

LEGISLATIVE COUNCIL BRIEF

MATRIMONIAL CAUSES (AMENDMENT) RULES 2001

INTRODUCTION

This brief explains the Matrimonial Causes (Amendment) Rules 2001 at **Annex A** (Amendment Rules). The Amendment Rules, made by the Chief Justice under section 54 of the Matrimonial Causes Ordinance (the Ordinance), will:

- (a) simplify the procedures regarding undefended divorce and judicial separation that cannot be entered in the special procedure list under the current law; and
- (b) relax rule 113 of the Matrimonial Causes Rules (MCR) on application for extension of time.

BACKGROUND

2. In November 1994, the then Chief Justice appointed a Working Group (WG) to review the practices and procedures relating to matrimonial proceedings. The WG's report, published in August 1996, recommended a series of legislative amendments.

3. To implement two of the WG's recommendations (paragraphs 1(a) and (b) above), the Chief Justice has made the Amendment Rules, which will be gazetted on 14 December 2001. The effect of the Amendments Rules is to reduce the time spent by the court and parties to proceedings on undefended divorces and judicial separations.

THE AMENDMENT RULES

Procedures regarding undefended divorce and judicial separation

4. Rule 33 provides for the Registrar of High Court (“the Registrar”) to give directions in respect of petitions for divorce or judicial separation. Under rule 33(2A), the Registrar may direct a petition to be included in the special procedure list if the following conditions are satisfied –

- (a) the only grounds for the petitions are those falling within section 11A(2)(a), (c), (d) or (e) of the Ordinance. An extract of section 11A(2) is at **Annex B**;
- (b) either there are no children of the family or if there are, satisfactory arrangements for their welfare have already been made; and
- (c) the respondent has returned a statement to the court office that he does not intend to defend the proceedings.

5. A petition included in the special procedure list will be dealt with in accordance with rule 47A of the MCR. The effect of rule 47A is that the Registrar, if satisfied that the contents of the petition have been sufficiently proved, may issue a certificate accordingly without an hearing in an open court.

6. For a petition which cannot be included in the special procedure list (or is removed from the list by the Registrar), the matter will be set down for trial (rule 33). Rule 38 requires that a fact to be proved by evidence of a witness should be proved by the examination of the witness orally and in the open court.

7. The effect of the rules referred to in paragraphs 4 to 6 above is that at present, many undefended petitions for divorce or judicial separation are processed in open court. Improvements are considered necessary so as to –

- (a) do away with the essentially ceremonial but public incantation;

- (b) reduce the time it takes for a litigant to obtain his/her divorce or judicial separation; and
- (c) allow the court to focus on the substantive issue of the children's welfare by holding private hearings during which the issue can be canvassed in a more informal and relaxed atmosphere.

New procedures

8. It is proposed that all undefended petitions for divorce or judicial separation should fall under the special procedure list, regardless of the grounds of divorce and whether or not the family has children. All joint applications for divorce or judicial separation should also be included in the list. If there are matters of custody, ancillary relief or costs to be settled, the solicitor acting for the petitioner will be required to seek a separate hearing date for those matters.

9. The above proposal involves amendments to rules 33(2A) and 47(1)(a) of the MCR. The existing forms of affidavit to be filed by the petitioner in support of a petition for divorce will have to be amended to include questions concerning arrangements for children of the family. The opportunity is taken to provide for a new form of affidavit to be used for petitions under section 11A(2)(b) of the Ordinance. The amendments mentioned above are set out in sections 2, 3 and 5 of the Amendment Rules.

Extension of time

10. Rule 113 of the MCR provides that for any time period fixed by the MCR for taking any step in any proceeding, filing or lodging any document or giving any notice, the court may grant an extension provided that the application for extension is made prior to the expiry of the time fixed by the rules. This proviso serves no useful purpose. The court has other means to impose sanctions (e.g. costs) if any application is made out of time.

11. It is proposed that the rule be amended to remove the restriction that extension can be granted only if the application is made prior to the

expiry of the time fixed by the rules. The amendment is set out in section 4 of the Amendment Rules.

PUBLIC CONSULTATION

12. The Hong Kong Bar Association and Law Society of Hong Kong have been consulted on the Amendment Rules. The former has no comment while the latter welcomes the proposals.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the Amendment Rules do not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice advises that the Amendment Rules are consistent with the human rights provisions of the Basic Law.

