*) the Petitioner.

11. If you intend to instruct an Advocate to act for you in these proceedings, you should at once complete and sign the Form of Acknowledgment of Service and then give him all the documents which have been served upon you, so that he may take the necessary steps on your behalf within the time specified. If you do not intend to instruct an Advocate, you should nevertheless give an address for service in the Island of Guernsey in the Memorandum of Appearance so that any documents affecting your interests

which are sent to you will in fact reach you.

Dated this day of , 19 .

(Signed)

The Petitioner

or

(Signed)

Advocate for the Petitioner.

FORM 4

Rules 6 (1), 13 (2), 13 (3), 17 (6).

MEMORANDUM OF APPEARANCE

(Respondent Spouse)

IN THE ROYAL COURT OF

GUERNSEY

MATRIMONIAL CAUSES:

DIVISION

Between A.B. Petitioner

and

C.D. Respondent

and

E.F. Co-Respondent

1. Have you received and read the Petition for divorce (*or as the case may be*) by your wife/husband (*delete whichever is not applicable*) and the Notice of Petition which are delivered with this Form?

2. On what date and at what address did you receive them?

3. Are you the person named as in the Petition?

4. Do you intend to defend the case at the hearing? (Answer "Yes" or "No".)

5. Even if you do not wish to defend the case (*to be struck out or altered if not applicable*):—

A

B

Do you wish to be heard as to other claims made in the Petition, namely:—

Do you wish to make any application on your own account, namely:—

- | | |
|----------------------------------|----------------------------------|
| (1) Costs. | (1) Access to the children. |
| (2) Custody of the children. | (2) Custody of the children. |
| (3) Maintenance of the children. | (3) Maintenance of the children. |
| (4) Contributions for support. | (4) Contributions for support. |
| (5) Maintenance. | (5) Maintenance. |
| (6) A secured provision. | |

(Answer "Yes" or "No" against each item.)

6. (*Delete if not applicable*) (*In the case of a petition alleging any such fact as is mentioned in sub-paragraph (d) of paragraph (1) of Article 16A of the Matrimonial Causes Law (Guernsey), 1939, as amended, (two years' separation and consent of the Respondent)*) Do you consent to a decree being granted? (Answer "Yes" or "No".)

7. (*Delete if not applicable*) (*In the case of a petition asking for divorce and alleging any such fact as is mentioned in sub-paragraph (e) of paragraph (1) of Article 16A of the Matri-*

monial Causes Law (Guernsey), 1939, as amended, (five years' separation))
Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage? (Answer "Yes" or "No".)

8. (*Delete if not applicable*) In the event of the grant of a decree of divorce and the Court holding that the only fact on which the Petitioner was entitled to rely in support of the Petition was any such fact as is mentioned in sub-paragraph (*d*) or sub-paragraph (*e*) of paragraph (1) of Article 16A of the Matrimonial Causes Law (Guernsey), 1939, as amended (two years' separation and the consent of the Respondent or five years' separation), do you intend to apply to the Court to consider your financial position as it will be after the divorce? (Answer "Yes" or "No".)

9. What is your Address for Service to which communications should be sent?

(It must be an address within the Island of Guernsey)

Note—If you intend to instruct an Advocate to act for you in these proceedings, give this form to him, he will sign below on your behalf *but if the answer to Question 6 is Yes, you must also sign here.*

Dated this day of , 19 .

(Signed)

The Respondent.

To be completed only by the Respondent's Advocate.

On the instructions of my/our client, enter an appearance in the terms of the above Memorandum, for the Respondent in this cause.

(Signed)
Advocate for the Respondent.

(Address for Service)

Note—If this Form is used, both copies must be completed and sent to Her Majesty's Greffier, Royal Court House, Guernsey.”;

(iii) In form 5 the words “together with a fee of 2s. 6d.” are repealed and the words “together with a fee (*insert prescribed fee*)” are substituted therefor.

2. Section four of the Matrimonial Causes (Amendment) Rules, 1973, is hereby repealed. Repeal.

3. 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 these Rules. Savings for petitions presented before these Rules came into force.

4. These Rules may be cited as the Matrimonial Causes (Amendment) (No. 2) Rules, 1973. Citation.

5. These Rules, the Matrimonial Causes (Amendment) Rules, 1973, and the principal Rules may be cited together as the Matrimonial Causes Rules, 1952 and 1973. Collective title.

Commence-
ment.

6. These Rules shall come into force on the first day of January, nineteen hundred and seventy-four.

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

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.

PRICE 18p