

PART 2

MATRIMONIAL PROCEEDINGS

**5. Application of Part 2**

This Part applies —

- (a) to matrimonial proceedings, and
- (b) for specifying the procedure for complying with the requirements of section 25 of the Act (restriction on orders affecting children).

*Commencement etc of matrimonial proceedings*

**6. Matrimonial proceedings to be begun by application**

(1) All matrimonial proceedings shall be begun by an application (an "initial application") in Form 2.

(2) Unless otherwise directed, every initial application shall contain the information required by Schedule 2.

(3) Where an application for a divorce order, annulment order or separation order discloses that there is a minor child of the family who is —

- (a) under 16 or
- (b) over that age and receiving instruction at an educational establishment or undergoing training for a trade or profession,

the initial application shall be accompanied by a statement, signed by the applicant personally and if possible agreed with the respondent, containing the information required by Form 3, to which shall be attached a copy of any medical report mentioned in it.

**7. Applicant relying on section 11 or 12 of the Civil Evidence Act 1973**

(1) A applicant who, in reliance on section 11 or 12 of the Civil Evidence Act 1973<sup>12</sup>, intends to adduce evidence that a person —

- (a) was convicted of an offence by or before a court in the British Islands or by a court-martial there or elsewhere, or
- (b) was found guilty of adultery in matrimonial proceedings, or
- (c) was found or adjudged to be the father of a child in affiliation proceedings before a court in the British Islands,

must include in his initial application a statement of his intention with particulars of —

- (i) the conviction, finding or adjudication and the date of it,
- (ii) the court or court-martial which made the conviction, finding or adjudication and, in the case of a finding or adjudication, the proceedings in which it was made, and

---

<sup>12</sup> 1973 c.18

- (iii) the issue in the proceedings to which the conviction, finding or adjudication is relevant.

(2) In this rule "matrimonial proceedings", "relevant proceedings" and "affiliation proceedings" have the same meanings as in the said section 12.

#### **8. Signing of initial application**

Every initial application shall be signed by the applicant's advocate in his own name or the name of his firm, or by the applicant if he sues in person.

#### **9. Making of initial application**

(1) Unless otherwise directed on an application made *ex parte*, a certificate of the marriage to which the proceedings relate shall be filed with the initial application.

(2) Where an advocate is acting for a applicant for a divorce order or separation order, a certificate in Form 4 shall be filed with the initial application, unless otherwise directed on an application made *ex parte*.

(3) Where there is before the Court an initial application which has not been dismissed or otherwise disposed of by a final order, another application by the same applicant in respect of the same marriage shall not be made without leave granted on an application made in the pending proceedings:

Provided that no such leave shall be required where it is proposed, after the expiration of the period of one year from the date of the marriage, to make an application for a divorce order alleging such of the facts mentioned in section 2(2) of the Act as were alleged in an application for a separation order made before the expiration of that period.

(4) The initial application shall be made by filing it, together with any statement and report required by rule 6(3), with as many copies of the application as there are persons to be served and a copy of the statement and report required by rule 6(3) for service on the respondent.

(5) There shall be annexed to every copy of the application for service a notice in Form 5 with Form 6 attached, and there shall also be annexed to the copy application for service on a respondent the copy of any statement and report filed pursuant to paragraph (4).

#### **10. Parties**

(1) Subject to paragraph (2), where an initial application alleges that the respondent has committed adultery, the person with whom the adultery is alleged to have been committed shall be made a co-respondent in the proceedings unless —

- (a) that person is not named in the application, or
- (b) the Court otherwise directs.

(2) Where an initial application alleges that the respondent has been guilty of rape upon a person named, then, notwithstanding anything in paragraph (1), that person shall not be made a co-respondent in the proceedings unless the Court so directs.

(3) Where an initial application alleges that the respondent has been guilty of an improper association (other than adultery) with a person named, the Court may direct that the person named be made co-respondent in the proceedings, and for that purpose the Court may give notice to the applicant and to any other party who has given notice of intention to defend of a date, time and place at which the Court will consider giving such a direction.

(4) An application for directions under paragraph (1) may be made *ex parte* if no notice of intention to defend has been given.

(5) Paragraphs (1) and (3) do not apply where the person named has died before the filing of the application.

## **11. Discontinuance of proceedings before service of application**

Before an initial application is served on any person, the applicant may file a notice of discontinuance and the proceedings shall thereupon stand dismissed.

*Service of application etc.*

## **12. Service of initial application**

(1) Subject to the provisions of this rule and rules 88 and 90, a copy of every initial application shall be served personally or by post on every respondent or co-respondent.

(2) Service may be effected —

- (a) where the party to be served is a person under disability within the meaning of rule 89, through the applicant, and
- (b) in any other case, through the Court or, if the applicant so requests, through the applicant.

(3) Personal service shall in no case be effected by the applicant himself.

