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STATUTORY INSTRUMENTS

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**2010 No. 2955**

**The Family Procedure Rules 2010**

**PART 7**

**PROCEDURE FOR APPLICATIONS IN MATRIMONIAL  
AND CIVIL PARTNERSHIP PROCEEDINGS**

**CHAPTER 1**

**APPLICATION AND INTERPRETATION**

**Application and interpretation**

**7.1.**—(1) The rules in this Part apply to matrimonial and civil partnership proceedings.

(2) The rules in this Part do not apply to magistrates' courts.

(3) In this Part—

“defended case” means matrimonial proceedings or civil partnership proceedings in which—

- (a) an answer has been filed opposing the grant of a matrimonial or civil partnership order on the application, and has not been struck out; or
- (b) the respondent has filed an application for a matrimonial or civil partnership order in accordance with rule 7.14 and neither party's application has been disposed of; or
- (c) rule 7.12(11) applies, notice has been given of intention to rebut and that notice has not been withdrawn,

and in which no matrimonial or civil partnership order has been made; and

“undefended case” means matrimonial proceedings or civil partnership proceedings other than a defended case.

(4) In this Part—

- (a) a reference to a conditional order is a reference to a civil partnership order (other than a separation order) which has not been made final; and
- (b) a reference to a final order is a reference to a conditional order which has been made final.

**District Registries**

**7.2.** A reference in this Part to a registry for a place at which sittings of the High Court in matrimonial or civil partnership proceedings are authorised is a reference—

- (a) to the district registry for that place;
- (b) where the place has no district registry, such district registry as the Lord Chancellor may designate for the purpose; or
- (c) if the place is not situated within the district of any district registry, the principal registry.

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*Changes to legislation: There are currently no known outstanding effects for the  
The Family Procedure Rules 2010, PART 7. (See end of Document for details)*

### **Principal Registry**

7.3.—(1) A provision of this Part which refers to—

- (a) proceedings being started or heard in a divorce county court or a civil partnership proceedings county court; or
- (b) the transfer of proceedings to or from such a court,

includes a reference to the principal registry when treated as such a court.

(2) Proceedings to which this Part applies which were started in the principal registry or have been transferred to it as if it were a county court are treated as pending—

- (a) if the proceedings are matrimonial proceedings, in a divorce county court; and
- (b) if the proceedings are civil partnership proceedings, in a civil partnership proceedings county court.

### **References to respondents**

7.4.—(1) Where a respondent makes an application for a matrimonial order or a civil partnership order, unless the context otherwise requires, the rules in this Part shall apply with necessary modifications as if the reference to a respondent is a reference to the applicant in the other party's application for a matrimonial order or a civil partnership order.

(2) Where a respondent makes an application for a matrimonial order, unless the context otherwise requires, the rules in this Part shall apply with necessary modifications as if the reference to a co-respondent is a reference to a party cited in the respondent's application for a matrimonial order.

## **CHAPTER 2**

### **RULES ABOUT STARTING AND RESPONDING TO PROCEEDINGS**

#### **Starting proceedings**

7.5.—(1) Matrimonial proceedings may be started in any divorce county court.

(2) Civil partnership proceedings may be started in any civil partnership proceedings county court.

#### **Statement of reconciliation**

7.6. Where the applicant is legally represented, the legal representative must, unless the court directs otherwise, complete and file with the application a statement in the form for this purpose referred to in Practice Direction 5A, certifying whether the legal representative has discussed with the applicant the possibility of a reconciliation and given the applicant the names and addresses of persons qualified to help effect a reconciliation.

#### **Limitation on applications in respect of same marriage or civil partnership**

7.7.—(1) Subject to paragraph (2), a person may not make more than one application for a matrimonial or civil partnership order in respect of the same marriage or civil partnership unless—

- (a) the first application has been dismissed or finally determined; or
- (b) the court gives permission.

(2) Where a person—

- (a) has, within one year of the date of the marriage or civil partnership, made an application for, as the case may be, a decree of judicial separation or an order for separation; and

(b) then, after that one-year period has passed, wishes to apply for a decree of divorce or a dissolution order on the same facts as those mentioned in the first application, that person does not need the court's permission to make the application referred to in subparagraph (b).

### **Service of application**

**7.8.**—(1) After an application for a matrimonial or civil partnership order has been issued by the court, a copy of it must be served on the respondent and on any co-respondent. (Rule 6.4 provides for who may serve an application for a matrimonial or civil partnership order.)

- (2) When the application is served on a respondent it must be accompanied by—
- (a) a form for acknowledging service;
  - (b) a notice of proceedings; and
  - (c) where applicable, a copy of the statement of arrangements for children.

