PART 4

OTHER FAMILY PROCEEDINGS

Failure to provide reasonable maintenance

68. Application in case of failure to provide reasonable maintenance

(1) Every application under section 38 of the Act shall be made in Form 16.

(2) 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 an application for a divorce order by paragraph 1(a), (c), (d), (f) and (i) of Schedule 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 17 with Form 6.

(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.

(7) Where the respondent's affidavit contains an allegation of adultery or of an improper association with a person named, rule 59(1) 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) Rule 61(4) shall apply, with any necessary modifications, to an application for an order under section 38 of the Act as if the application were for financial provision.

Alteration of maintenance agreement

69. Application for alteration of maintenance agreement during lifetime of parties

(1) An application under section 50 of the Act for the alteration of a maintenance agreement shall, unless otherwise directed, be in Form 18.

(2) There shall be filed with the application an affidavit by the applicant exhibiting a copy of the agreement and verifying the statements in the application and also a copy of the application and of the affidavit for service on the respondent.

(3) 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 17 with Form 6 attached.

(4) The respondent shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application containing full particulars of his property and income and, if he does not do so, the court may order him to file an affidavit containing such particulars.

(5) A respondent who files an affidavit under paragraph (4) shall at the same time serve a copy on the applicant.

70. Application for alteration of maintenance agreement after death of one party

(1) An application under section 51 of the Act for the alteration of a maintenance agreement after the death of one of the parties shall be made in Form 19.

(2) There shall be filed in support of the application an affidavit by the applicant exhibiting a copy of the agreement and an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof and stating—

(a) whether the deceased died domiciled in the Island;

(b) the place and date of the marriage between the parties to the agreement and the name and status of the wife before the marriage;

(c) the name of every child of the family and of any other child for whom the agreement makes financial arrangements, and —

(i) the date of birth of each such child who is still living (or, if it be the case, that he has attained 18) and the place where and the person with whom any such minor child is residing,

(ii) the date of death of any such child who has died since the agreement was made;

(d) whether there have been in any court any, and if so what, previous proceedings with reference to the agreement or to the marriage or to the children of the family or any other children for whom the agreement makes financial arrangements, and the date and effect of any order or decree made in such proceedings;

(e) whether there have been any proceedings by the applicant against the deceased's estate under the Inheritance (Provision for Family and Dependants) Act 1982[17] or any Act repealed by that Act and the date and effect of any order made in such proceedings;

(f) in the case of an application by the surviving party, the applicant's means;

(g) in the case of an application by the personal representatives of the deceased, the surviving party's means, so far as they are known to the applicant, and the information mentioned in rule 71(3)(a), (b) and (c);

(h) the facts alleged by the applicant as justifying an alteration in the agreement and the nature of the alteration sought;

(i) if the application is made after the end of the period of 6 months from the date on which representation in regard to the deceased's estate was first taken out, the grounds on which the court's permission to entertain the application is sought.

(3) In this rule and rule 71 "the deceased" means the deceased party to the agreement to which the application relates.

71. Further proceedings on application under rule 70

(1) The Court may at any stage of the proceedings direct that any person be added as a respondent to an application under rule 70.

(2) Order 9 rule 10 of the Rules of Court (representation orders) applies to the proceedings as if they were mentioned in that rule.

(3) A respondent who is a personal representative of the deceased shall, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application stating —

(a) full particulars of the value of the deceased's estate for probate, after providing for the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable out of it, including the amount of any tax or duty payable thereon and interest on such tax or duty;

(b) the person or classes of persons beneficially interested in the estate (giving the names and addresses of all living beneficiaries) and the value of their interests so far as ascertained, and

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[17] 1982 c.8

(c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of rule 89.

(4) If a respondent who is a personal representative of the deceased does not file an affidavit stating the matters mentioned in paragraph (4) the Court may order him to do so.

(5) A respondent who is not a personal representative of the deceased may, within 14 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application.