(4) For the purposes of paragraphs (1) to (3), a copy of an initial application shall be deemed to be duly served if —

- (a) an acknowledgement of service in Form 6 is signed by the party to be served or by an advocate on his behalf and is returned to the General Registry, and
- (b) where the form purports to be signed by the respondent, his signature is proved at the hearing or, where the proceedings are undefended, in the affidavit filed by the applicant under rule 26(3).

(5) Where a copy of an initial application has been sent to a party and no acknowledgement of service has been returned to the General Registry, a Deemster, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him.

(6) Where a copy of an initial application has been served on a party personally and no acknowledgement of service has been returned to the General Registry, service shall be proved by filing an affidavit of service showing, in the case of a respondent, the server's means of knowledge of the identity of the party served.

(7) Paragraph (6) does not apply in cases where —

- (a) the application alleges 2 years' separation coupled with the respondent's consent to an order being made, and
- (b) none of the other facts mentioned in section 2(2) of the Act is alleged,

unless the applicant produces to the Court a written statement containing the respondent's consent to the making of an order.

(8) Where an acknowledgement of service is returned to the General Registry, the Chief Registrar shall send a photocopy of it to the applicant.

(9) An application for leave to substitute some other mode of service for the modes of service prescribed by paragraph (1) or to substitute notice of the proceedings by advertisement or otherwise, shall be made *ex parte* by filing an affidavit setting out the grounds on which the application is made; and the form of any advertisement shall be settled by the Chief Registrar:

Provided that no order giving leave to substitute notice of the proceedings by advertisement shall be made unless it appears to the Court that there is a reasonable probability that the advertisement will come to the knowledge of the person concerned.

(10) Where in the opinion of the Court it is impracticable to serve a party in accordance with any of the foregoing paragraphs or it is otherwise necessary or expedient to dispense with service of a copy of an initial application on the respondent or on any other person, the Court may make an order dispensing with such service.

An application for an order under this paragraph shall be made in the first instance *ex parte* by filing an affidavit setting out the grounds of the application, but the Court may, if it thinks fit, require the attendance of the applicant on the application.

### **13. Consent to making of order**

(1) Where, before the hearing of an application alleging 2 years' separation coupled with the respondent's consent to an order being made, the respondent wishes to indicate to the court that he consents to the making of an order, he shall do so by filing a notice to that effect signed by the respondent personally.

For the purposes of this paragraph an acknowledgement of service containing a statement that the respondent consents to the making of an order shall be treated as such a notice if the acknowledgement is signed —

- (a) in the case of a respondent acting in person, by the respondent, or
- (b) in the case of a respondent represented by an advocate, by the respondent as well as by the advocate.

(2) A respondent to an application which alleges any such fact as is mentioned in paragraph (1) may give notice to the Court either that he does not consent to an order being made or that he withdraws any consent which he has already given. Where any such notice is given and none of the other facts mentioned in section 2(2) of the Act is alleged, the proceedings on the application shall be stayed and the Chief Registrar shall thereupon give notice of the stay to all parties.

*Pleadings and amendment*

**14. Supplemental application and amendment of application**

- (1) Subject to rule 17 —
  - (a) a supplemental application may be made without leave at any time before an answer is filed but thereafter only with leave; and
  - (b) an initial application may be amended without leave at any time before an answer is filed but thereafter only with leave.
- (2) Subject to paragraph (3) an application for leave under this rule —
  - (a) may, if every opposite party consents in writing to the supplemental application being made or the initial application being amended, be made by filing in the General Registry the supplemental application or a copy of the initial application as proposed to be amended; and
  - (b) shall, in any other case, be made on notice to be served, unless otherwise directed, on every opposite party.
- (3) The Court may, if it thinks fit, require an application for leave to be supported by an affidavit.
- (4) An order granting leave shall —
  - (a) where any party has given notice of intention to defend, fix the time within which his answer must be filed or amended;
  - (b) where the order is made after directions for trial have been given, provide for a stay of the hearing until after the directions have been renewed.
- (5) An amendment authorised to be made under this rule shall be made by filing a copy of the amended application.
- (6) Rules 8 and 10 apply to a supplemental or amended application as they apply to the initial application.
- (7) Unless otherwise directed, a copy of a supplemental or amended application, together with a copy of the order (if any) made under this rule shall be served on every respondent and co-respondent named in the initial application or in the supplemental or amended application.
- (8) The applicant shall file the documents required by paragraph (7) to be served on any person and thereupon, unless otherwise directed, rules 9(5) and 12 shall apply in relation to that person as they apply in relation to a person required to be served with an initial application.

**15. Filing of answer to application**

- (1) Subject to paragraph (2) and to rules 13, 17 and 35, a respondent or co-respondent who —
  - (a) wishes to defend the initial application or to dispute any of the facts alleged in it,

- (b) being the respondent wishes to make in the proceedings any charge against the applicant in respect of which the respondent applies for relief, or
- (c) being the respondent to an application to which section 6(1) of the Act applies, wishes to oppose the making of an order on the ground mentioned in that subsection,

shall, within 21 days after the expiration of the time limited for giving notice of intention to defend, file an answer to the application.

(2) An answer may be filed even though the person filing the answer has not given notice of intention to defend.

