
STATUTORY INSTRUMENTS

2010 No. 2955

The Family Procedure Rules 2010

PART 7

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

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,

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⁽¹⁾ 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

(1) 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.

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.

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;
- (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.