BINDING EFFECTS OF THE LEGISLATION

15. The Amendment Rules will not affect the current binding effect of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. The sections relating to all undefended petitions for divorce or judicial separation of the Amendment Rules (2(a) and 3) will simplify the proceedings as the parties concerned will no longer be required to attend the court hearing to give evidence. This will generate some notional savings in the Judiciary. It is difficult to quantify the amount of savings, which depend on the number of such cases. Nevertheless, these notional savings will help to shorten the waiting time for other cases, e.g. enforcement proceedings to recover maintenance arrears. There are no financial or staffing implications arising from the other sections of the Amendment Rules.

LEGISLATIVE TIMETABLE

17. The Amendment Rules will be tabled in the Legislative Council (LegCo) on 19 December 2001. After negative vetting by the LegCo, the Secretary for Home Affairs will publish in the Gazette a commencement notice to bring the Amendment Rules into effect.

PUBLICITY

18. A press release will be issued and a spokesman will be available to answer enquiries.

ENQUIRY

19. Enquiries on this brief should be directed to Mr Ng Hon-wah, Principal Assistant Secretary for Home Affairs, at telephone number 2835 1383.

Home Affairs Bureau
12 November 2001
HAB/II/4/5 Part V

MATRIMONIAL CAUSES (AMENDMENT) RULES 2001

(Made under section 54 of the Matrimonial Causes
Ordinance (Cap. 179))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

2. Directions for trial; the entry of joint application

Rule 33(2A) of the Matrimonial Causes Rules (Cap. 179 sub. leg.) is amended -

(a) by repealing everything before “then” and substituting -

“(2A) Where a cause is an undefended cause begun by petition for divorce or judicial separation pending in a district court,”;

(b) in subparagraph (i), by repealing “or 21(4)” and substituting “, 21(4) or 21(7)”.

3. Disposal of causes in special procedure list

Rule 47A(1) (a) is amended by repealing everything before “the registrar” and substituting -

“(a) if he is satisfied that the petitioner has sufficiently

proved the contents of the petition and is entitled to a decree and any costs for which he prays.”.

4. Abridgement etc. of time

Rule 113 is amended by repealing everything after “writing” and substituting a full stop.

5. Forms

The Appendix is amended -

(a) in Form 21(1) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER
About the divorce/judicial separation petition	
1. Have you read the petition filed in this case?	
2. Do you wish to alter anything in the petition or add anything to it? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State briefly your reasons for saying that the respondent has committed the adultery alleged.	
5. On what date did it first become known to you that the respondent had committed the adultery alleged?	
6. Do you find it intolerable to live with	

	the respondent?	
7.	Since the date given in the answer to Question 5, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.	
About the children of the family		
8.	Have you read the Statement as to Arrangements for Children filed in this case?	
9.	Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.	
10.	Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?	

(ii) after the table, in paragraph 2, by repealing “7” and substituting “10”;

(b) in Form 21(2) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER
About the divorce/judicial separation petition	
1.	Have you read the petition filed in this case?
2.	Do you wish to alter anything in the petition or add anything to it? If so, state the alterations or additions.
3.	Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.

4. State the date on which you and the respondent began to separate, and, if different, the date on which the alleged desertion began. At that time, did you agree to the separation?																									
5. State briefly the facts you rely on in support of the allegation that the respondent deserted you, and your reason for saying that the desertion continued up to the presentation of the petition.																									
6. Did the respondent ever offer to resume cohabitation?																									
7. State as far as you know the various addresses at which you and the respondent have respectively lived since the last date given in the answer to Question 4, and the periods of residence at each address:																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><i>Petitioner's Address</i></th> <th style="width: 10%;"></th> <th style="width: 15%;"></th> <th style="width: 10%;"></th> </tr> <tr> <td style="text-align: center;">From</td> <td style="border-left: 3px double black;"></td> <td></td> <td style="border-left: 3px double black;"></td> <td style="text-align: center;">From</td> <td style="text-align: center;"><i>Respondent's Address</i></td> </tr> <tr> <td style="text-align: center;">to</td> <td style="border-left: 3px double black;"></td> <td></td> <td style="border-left: 3px double black;"></td> <td style="text-align: center;">to</td> <td></td> </tr> </thead> <tbody> <tr> <td colspan="6">8. Since the last date given in the answer to Question 4, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.</td> </tr> </tbody> </table>			<i>Petitioner's Address</i>				From				From	<i>Respondent's Address</i>	to				to		8. Since the last date given in the answer to Question 4, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.						
		<i>Petitioner's Address</i>																							
From				From	<i>Respondent's Address</i>																				
to				to																					
8. Since the last date given in the answer to Question 4, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.																									
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11. Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?																									

