

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4606 of 15 August, 2019

LEGAL NOTICE NO. 171 OF 2019

MATRIMONIAL CAUSES ACT

SUPREME COURT ACT

MAINTENANCE ACT

FAMILY PROCEEDINGS (MATRIMONIAL CAUSES) (AMENDMENT) RULES 2019

In exercise of the powers conferred by section 61 of the Matrimonial Causes Act, section 38 of the Supreme Court Act and section 68 of the Maintenance Act, and of all other enabling powers, the Chief Justice has made the following Rules-

Title.

1. These Rules may be cited as the Family Proceedings (Matrimonial Causes) (Amendment) Rules 2019.

Commencement.

2. These Rules come into operation on the day of publication.

Amendment of Rules.

3.(1) The Family Proceedings (Matrimonial Causes) Rules 2010 are amended in accordance with this rule.

(2) In rule 6(1) substitute “three years” with “one year”.

(3) In rule 7(3) before the word “attached” insert “and in the case of a petition for divorce or judicial separation the Petitioner’s notice of intention to divorce in accordance with FORM – M24 or notice of intention of judicial separation in accordance with FORM – M25”.

(4) In rule 8(1)-

(a) in sub-rule (k) remove the words “where the facts on which the petition is filed is two years separation with consent or three years separation,”; and

- (b) in sub-rule (m)-
- (i) substitute “the facts alleged by the petitioner for the purposes of section 16 (2) of the Act or, where the petition is not for divorce or judicial separation,” with “in the case of nullity proceedings”; and
 - (ii) remove “in any case”.
- (5) In rule 9-
- (a) in sub-rule (c) remove “and”;
 - (b) in sub-rule (d) remove “and”;
 - (c) in sub-rule (e) replacing “.” with “; and”; and
 - (d) after sub-rule (e) insert the following sub-rule-
 - “(f) the Petitioner’s notice of intention to divorce in FORM - M24 or notice of intention of judicial separation in FORM - M25.”.
- (6) Rule 10 is omitted.
- (7) In rule 12-
- (a) remove “or co-respondent”; and
 - (b) after “in FORM – M3” insert “and in the case of divorce proceedings or judicial separation proceedings the Petitioner’s notice of intention to divorce in FORM - M24 or the Petitioner’s notice of intention of judicial separation in FORM - M25”.
- (8) In rule 13-
- (a) in sub-rule (1)(a)-
 - (i) after “a copy of every petition” insert “and in the case of divorce proceedings or judicial separation proceedings a copy of the Petitioner’s notice of intention to divorce in FORM - M24, or a copy of the Petitioner’s notice of intention of judicial separation in FORM - M25”; and
 - (ii) remove the words “and co-respondent”;
 - (b) in sub-rule (3) after “a copy of the petition” insert “and in the case of divorce proceedings or judicial separation proceedings a copy of the Petitioner’s notice of intention to divorce in FORM - M24 or a copy of the Petitioner’s notice of intention of judicial separation in Form – M24”.

(c) in sub-rule (5)-

(i) after “a copy of the petition” insert “and in the case of divorce proceedings or judicial separation proceedings a copy of the Petitioner’s notice of intention to divorce in FORM - M24 or a copy of the Petitioner’s notice of intention of judicial separation in FORM - M25”;
and

(ii) substitute “document” with “documents” in the two places where it occurs;

(d) in sub-rule (10)(a)(ii)-

(i) before “has given notice of intention to defend” insert “in the case of nullity proceedings”; and

(ii) after “has given notice of intention to defend” insert “and in the case of divorce proceedings or judicial separation proceedings, has filed an acknowledgement of service in FORM – M3”.

(9) In rule 14(2) after the words “notice of intention to defend” insert “in nullity proceedings”.

(10) In rule 15-

(a) remove “and every co-respondent” and “and every person named in it”;

(b) in sub-rule (a) before “has given notice of intention to defend” insert “in nullity proceedings”; and

(c) in sub-rule (b)-

(i) before “is shown by record of the Registrar” insert “in divorce proceedings, judicial separation proceedings and nullity proceedings”;
and

(ii) after “the petition” insert “and the Petitioner’s notice of intention to divorce in FORM - M24 in divorce proceedings or the Petitioner’s notice of intention of judicial separation in FORM - M25 in judicial separation proceedings”.