(6) Every respondent who files an affidavit in answer to the application shall at the same time serve a copy on the applicant.

72. Application of other rules to proceedings under section 50 or 51

(1) Rules 59, 61(4) and 64(2) and (3) apply, with any necessary modifications, to an application under section 50 or 51 of the Act as they apply to an application for financial provision.

(2) Subject to paragraph (1) and to rules 42 to 43, these rules shall, so far as applicable, apply with any necessary modifications to an application under section 50 or 51 of the Act as if the application were an initial application in matrimonial proceedings.

Summary determination of property disputes

73. Applications under section 128

(1) Subject to paragraph (2), an application under section 128 of the Act shall be made in Form 20 and shall be supported by affidavit.

(2) An order under section 128 of the Act may be made in any financial provision proceedings upon the application of any party to those proceedings in Form 21.

(3) Where the application concerns the title to or possession of land, the application shall —

(a) state whether the title to the land is registered or unregistered and, if registered, the title number; and

(b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

(4) The application shall be served on the respondent, together with a copy of the affidavit in support and an acknowledgement of service in Form 6.

(5) Where particulars of a mortgage are given pursuant to paragraph (3), the applicant shall serve a copy of the application on the mortgagee; and any person so served may apply to the court in writing, within 14 days after service, for a copy of the affidavit in support; and within 14 days of receiving such affidavit may file an affidavit in answer and shall be entitled to be heard on the application.

(6) If the respondent intends to contest the application, he shall, within 14 days after the time allowed for sending the acknowledgement of service, file an affidavit in answer to the application setting out the grounds on which he relies, and serve a copy of the affidavit on the applicant.

(7) If the respondent fails to comply with paragraph (6), the applicant may apply for directions; and the court may give such directions as it thinks fit, including a direction that the respondent shall be debarred from defending the application unless an affidavit is filed within such time as the court may specify.

(8) The court may grant an injunction in proceedings under section 128 of the Act if, but only so far as, the injunction is ancillary or incidental to any relief sought in those proceedings.

(9) Rules 59, 61(4) and 64(2) and (3) apply, with any necessary modifications, to an application under section 128 of the Act as they apply to an application for financial provision.

(10) Subject to the provisions of this rule, these rules shall apply, with any necessary modifications, to proceedings on an application under section 128 of the Act as if they were matrimonial proceedings,

Family homes and domestic violence

74. Applications under Part 5 of the Act

(1) An application for an occupation order or a non-molestation order under Part 5 of the Act shall be made in Form 22.

(2) An application for an occupation order or a non-molestation order made by a child under the age of 16 shall be made in Form 22 but shall be treated, in the first instance, as an application to the Court for leave.

(3) An application for an occupation order or a non-molestation order which is made in other proceedings which are pending shall be made in Form 22.

(4) An application in Form 22 shall be supported by an affidavit by the applicant.

(5) Where an application is made *ex parte*, the affidavit shall state the reasons why notice was not given.

(6) An application made on notice (together with the affidavit and a notice of the time and place of the hearing) shall be served on the respondent personally not less than 2 days before the date on which the application will be heard.

(7) The court may abridge the period specified in paragraph (6).

(8) Where the applicant is acting in person, service of the application shall be effected by the coroner if the applicant so requests.

This does not affect the court's power to order substituted service.

(9) Where an application for an occupation order or a non-molestation order is pending, the court shall consider (on the application of either party or of its own motion) whether to exercise its power under section 91(3) of the Act to transfer the hearing of that application to a court of summary jurisdiction, and shall make an order for transfer in Form 23 if it seems necessary or expedient to do so.

(10) A copy of an application for an occupation order under section 95, 97 or 98 of the Act shall be served by the applicant by post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question, with a notice in Form 24 informing him of his right to make representations in writing or at any hearing.

(11) Rules 61(4) and 63 apply, with any necessary modifications, to an application for an occupation order under section 95, 97 or 98 of the Act as they apply to an application for financial provision.

