
STATUTORY INSTRUMENTS

1991 No. 1247

The Family Proceedings Rules 1991

PART III

OTHER MATRIMONIAL ETC PROCEEDINGS

Application in case of failure to provide reasonable maintenance

3.1.—(1) Every application under section 27 of the Act of 1973(1) shall be made by originating application in Form M19.

(2) The application may be made to any divorce county court and there shall be filed with the application an affidavit by the applicant and also a copy of the application and of the affidavit for service on the respondent.

(3) The affidavit shall state—

- (a) the same particulars regarding the marriage, the court's jurisdiction, the children and the previous proceedings as are required in the case of a petition by sub-paragraphs (a), (c), (d), (f) and (i) of paragraph 1 of Appendix 2;
- (b) particulars of the respondent's failure to provide reasonable maintenance for the applicant, or, as the case may be, of the respondent's failure to provide, or to make a proper contribution towards, reasonable maintenance for the children of the family; and
- (c) full particulars of the applicant's property and income and of the respondent's property and income, so far as may be known to the applicant.

(4) A copy of the application and of the affidavit referred to in paragraph (2) shall be served on the respondent, together with a notice in Form M20 with Form M6.

(5) Subject to paragraph (6), the respondent shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit stating—

- (a) whether the alleged failure to provide, or to make proper contribution towards, reasonable maintenance is admitted or denied, and, if denied, the grounds on which he relies;
- (b) any allegation which he wishes to make against the applicant; and
- (c) full particulars of his property and income, unless otherwise directed.

(6) Where the respondent challenges the jurisdiction of the court to hear the application he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit setting out the grounds of the challenge; and the obligation to file an affidavit under paragraph (5) shall not arise until 14 days after the question of jurisdiction has been determined and the court has decided that the necessary jurisdiction exists.

(1) Section 27 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), sections 6(1), the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 89 and Schedule 3, the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 4 and 46(1) and Schedule 1, paragraph 12 and the Family Law Reform Act 1987 (c. 42), Schedule 2, paragraph 52.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) Where the respondent's affidavit contains an allegation of adultery or of an improper association with a person named, the provisions of rule 2.60 (which deal with service on, and intervention by, a named person) shall apply.

(8) If the respondent does not file an affidavit in accordance with paragraph (5), the court may order him to file an affidavit containing full particulars of his property and income, and in that case the respondent shall serve a copy of any such affidavit on the applicant.

(9) Within 14 days after being served with a copy of any affidavit filed by the respondent, the applicant may file a further affidavit as to means and as to any fact in the respondent's affidavit which is disputed, and in that case the applicant shall serve a copy on the respondent.

No further affidavit shall be filed without leave.

(10) Rules 2.61 to 2.66 and rule 10.10 shall apply, with such modifications as may be appropriate, to an application for an order under section 27 of the Act of 1973 as if the application were an application for ancillary relief.