(3) Any reference in these rules to a person who has given notice of intention to defend shall be construed as including a reference to a person who has filed an answer without giving notice of intention to defend.

(4) Where in proceedings in which relief is sought under section 13(d) of the Act the respondent files an answer containing no more than a simple denial of the facts stated in the application, he shall, if he intends to rebut the charges in the application, give the Court notice to that effect when filing his answer.

#### **16. Filing of reply and subsequent pleadings**

(1) A applicant may file a reply to an answer within 14 days after he has received a copy of the answer pursuant to rule 20.

(2) If the applicant does not file a reply to an answer, he shall, unless the answer applies for a divorce order, annulment order or separation order, be deemed, on making a request for directions for trial, to have denied every material allegation of fact made in the answer.

(3) No pleading subsequent to a reply shall be filed without leave.

#### **17. Filing and amendment of pleadings after directions for trial**

(1) No pleading shall be filed or amended without leave after directions for trial have been given.

(2) Rules 4, 5 and 11 of Order 47 of the Rules of Court (which restrict the service and amendment of pleadings in the long vacation) do not apply to proceedings to which this Part applies.

#### **18. Contents of answer and subsequent pleadings**

(1) Where an answer, reply or subsequent pleading contains more than a simple denial of the facts stated in the initial application, answer or reply, as the case may be, the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and, if the pleading is filed by the husband or wife, it shall, in relation to those facts, contain the information required in the case of an initial application by paragraph 1(k) of Schedule 2.

(2) Unless otherwise directed, an answer by a husband or wife who disputes any statement required by paragraphs 1(f), (g) and (h) of Schedule 2 to be included in the initial application shall contain full particulars of the facts relied on.

(3) Paragraph 4(a) of Schedule 2, where appropriate, applies with any necessary modifications to a respondent's answer as it applies to an initial application:

Provided that it shall not be necessary to include in the answer any claim for costs against the applicant.

(4) Where an answer to an initial application contains an application for relief, it shall contain the information required by paragraph 1(j) of Schedule 2 in the case of the initial application in so far as it has not been given by the applicant.

(5) Where a party's pleading includes such a statement as is mentioned in rule 7, then if the opposite party —

- (a) denies the conviction, finding or adjudication to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

(6) Rules 7 and 8 apply, with any necessary modifications, to a pleading other than an initial application as they apply to an initial application.

#### **19. Allegation against third person in pleading**

(1) Rules 10 and 12 apply, with any necessary modifications, to a pleading other than an application as they apply to an application, except that for the references in those rules to a co-respondent there shall be substituted references to a party cited.

(2) Rule 15 applies, with any necessary modifications, to a party cited as it applies to a co-respondent.

#### **20. Service of pleadings**

A party who files an answer, reply or subsequent pleading shall at the same time file a copy for service on every opposite party, and thereupon the Chief Registrar shall annex to every copy for service on a party cited in the pleading a notice in Form 5 with Form 6 attached and shall send a copy to every other opposite party.

#### **21. Supplemental answer and amendment of pleadings**

Rule 14 applies, with any necessary modifications, to the filing of a supplemental answer, and the amendment of a pleading or other document not being an application, as it applies to the filing of a supplemental application and the amendment of an application.

#### **22. Particulars**

(1) A party on whom a pleading has been served may in writing request the party whose pleading it is to give particulars of any allegation or other matter pleaded and, if that party fails to give the particulars within a reasonable time, the party requiring them may apply for an order that the particulars be given.

(2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

(3) A party giving particulars, whether in pursuance of an order or otherwise, shall at the same time file a copy of them.

*Preparations for trial*

**23. Discovery in defended proceedings**

(1) Order 23 of the Rules of Court (discovery and inspection of documents) apply to defended proceedings as it applies to an action, with the following modifications —

- (a) omit the second paragraph of rule 2(1) and rules 2(2) to (4) and 6,
- (b) in rule 2(7), for "the cause or matter is set down for hearing" substitute "directions for trial are given",
- (c) in rule 16(1), omit the words from "including" onwards, and
- (d) omit rule 19 and, in rule 23(1), the words from "including" onwards.

(2) For the purposes of Order 23 rule 2(1) as applied by paragraph (1), pleadings shall be deemed to be closed at the expiration of 14 days after service of the answer, and are deemed to be closed then notwithstanding that any request or order for particulars previously made has not been complied with.

(3) The applicant and any party who has filed an answer shall be entitled to have a copy of any list of documents served on any other party under Order 23 as applied by paragraph (1), and such copy shall, on request, be supplied to him free of charge by the party who served the list.

In this paragraph "list of documents" includes an affidavit verifying the list.

(4) A copy of the proposed interrogatories shall be filed when the motion for an order under Order 23 rule 18 is filed.

**24. Medical examination in proceedings for annulment**

(1) In proceedings for an annulment order on the ground of incapacity to consummate the marriage the applicant shall, subject to paragraph (2), apply to the Court to determine whether medical inspectors should be appointed to examine the parties.