### **Withdrawal of application before service**

**7.9.** An application for a matrimonial or civil partnership order may be withdrawn at any time before it has been served by giving notice in writing to the court where the proceedings were started.

### **Who the parties are**

**7.10.**—(1) The parties to matrimonial proceedings or civil partnership proceedings are—

- (a) the parties to the marriage or civil partnership concerned; and

- (b) any other person who is to be a party in accordance with a provision of the rules in this Part.

(2) Subject to paragraph (3), where an application for a matrimonial order or an answer to such an application alleges that the other party to the marriage has committed adultery with a named person, that named person is to be the co-respondent.

(3) The named person referred to in paragraph (2) is not to be a co-respondent where—

- (a) the court so directs;
- (b) that person has died; or
- (c) unless the court directs otherwise—
  - (i) that person is under 16 years of age; or
  - (ii) the other party to the marriage is alleged in the application or answer to have committed rape on the named person.

(4) Where an application for a matrimonial or civil partnership order or an answer alleges that the other party to the marriage or civil partnership has had an improper association with a named person, the court may direct that the named person is to be a party to the application, unless the named person has died.

(5) An application for directions under paragraph (3)(a) or (c) may be made without notice if the acknowledgment of service indicates that no party intends to defend the case.

### **Nullity: Interim and full gender recognition certificates**

**7.11.**—(1) Where the application is for—

- (a) nullity of marriage under section 12(g) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act <sup>M1</sup>; or

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(b) an order of nullity of civil partnership under section 50(1)(d) of the 2004 Act, the court officer must send to the Secretary of State a notice in writing that the application has been made.

(2) Where a copy of an interim gender recognition certificate has been filed with the application, that certificate must be attached to the notice.

(3) Where no copy of an interim gender recognition certificate has been filed the notice must also state—

(a) in matrimonial proceedings—

- (i) the names of the parties to the marriage and the date and place of the marriage, and
- (ii) the last address at which the parties to the marriage lived together as husband and wife;

(b) in civil partnership proceedings—

- (i) the names of the parties to the civil partnership and the date on, and the place at which, the civil partnership was formed, and
- (ii) the last address at which the parties to the civil partnership lived together as civil partners of each other; and

(c) in either case, such further particulars as the court officer considers appropriate.

(4) Where—

- (a) the application is for a decree of nullity of marriage under section 12(h) of the 1973 Act <sup>M2</sup> or for an order of nullity of civil partnership under section 50(1)(e) of the 2004 Act; and
- (b) a full gender recognition certificate has been issued to the respondent,

the applicant must file a copy of that full certificate with the application unless the court, on an application made without notice, directs otherwise.

#### **Marginal Citations**

**M1** Section 12(g) was inserted by section 4(4) of and paragraph 2 of Schedule 2 to the Gender Recognition Act 2004.

**M2** Section 12(h) was inserted by section 11 of and paragraphs 4 and 5 of Schedule 4 to the Gender Recognition Act 2004.

#### **What the respondent and co-respondent should do on receiving the application**

**7.12.**—(1) The respondent, and any co-respondent, must file an acknowledgment of service within 7 days beginning with the date on which the application for a matrimonial or civil partnership order was served.

(2) This rule is subject to rule 6.42 (which specifies how the period for filing an acknowledgment of service is calculated where the application is served out of the jurisdiction).

(3) The acknowledgment of service must—

- (a) subject to paragraph (4), be signed by the respondent or the respondent's legal representative or, as the case may be, the co respondent or the co respondent's legal representative;
- (b) include the respondent's or, as the case may be, the co respondent's address for service; and
- (c) where it is filed by the respondent, indicate whether or not the respondent intends to defend the case.

(4) Where paragraph (5) or (6) applies, the respondent must sign the acknowledgment of service personally.

(5) This paragraph applies where—

- (a) the application for a matrimonial order alleges that the respondent has committed adultery; and
- (b) the respondent admits the adultery.

(6) This paragraph applies where—

- (a) the application for a matrimonial or civil partnership order alleges that the parties to the marriage or civil partnership concerned have been separated for more than 2 years; and
- (b) the respondent consents to the making of the matrimonial or civil partnership order.

(7) Where the respondent does not agree with the proposals set out in the applicant's statement of arrangements for children, the respondent may file a statement of arrangements for children under section 41(1) of the 1973 <sup>M3</sup> Act or section 63(1) of the 2004 Act.

(8) A respondent who wishes to defend the case must file and serve an answer within 21 days beginning with the date by which the acknowledgment of service is required to be filed.

(9) An answer is not required where the respondent does not object to the making of the matrimonial or civil partnership order but objects to paying the costs of the application or to the applicant's statement of arrangements for children.

(10) A respondent may file an answer even if the intention to do so was not indicated in the acknowledgment of service.