(11) In rule 16-

(a) in sub-rule (1) after “intends to defend the proceedings” insert “for nullity”;

(b) in sub-rule (2) after “giving notice of intention to defend” insert “the nullity proceedings”; and

- (c) in sub-rule (3) substitute “a cause” with “nullity proceedings”.
- (12) Rule 17 is omitted.
- (13) In rule 18-
- (a) in sub-rule (1)-
 - (i) substitute “A supplemental petition may be filed or amended” with “A petition may be amended or a supplemental petition filed”; and
 - (ii) after “answer is filed” insert “in nullity proceedings or before the acknowledgement of service in FORM - M3 is filed in divorce or judicial separation proceedings”;
 - (b) in sub-rule (2)(a) after “notice of intention to defend is given” insert “in nullity proceedings or the acknowledgement of service in FORM – M3 is not filed in divorce or judicial separation proceedings”;
 - (c) in sub-rule (2)(b) after “given notice of intention to defend” insert “in nullity proceedings or filed an acknowledgement of service in FORM – M3 in divorce or judicial separation proceedings”;
 - (d) in sub-rule 4(a) after “where any party” insert “in nullity proceedings”; and
 - (e) in sub-rule 6 remove “and co-respondent”.
- (14) In rule 19-
- (a) in sub-rule (1) substitute “or co-respondent” with “in nullity proceedings”; and
 - (b) in sub-rule (2) substitute “An” with “In nullity proceedings an” .
- (15) In rule 21-
- (a) in sub-rule (1) substitute “If” with “In nullity proceedings if”;
 - (b) in sub-rule (2) substitute “The answer” with “In nullity proceedings the answer”;
 - (c) in sub-rule (3) substitute “If an” with “In nullity proceedings if an”;
 - (d) in sub-rule (4) substitute “An answer” with “In nullity proceedings an answer”;
 - (e) sub-rule (5) is omitted; and
 - (f) in sub-rule (6) substitute “Every answer” with “In nullity proceedings every answer”.
- (16) In rule 22-

- (a) in sub-rule (1) substitute “A petitioner” with “In nullity proceedings a petitioner”; and
- (b) in sub-rule (2) substitute “If the petitioner” with “In nullity proceedings if the petitioner”.

(17) In rule 23-

- (a) in sub-rule (1) substitute “A party” with “In nullity proceedings a party”; and
- (b) in sub-rule (3) substitute “A party” with “In nullity proceedings a party”.

(18) In rule 24-

- (a) in sub-rule (1) after “the filing of any answer” insert “in nullity proceedings and the acknowledgement of service in FORM - M3 in divorce or judicial separation proceedings”; and
- (b) in sub-rule (6)-
 - (i) substitute “undefended list” with “divorce list or judicial separation list or undefended nullity list”; and
 - (ii) before “the filing of a notice pursuant to rule 29 for the issue of the Registrar’s Certificate be dispensed with.” insert “in the case of proceedings for nullity”.

(19) In rule 29-

- (a) in sub-rule (1)-
 - (i) substitute “a matrimonial cause” with “proceedings for nullity”;
 - (ii) substitute “who shall give a certificate” with “who shall issue a certificate”;
 - (iii) substitute the following for sub-rule (e)-

“(e) that any application for a medical examination has been made and if an order for the examination of the parties has been made, that any notice required has been served and that the report of the doctor or doctors has been filed.”; and
 - (iv) remove “shall issue a certificate (the Registrar’s certificate) to that effect.”;
- (b) in sub-rule (2)-

- (i) remove “an undefended cause”; and
 - (ii) substitute “undefended list” with “divorce list or judicial separation list”; and
- (c) in sub-rule (3)-
- (i) substitute “a defended cause” with “defended nullity proceedings”; and
 - (ii) insert “nullity” after “the next defended”.
- (20) In rule 30-
- (a) substitute the following for sub-rule (1)-

“30.(1) The Registrar shall prepare and maintain four lists, to be known as “the divorce list”, “the judicial separation list”, the “undefended nullity list” and the “defended nullity list”.”;
 - (b) in sub-rule (3) substitute “undefended cause” with “divorce or judicial separation or undefended nullity proceedings”;
 - (c) in sub-rule (4) substitute “the causes for the time being entered into the undefended list” with “the causes entered in the divorce list, the judicial separation list, and the undefended nullity list”;
 - (d) in sub-rule (6) after “defended” insert “nullity”;
 - (e) in sub-rule (9) substitute “causes” with “nullity proceedings”; and
 - (f) in sub-rule (10) substitute “a cause” with “defended nullity proceedings”.
- (21) In rule 31-
- (a) substitute the heading with the following-

“Evidence at a trial of defended nullity proceedings.”; and
 - (b) in sub-rule (1) substitute “a cause” with “defended nullity proceedings”.
- (22) In rule 39-
- (a) substitute the heading with the following-

“Hearing of divorce, judicial separation and undefended nullity proceedings by the Court.”;