(2) An application under paragraph (1) shall not be made in undefended proceedings —

- (a) if the husband is the applicant, or
- (b) if the wife is the applicant and
  - (i) it appears from the initial application that she was either a widow or divorced at the time of the marriage in question, or
  - (ii) it appears from the initial application or otherwise that she has borne a child, or
  - (iii) a statement by the wife that she is not a virgin is filed;

unless, in any such case, the applicant is alleging his or her own incapacity.

(3) References in paragraphs (1) and (2) to the applicant shall, where the matter is proceeding only on the respondent's answer or where the allegation of

incapacity is made only in the respondent's answer, be construed as references to the respondent.

- (4) An application under paragraph (1) by the applicant shall be made —
  - (a) where the respondent has not given notice of intention to defend, after the time limited for giving the notice has expired;
  - (b) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his answer or, if he has filed an answer, after it has been filed;

and an application under paragraph (1) by the respondent shall be made after he has filed an answer.

(5) Where the party required to make an application under paragraph (1) fails to do so within a reasonable time, the other party may, if he is prosecuting or defending the proceedings, make an application under that paragraph.

(6) In proceedings for an annulment order on the ground that the marriage has not been consummated owing to the wilful refusal of the respondent, either party may apply to the Court for the appointment of medical inspectors to examine the parties.

(7) If the respondent has not given notice of intention to defend, an application by the applicant under paragraph (1) or (6) may be made *ex parte*.

(8) If the Court on an application under paragraph (1) or (6) considers it expedient to do so, it shall appoint a medical inspector or, if it thinks it necessary, 2 medical inspectors to examine the parties and report to the Court the result of the examination.

(9) At the hearing of any such proceedings as are referred to in paragraph (1) the Court may, if it thinks fit, appoint a medical inspector or 2 medical inspectors to examine any party who has not been examined or to examine further any party who has been examined.

(10) The party on whose application an order under paragraph (8) is made or who has the conduct of proceedings in which an order under paragraph (9) has been made for the examination of the other party, shall serve on the other party notice of the date, time and place appointed for his or her examination.

## **25. Conduct of medical examination**

(1) Every medical examination under rule 24 shall be held at the consulting room of the medical inspector or, as the case may be, of one of the medical inspectors appointed to conduct the examination:

Provided that the Court may, on the application of a party, direct that the examination of that party shall be held at such other place as the Court thinks convenient.

(2) Every party presenting himself for examination shall sign, in the presence of the inspector or inspectors, a statement that he is the person referred to as the applicant or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the inspector or inspectors shall certify on the statement that it was signed in his or their presence by the person who has been examined.

(3) Every report made in pursuance of rule 24 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.

(4) In undefended proceedings it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial unless so directed.

(5) In defended proceedings, if the report made in pursuance of rule 24 is accepted by both parties, notice to that effect shall be given by the parties to the Court and to the inspector or inspectors not less than 7 clear days before the date fixed for the trial; and where such notice is given, it shall not be necessary for the inspector or inspectors to attend and give evidence at the trial.

(6) Where pursuant to paragraphs (4) or (5) the evidence of the inspector or inspectors is not given at the trial, his or their report shall be treated as information furnished to the Court by a court expert and be given such weight as the court thinks fit.

## **26. Directions for trial**

(1) On the written request of the applicant or of any party who is defending proceedings begun by an initial application, the Court shall give directions for the trial of the proceedings if it is satisfied—

- (a) that a copy of the application (including any supplemental or amended application) and any subsequent pleading has been duly served on every party required to be served and, where that party is a person under disability, that any affidavit required by rule 90(2) has been filed;
- (b) if no notice of intention to defend has been given by any party entitled to give it, that the time limited for giving such notice has expired;
- (c) if notice of intention to defend has been given by any party, that the time allowed him for filing an answer has expired;
- (d) if an answer has been filed, that the time allowed for filing any subsequent pleading has expired;
- (e) in proceedings for annulment —
  - (i) that any application required by rule 24(1) has been made, and
  - (ii) where an order for the examination of the parties has been made on an application under rule 24, that the notice required by paragraph (10) of that rule has been served and that the report of the inspector or inspectors has been filed.

(3) Where the proceedings are undefended proceedings for divorce or separation and, in a case to which section 2(2)(d) of the Act applies, the respondent has filed a notice under rule 13(1) that he consents to the making of an order, then, unless otherwise directed there shall be filed with the request for directions for trial an affidavit by the applicant—

- (a) containing the information required by Form 7(a), (b), (c), (d), or (e) as near as may be in the order there set out, together with any corroborative evidence on which the applicant intends to rely, and

- (b) verifying, with such amendments as the circumstances may require, the contents of any statement of arrangements filed by the applicant under rule 6(3),

and the Chief Registrar shall give directions for trial by entering the proceedings in a list to be known as "the special procedure list".