(12) The applicant shall file a statement in Form 25 after he has served the application.

75. Hearing of applications under Part 5 of the Act

(1) An application for an occupation order or a non-molestation order under Part 5 of the Act shall be dealt with in chambers unless the Court otherwise directs.

(2) Where an order is made on an application made *ex parte*, a copy of the order together with a copy of the application and of the affidavit in support shall be served on the respondent personally.

(3) Where the application is for an occupation order under section 95, 97 or 98 of the Act, a copy of any order made on the application shall be served by the applicant by post on the mortgagee or, as the case may be, the landlord of the dwelling-house in question.

(4) A copy of an order made on an application heard *inter partes* shall be served on the respondent personally.

(5) Where the applicant is acting in person, service of a copy of any order made on the hearing of the application shall be effected by the coroner if the applicant so requests.

(6) Any order made on the hearing of an application under Part 5 of the Act shall be issued in Form 26.

(7) The Court may direct that a further hearing be held in order to consider any representations made by a mortgagee.

(8) An application to vary, extend or revoke an order made under Part 5 of the Act shall be made in Form 27 and this rule shall apply to the hearing of such an application.

76. Enforcement of orders made on applications under Part 5 of the Act

(1) Where a power of arrest is attached to one or more of the provisions ("the relevant provisions") of an order made under Part 5 of the Act —

(a) the relevant provisions shall be set out in an abridged copy of the order in Form 28, which shall not include any provisions of the order to which the power of arrest was not attached; and

(b) the abridged copy shall be delivered to the Chief Constable, accompanied by a statement showing that the respondent has been served with the order or informed of its terms (whether by being present when the order was made or by telephone or otherwise).

(2) Where an order is made varying or revoking the relevant provisions, the Chief Registrar shall —

(a) immediately inform the Chief Constable; and

(b) deliver a copy of the order to him.

(3) An application for the issue of a warrant for the arrest of the respondent shall be made in Form 29.

(4) The court before whom a person is brought following his arrest may —

(a) determine whether the facts, and the circumstances which led to the arrest, amounted to disobedience of the order, or

(b) adjourn the proceedings and, where such an order is made, the arrested person may be released and —

(i) be dealt with within 14 days of the day on which he was arrested; and

(ii) be given not less than 2 days' notice of the adjourned hearing.

(5) The court may adjourn consideration of the penalty to be imposed for contempts found proved and such consideration may be restored if the respondent does not comply with any conditions specified by the court.

(6) Where the court makes a hospital order or a guardianship order under section 111 of the Act, the Chief Registrar shall —

(a) send to the hospital any information which will be of assistance in dealing with the patient;

(b) inform the applicant when the respondent is being transferred to hospital.

(7) Where a transfer direction given by the Department of Home Affairs under section 54 of the Mental Health Act 1998[18] is in force in respect of a person remanded in custody by the court under Schedule 3 to the Act, the Chief Registrar shall notify —

(a) the chief officer of the institution where that person was detained; and

(b) the hospital where he is detained,

of any committal hearing which that person is required to attend, and the Chief Registrar shall give notice in writing to the hospital where that person is detained of any further remand under paragraph 3 of Schedule 3 to the Act.

(8) In paragraph (4) "arrest" means arrest under a power of arrest attached to an order or under a warrant of arrest.

77. Bail application

(1) An application for bail made by a person arrested under a power of arrest or a warrant of arrest may be made either orally or in writing.

(2) Where an application is made in writing, it shall contain the following particulars —

(a) the full name of the person making the application;

(b) the address of the place where the person making the application is detained at the time when the application is made;

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[18] 1998 c.3

(c) the address where the person making the application would reside if he were to be granted bail;

(d) the amount of the recognizance in which he would agree to be bound; and

(e) the grounds on which the application is made and, where a previous application has been refused, full particulars of any change in circumstances which has occurred since that refusal.

