
STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 7

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

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—

- (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 Partnership Proceedings</i>
A county court.	Any divorce county court designated as a court of trial.	Any civil partnership proceedings 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.).	<ul style="list-style-type: none"> a) The Royal Courts of Justice. a) Any court at which sittings of the High Court in matrimonial proceedings are authorised. 	<ul style="list-style-type: none"> b) 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⁽¹⁾ (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.

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
 - (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—

⁽¹⁾ 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.

- (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^(GL) under paragraph 9 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973⁽²⁾ 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^(GL) the proceedings, the court will—

- (a) stay^(GL) the proceedings; and
- (b) fix a date for a hearing to determine the questions of jurisdiction and whether there should be a further stay^(GL) 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.

(2) 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).