(4) In the case of defended proceedings a Deemster may treat the request for directions for trial as an application for directions so as to enable him to give such directions with regard to—

- (a) the future course of the proceedings,
- (b) any application made therein for financial provision or for an order relating to a child, and
- (c) the provision of evidence relating to the arrangements or proposed arrangements for the children of the family,

as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the proceedings; and the Chief Registrar shall give the parties notice of a date, time and place at which the request will be considered.

(5) In any other case the Chief Registrar shall give directions for trial by setting the proceedings down for trial and giving notice that he has done so to every party to the proceedings.

(6) Except where evidence has been provided under paragraph (3)(b), directions for trial under this rule shall, unless the Chief Registrar orders otherwise, include a direction to the applicant to file an affidavit verifying, with such amendments as the circumstances may require, the contents of any statement of arrangements filed by the applicant under rule 6(3).

(7) In the case of undefended proceedings on the respondent's answer, paragraphs (3) and (6) shall have effect as if for the references to the applicant and respondent there were substituted references to the respondent and the applicant respectively.

## **27. Determination of place of trial**

(1) Directions for trial shall determine the place of trial.

(2) Directions determining the place of trial of any proceedings may be varied by the Chief Registrar of his own motion or on the application of any party to the proceedings.

## **28. Directions as to allegations under section 2(2)(b) of Act**

(1) Where in defended proceedings the applicant alleges that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, a Deemster may, of his own motion on giving directions for trial or on the application of any party made at any time before the trial, order or authorise the party who has made the request for or obtained such directions to file a schedule of the allegations and counter-allegations made in the pleadings or particulars.

(2) Where such an order is made or authority given, the allegations and counter-allegations shall, unless otherwise directed, be listed concisely in

chronological order, each counter-allegation being set out against the allegation to which it relates, and the party filing the schedule shall serve a copy of it on any other party to the proceedings who has filed a pleading.

**29. Stay under Schedule 1 to the Act**

(1) An application to the Court by the applicant or respondent in proceedings for divorce for an order under paragraph 3 (obligatory stay) or paragraph 4 (discretionary stay) of Schedule 1 to the Act shall be made to the Chief Registrar.

(2) Where, on giving directions for trial —

(a) it appears to the Chief Registrar from any information given pursuant to paragraph 1(j) of Schedule 2 or rule 18(4) or paragraph (4) that any proceedings which are in respect of the marriage in question or which are capable of affecting its validity or subsistence are continuing in another jurisdiction, and

(b) he considers that the question whether the proceedings on the application should be stayed under paragraph 3 of Schedule 1 to the Act ought to be determined by the Court,

he shall fix a date, time and place for the consideration of that question by a Deemster and give notice of it to all parties.

In this paragraph "proceedings continuing in another jurisdiction" has the same meaning as in paragraph 1(j) of Schedule 2.

(3) Any party who makes a request for directions for trial in matrimonial proceedings within the meaning of Schedule 1 to the Act shall, if there has been a change in the information given pursuant to paragraph 1(j) of Schedule 2 and rule 18(4), file a statement giving particulars of the change.

(4) An application by a party to the proceedings for an order under paragraph 5 (revocation of stay) of Schedule 1 to the Act shall be made to the Chief Registrar.

(5) An application by a party to the proceedings for an order under paragraph 10 of Schedule 1 may be made to a Deemster as if the application were an application for financial provision.

*Evidence*

**30. Evidence at trial**

(1) Subject to the provisions of this rule and rules 34 and 94 and of the Civil Evidence Act 1973 and any other enactment, any fact required to be proved by the evidence of witnesses at the trial of matrimonial proceedings shall be proved by the examination of the witnesses orally and in open court.

(2) Nothing in this rule and rule 94 affects the power of the Deemster at the trial to refuse to admit any evidence if in the interest of justice he thinks fit to do so.

(3) The Court may order —

(a) that the affidavit of any witness may be read at the trial on such conditions as the Court thinks reasonable;

- (b) that the evidence of any particular fact shall be given at the trial in such manner as may be specified in the order and in particular —
  - (i) by statement on oath of information or belief, or
  - (ii) by the production of documents or entries in books, or
  - (iii) by copies of documents or entries in books, or
  - (iv) in the case of a fact which is or was a matter of common knowledge, by the production of a specified newspaper containing a statement of that fact; and
- (c) that not more than a specified number of expert witnesses may be called.
- (4) An application for an order under paragraph (3) shall —
  - (a) if no notice of intention to defend has been given, or
  - (b) if the applicant and every party who has given notice of intention to defend consents to the order sought, or
  - (c) if the proceedings are undefended and directions for trial have been given,

be made *ex parte* by filing an affidavit stating the grounds on which the application is made.

(5) Where an application is made before the trial for an order that the affidavit of a witness may be read at the trial or that evidence of a particular fact may be given at the trial by affidavit, the proposed affidavit or a draft of it shall be submitted with the application; and where the affidavit is sworn before the hearing of the application and sufficiently states the ground on which the application is made, no other affidavit shall be required under paragraph (4).

*Trial etc.*

### **31. Mode and place of trial**

(1) Unless otherwise directed and subject to rule 34 all matrimonial proceedings and any issue arising in them shall be tried by a Deemster without a jury.