(11) Where the application is for nullity of marriage under section 12(d) of the 1973 Act or for nullity of civil partnership under section 50(1)(b) of the 2004 Act and the respondent files an answer containing no more than a simple denial of the facts stated in the application, the respondent must, if intending to rebut the matters stated in the application, give notice to the court of that intention when filing the answer.

(12) A respondent to an application for a matrimonial or civil partnership order alleging 2 years' separation and the respondent's consent may—

- (a) indicate consent to the making of the matrimonial or civil partnership order in writing at any time after service of the application, whether in the acknowledgment of service or otherwise;
- (b) indicate lack of consent to the making of that order, or withdraw any such consent already given, by giving notice to the court.

(13) Where a respondent gives a notice under paragraph (12)(b) and no other relevant fact is alleged, the proceedings must be stayed<sup>(GL)</sup>, and notice of the stay<sup>(GL)</sup> given to the parties by the court officer.

(14) In this rule, a “relevant fact” is—

- (a) in matrimonial proceedings, one of the facts mentioned in section (1)(2) of the 1973 Act; and
- (b) in civil partnership proceedings, one of the facts mentioned in section 44(5) of the 2004 Act.

(The form of the answer is referred to in Practice Direction 5A.)

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### Marginal Citations

**M3** Section 41(1) has been prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.

### Amendments to the application and the answer

**7.13.**—(1) Unless paragraph (2) applies—

- (a) a party making an application for a matrimonial or civil partnership order may amend the application at any time before an answer to it has been filed;
- (b) a party who has filed an answer may amend the answer.

(2) No amendment to an application for a matrimonial or civil partnership order or to an answer may be made under paragraph (1) if an application under rule 7.19(1) has been made in relation to the marriage or civil partnership concerned.

(3) Where an amendment is made under paragraph (1)—

- (a) if the document amended is the application—
  - (i) it must be served in accordance with rule 7.8 (service of application); and
  - (ii) rule 7.12 (what the respondent and co respondent should do) applies;
- (b) rule 7.10 (parties) applies; and
- (c) any person who becomes a co-respondent to the proceedings in accordance with rule 7.10 as a consequence of such an amendment must be served with the documents required to be served on a co-respondent with an application for a matrimonial or civil partnership order.

(4) Paragraphs (1) and (2) do not apply if the amendment is made—

- (a) with the written consent of all the other parties; or
- (b) with the permission of the court.

(5) Where the court gives permission for a party to amend that party's application for a matrimonial or civil partnership order or answer it may give directions as to—

- (a) the service of the amended application or answer and any accompanying documents;
- (b) the joining of any additional parties in accordance with rule 7.10; and
- (c) the extent to which rule 7.12 must be complied with in respect of any amended application.

(6) The court may direct that any person cease to be a party if, in consequence of any amendment made under this rule, that person—

- (a) no longer falls within rule 7.10(2) or(4); or
- (b) falls within rule 7.10(4) but it is no longer desirable for that person to be a party to the proceedings.

### How the respondent can make an application

**7.14.**—(1) A respondent who wishes to make an application for a matrimonial or civil partnership order must make the application for that order within 21 days beginning with the date by which the respondent's acknowledgment of service is required to be filed, unless the court gives permission to make the application after that time has passed.

(2) Where the respondent makes an application under this rule, that application is to be treated as an application in the same proceedings for the purposes of this Part.

### **Further information about the contents of the application and the answer**

- 7.15.**—(1) The court may at any time order a party—
- (a) to clarify any matter which is in dispute in the proceedings; or
  - (b) to give additional information in relation to any such matter,
- whether or not the matter is contained or referred to in the application for a matrimonial or civil partnership order or in the answer.
- (2) Paragraph (1) is subject to any rule of law to the contrary.
- (3) Where the court makes an order under paragraph (1), the party against whom it is made must—
- (a) file the reply to the order made under paragraph (1); and
  - (b) serve a copy of it on each of the other parties,
- within the time specified by the court.
- (4) The court may direct that information provided by a party to another party (whether given voluntarily or following an order made under paragraph (1)) must not be used for any purpose except for the proceedings in which it is given.

## **CHAPTER 3**

### **HOW THE COURT DETERMINES MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS**

#### **General rule – hearing to be in public**

- 7.16.**—(1) The general rule is that a hearing to which this Part applies is to be in public.
- (2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.
- (3) A hearing, or any part of it, may be in private if—
- (a) publicity would defeat the object of the hearing;
  - (b) it involves matters relating to national security;
  - (c) it involves confidential information (including information relating to personal financial matters ) and publicity would damage that confidentiality;
  - (d) a private hearing is necessary to protect the interests of any child or protected party;
  - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing; or
  - (f) the court considers this to be necessary, in the interests of justice.
- (4) A hearing of an application for rescission of an order by consent under rule 7.28 is, unless the court directs otherwise, to be in private.
- (5) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

#### **Exercise of jurisdiction in cases heard at place other than the court in which the case is proceeding**

- 7.17.** Where a defended case is to be heard at a place other than the court in which it is proceeding, a judge of that other court may exercise all the powers that would be exercisable by a judge of the court in which the case is proceeding.