(3) An application made in writing shall be signed by the person making the application or by a person duly authorised by him in that behalf or, where the person making the application is a minor or is for any reason incapable of acting, by a guardian ad litem acting on his behalf, and a copy shall be served by the person making the application on the applicant for the Part 5 order.

Proceedings in respect of polygamous marriage

78. Proceedings in respect of polygamous marriage

(1) This rule applies where an application is made for any order or declaration specified in section 136(1) of the Act in respect of a marriage where either party to the marriage is, or has been during the subsistence of the marriage been, married to more than one person (a "polygamous marriage").

(2) The application —

(a) shall state that the marriage in question is polygamous;

(b) shall state whether or not there is, to the knowledge of the applicant, any living spouse of his or hers additional to the respondent or, as the case may be, any living spouse of the respondent additional to the applicant (in this rule referred to as an additional spouse); and

(c) if there is any additional spouse, shall give his or her full name and address and the date and place of his or her marriage to the applicant or, as the case may be, to the respondent, or state, so far as may be applicable, that such information is unknown to the applicant.

(3) The court may order that any additional spouse —

(a) be added as a party to the proceedings; or

(b) be given notice of—

(i) the proceedings; or

(ii) of any application in the proceedings for any such order as is mentioned in section 136(1)(c) of the Act.

(4) Any order under paragraph (3) may be made at any stage of the proceedings and either on the application of any party or by the court of its own motion and, where an additional spouse is mentioned in an application or an acknowledgement of service of an application, the applicant shall, on making any application in the proceedings or, if no previous application has been made in the proceedings, on making a request for directions for trial, ask for directions as to whether an order should be made under paragraph (3).

(5) Any person to whom notice is given pursuant to an order under paragraph (3) shall be entitled, without filing an answer or affidavit, to be heard in the proceedings or on the application to which the notice relates.

Application for declaration as to marital status

79. Application under section 19 for declaration as to marital status

(1) Unless otherwise directed, an initial application under section 19 of the Act 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 application;

(b) the place and date of any ceremony of marriage to which the application relates;

(c) the grounds on which the application is made and all other material facts alleged by the applicant to justify the making of the declaration;

(d) whether there have been or are continuing any proceedings in any court, tribunal or authority in the Island 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 application should be stayed under Schedule 1 to the Act;

and any such proceedings shall include any which are instituted otherwise than in a court of law in any country outside the Island, 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 the Island on the date of the application, or died before that date and was at death domiciled in the Island;

(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 the Island, or died before that

date and had been habitually resident in the Island throughout the period of one year ending with the date of death;

(g) where the applicant 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 the Island in respect of the marriage either is or is not entitled to recognition in the Island, the application shall in addition state the date and place of the divorce, annulment or legal separation.

(3) There shall be annexed to the application a copy of the certificate of any marriage to which the application relates, or, as the case may be, a certified copy of any order or decree of divorce or annulment or 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 applicant and respondent respectively to the application, unless a third party is applying for a declaration, in which case he shall be the applicant and the parties to the marriage shall be respondents to the application.

80. General provisions as to proceedings under rule 79

(1) An application under rule 79 shall be supported by an affidavit by the applicant verifying the application and giving particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant.

Provided that if the applicant 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 an application is based on habitual residence the application 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 application 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 of them.

(4) A copy of the application and every document accompanying it shall be sent by the applicant to the Attorney General at least one month before the application is filed, and it shall not be necessary thereafter to serve these documents upon him.

(5) The Chief Registrar shall send a copy of any answer to the Attorney General if he has notified the court that he wishes to intervene in the proceedings.

(6) When all answers to the application have been filed the applicant 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 application 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 court to be joined as parties.

(9) The Attorney General may file an answer to the application 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 filed in the General Registry which relates to any other family proceedings referred to in the proceedings.

(11) Subject to rule 79 and this rule, these rules, so far as applicable, apply with the necessary modifications to the proceedings as if they were matrimonial proceedings.