(2) As soon as practicable after matrimonial proceedings have been set down for trial, the Chief Registrar shall fix the date, place and, as nearly as may be, the time of the trial and give notice of it to every party to the proceedings.

### **32. Trial of issue**

Where directions are given for the separate trial of any issue and those directions have been complied with, the Chief Registrar shall —

- (a) if the issue arises on an application for financial provision or an application with respect to any child or alleged child of the family, proceed as if the issue were a question referred to a Deemster on an application for financial provision;
- (b) in any other case, set the issue down for trial and thereupon rule 31(2) shall apply as if the issue were matrimonial proceedings.

**33. Date of trial**

Except with the consent of the parties or by leave of a Deemster, no matrimonial proceedings, whether defended or undefended, shall be tried until after the expiration of 10 days from the date on which directions for trial were given:

Provided that nothing in this rule shall apply to a proceedings entered in the special procedure list.

**34. Disposal of cases in special procedure list**

(1) As soon as practicable after matrimonial proceedings have been entered in the special procedure list, a Deemster shall consider the evidence filed by the applicant and —

- (a) if he is satisfied that the applicant has sufficiently proved the contents of the initial application and is entitled to an order, he shall so certify;
- (b) if he is not so satisfied he may either give the applicant an opportunity of filing further evidence or remove the proceeding from the special procedure list, whereupon rule 26(3) shall cease to apply.

(2) On the giving of a certificate under paragraph (1) a date shall be fixed for the making of an order by a Deemster in open court, and the Chief Registrar shall send to each party notice of the date and place so fixed and a copy of the certificate, but subject to paragraph (3) it shall not be necessary for any party to appear on that occasion.

(3) Where a Deemster gives a certificate under paragraph (1) and the application contains a request for costs, the Deemster may —

- (a) if satisfied that the applicant is entitled to such costs, include in his certificate a statement to that effect;
- (b) if not so satisfied, give to any party who objects to paying such costs notice that, if he wishes to proceed with his objection, he must attend before the court on the date fixed under paragraph (2).

(4) Within 14 days after the making of an order in accordance with a certificate under paragraph (1) any person may inspect the certificate and the evidence filed under rule 26(3) (except the statement of arrangements) and may bespeak copies on payment of the prescribed fee.

**35. Right to be heard on question of costs**

(1) A respondent, co-respondent or party cited may, without filing an answer, be heard on any question as to costs, but the Court may at any time order any party objecting to a claim for costs to file and serve on the party making the claim a written statement setting out the reasons for his objection.

(2) A party shall be entitled to be heard on any question pursuant to paragraph (1) whether or not he has returned to the General Registry an acknowledgement of service stating his wish to be heard on that question.

(3) In proceedings after a provisional divorce order or a separation order, no order the effect of which would be to make a co-respondent or party cited liable for costs which are not directly referable to the divorce order or separation order shall be

made unless the co-respondent or party cited is a party to such proceedings or has been given notice of the intention to apply for such an order.

**36. Respondent's statement as to arrangements for children**

(1) A respondent on whom there is served a statement in accordance with rule 6(3) may, whether or not he agreed that statement, file a written statement of his views on the present and proposed arrangements for the children, and on receipt of such a statement from the respondent the Chief Registrar shall send a copy to the applicant.

(2) Any such statement of the respondent's views shall, if practicable, be filed within the time limited for giving notice of intention to defend, and in any event before the Deemster considers the arrangements or proposed arrangements for the upbringing and welfare of the children of the family under section 25(1) of the Act.

**37. Procedure for complying with section 25**

(1) Where no such application as is referred to in rule 38 is pending the Deemster shall, after giving his certificate under rule 34(1)(a) or after the provision of evidence pursuant to a direction under rule 26(4), as the case may be, proceed to consider the matters specified in section 25(1) of the Act in accordance with the following provisions of this rule.

(2) Where, on consideration of the relevant evidence, including any further evidence or report provided pursuant to this rule and any statement filed by the respondent under rule 36, the Deemster is satisfied that —

- (a) there are no children of the family to whom section 25 of the Act applies, or
- (b) there are such children but the court need not exercise its powers under the Children and Young Persons Act 2001 with respect to any of them or give any direction under section 25(2) of the Act,

the Deemster shall certify accordingly and, in a case to which sub-paragraph (b) applies, the Chief Registrar shall send the applicant and the respondent a copy of the certificate.

(3) Where the Deemster is not satisfied as mentioned in paragraph (2) he may, without prejudice to his powers under the Children and Young Persons Act 2001 or section 25(2) of the Act, give one or more of the following directions —

- (a) that the parties, or any of them, shall file further evidence relating to the arrangements for the children (and the direction shall specify the matters to be dealt with in the further evidence);
- (b) that a welfare report on the children, or any of them, be prepared;
- (c) that the parties, or any of them, shall attend before him at the date, time and place specified in the direction; and the parties shall be notified accordingly.

(4) Where the court gives a direction under section 25(2) of the Act, notice of the direction shall be given to the parties.