## Notice of hearing

**7.18.** The court officer will give notice to the parties—

- (a) of the date, time and place of every hearing which is to take place in a case to which they are a party; and
- (b) in the case of a hearing following a direction under rule 7.20(2)(a), of the fact that, unless the person wishes or the court requires, the person need not attend.

## Applications for a decree nisi or a conditional order

**7.19.—**(1) An application may be made to the court for it to consider the making of a decree nisi, a conditional order, a decree of judicial separation or a separation order in the proceedings—

- (a) at any time after the time for filing the acknowledgment of service has expired, provided that no party has filed an acknowledgment of service indicating an intention to defend the case; and
- (b) in any other case, at any time after the time for filing an answer to every application for a matrimonial or civil partnership order made in the proceedings has expired.

(2) An application under paragraph (1) may be made—

- (a) in a case within paragraph (1)(a), by the applicant; and
- (b) in any other case, by either party to the marriage or civil partnership in question.

(3) An application under this rule must, if the information which was required to be provided by the application form is no longer correct, be accompanied by a statement setting out particulars of the change.

(4) If neither party has filed an answer opposing the making of a decree nisi, a conditional order, a decree of judicial separation or a separation order on the other's application, then an application under this rule must be accompanied by an affidavit—

- (a) stating whether there have been any changes in the information given in the application or in any statement of arrangements for children;
- (b) confirming that, subject to any changes stated, the contents of the application and any statement of arrangements for children are true; and
- (c) where the acknowledgment of service has been signed by the other party, confirming that party's signature on the acknowledgment of service.

## What the court will do on an application for a decree nisi, a conditional order, a decree of judicial separation or a separation order

**7.20.—**(1) This rule applies where an application is made under rule 7.19.

(2) If at the relevant time the case is an undefended case, the court must—

- (a) if satisfied that the applicant is entitled to—
  - (i) in matrimonial proceedings, a decree nisi or a decree of judicial separation (as the case may be); or
  - (ii) in civil partnership proceedings, a conditional order or a separation order (as the case may be),

so certify and direct that the application be listed before a district judge for the making of the decree or order at the next available date;

- (b) if not so satisfied, direct—



- (i) that any party to the proceedings provide such further information, or take such other steps, as the court may specify; or
  - (ii) that the case be listed for a case management hearing.
- (3) If the applicant has applied for costs, the court may, on making a direction under paragraph (2) (a)—
- (a) if satisfied that the applicant is entitled to an order for costs, so certify; or
  - (b) if not so satisfied, make no direction about costs.
- (4) If at the relevant time the case is a defended case, the court must direct that the case be listed for a case management hearing.
- (5) The court may, when giving a direction under paragraph (2)(b), direct that the further information provided be verified by an affidavit.
- (6) The court must not give directions under this rule unless at the relevant time it is satisfied—
- (a) that a copy of each application for a matrimonial or civil partnership order or answer (including any amended application or answer) has been properly served on each party on whom it is required to be served; and
  - (b) that —
    - (i) in matrimonial proceedings, the application for a decree nisi or a decree of judicial separation; or
    - (ii) in civil partnership proceedings, the application for a conditional order or separation order,was made at a time permitted by rule 7.19(1).
- (7) In this rule, “the relevant time” means the time at which the court is considering an application made under rule 7.19(1).

### Further provisions about costs

**7.21.**—(1) Subject to paragraph (2), any party to matrimonial or civil partnership proceedings may be heard on any question as to costs at the hearing of the proceedings.

(2) In the case of a hearing following a direction under rule 7.20(2)(a), a party will not be heard unless that party has, not less than 2 days before the hearing, served on every other party written notice of that party's intention to attend the hearing and apply for, or oppose the making of, an order for costs.

### What the court must do for the case management hearing

**7.22.**—(1) This rule applies to a case in which the court has directed a case management hearing under rule 7.20.

- (2) Where a hearing has been directed under rule 7.20(4) the court must—
- (a) decide where the hearing in the case should take place;
  - (b) set a timetable for the filing and service of evidence;
  - (c) make such order for the disclosure and inspection of documents as it considers appropriate; and
  - (d) give directions as to the conduct of the final hearing and the attendance of witnesses.