- (b) in sub-rule (1) substitute “undefended causes” with “petitions for divorce, judicial separation and undefended nullity proceedings”; and
 - (c) in sub-rule (2) substitute “the undefended list” with “the divorce list, or the judicial separation list or the undefended nullity list”.
- (23) In rule 40 –
- (a) substitute the heading with the following-

“Right of respondent to be heard on question of costs.”;
 - (b) in sub-rule (1) substitute “, co-respondent or party cited” with “ in nullity proceedings”; and
 - (c) sub-rule (3) is omitted.
- (24) Rule 45 is omitted.
- (25) In rule 51(1) substitute “weeks” with “months”.
- (26) Rule 53 is omitted.
- (27) In rule 55 remove “without filing an answer and”.
- (28) In rule 56-
- (a) in sub-rule (1) substitute “answer” with “acknowledgement of service in FORM – M3”;
 - (b) in sub-rule (2) substitute “answers” with “acknowledgement of service in FORM – M3”;
 - (c) in sub-rule (3) substitute “answer” with “acknowledgement of service in FORM – M3”; and
 - (d) in sub-rule (4) substitute “answer” with “acknowledgement of service in FORM – M3”.
- (29) Rule 60 is omitted.
- (30) In rule 62(1) substitute “answer” with “acknowledgement of service in FORM – M3”.
- (31) In rule 69(1) substitute “answer” with “acknowledgement of service”.
- (32) Rules 75(7) and 75(8) are omitted.
- (33) At the end of Part VIII insert the following Part IX-

“PART IX

Applications for financial relief following an overseas divorce, decree of nullity or legal separation

Application for leave.

99.(1) An application for leave to file an application for financial relief following an overseas divorce, decree of nullity or legal separation under section 63 of the Act shall be made to the Court by originating summons in accordance with FORM – M26, accompanied by-

- (a) an affidavit in support of the application;
- (b) a copy of the decree of divorce, annulment or legal separation obtained in the overseas country.

(2) The affidavit in support of the application shall state-

- (a) the grounds on which the application is made to include the jurisdictional basis upon which an application for financial relief would be made;
- (b) whether an interim order for maintenance is sought for the benefit of the applicant or any child of the family and on what basis there is an immediate need for financial assistance.

(3) The application shall be heard before the Court on a date not less than 28 days from the filing of the original summons and that date to be fixed by the Supreme Court Registry as soon as practicable after the filing of the application.

(4) Unless otherwise directed, the summons and the affidavit must be served on the intended respondent at least 28 clear days before the date of the hearing.

(5) If the respondent wishes to oppose the application, he or she must file in the Court and serve on the applicant an affidavit setting out the grounds on which it will be opposed within 14 days of service in accordance with sub-rule (4).

(6) The respondent may be heard without filing an affidavit setting out the grounds on which the application will be opposed, but only with leave of the Court.

Application for financial relief.

100. Upon leave being granted to the applicant to file an application for financial relief following an overseas divorce, annulment or legal separation the application for financial relief shall be made by notice in Form – M10 and

the application for financial relief shall be dealt with in accordance with Rules 62 to 68 and Rules 71 to 74.

Information required in an application for financial relief consent order.

101. Upon leave being granted to the applicant to file an application for financial relief following an overseas divorce, annulment or legal separation and the parties to that application agree the terms of a consent order pursuant to sections 67, 68 and 70 of the Act, then Rule 61 shall apply insofar as it applies to sections 34, 35 or 36 of the Act.”.

(34) In Form - M1 substitute “3 years have” with “1 year has”.

(35) Substitute the following for Form - M2-

“

FORM-M2

Rules 7(3), 12 and 19(3)

NOTICE OF APPLICATION/PROCEEDINGS

In the Supreme Court of Gibraltar	
Application No.	
Petitioner/Applicant (including ref)	
Respondent/Defendant	

TAKE NOTICE that a petition for divorce / judicial separation / nullity [delete as appropriate] has been presented to the Court. A sealed copy of it [and a copy of the Petitioner's statement of arrangements regarding the children] is / are delivered with this notice.

1. You must complete and detach the acknowledgment of service in FORM-M3 and send it so as to reach the Registry of the Supreme Court, Main Street, Gibraltar, within 8 days after you receive this notice, exclusive of the day of receipt. Delay in returning the form may add to the costs.

2. If you intend to instruct a Lawyer to act for you, you should at once give him all documents which have been served on you, so that he may send the acknowledgment to the Registrar on your behalf. If you do not intend to instruct a Lawyer, you should nevertheless give an address for service in the acknowledgment so that any documents affecting your interests which are sent to you will in fact reach you. Any change of address should be notified to the Registrar.

NOTES ON QUESTIONS IN FORM-M3

3. If you answer Yes to Question 6, you must within 22 days after you receive this notice, exclusive of the day of receipt, file in the Registry, an answer to the petition, and deliver a copy to every other party to the proceedings.

