

1988 No. 226

**MATRIMONIAL CAUSES
SUPREME COURT OF ENGLAND AND WALES
COUNTY COURTS**

The Matrimonial Causes (Amendment) Rules 1988

Made - - - - - *12th February 1988*

Laid before Parliament *25th February 1988*

Coming into force *4th April 1988*

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 1988.

(2) These Rules shall come into force on 4th April 1988.

(3) In these Rules a rule referred to by number means the rule so numbered in the Matrimonial Causes Rules 1977(b).

2. Rule 2(2) shall be amended by the insertion before the words “ancillary relief” of the words “‘the Act of 1986’ means the Family Law Act 1986’(c).

3. Rule 12(1) shall be amended by substituting for the words “rule 109 or 110”, the words “rule 109, 109A, 110 or 110A”.

4. Rule 53(6) shall be amended by substituting for the words “or the Queen’s Proctor” the words “, the Queen’s Proctor or, where a declaration of parentage has been made under section 56(1)(a) of the Act of 1986, the Registrar General”.

5. For rule 109 there shall be substituted the following rule-

“Application under section 55 of the Act of 1986 for declaration as to marital status

109.—(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;

(a) 1973 c.18.

(b) S.I. 1977/344. There are no relevant amending instruments.

(c) 1986 c.55.

- (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 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(a);

and 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 and 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.”

6. After rule 109 the following rule shall be inserted—

(a) 1973 c.45.

“Application under section 56(1)(a) of the Act of 1986 for declaration of parentage

109A.—(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;
- (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 his 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 the 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 when they were begun,
 - (iii) the names of the parties,
 - (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 secretary of the divorce 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 26 and the petition.”.

7. For rule 110 there shall be substituted the following rule—

“Application under section 56(1)(b) and (2) of the Act of 1986 for a declaration of legitimacy or legitimation

110.—(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.”.

8. After rule 110 the following rule shall be inserted—

“Application under section 57 of the Act of 1986 for declaration as to an adoption effected overseas

110A.—(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(a);
or

(a) 1976 c.36.

(b) those whom the petitioner claims are not his adoptive parents for the purposes of that section.”.

9. For rule 111 there shall be substituted the following rule—

“General provisions as to proceedings under rules 109, 109A, 110 and 110A

111.—(1) The petition 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 registrar shall send a copy of any answer to the Attorney General if he has notified the registrar 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 registrar 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 matrimonial proceedings referred to in the 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 25, 26, 27 and 28.

(12) Subject to rules 109, 109A, 110 and 110A and this rule, these Rules shall, so far as applicable, apply, with the necessary modifications, to the proceedings as if they were a cause.”.

10. Rule 130(2) shall be amended by substituting for the words “rules 48(3) and 95(3)”, the words “rules 48(3), 95(3) and 111(10)”.

11. After Form 24 in Appendix 1 there shall be inserted the following—

DECLARATION AS TO MARITAL STATUS UNDER SECTION 55 OF THE FAMILY LAW ACT 1986

(Heading as in matter)

Upon the petition of (the petitioner) and upon hearing (the petitioner) and upon hearing (the respondent):

It is declared* that the marriage between and was a valid marriage at its inception, namely the day of 19 .

Dated

* or, where a declaration is made under section 55(1)(b) of the Family Law Act 1986, the following form shall be followed:-

... that the marriage between and subsisted on day of 19 .

* or, when a declaration is made under section 55(1)(c) of the Family Law Act 1986, the following form shall be followed:-

... that the marriage between and did not subsist on day of 19 .

* or, when a declaration is made under section 55(1)(d) of the Family Law Act 1986, the following form shall be followed:-

... that the divorce, [or annulment or legal separation] in respect of and (parties to the marriage) obtained on day of 19 in (the country where the divorce, annulment or legal separation was obtained) is entitled to recognition in England and Wales.

* or, when a declaration is made under section 55(1)(e) of the Family Law Act 1986, the following form shall be followed:-

... that the divorce, [or annulment or legal separation] in respect of and (parties to the marriage) obtained on day of 19 in (the country where the divorce, annulment or legal separation was obtained) is not entitled to recognition in England and Wales.

DECLARATION AS TO PARENTAGE UNDER SECTION 56(1)(a) OF THE FAMILY
LAW ACT 1986

(Heading as in matter)

Upon the petition of *(the petitioner)* and upon hearing
(the petitioner) and upon hearing *(the respondent):*

It is declared that *(the parent of the petitioner)* is [or was] the parent of the
said *,* the petitioner.

Dated

DECLARATION AS TO LEGITIMACY OR LEGITIMATION UNDER SECTION 56(1)(b)
and (2) OF THE FAMILY LAW ACT 1986

(Heading as in matter)

Upon the petition of (the petitioner) and upon hearing (the respondent):

It is declared* that and (the petitioner's parents) were lawfully married at on the day of 19, and that the said the petitioner, born at on the day of 19, is the lawful child of his parents the said and, [or, where the petitioner was born before such marriage, and that by the said marriage the said, the petitioner, was [or was not] legitimated for the purposes of the Legitimacy Act 1926 as from 1st day of January 1927, the date of the commencement of the said Act [or from the date of the said marriage], [or, where section 1 of the Legitimacy Act 1959 applies, as from the date of the commencement of the Legitimacy Act 1959, the 29th day of October 1959 [or as from the day of 19, the date of the said marriage) (whichever is the later date), [or, where section 2 of the Legitimacy Act 1976 applies, as from the date of the marriage]].

