Family Justice Policy
Area 7.17
102 Petty France
London
SW1H 9AJ
rosa.abulafia@justice.gov.uk
www.justice.gov.uk

15 December 2020

Dear Colleague,

FAMILY PROCEDURE RULE COMMITTEE CONSULTATION ON DRAFT CHANGES TO THE FAMILY PROCEDURE RULES ARISING FROM PLANNED IMPLEMENTATION OF THE DIVORCE, DISSOLUTION AND SEPARATION ACT 2020

Please find enclosed a consultation paper regarding proposed amendments and new rules in relation to Part 6 (Service) and Part 7 (Procedure for Applications in Matrimonial and Civil Partnership Proceedings) of the Family Procedure Rules 2010 ("the FPR"). Attached to the consultation paper are the draft amendments and new rules in respect of Part 6 (**Annex A**) and Part 7 (**Annex B**).

The proposed amendments and new rules in relation to Part 6 and Part 7 arise as a result of the Family Procedure Rule Committee ("the Committee") seeking to give procedural effect to the revised legislative framework brought about by the Divorce, Dissolution and Separation Act 2020 ("DDSA 2020"), which received Royal Assent on 25 June 2020. The Ministry of Justice is working to an indicative timetable of autumn 2021 for implementation.

A dedicated Working Group has supported the Committee in overseeing the drafting of proposed new and amended procedure rules. Separate to proposed procedure rule changes, the Committee and the President of the Family Division will in due course consider whether new Practice Directions or amendments to current Practice Directions may be needed.

On implementation, the DDSA 2020 will bring about the most significant changes to the law of divorce, dissolution and separation in half a century. The legislation removes the need for the party applying for divorce or dissolution to satisfy the court of either 'conduct' or 'separation' facts in order to establish irretrievable breakdown of the marriage or civil partnership. It will allow for the first time for joint applications to be made for divorce, dissolution and separation, and introduce a new 'minimum period' of 20 weeks in divorce and dissolution proceedings between the start of proceedings (when the court issues the application) and when the applicant(s) may apply for a

Conditional Order. A respondent will also no longer be able to defend a divorce or dissolution application or dispute a 'fact', and the legal language used for divorce will be updated.

These statutory changes will of course require significant procedure rule changes. The consultation paper outlines the most substantive changes that are proposed by the Committee, most notably in respect of service (both within and outside the jurisdiction) and joint applications. Other key changes include the definition of disputed cases and the listing of case management hearings in disputed cases.

The Committee invites comments from interested parties in respect of the specific questions set out in the consultation paper. Please could you send your comments by e-mail to FPRCSecretariat@Justice.gov.uk by 5.30pm on 2 March 2021. In view of the continuing restrictions due to the Covid-19 pandemic, we ask you please not to send paper responses.

Copies of the consultation document and attachments have been sent to the following bodies (although the names of individual consultees are omitted from the list below):

Access to Justice Foundation
Advocates' Gateway
Association of Costs Lawyers
Association of HM District Judges
Association of Circuit Judges
Association of Lawyers for Children
Bar Council
Chartered Institute of Legal Executives
Citizen's Advice Bureau (national organisation)
Council of HM Circuit Judges
Council of HM District Judges (magistrates' courts)
Family Justice Council
Family Law Bar Association
High Court Judges of the Family Division
International Family Law Committee
Judicial College
Judicial Office
Justices' Clerks' Society
Magistrates' Association
Magistrates' Leadership Executive
RCJ Citizen's Advice Bureau
Resolution
Support Through Court
The Law Society
Transparency Project

Please do forward these attachments to other interested parties or inform me of other people who should be sent a copy of them. Please do not hesitate to contact me if you require any further information.

I am copying this letter and attachments to the President's office and to members of the Family Procedure Rule Committee.

Yours faithfully,

ROSA ABULAFIA

Enclosures:

- Consultation Paper;
- **Annex A** (draft amendments to Part 6); and
- **Annex B** (draft amendments to Part 7).

FAMILY PROCEDURE RULE COMMITTEE

CONSULTATION ON DRAFT CHANGES TO THE FAMILY PROCEDURE RULES ARISING FROM PLANNED IMPLEMENTATION OF THE DIVORCE, DISSOLUTION AND SEPARATION ACT 2020

Introduction

1. Attached to this paper are draft amendments to the Family Procedure Rules 2010 ("the FPR") which would give procedural effect to the revised legislative framework brought about by the Divorce, Dissolution and Separation Act 2020 ("DDSA 2020"), which received Royal Assent on 25 June 2020. The main provisions of the Act will be brought into effect through commencement regulations made by the Lord Chancellor in due course.

2. At **Annex A** are draft amendments to Part 6 (Service) and at **Annex B** are draft amendments to Part 7 (Procedure for Applications in Matrimonial and Civil Partnership Proceedings).