(Rule 21.1 explains what is meant by disclosure and inspection.)

- (3) Where a hearing has been directed under rule 7.20(2)(b)(ii), the court must—

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- (a) consider what further evidence is required properly to dispose of the proceedings and give directions about the filing and service of such evidence;
- (b) consider whether any further information is required about the arrangements for the children of the family and give directions about the filing and service of such information;
- (c) give directions for the further conduct of the proceedings, including—
  - (i) giving a direction that on compliance with any directions under sub-paragraph (a) or (b) a further application may be made under rule 7.19(1) for the proceedings to be dealt with under rule 7.20(2)(a); or
  - (ii) giving a direction that the case is not suitable for determination under that rule.

(4) Where the court gives a direction under paragraph (3)(c)(ii), it may also give directions under paragraph (2) or direct that the case be listed for a further hearing at which such directions will be given.

(5) Any party to proceedings which are not being dealt with under rule 7.20(2)(a) may apply to the court for further directions at any time. (Part 3 sets out the court's powers to encourage the parties to use alternative dispute resolution and Part 4 sets out the court's general case management powers.)

**Where proceedings under this Part may be heard**

**7.23.** A case, other than one dealt with under rule 7.20(2)(a), may be heard, where it is proceeding in the court set out in column 1 of the following table—

- (a) in matrimonial proceedings, at the place referred to in column 2;
- (b) in civil partnership proceedings, at the place referred to in column 3.

	<i>Matrimonial Proceedings</i>	<i>Civil Proceedings</i>	<i>Partnership Proceedings</i>
A county court.	Any divorce county court designated as a court of trial.	Any civil proceedings designated as a court of trial.	partnership county court designated as a court of trial.
The principal registry when proceedings are treated as pending in a county court.	The Royal Courts of Justice.	The Royal Courts of Justice.	
The High Court (including the principal registry other than when proceedings are treated as pending in a county court.).	a) The Royal Courts of Justice. b) Any court at which sittings of the High Court in matrimonial proceedings are authorised.	a) The Royal Courts of Justice. b) Any court at which sittings of the High Court in civil partnership proceedings are authorised.	

**The circumstances in which proceedings may be transferred between courts**

**7.24.—(1)** A court may transfer the hearing of a case which is due to be heard in one court to another court of the same type at which hearings of those proceedings are permitted under rule 7.23.

(2) A court in which matrimonial or civil partnership proceedings are pending may order them, or an application made in the course of them—

- (a) if the proceedings are pending in the High Court, to be transferred from the registry in which they are pending to another district registry;
- (b) if the proceedings are matrimonial proceedings pending in a divorce county court, to be transferred from that county court to another divorce county court; and

- (c) if the proceedings are civil partnership proceedings pending in a civil partnership proceedings county court, to be transferred from that county court to another civil partnership proceedings county court.
- (3) An order transferring the hearing of an application must not be made under paragraph (2) unless it would be more convenient than transferring the proceedings themselves.
- (4) No transfer may be made under this rule or under section 38 or 39 of the 1984 Act<sup>M4</sup> (transfers between High Court and a county court) unless—
  - (a) the parties consent to the transfer;
  - (b) the court has held a hearing to determine whether a transfer should be ordered; or
  - (c) the court has transferred a case without a hearing where neither party has, within 14 days of being notified in writing of the court's intention to make such an order, requested a hearing to determine whether a transfer should be ordered.
- (5) Proceedings—
  - (a) which are transferred from the High Court to a divorce county court or a civil partnership proceedings county court and are to continue after the transfer in the principal registry are to be treated as pending in a divorce or civil partnership proceedings county court (as the case may be); and
  - (b) which are transferred from a divorce county court or a civil partnership proceedings county court to the High Court and are to continue after the transfer in the principal registry are no longer to be treated as pending in a divorce or civil partnership proceedings county court (as the case may be).
- (6) Proceedings transferred from a divorce county court or a civil partnership proceedings county court to the High Court are to proceed in the registry nearest to the court from which they were transferred unless—
  - (a) the order transferring the proceedings directs otherwise; or
  - (b) the court subsequently orders.

#### Marginal Citations

**M4** Section 38 was amended by article 3 of the [Civil Partnership \(Family Proceedings and Housing Consequential Amendments\) Order 2005 \(S.I. 2005/3336\)](#) and section 108(5) of and paragraph 51 of Schedule 13 to the Children Act 1989 and section 261(1) of and paragraphs 93 and 94 of Schedule 27 to the Civil Partnership Act 2004.