(5) In this rule "parties" means the applicant, the respondent and any person who appears to the court to have the care of the child.

**38. Applications relating to children of the family**

(1) Where matrimonial proceedings are pending, an application by a party to the proceedings or by any other person for an order under any provision of Part 1 or Part 2 of the Children and Young Persons Act 2001 in relation to a child of the family shall be made in the proceedings; and where the applicant is not a party and has obtained such leave as is required under that Act to make the application, no leave to intervene in the proceedings shall be necessary.

(2) If, while matrimonial proceedings are pending, proceedings relating to any child of the family are begun in any other Court, a concise statement of the nature of the proceedings shall forthwith be filed by the person beginning the proceedings or, if he is not a party to the matrimonial proceedings, by the applicant.

**39. Restoration of matters adjourned at the hearing**

Where at the trial of matrimonial proceedings any application is adjourned by the Court for hearing in chambers, it may be restored —

- (a) by notice by any party, or
- (b) by notice given by a Deemster when in his opinion the matter ought to be further considered;

and the notice shall state the date, time and place for the hearing of the restored application and be served on every party concerned.

**40. Application for re-hearing**

(1) An application for re-hearing of proceedings tried by a Deemster alone, where no error of the Court at the hearing is alleged, shall be made to a Deemster.

(2) Unless otherwise directed, the application shall be made to the Deemster by whom the proceedings were tried and shall be heard in open court.

(3) The application shall state the grounds on which it is made.

(4) Unless otherwise directed, the application must be issued within 6 weeks after the judgment and served on every other party to the proceedings not less than 14 days before the day fixed for the hearing of the application.

(5) The applicant shall file a certificate that a copy of the application, with a notice of the time and place of the hearing, has been duly served on each person required to be served with it.

(6) The application shall be supported by an affidavit setting out the allegations on which the applicant relies or exhibiting a copy of any pleading which he proposes to file if the application is granted, and a copy of the affidavit shall be served on every other party to the proceedings.

(7) Not less than 7 days before the application is heard the applicant shall file a copy of a transcript of so much as is relevant of any official record of the proceedings at the trial.

(8) Where a party wishes to appeal against a final divorce order or final annulment order, the question whether he has had the time and opportunity to appeal

from the provisional order on which the final order was founded shall be determined on an application for a re-hearing under this rule.

(9) Any other application for re-hearing shall be made by way of appeal to the Staff of Government Division.

(10) This rule applies, with any necessary modifications, to proceedings disposed of under rule 34 as it applies to proceedings tried by a Deemster alone.

### *Orders*

#### **41. Orders**

Except in a case to which rule 60 (consent orders) applies —

- (a) every divorce order, annulment order and separation order,
- (b) every order made in open court, and
- (c) every other order which is required to be drawn up,

shall be drawn up by the Chief Registrar unless the Court otherwise directs.

#### **42. Application for revocation of divorce order**

(1) An application by a respondent under section 9(1) of the Act for the revocation of a divorce order shall be made to a Deemster and shall be heard in open court.

(2) Paragraphs (3) and (5) of rule 40 apply to an application under this rule as they apply to an application under that rule.

(3) The application shall state the grounds on which it is made, and a copy of the application shall be served on the applicant not less than 14 days before the day fixed for the hearing of the application.

(4) The application shall be supported by an affidavit setting out the allegations on which the applicant relies and a copy of the affidavit shall be served on the applicant.

#### **43. Application under section 9(2)**

(1) An application by a respondent to an application for a divorce order for the Court to consider the financial position of the respondent after the divorce shall be made in Form 8.

(2) The respondent shall file a certificate that a copy of the application, with a notice of the time and place of the hearing, has been duly served on each person required to be served with it.

(3) Where the applicant has relied on the fact of 2 or 5 years' separation and the court has made a provisional order without making any finding as to any other fact mentioned in section 2(2) of the Act —

- (a) rules 50 to 67 apply as if the application were for financial provision, and
- (b) unless the context otherwise requires, references in those rules to Form 12 shall be read as references to Form 8.

(3) A statement of any of the matters mentioned in section 9(3) of the Act with respect to which the Court is satisfied, or, where the Court has proceeded under section 9(4), a statement that the conditions for which that subsection provides have been fulfilled, shall be entered in the records of the Court.

#### **44. Intervention to show cause by Attorney General**

(1) If the Attorney General wishes to show cause against a provisional order being made final, he shall file a notice to that effect and send a copy to the party in whose favour it was pronounced.

(2) Within 21 days after giving notice under paragraph (1) the Attorney General shall file his plea setting out the grounds on which he desires to show cause, together with a copy for service on the party in whose favour the order was made and every other party affected by the order.

(3) The Attorney General shall serve a copy of the plea on each of the persons mentioned in paragraph (2).

(4) Subject to the following provisions of this rule, these rules shall apply to all subsequent pleadings and proceedings in respect of the plea as if it were an initial application.

(5) If no answer to the plea is filed within the time limited or, if an answer is filed and struck out or not proceeded with, the Attorney General may apply forthwith for an order revoking the provisional order and dismissing the application.