”;

(ii) after the table, in paragraph 2, by repealing “8” and substituting “11”;

(c) in Form 21(3) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER												
About the divorce/judicial separation petition													
1. Have you read the petition filed in this case?													
2. Do you wish to alter anything in the petition or add anything to it? If so, state the alterations or additions.													
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.													
4. State the date on which you and the respondent began to separate.													
5. State briefly the reason or main reason for the separation.													
6. State the date when and the circumstances in which you came to the conclusion that the marriage was in fact at an end.													
7. State as far as you know the various addresses at which you and the respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:													
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	<i>Petitioner's Address</i>		<i>Respondent's Address</i>										
From		From											
to		to											
8. Since the date given in the answer to Question 4, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.													
About the children of the family													
9. Have you read the Statement as to Arrangements for Children filed in this case?													

10. Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.	
11. Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?	

”;

(ii) after the table, in paragraph 2, by repealing “8” and substituting “11”;

(d) in Form 21(4) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER
About the divorce/judicial separation petition	
1. Have you read the petition filed in this case?	
2. Do you wish to alter anything in the petition or add anything to it? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State the date on which you and the respondent began to separate.	
5. State briefly the reason or main reason for the separation.	
6. State the date when and the circumstances in which you came to the conclusion that the marriage was in fact at an end.	
7. State as far as you know the various addresses at which you and the respondent have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:	

<i>Petitioner's Address</i>		<i>Respondent's Address</i>	
From		From	
to		to	
8.	Since the date given in the answer to Question 4, have you ever lived with the respondent in the same household? If so, state the addresses and the period or periods, giving dates.		
About the children of the family			
9.	Have you read the Statement as to Arrangements for Children filed in this case?		
10.	Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.		
11.	Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?		

”;

(ii) after the table, in paragraph 2, by repealing “8” and substituting “11”;

(e) in Form 21(5) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER
About the divorce application	
1.	Have you read the application filed in this case?
2.	Do you wish to alter anything in the application or add anything to it? If so, state the alterations or additions.
3.	Subject to these alterations and additions (if any), is everything stated

	in your application true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.		
4.	State the date on which you both began to separate.		
5.	State briefly the reason or main reason for the separation.		
6.	State the date when and the circumstances in which you both came to the conclusion that the marriage was in fact at an end.		
7.	State as far as you know the various addresses at which each of you have respectively lived since the date given in the answer to Question 4, and the periods of residence at each address:		
	From	<i>1st Applicant's Address</i>	From
	to		to
8.	Since the date given in the answer to Question 4, have you both ever lived together in the same household? If so, state the addresses and the period or periods, giving dates.		
	About the children of the family		
9.	Have you read the Statement as to Arrangements for Children filed in this case?		
10.	Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.		
11.	Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?		

”;

(ii) after the table, in paragraph 2, by repealing “8” and substituting “11”;

(f) in Form 21(6) -

(i) by repealing the table and substituting -

“

QUESTION	ANSWER
About the divorce application	
1. Have you read the application filed in this case?	
2. Do you wish to alter anything in the application or add anything to it? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your application true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. State the date when and the circumstances in which you both came to the conclusion that the marriage was in fact at an end.	
About the children of the family	
5. Have you read the Statement as to Arrangements for Children filed in this case?	
6. Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.	
7. Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?	

”;

(ii) after the table, in paragraph 2, by repealing “4” and substituting “7”;

(g) by adding -

“FORM 21(7)

[Rule 33(2A)]

*Affidavit by Petitioner in Support of Petition
under Section 11A(2) (b) of Matrimonial
Causes Ordinance*

[Heading as in Form 3]

QUESTION	ANSWER
About the divorce/judicial separation petition	
1. Have you read the petition filed in this case including what is said about the respondent's behaviour?	
2. Do you wish to alter anything in the petition or add anything to it? If so, state the alterations or additions.	
3. Subject to these alterations and additions (if any), is everything stated in your petition true? If any statement is not within your own knowledge, indicate this and say whether it is true to the best of your information and belief.	
4. (i) Is the respondent's behaviour as set out in the petition continuing? (ii) If the respondent's behaviour is not continuing, what was the date of the final incident relied upon by you in the petition?	
5. (i) Since the date given in the answer to Question 4 or, if no date is given in answer to that question, since the date of the petition, have you ever lived at the same address as the respondent for a period of more than 6 months, or for periods which together amount to more than 6 months? (ii) If so, state the addresses and the period or periods, giving dates to the best of your information and belief, and describe the	

