

## 1970 No. 1871 (L.39)

## COUNTY COURTS

## PROCEDURE

## The County Court (Amendment No. 5) Rules 1970

Made - - - 10th December 1970

Coming into Operation \_\_\_\_\_

Rules 1, 3, 6, 8(2) and (4) 1st January 1971

Rules 2, 4, 5, 7, 8(1) and (3) 1st February 1971

1.—(1) These Rules may be cited as the County Court (Amendment No. 5) Rules 1970.

(2) In these Rules an Order and Rule referred to by number means the Order and Rule so numbered in the County Court Rules 1936(a), as amended (b); "Appendix A" means Appendix A to those Rules, and a form referred to by number means the form so numbered in Appendix A.

(3) The Interpretation Act 1889(c) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

2. In Order 7, Rule 7(2), for sub-paragraphs (ii) and (iii) there shall be substituted the following sub-paragraphs:—

"(ii) whether or not the property consists of or includes a dwelling-house within the meaning of Part IV of the Administration of Justice Act 1970(d); and

(iii) the state of the account between the plaintiff and the defendant with details of—

(a) the amount of the advance,

(b) the sums payable from time to time under or in connection with the mortgage or charge,

(c) the amount of any such sums in arrear, and

(d) the amount remaining due under the mortgage or charge; and".

3. In Order 8, Rule 46(6), sub-paragraph (f) shall be omitted.

4. In Order 24, Rule 4, paragraph (2) shall be omitted and paragraph (3) shall stand as paragraph (2).

(a) S.R. & O. 1936/626 (1936 I, p. 282).

(b) The relevant amending instruments are S.R. & O. 1938/1475, S.I. 1950/1231, 1957/1136, 1958/2226, 1964/353, 1967/276, 1812, 1970/1201 (1938 I, p. 990; 1950 I, p. 400; 1957 I, p. 517; 1958 I, p. 372; 1964 I, p. 543; 1967 I, p. 990; III, p. 4840; 1970 II, p. 3984).

(c) 1889 c. 63.

(d) 1970 c. 31.

5. In Order 25, Rule 13(5), for the words “£1” there shall be substituted the words “£3”, and for the proviso there shall be substituted the following proviso :—

“Provided that no warrant shall be issued unless at the time when it is issued—

- (a) the whole or part of an instalment which has already become due remains unpaid, and
- (b) any warrant previously issued for part of the said sum of money and costs has expired or been satisfied or abandoned.”.

6. Order 45A shall be amended as follows :—

(1) For the title there shall be substituted the words “FAMILY PROVISION”.

(2) In Rule 1—

(a) the following definition shall be inserted after the definition of “the Act of 1965” :—

“‘the Act of 1970’ means the Matrimonial Proceedings and Property Act 1970(a)”, and

(b) for the definition of “the deceased” there shall be substituted the following definition :—

“‘the deceased’ means, in the case of an application under section 1 of the Act of 1938 or section 26 of the Act of 1965, the person to whose estate the application relates and, in the case of an application under section 15 of the Act of 1970, the deceased party to the agreement to which the application relates.”

(3) In Rule 2—

(a) the following paragraph shall be substituted for paragraph (1) :—

“(1) An application under section 1 of the Act of 1938, section 26 of the Act of 1965 or section 15 of the Act of 1970 shall be made by originating application in Form 370 or 370A, whichever is appropriate” ; and

(b) after paragraph (3)(b) there shall be added the following words :—

“and

(c) in the case of an application under section 15 of the Act of 1970, a copy of the agreement to which the application relates.”

(4) In Rule 3(2) after the words “the Act of 1965” there shall be inserted the words “or section 15 of the Act of 1970”.

(5) In Rule 7 after the words “the Act of 1965” there shall be inserted the words “or section 15 of the Act of 1970”.

7. The following Rule shall be added at the end of Order 46 :—

“PART IV OF THE ADMINISTRATION OF JUSTICE ACT 1970

21. Any action to which section 36 of the Administration of Justice Act 1970 applies may be heard and determined in chambers and, unless the court otherwise orders, evidence in support of or in opposition to the plaintiff’s claim may be given by affidavit.”

8. Appendix A shall be amended as follows :—

- (1) In the marginal notes to Forms 139(1) to (5) for the words “Rule 4(3)” there shall be substituted the words “Rule 4(2)”.
- (2) The following form shall be inserted after Form 370 :—

“370A

ORIGINATING APPLICATION FOR ALTERATION OF  
MAINTENANCE AGREEMENT

Order 45A,  
Rule 2(1)

[General Title—Form 1]

1. I [We], of apply to the Court for an order under section 14 of the Matrimonial Proceedings and Property Act 1970 that the agreement made on the day of 19 between [me and] who died on the day of 19 [and the respondent] should be altered so as to make different [or contain] financial arrangements.
2. A grant of probate [or letters of administration] in regard to the estate of the deceased was first taken out on the day of 19 and the personal representative[s] is [are] of [and] of [or and I am [we are] the personal representative[s]]
3. Immediately before his death the deceased was domiciled in England and Wales.
4. The deceased and I [or the Respondent] were married at on the day of 19 .
5. There is [are] [no [or state number] child[ren] of the family [namely] [state the name of each child and his date of birth or, if it be the case, that he is over 18]
6. [The agreement also makes financial arrangements for the following child[ren] namely [state the name of each child and his date of birth or, if it be the case, that he is over 18]
7. [Where any child mentioned in paragraph 5 or 6 has died since the agreement was made] The said [state name] died on the day of 19 .
8. To the best of my knowledge and belief—
  - (a) the value of the deceased’s estate net does not exceed £5,000;
  - (b) the persons or classes of persons beneficially interested in the estate and the nature of their interests are as follows:—

[or where the applicant[s] is a [are] personal representative[s]

- (a) The value of the deceased’s net estate is £
- (b) The persons or classes of persons beneficially interested in the estate are [state names and addresses of all known beneficiaries and whether any of them is under 18 or a mental patient] and the value of their interests so far ascertained is ]



I allow these Rules, Rules 1, 3, 6, 8(2) and (4) of which shall come into operation on 1st January 1971 and the remainder on 1st February 1971.

Dated 10th December 1970.

*Hailsham of St. Marylebone, C.*

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#### EXPLANATORY NOTE

*(This Note is not part of the Rules.)*

The amendments made by these Rules are largely consequential on the coming into operation of Part IV of the Administration of Justice Act 1970 (which relates to actions for possession of mortgaged property) and section 15 of the Matrimonial Proceedings and Property Act 1970 (which deals with the alteration of maintenance agreements after the death of one of the parties) (Rules 2, 4, 6, 7, 8(1), (2) and (3)). The Rules also make fresh provision for the service of county court process in the United States of America (Rule 3) and alter the conditions on which a warrant of execution may issue for part of a judgment debt (Rule 5). Four forms are re-numbered so as to distinguish them from other forms bearing the same numbers (Rule 8(4)).

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