### The procedure for complying with section 41 of 1973 Act or section 63 of 2004 Act

- 7.25.**—(1) Before the court—
- (a) gives a direction under rule 7.20(2)(a); or
  - (b) makes—
    - (i) in matrimonial proceedings, a decree nisi or decree of judicial separation; or
    - (ii) in civil partnership proceedings, a conditional order or a separation order,
- it must consider the matters set out in paragraph (2).
- (2) The matters referred to in paragraph (1) are—
- (a) whether there are any children of the family to whom section 41(1) of the 1973 Act or section 63(1) of the 2004 Act (as the case may be) applies; and

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- (b) if there are such children, and no application is pending in relation to them under Part 1 or 2 of the 1989 Act, the matters set out in section 41(1)(b) of the 1973 Act or in section 63(1)(b) of the 2004 Act (as the case may be).
- (3) Where the court is satisfied that—
- (a) there are no children of the family to whom—
    - (i) in matrimonial proceedings, section 41 of the 1973 Act applies; and
    - (ii) in civil partnership proceedings, section 63 of the 2004 Act applies; or
  - (b) there are such children but the court need not exercise its powers under the 1989 Act or its power to give a relevant direction with respect to any of them,
- it must give a certificate to that effect.
- (4) Where the court does not issue a certificate under paragraph (3) it may direct that—
- (a) the parties, or any of them, must file further evidence relating to the arrangements for the children and may direct what specific matters must be dealt with in that evidence;
  - (b) a welfare report on the children, or any of them, be prepared;
  - (c) the parties, or any of them, attend a hearing for the court to consider the matter.
- (5) Where the court makes a direction under paragraph (4) or a relevant direction, it must state in writing—
- (a) its reasons for doing so; and
  - (b) in the case of a relevant direction, the exceptional circumstances which make it desirable in the interests of the child that the court should make such a direction.
- (6) Nothing in this rule affects the court's power to make an order under the 1989 Act or a relevant direction.
- (7) The court officer must send the parties—
- (a) a copy of any certificate given under paragraph (3);
  - (b) a copy of any direction made under paragraph (4);
  - (c) a copy of any relevant direction; and
  - (d) a copy of any statement under paragraph (5).
- (8) In this rule—
- “parties” means a party to the marriage or civil partnership concerned and any person who appears to the court to have the care of any child of the family; and
- “relevant direction” means—
- (a) in matrimonial proceedings, a direction under section 41(2) of the 1973 Act;
  - (b) in civil partnership proceedings, a direction under section 63(2) of the 2004 Act.

### **Medical examinations in proceedings for nullity of marriage**

**7.26.—**(1) Where the application is for a decree of nullity of marriage on the ground of incapacity to consummate or wilful refusal to do so, the court must determine whether medical examiners should be appointed to examine the parties or either of them.

(2) The court must only appoint medical examiners under paragraph (1) where it considers that it is necessary for the proper disposal of the case.

(3) The person to be examined must, in the presence of the medical examiner, sign a statement identifying that person as the party to whom the order for examination applies.

(4) The medical examiner must certify on the same statement that it was signed in his or her presence by the person who has been examined.

(5) The person who carries out the examination must prepare a report and file it with the court by the date directed by the court.

(6) Either party is entitled to see a copy of a report filed under paragraph (5).

### Stay of proceedings

7.27.—(1) Where—

- (a) the court is considering an application in accordance with rule 7.20 or gives directions under rule 7.22;
- (b) it appears to the court that there are proceedings continuing in any country outside England and Wales which are in respect of the marriage or civil partnership in question or which are capable of affecting its validity or subsistence; and
- (c) the court considers that the question whether the proceedings should be stayed<sup>(GL)</sup> under paragraph 9 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973<sup>M5</sup> or, for civil partnership proceedings, under rules made under sections 75 and 76 of the Courts Act 2003,

the court must give directions for the hearing of that question.

(2) Where at any time after the making of an application under this Part it appears to the court in matrimonial proceedings that, under Articles 16 to 19 of the Council Regulation, the court does not have jurisdiction to hear the application and is or may be required to stay<sup>(GL)</sup> the proceedings, the court will—

- (a) stay<sup>(GL)</sup> the proceedings; and
- (b) fix a date for a hearing to determine the questions of jurisdiction and whether there should be a further stay<sup>(GL)</sup> or other order.

(3) The court must give reasons for its decision under Articles 16 to 19 of the Council Regulation and, where it makes a finding of fact, state such finding of fact.

(4) An order under Article 17 of the Council Regulation that the court has no jurisdiction over the proceedings will be recorded by the court or the court officer in writing.

(5) The court may, if all parties agree, deal with any question about the jurisdiction of the court without a hearing.

#### Marginal Citations

**M5** Paragraph 9 of Schedule 1 was amended by section 19(5) of and paragraphs 7(1), (2), (3), (4) and (5) of Schedule 3 to the Family Law Act 1996 and regulation 4 of the European Communities (Matrimonial Jurisdiction and Judgments) Regulations 2001( S.I. 2001/310).