The DDSA 2020

3. Consultees will be aware that the DDSA 2020 will reform the law on divorce, dissolution and separation by:

    a. Removing the need for the party applying for a divorce or dissolution to satisfy the court of either 'conduct' or 'separation' facts in order to establish irretrievable breakdown of the marriage or civil partnership (and removing the need for an applicant for judicial separation to satisfy the court in relation to any such facts);

    b. Removing the ability of a respondent to defend a divorce or dissolution application or dispute a 'fact';

    c. Allowing for joint applications for divorce, dissolution and separation;

    d. Introducing a new 'minimum period' of 20 weeks in divorce and dissolution proceedings between the start of proceedings (when the court issues the application) and when the applicant(s) may apply for a Conditional Order; and

    e. Updating the legal language used for divorce ('Petition' will become 'Application', 'Petitioner' will become 'Applicant', 'Decree Nisi' will become 'Conditional Order' and 'Decree Absolute' will become 'Final Order'.

4. The context of these reforms is the Government's key policy aim behind the DDSA 2020 to reduce conflict within the legal process of divorce, dissolution and separation.

Power of the Family Procedure Rule Committee

5. Under Section 75 of the Courts Act 2003 the Family Procedure Rule Committee ("the Committee") has a statutory role to make Rules of court governing practice and procedure in family proceedings. That power is to be exercised to secure fairness, accessibility and efficiency in the family justice system. Rules are also required to be both simple and simply expressed.

6. Parliament has provided through the DDSA 2020 a revised legal process by which to obtain a divorce, dissolution or separation. The amendments proposed at **Annex A** and **Annex B** aim to give procedural effect to the revised legislative framework introduced by the DDSA 2020 through amendments to the FPR.

7. In addition, consultees should note that, without prejudice to the general power to make Rules at section 75 of the 2003 Act, the DDSA 2020 expressly provides the power that the Committee may make rules providing for the procedure by which applications for divorce and dissolution made by both parties to a marriage or civil partnership become an application made by one party to a marriage or civil partnership only.

Proposed Changes to the Family Procedure Rules

8. The Committee has been supported by a dedicated Working Group which has overseen the drafting of proposed new procedure rules and amendments to current procedure rules. The Committee now invites comments from interested parties in relation to the specific consultation questions set out below. Once consultation responses are received, they will be considered by the Committee in the context of what is necessary to give effect to the DDSA 2020.

9. Implementing the DDSA 2020 will require a large number of substantive and consequential amendments to Parts 6 and 7 of the FPR (as well as wider consequential amendments to other Parts of the FPR). The Committee is therefore limiting its consultation to those substantive changes to Parts 6 and 7 on which it considers it would be most helpful to draw wider views. The most substantive changes have been made in relation to service (both within and outside the jurisdiction) and joint applications (including how they relate to s.10(2) of the MCA 1973, as amended by the DDSA 2020). Other key changes include the definition of disputed cases and the listing of case management hearings in disputed cases. Separate to proposed rule changes, the Committee and the President of the Family Division will in due course consider whether new Practice Directions may be needed, as well as amendments to existing Practice Directions

10. When the Government legislated on the DDSA 2020 its stated policy objective was to reduce conflict in the legal process of divorce. The Committee has therefore sought for the procedure rules to reduce opportunities for satellite litigation and conflict.

General Points

Part 6

11. Consultees are referred to Paragraphs 24-38 below in respect of Part 6. In short, the most substantive draft changes that have been made to this part are in relation to who is to serve, method of service and time limit on steps to be taken to serve (including in relation to international service).

Part 7

12. Consultees are referred to Paragraphs 13-23 and Paragraphs 39-55 below in respect of Part 7.

Structure

13. It will be noted that the amended Part 7 has been restructured (although not re-written). Part 7 is now divided into seven Chapters:

a. Chapter I – Application and Interpretation;
b. Chapter II – Rules about Starting Proceedings;
c. Chapter III – Standard Case;
d. Chapter IV – Disputed Case;
e. Chapter V – Proceedings after Conditional Order (Standard and Disputed Case);
f. Chapter VI – Provisions Specific to Nullity Proceedings;
g. Chapter VII – General Provisions.

14. The aim of this restructure of the current Part 7 is to provide clarity in respect of which rules apply generally, which rules will apply to specifically to standard case proceedings and disputed case proceedings prior to the making of the Conditional Order and which specifically relate to nullity.

Costs

15. Consultees will note that no substantive changes are proposed by the Committee in relation to the rules on costs in respect of matrimonial and civil partnership order applications as part of this consultation. The existing rules on costs would therefore continue to apply.

16. The Committee has considered the extent to which current orders for costs are predicated on the five facts, and whether the abolition of the five facts will remove the basis on which such costs orders are currently made. The Committee has considered whether this should mean that there should be a general 'no order as to costs' rule in respect of matrimonial and civil partnership order applications, with exceptions. It has also considered whether, if no rule changes are made, it would be unlikely that costs orders would be made in circumstances where the five facts no longer exist or whether costs will continue to be relevant in certain cases.

17. In light of this, it has concluded not to make any costs rule changes now but that a further consultation may need to be considered, specifically on costs, once there has been time for assessment of the operation of current costs rules following implementation of the reforms under the DDSA 2020. Such assessment would be needed to ensure the Committee has a clear evidence base and understanding in respect of how current costs rules are being applied in the new divorce landscape, from which it can draw conclusions as to whether rule changes may be necessary.