(6) Rule 26 applies to proceedings in respect of a plea by the Attorney General as it applies to the trial of matrimonial proceedings, except that —

- (a) if all the charges in the plea are denied in the answer the application for directions shall be made by the Attorney General, and
- (b) in any other case it shall be made by the party in whose favour the provisional order was made.

#### **45. Intervention to show cause by person other than Attorney General**

(1) If any person other than the Attorney General wishes to show cause under section 23(3) or (4) of the Act against a provisional order being made final, he shall file an affidavit stating the facts on which he relies and serve a copy on the party in whose favour the order was made.

(2) A party on whom a copy of the affidavit has been served under paragraph (1) may, within 14 days after service, file an affidavit in answer and, if he does so, shall serve a copy of it on the person showing cause.

(3) The person showing cause may file an affidavit in reply within 14 days after service of the affidavit in answer and, if he does so, shall serve a copy on each party who was served with a copy of his original affidavit.

(4) No affidavit after an affidavit in reply shall be served without leave.

(5) A person showing cause shall apply to a Deemster for directions within 14 days after expiry of the time allowed for filing an affidavit in reply or, where an affidavit in answer has been filed, within 14 days after the expiry of the time allowed for filing such an affidavit.

(6) If the person showing cause does not apply under paragraph (5) within the time allowed, the person in whose favour the provisional order was made may do so.

**46. Revocation of provisional order by consent**

(1) Where a reconciliation has been effected between the applicant and the respondent —

- (a) after a provisional order has been made but before it has been made final, or
- (b) after a separation order has been made,

either party may apply for an order revoking the order by consent.

(2) The application shall be made with notice to the other spouse and to any other party against whom costs have been awarded or who is otherwise affected by the provisional order or separation order, and a copy of the application shall be served on every such person.

(3) The application may be heard in chambers.

**47. Final order on notice**

(1) Subject to rule 48(1) an application by a spouse to make final a provisional order made in his favour may be made in Form 9.

(2) On the making of such an application, the Chief Registrar shall search the records of the court and, subject to paragraph (3), if he is satisfied —

- (a) that no application for revocation of the order or for re-hearing of the proceedings and no appeal against the order or the dismissal of an application for re-hearing of the proceedings is pending;
- (b) that no order has been made by the Court extending the time for making an application for re-hearing of the proceedings or by the Staff of Government Division extending the time for appealing against the order or the dismissal of an application for re-hearing of the proceedings or, if any such order has been made, that the time so extended has expired;
- (c) that no application for such an order as is mentioned in sub-paragraph (b) is pending;
- (d) that no intervention under rule 44 or 45 is pending;
- (e) that the Court has complied with section 25(1) of the Act and has not given any direction under section 25(2); and
- (f) that the provisions of section 9(2) to (4) of the Act do not apply or have been complied with,

the Court shall make the order final.

(3) If the application under paragraph (1) is filed more than 12 months after the provisional order was made, there shall be filed with the notice an explanation in writing —

- (i) giving reasons for the delay;

- (ii) stating whether the parties have lived with each other since the making of the provisional order and, if so, between what dates; and
- (iii) stating whether the applicant being the wife has, or being the husband has reason to believe that his wife has, given birth to any child since the making of the provisional order and, if so, stating the relevant facts and whether or not it is alleged that the child is or may be a child of the family;

and the Chief Registrar shall refer the application to a Deemster, who may require the applicant to file an affidavit verifying the said explanation and may make such order on the application as he thinks fit.

#### **48. Final order on application**

(1) In the following cases an application for a provisional order to be made final shall be made to a Deemster —

- (a) where the Attorney General gives to the Court and to the party in whose favour the order was made a notice that he requires more time to decide whether to show cause against the order being made final, and the notice has not been withdrawn, or
- (b) where there are other circumstances which ought to be brought to the attention of the Court before the order is made final.

Unless otherwise directed, the application shall be served on every party to the proceedings (other than the applicant) and, in a case to which sub-paragraph (a) applies, on the Attorney General.

(2) An application by a spouse for a provisional order made against him to be made final shall be made to a Deemster, and the application shall be served on the other spouse not less than 4 clear days before the day on which the application is heard.

(3) A final order made under this rule shall not take effect until the Chief Registrar has searched the records of the Court and is satisfied as to the matters mentioned in rule 47(2).

#### **49. Final order**

(1) Where a provisional order is made final, the Chief Registrar shall issue the final order, which shall include a statement of the precise time at which it was made.

(2) Where a provisional order is made final, the Chief Registrar shall send to the applicant and the respondent a certificate in Form 10 or 11, authenticated by the seal of the Court.

(3) A copy of the certificate in Form 10 or 11 that a provisional order has been made final shall be issued to any person requiring it on payment of the prescribed fee.

(4) An index of final orders shall be kept in the General Registry, and any person shall be entitled to require a search to be made therein, and to be furnished with a certificate of the result of the search, on payment of the prescribed fee.