## CHAPTER 4

### COURT ORDERS

#### The circumstances in which an order may be set aside (rescission)

7.28.—(1) The court must not hear an application by a respondent for—

- (a) the rescission of a decree of divorce under section 10(1) of the 1973 Act;
- (b) the rescission of a dissolution order under section 48(1) of the 2004 Act,

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less than 14 days after service of the application.

- (2) Either party to the marriage concerned may apply—
- (a) after the decree nisi has been made but before it has been made absolute; or
  - (b) after a decree of judicial separation has been made

for the rescission of the decree on the grounds that the parties are reconciled and both consent to the rescission.

- (3) Either party to the civil partnership concerned may apply—
- (a) after a conditional order has been made but before it has been made final; or
  - (b) after a separation order has been made,

for the rescission of the order on the grounds that the parties are reconciled and both consent to the rescission.

### **Applications under section 10(2) of 1973 Act or section 48(2) of 2004 Act**

**7.29.** Where the court makes—

- (a) in the case of divorce, a decree absolute following an application under section 10(2) of the 1973 Act; or
- (b) in the case of dissolution, a final order following an application under section 48(2) of the 2004 Act,

it must make a written record of the reasons for deciding to make that decree absolute or final order.

### **Orders under section 10A(2) of the 1973 Act**

**7.30.—**(1) Where the court has made an order under section 10A(2) of the 1973 Act, the declaration referred to in that section must—

- (a) be made and signed by both parties to the marriage concerned;
- (b) give particulars of the proceedings in which the order was obtained;
- (c) confirm that the steps required to dissolve the marriage in accordance with the religious usages appropriate to the parties have been taken;
- (d) be accompanied by—
  - (i) a certificate from a relevant religious authority that all such steps have been taken; or
  - (ii) such other documents showing the relevant steps have been taken as the court may direct; and
  - (iii) be filed at the court either before or together with an application to make the decree nisi absolute,

under rule 7.32 or 7.33.

(2) Where the certificate referred to in paragraph (1)(d)(i) is not in English it must be accompanied by a translation of that certificate into English, certified by a notary public or authenticated by statement of truth.

(3) The court may direct that the declaration need not be accompanied by the material mentioned in paragraph (1)(d).

(4) In this rule a religious authority is “relevant” if the party who made the application for the order under section 10A(2) of the 1973 Act considers that authority competent to confirm that the steps referred to in paragraph (1)(c) have been taken.

## **Applications to prevent decrees nisi being made absolute or conditional orders being made final**

**7.31.**—(1) This rule applies to an application under section 8 or 9 of the 1973 Act <sup>M6</sup> or under section 39 or 40 of the 2004 Act to prevent —

- (a) in the case of divorce or nullity of marriage, a decree nisi being made absolute; or
- (b) in the case of dissolution or nullity of civil partnership, a conditional order being made final.

(2) An application to which this rule applies must be made using the Part 18 procedure, subject to paragraphs (3) to (6) of this rule.

(3) The person making an application to which this rule applies must within 28 days of filing the application apply to the court to give directions for the hearing of the application.

(4) Where the person making an application to which this rule applies does not apply for directions under paragraph (3), then the person in whose favour the decree nisi or conditional order (as the case may be) was made may do so.

(5) Rule 7.22(2) applies to an application to which this rule applies as it applies to an application for a matrimonial or civil partnership order.

(6) Where an application to which this rule applies is made by the Queen's Proctor—

- (a) the Queen's Proctor may give written notice, to the court and to the party in whose favour the decree nisi or conditional order (as the case may be) was made, of the Queen's Proctor's intention to make an application to prevent the decree nisi being made absolute or the conditional order being made final; and
- (b) where the Queen's Proctor does so the application under paragraph (1) must be made within 21 days beginning with the date on which the notice is given.

### **Marginal Citations**

**M6** Section 8 was amended by section 66(1) and (3) of and paragraph 5 of Schedule 8 to the Family Law Act 1996 and section 9 was prospectively repealed by section 66(3) of and Schedule 10 to the Family Law Act 1996.

## **Making decrees nisi absolute or conditional orders final by giving notice**

**7.32.**—(1) Unless rule 7.33 applies—

- (a) in matrimonial proceedings, a spouse in whose favour a decree nisi has been made may give notice to the court that he or she wishes the decree nisi to be made absolute; or
- (b) in civil partnership proceedings, a civil partner in whose favour a conditional order has been made may give notice to the court that he or she wishes the conditional order to be made final.

