

1974 No. 2168 (L.28)

MATRIMONIAL CAUSES
SUPREME COURT OF JUDICATURE
COUNTY COURTS

The Matrimonial Causes (Amendment) Rules 1974

<i>Made</i>	- - -	<i>17th December 1974</i>
<i>Laid before Parliament</i>		<i>6th January 1975</i>
<i>Coming into Operation</i>		<i>27th January 1975</i>

We, the authority having power to make rules of court for the purposes mentioned in section 50 of the Matrimonial Causes Act 1973(a), hereby exercise that power as follows:—

1.—(1) These Rules may be cited as the Matrimonial Causes (Amendment) Rules 1974 and shall come into operation on 27th January 1975.

(2) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1973(b).

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

2. For rule 42 there shall be substituted the following rule:—

“Hearsay and expert evidence in High Court

42.—(1) R.S.C. Order 38, rules 7, 21(1) and 36 shall not apply in relation to an undefended cause in the High Court.

(2) R.S.C. Order 38, rule 21, shall have effect in relation to a defended cause in the High Court as if—

(a) for the reference in paragraph (4) to Order 38, rule 3, there were substituted a reference to rule 39 of these Rules; and

(b) paragraph (5) were omitted.”

3. The following paragraph shall be added to rule 92:—

“(8) Unless otherwise directed, any order giving a parent custody or care and control of a child shall provide that no step (other than the institution

(a) 1973 c.18.

(b) S.I. 1973/2016 (1973 III, p.6943).

(c) 1889 c.63.

of proceedings in any court) be taken by that parent which would result in the child being known by a new surname before he or she attains the age of 18 years or, being a female, marries below that age, except with the leave of a judge or the consent in writing of the other parent.”

4. At the end of rule 106(2)(b) there shall be added the words “subject to the right of appeal conferred by C.C.R. Order 37, rule 5”.

5. For rule 115 there shall be substituted the following rule:—

“*Separate representation of children*

115.—(1) Without prejudice to rule 72, if in any matrimonial proceedings it appears to the court that any child ought to be separately represented, the court may appoint—

- (a) the Official Solicitor, or
- (b) some other proper person,

(provided, in either case, that he consents) to be the guardian *ad litem* of the child, with authority to take part in the proceedings on the child’s behalf.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of a party to the proceedings or of the proposed guardian *ad litem*.

(3) The court may at any time direct that an application be made by a party for an order under paragraph (1) and may stay the proceedings until the application has been made.

(4) Unless otherwise directed, on making an application for an order under paragraph (1) the applicant shall—

- (a) unless he is the proposed guardian *ad litem*, file a written consent by the proposed guardian to act as such;
- (b) unless the proposed guardian *ad litem* is the Official Solicitor, file a certificate by a solicitor that the proposed guardian has no interest in the proceedings adverse to that of the child and that he is a proper person to be guardian.

(5) Unless otherwise directed, a person appointed under this rule or rule 72 to be the guardian *ad litem* of a child in any matrimonial proceedings shall be treated as a party for the purpose of any provision of these Rules requiring a document to be served on or notice to be given to a party to the proceedings.”

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6. In rule 130(1) after the words "Queen's Proctor" there shall be inserted the words "or a person appointed under rule 72 or 115 to be the guardian *ad litem* of a child in any matrimonial proceedings".

Dated 17th December 1974.

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EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules amend the Matrimonial Causes Rules 1973 so as (1) to provide for the admission of hearsay and expert evidence in causes pending in the High Court (rule 2); (2) to ensure that a parent who is given custody or care and control of a child does not change the child's surname without the leave of a judge or the written consent of the other parent (rule 3); (3) to clarify the right of appeal from the decision of a registrar of the divorce registry on an application under section 17 of the Married Woman's Property Act 1882 (c. 75) which is treated as pending in a county court (rule 4), and (4) to extend the court's power to require the separate representation of children in matrimonial proceedings (rules 5 and 6).

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