4. If you answer No to Question 6 and after indicating that you do not wish to defend the case you wish to defend the case, you must immediately inform the Registry and give notice to the Petitioner.

5. If you answer Yes to Question 7 you must, make an application to the Court by filing and serving on the Petitioner a notice in FORM- M10.

6. Question 8:-

(a) If you do not wish to defend the case but object to the claim for costs, you should answer Yes to Question 8 in the acknowledgment. You must state the grounds on which you object. An objection cannot be entertained unless grounds are given which, if established, would form a valid reason for not paying the costs. If such grounds are given, you will be notified of a date on which you must attend before the Judge if you wish to pursue your objection.

(b) If you do not object to the claim for costs but simply wish to be heard on the amount to be allowed, you should answer No to Question 8.

(c) If you are ordered to pay costs, the amount will, unless agreed between the Petitioner and yourself, be fixed by the Court, or will be taxed by the Commissioner of Income Tax, after lodgement of the Petitioner's bill of costs. In the latter event, you will be sent a copy of the bill and will have the right to be heard about the amount before it is finally settled.

7. Please answer Question 9. If your answer to Question 9(b) is Yes make sure you sign the form at the end.

8. If you wish to make an application for-

- A residence order
- A contact order
- A specific issue order
- A prohibited steps order

in respect of a child you will have to make a separate application in the prescribed form . Before you apply for any of these orders or any other order which may be available to you under the Children Act 2009 you are advised to see a Lawyer.

9. If you wish to contest the Petitioner's financial or property claim, you will have an opportunity of doing so when you receive a notice stating that the Petitioner intends to proceed with the claim. You will then be required to file an affidavit giving particulars of your property and income and be notified of the date when the claim is to be heard.

10. If you wish to make some financial or property claim on your own account, you will have to make a separate application. If you are in doubt as to the consequences of divorce on your financial position, you should obtain legal advice from a Lawyer.

Dated this day of

The Supreme Court office at 277 Main Street, Gibraltar is open between 9:30 am and 4:30 pm Monday to Friday. When corresponding with the Court, please address forms or letters to the Registrar and quote the case number.

If you do not do so, your correspondence may be returned.

”.

(36) Substitute the following for Form - M3-

“

FORM-M3

Rules 6(5), 7(3), 12, 13(3), 15(c), 16 and 19(3)

ACKNOWLEDGEMENT OF SERVICE

In the Supreme Court of Gibraltar

Application No.

Petitioner/Applicant

(including ref)

Respondent/Defendant

If you intend to instruct a Lawyer to act for you, give him or her, this form immediately.

Address for service:

The Supreme Court office at 277 Main Street, Gibraltar is open between 9:30 am and 4:30 pm Monday to Friday. When corresponding with the Court, please address forms or letters to the Registrar and quote the case number.

If you do not do so, your correspondence may be returned.

”.

(37) Omit FORM - M9.

(38) After the end of FORM – M23 insert the following-

“

FORM - M24

NOTICE OF INTENTION TO DIVORCE

Rule 7(3)

In the Supreme Court of Gibraltar	
Application No.	
Petitioner / Applicant (including ref)	
Respondent / Defendant	

TAKE NOTICE that the Petitioner herein intends to petition for divorce on the basis of the irretrievable breakdown of his / her marriage to the Respondent.

Signed
(Petitioner)

Dated this day of 20

FORM - M25

NOTICE OF INTENTION OF JUDICIAL SEPARATION

Rule 7(3)

In the Supreme Court of Gibraltar

Application No.	
Petitioner / Applicant (including ref)	
Respondent / Defendant	

TAKE NOTICE that the Petitioner herein intends to petition for judicial separation.

Signed
(Petitioner)

Dated this day of 20

Note:

1. In default of you filing an affidavit setting out the grounds upon which you oppose the application, the Court will proceed to hear and determine the application and make such order thereon as it may think fit, notwithstanding your absence.

2. If you intend to instruct a lawyer to act for you, you should at once give him all the documents served on you, so that he may take the necessary steps on your behalf.

”.

Transitional Provisions.

4. Proceedings commenced under the Act and prior to the commencement of the Matrimonial Causes (Amendment) Act 2019 shall be regulated and continue until determination in accordance with the Family Proceedings (Matrimonial Causes) Rules 2010 as if they had not been amended in accordance with these rules.

Dated 15th August, 2019.

A E DUDLEY,
Chief Justice.

EXPLANATORY MEMORANDUM

These Rules amend the Family Proceedings (Matrimonial Causes) Rules 2010 following the amendments to the Matrimonial Causes Act by the Matrimonial Causes (Amendment) Act 2019.