(2) Subject to paragraphs (3) and (4), where the court receives a notice under paragraph (1) it will make the decree nisi absolute or the conditional order final (as the case may be) if it is satisfied that—

- (a) no application for rescission of the decree nisi or the conditional order is pending;
- (b) no appeal against the making of the decree nisi or the conditional order is pending;
- (c) no order has been made by the court extending the time for bringing an appeal of the kind mentioned in sub-paragraph (b), or if such an order has been made, that the time so extended has expired;
- (d) no application for an order of the kind mentioned in sub-paragraph (c) is pending;

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- (e) no application to prevent the decree nisi being made absolute or the conditional order being made final is pending;
  - (f) the court has complied with section 41(1) of the 1973 Act or section 63(1) of the 2004 Act, as the case may be, and has not given any direction under subsection (2) of either of those sections;
  - (g) the provisions of section 10(2) to (4) of the 1973 Act or section 48(2) to (4) of the 2004 Act do not apply or have been complied with;
  - (h) any order under section 10A(2) of the 1973 Act has been complied with; and
  - (i) where the decree nisi was made on the ground in section 12(g) of, or paragraph 11(1)(e) of Schedule 1 to, the 1973 Act, or the conditional order was made under section 50(1)(d) of the 2004 Act—
    - (i) there is not pending a reference under section 8(5) of the Gender Recognition Act 2004 in respect of the application on which the interim gender recognition certificate to which the application relates was granted;
    - (ii) that interim certificate has not been revoked under section 8(6)(b) of that Act; and
    - (iii) no appeal is pending against an order under section 8(6)(a) of that Act.
- (3) Where the notice is received more than 12 months after the making of the decree nisi or the conditional order, it must be accompanied by an explanation in writing stating—
- (a) why the application has not been made earlier;
  - (b) whether the applicant and respondent have lived together since the decree nisi or the conditional order was made, and, if so, between what dates;
  - (c) if the applicant is female, whether she has given birth to a child since the decree nisi or the conditional order was made and whether it is alleged that the child is or may be a child of the family;
  - (d) if the respondent is female, whether the applicant has reason to believe that she has given birth to a child since the decree nisi or the conditional order was made and whether it is alleged that the child is or may be a child of the family.
- (4) Where paragraph (3) applies, the court may—
- (a) require the applicant to file an affidavit verifying the explanation; and
  - (b) make such order on the application as it thinks fit, but where it orders the decree nisi to be made absolute or the conditional order to be made final that order is not to take effect until the court is satisfied that none of the matters mentioned in paragraph (2)(a) to (i) applies.

### **Applications to make decrees nisi absolute or conditional orders final**

**7.33.**—(1) An application must be made—

- (a) in matrimonial proceedings, for the decree nisi to be made absolute; or
- (b) in civil partnership proceedings, for the conditional order to be made final,

where the conditions set out in paragraph (2) apply.

(2) The conditions referred to in paragraph (1) are—

- (a) the Queen's Proctor gives notice to the court under rule 7.31(6)(a) and has not withdrawn that notice;
- (b) there are other circumstances which ought to be brought to the attention of the court before the application is granted; or
- (c) the application is made—



- (i) in matrimonial proceedings, by the spouse against whom the decree nisi was made;  
or
  - (ii) in civil partnership proceedings, by the civil partner against whom the conditional order was made.
- (3) An application under this rule to which paragraph (2)(a) applies must be—
- (a) made to a judge, but not a district judge; and
  - (b) served on the Queen's Proctor.
- (4) Where the court orders—
- (a) in matrimonial proceedings, a decree to be made absolute under this rule; or
  - (b) in civil partnership proceedings, a conditional order to be made final under this rule,
- that order is not to take effect until the court is satisfied about the matters mentioned in rule 7.32(2) (a) to (i) .

#### **What the court officer must do when a decree nisi is made absolute**

- 7.34.** In matrimonial proceedings, where a decree nisi is made absolute the court officer must—
- (a) endorse that fact on the decree nisi together with the precise time at which the decree was made absolute; and
  - (b) send a certificate that a decree nisi has been made absolute to the applicant, the respondent, any co-respondent and any other party.

#### **What the court officer must do when a conditional order is made final**

- 7.35.** Where a conditional order is made final the court officer must—
- (a) endorse that fact on the conditional order together with the precise time at which the order was made final; and
  - (b) send the final order to the applicant, the respondent and any other party.

#### **Records of decrees absolute and final orders**

- 7.36.—**(1) A central index of decrees absolute and final orders must be kept under the control of the principal registry.
- (2) Any person, on payment of the prescribed fee, may require a search to be made of that index and to be provided with a certificate showing the results of that search.
- (3) Any person who requests it must, on payment of the prescribed fee, be issued with a copy of the decree absolute or final order.

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