Dated

* or, where section 1 of the Legitimacy Act 1976 applies, the following form shall be followed:-

... that, the said petitioner, born on the day of 19 at, the child of and who entered into a form of ceremony of marriage at on the day of 19, is [or is not] by virtue of section 2 of the Legitimacy Act 1959 to be treated as a legitimate child of the said and.

* or, where section 3 of the Legitimacy Act 1976 applies, the following form shall be followed:-

... that, because, the father of, the said petitioner, was [or was not] domiciled in at the date of his marriage with, then, spinster, and that the requirements (country of domicile) law as to the legitimation of a person, born out of wedlock, by the subsequent marriage of the parents of such a person had [or had not] been complied with, then by virtue of section 3 of the Legitimacy Act 1976, the said and (formerly, spinster) were [or were not] lawfully married at on the day of 19, and that the said, petitioner, born at on the day of 19, is [or is not] the lawful child of his parents, the said and that, by the said marriage, the said (petitioner) was [or was not] legitimated for the purpose of the Legitimacy Act 1976 as from the date of the said marriage.

* or, where there has been a legitimation (whether or not by virtue of the subsequent marriage of the petitioner's parents) which is recognised by the law of England and Wales and effected under the law of any other country, the following form shall be followed:-

... that, because, the father of, the said petitioner, was [or was not] domiciled in, at the date of his marriage with, then, spinster, and that the requirements (country of domicile) law as to the legitimation of a person, born out of wedlock, by the subsequent marriage of the parents of such a person had [or had not] been complied with, then by virtue of the law of England and Wales, that the said and (formerly, spinster) were [or were not] lawfully married at on the day of 19, and that the said, petitioner, born at on the day of 19, is [or is not] the lawful child of his parents, the said and that, by the said marriage, the said (petitioner) was [or was not] legitimated for the purpose of the law of England and Wales as from the date of the said marriage.

DECLARATION AS TO AN ADOPTION EFFECTED OVERSEAS UNDER SECTION 57
OF THE FAMILY LAW ACT 1986

(Heading as in matter)

Upon the petition of _____ *(the petitioner)* and upon hearing
(the petitioner) and upon hearing _____ *(the respondent):*

It is declared* that, because the said _____, the petitioner was [or was not] adopted for the purposes of section 72(2) of the Adoption Act 1976 on the _____ day of _____ 19____, in _____ *(country where the adoption took place or did not take place)* by _____ *(the actual or alleged adoptive parent)*, then for the purposes of section 39 of the Adoption Act 1976 the said _____, the petitioner, is [or is not] the adopted child of the said _____ *(the actual or alleged adoptive parent)*.

Dated

* *or, where the adoption is or is not recognised by the law of England and Wales and was or was not effected under the law of any country outside the British Islands, the following form shall be followed:-*

... that, because the said _____, the petitioner was [or was not] adopted for the purposes of being recognized under the law of England and Wales on the _____ day of _____ 19____, in _____ *(country where the adoption took place or did not take place)* by _____ *(the actual or alleged adoptive parent)*, then for the purposes of section 39 of the Adoption Act 1976 the said _____, the petitioner, is [or is not] the adopted child of the said _____ *(the actual or alleged adoptive parent)*."

12. In Appendix 2 paragraph 1 shall be amended by substituting for the words "rule 109 or 110" the words "rule 109, 109A, 110 or 110A".

Dated 12th February 1988

*Mackay of Clashfern, C.
Stephen Brown, P.
Anthony Ewbank, J.
Harold Wilson,
Joyanne Bracewell,
B. P. Tickle,
Roger Bird,
T. A. C. Coningsby,
Eleanor F. Platt,
Henry Hodge,
M. J. W. Churchouse.*

EXPLANATORY NOTE

(This Note is not part of the Rules)

The Entry into force of Part III of the Family Law Act 1986 (c.55) establishes a new statutory code to determine declaratory relief in matters of status, that is to say, declarations as to matrimonial status, parentage, legitimacy, legitimation and adoptions effected overseas. Provision is also made in Part III as to who should be able to apply for such relief and for procedural safeguards including the power for the Attorney General to intervene in applications for these declarations.

These Rules revoke the provisions of the Matrimonial Causes Rules 1977 which previously laid down the procedure in relation to declarations as to matrimonial status, legitimacy and legitimation. They establish a new procedure in relation to the declarations provided under Part III, including requirements that petitions for these declarations contain specified items of information, that particular documents be annexed to such petitions, and that certain persons be parties to applications for these declarations. These Rules also provide that notice of such applications be sent to the Attorney General. Finally, provision is made for these declarations to be in prescribed forms.

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