<p>arrangements for sharing the accommodation.</p>	
<p>[State:</p> <ul style="list-style-type: none"> ● whether you have shared a bedroom; ● whether you have taken your meals together; ● what arrangement you have made for cleaning the accommodation and for other domestic tasks; ● what arrangements you have made for the payment of household bills and other expenses.] 	
<p>About the children of the family</p>	
<p>6. Have you read the Statement as to Arrangements for Children filed in this case?</p>	
<p>7. Do you wish to alter anything in the Statement as to Arrangements for Children or add anything to it? If so, state the alterations or additions.</p>	
<p>8. Subject to these alterations and additions (if any), is everything stated in the Statement as to Arrangements for Children true and correct to the best of your information and belief?</p>	

I,
of

(full name)
(full residential address)
(occupation)

make oath/do solemnly, sincerely and truly affirm and say as follows -

- 1. I am the petitioner in this cause.
- 2. The answers to Questions 1 to 8 above are true.

(1) Delete if the acknowledgement of service is signed by a solicitor or no acknowledgement of service has been filed.

3. (1) I identify the signature(2) appearing on the copy acknowledgement of service now produced to me and marked "A" as the signature of my husband/wife, the respondent in this cause.

(2) Insert name.

(3) Exhibit any other documents on which the petitioner wishes to rely.

4. (3)

(4) If the petitioner seeks a judicial separation, amend accordingly.

5. I ask the Court to grant a decree dissolving my marriage with the respondent (4) on the grounds stated in my petition [and to order the respondent to pay..... the costs of this suit] (5).

(5) Delete if costs are not sought.

Sworn/Affirmed at
this day of

Before me,

A Commissioner for Oaths."

Chief Justice

4th December 2001

Explanatory Note

These Rules amend the Matrimonial Causes Rules (Cap. 179 sub.

leg.) (“the Rules”) -

- (a) to provide for all undefended causes begun by petitions for divorce and judicial separation to be entered in the special procedure list whereas before the amendments not all such undefended causes could be entered in that list (rules 2(a) and 3);
- (b) to revise existing forms of affidavits in support of petitions or applications for divorce and judicial separation and add a new form of affidavit consequent upon amendments mentioned in paragraph (a) (rules 2(b) and 5);
- (c) to allow the District Court to grant an application for extension of time under the Rules even though the time for making the application has expired (rule 4).

第 III 部

離婚

11. 離婚的理由等

提出離婚呈請或離婚申請的唯一理由，須為婚姻已破裂至無可挽救，而離婚法律程序可按下述任何一種方式提起——

- (a) 離婚呈請；或
- (b) 離婚申請。

(由 1995 年第 29 號第 7 條代替)

11A. 就呈請理由而提出的證明

(1) 離婚呈請可由婚姻的任何一方向法院提出。
 (2) 除非呈請人使聆訊離婚呈請的法院信納下列一項或多於一項事實，否則法院不得裁定該宗婚姻已破裂至無可挽救——

- (a) 答辯人曾與人通姦，而呈請人認為無法忍受與答辯人共同生活；
- (b) 因答辯人的行為而無法合理期望呈請人與其共同生活；
- (c) 婚姻雙方在緊接呈請提出前，已分開居住最少連續 1 年，且答辯人同意由法院批出判令；
- (d) 婚姻雙方在緊接呈請提出前，已分開居住最少連續 2 年；
- (e) 答辯人在緊接呈請提出前，已遺棄呈請人最少連續 1 年。

(由 1995 年第 29 號第 7 條代替)

11B. 就申請理由而提出的證明等

(1) 離婚申請須由婚姻雙方共同向法院提出。
 (2) 聆訊離婚申請的法院除非信納下列兩項或其中一項事實，否則不得裁定該宗婚姻已破裂至無可挽救——

PART III

DIVORCE

11. Ground for divorce, etc.

The sole ground for presenting or making a petition or application for divorce shall be that the marriage has broken down irretrievably and proceedings for divorce shall be instituted either—

- (a) by a petition for divorce; or
- (b) by an application for divorce.

(Replaced 29 of 1995 s. 7)

11A. Proof of ground for petition

(1) A petition for divorce may be presented to the court by either party to a marriage.
 (2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts—

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the parties to the marriage have lived apart for a continuous period of at least 1 year immediately preceding the presentation of the petition and the respondent consents to a decree's being granted;
- (d) that the parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition;
- (e) that the respondent has deserted the petitioner for a continuous period of at least 1 year immediately preceding the presentation of the petition.

(Replaced 29 of 1995 s. 7)

11B. Proof of ground for application, etc.

(1) An application for divorce shall be made to the court jointly by both parties to the marriage.

(2) The court hearing an application for divorce shall not hold the marriage to have broken down irretrievably unless it is satisfied as regards either or both of the following facts—