Financial relief after foreign divorce

81. Application for leave under section 79

(1) An application for leave to apply for an order for financial relief under Part 4 of the Act shall be made *ex parte* in Form 30, and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application with particular reference to the matters set out in section 78(2) of the Act.

(2) The affidavit in support shall give particulars of the judicial or other proceedings by means of which the marriage to which the application relates was dissolved or annulled or by which the parties to the marriage were legally separated and shall state, so far as is known to the applicant —

(a) the names of the parties to the marriage and the date and place of the marriage;

(b) the occupation and residence of each of the parties to the marriage;

(c) whether there are any living children of the family and, if so, the number of such children and the full names (including surname) of each and his date of birth or, if it be the case, that he is over 18;

(d) whether either party to the marriage has remarried;

(e) an estimate in summary form of the appropriate amount or value of the capital resources and net income of each party and of any minor child of the family;

(f) the grounds on which it is alleged that the court has jurisdiction to entertain an application for an order for financial relief under Part 4 of the Act.

(3) The Chief Registrar shall fix a date, time and place for the hearing of the application by a Deemster in chambers and give notice of it to the applicant.

82. Application for order for financial relief or avoidance of transaction order under Part 4

(1) An application for an order for financial relief under Part 4 of the Act shall be made in Form 31, and at the same time the applicant, unless otherwise directed, shall file an affidavit in support of the application giving full particulars of his property and income.

(2) The applicant shall serve a copy of the application on the respondent and shall annex to it a copy of the affidavit in support, if one has been filed, and a notice of proceedings and acknowledgement of service in Form 32, and rule 95 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) of that rule to 7 days were respectively references to Form 32 and 31 days.

(3) Rules 56, 58 and 60 apply, with any necessary modifications, to an application for an order for financial relief under this rule as they apply to an application for financial provision made in Form 11; and the court may order the attendance of any person for the purpose of being examined or cross-examined and the disclosure and inspection of any document.

(4) An application for an interim order for maintenance under section 80 or an avoidance of transaction order under section 88 of the Act may be made, unless the court otherwise directs, in the application under paragraph (1), and an application for an order under section 88 shall be supported by an affidavit, which may be the affidavit filed under paragraph (1), stating the facts relied on.

(5) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

(6) In respect of any application for an avoidance of transaction order the court may give such a direction or make such appointment as it is empowered to give or make by paragraph (3), and rule 58 shall apply, with any necessary modifications, to an application for an avoidance of transaction order as it applies to an application for an avoidance of disposition order.

83. Application for order under section 89 preventing transaction

(1) An application under section 89 of the Act for an order preventing a transaction shall be made in Form 33 and shall be supported by an affidavit by the applicant stating the facts relied on in support of the application.

(2) The applicant shall serve a copy of the application on the respondent and shall annex thereto a copy of the affidavit in support and a notice of proceedings and acknowledgement of service in Form 32, and rule 95 shall apply to such an acknowledgement of service as if the references in paragraph (1) of that rule to Form 6 and in paragraph (2) of that rule to 7 days were respectively references to Form 32 and 31 days.

(3) If the respondent intends to contest the application he shall, within 28 days after the time limited for giving notice of intention to defend, file an affidavit in answer to the application setting out the grounds on which he relies and shall serve a copy on the applicant.

Consent to marriage of minor

84. Consent to marriage of minor

(1) An application under section 3 of the Marriage Act 1984[19] for the consent of the court to the marriage of a minor shall be dealt with in chambers unless the court otherwise directs.

(2) The application may be brought without the intervention of the applicant's next friend, unless the court otherwise directs.

(3) Where the application follows a refusal to give consent to marriage, every person who has refused consent shall be made a respondent to the application.

(4) The application shall, unless the court orders otherwise, be served not less than 7 days before the date upon which the application is to be heard.

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[19] 1984 c.13