18. The desirability of issuing interim Guidance in this area more generally is something which the Committee will consider as part of plans for implementation.

Summary

Disputed Cases

19. Consultees will note that current reference to 'defended case' in Part 7 has changed in the draft amended Part 7 (at new r.7.1(3)) to 'disputed case'. The Committee considers that this change will send a clear signal that respondents will no longer have the ability to 'defend' a divorce or dissolution application or dispute a 'fact'. It is further of the view that the word 'dispute' sets a more neutral tone than the word 'defend'.

20. The Committee is however of the view that the ability to 'dispute' a case will be needed on limited grounds. Consultees are referred to new r.7.1(3)(b) which sets out the definition of a disputed case for matrimonial and civil partnership proceedings (excluding nullity proceedings) as being one where:

(i) an answer has been filed disputing—

(1) the validity or subsistence of the marriage or civil partnership; or
(2) the jurisdiction of the court to entertain the proceedings,

and has not been struck out; or

(ii) the respondent has filed an application for a matrimonial or civil partnership order in accordance with rules [ ] and neither party's application has been disposed of

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

21. These are the only circumstances in which a case can be classified as 'disputed' under the new draft Part 7. Whether a case is defined as 'disputed' or 'standard' it could be challenged on procedural grounds including fraud and procedural compliance. Consideration has been given to the 'disputed case' definition and whether r.7.1(3)(b) should specifically include cases where forum is disputed and an application may need to be made to stay proceedings under Paragraph 9 of Schedule 1 of the Domicile and Matrimonial Proceedings Act 1973. The current definition is considered wide enough to cover answers where various jurisdiction related disputes are raised. Specific provision in relation to forum disputes and stay applications is not considered necessary in circumstances where the court would expect the party who seeks a stay to do so by application to stay proceedings under Paragraph 9 of Schedule 1 of the Domicile and Matrimonial Proceedings Act 1973 rather than by answer, and, where if a stay is granted, no steps could be taken such that the rules for progressing a 'disputed case' would not apply.

22. For the avoidance of doubt, whilst a disputed case may be one in which the respondent has filed their own application for a matrimonial or civil partnership application in accordance with the rules, new r.7.12(1)(a) states that a respondent may not make an application for a matrimonial or civil partnership order *for the same relief* in respect of the same marriage or civil partnership unless the first application has been dismissed or finally determined or the court gives permission. This is so as to avoid 'cross-applications' for divorce or dissolution becoming standard practice for respondents wishing to be the one to apply for a divorce and make a divorce 'theirs'. The Committee envisages that one example of when a respondent might need to make their own application for the same relief with the court's permission is in the event that an applicant has failed to progress their own application and apply for a Conditional Order. Under the rule, permission would not be needed if a respondent makes an application for different relief (for example, if the applicant applies for judicial separation and the respondent applies for divorce).

23. Consultees will further note that current reference to 'undefended case' in Part 7 (at new r.7.1(3)) has changed in the draft amended Part 7 to 'standard case'. The Committee has considered the appropriateness of the term 'undisputed' (as opposed to 'standard) and has concluded that this term has potential to imply that by default most cases are disputed. This is of course not the case (with the vast majority of cases currently being undefended under existing law). 'Standard case' will therefore more accurately reflect the reality that under the reforms respondents will only be able to dispute a case on very limited grounds (as set out above).

Service within the jurisdiction

Introduction

24. By way of background, during the passage of the DDSA 2020 through Parliament, the Government made a specific commitment that it would invite the Committee to consider the issue of service.

25. The context of this commitment was concerns expressed by some parliamentarians and stakeholders about the operation of the new 20-week minimum period between the start of proceedings (when an application is issued) and when the court may be asked to make the Conditional Order. There is currently no time limit on service of applications for matrimonial or civil partnership orders in Part 6. Some expressed concern that if an applicant were to delay service (either deliberately or inadvertently), a significant part of the 20-week minimum period may have elapsed by the time the respondent is served.

26. During the Bill's progress through Parliament, Ministers and other stakeholders expressed the view that the greater 'mischief' in respect of service would be giving respondents the power to delay proceedings by evading or frustrating service, were the 20-week minimum period to start from the date the application is received by the respondent (i.e. service is acknowledged by the respondent). **The commencement of the 20-week period is therefore fixed by the DDSA 2020 to being from the start of proceedings**. Under FPR r. 5.3, this means when a court officer issues an application at the request of the applicant. **It is also important for consultees to note that the statute provides for the Court to shorten the period in a particular case (akin to the existing provision to shorten the 6-week period in a particular case) but does not give the court the power to extend the 20-week minimum period, either generally or in an individual case**.

27. **Furthermore, the 20-week minimum period is not a fixed notice period for the respondent. It is a minimum period between the applicant's application being issued by the court and the time when the court can be asked by the applicant or applicants to make the Conditional Order.**

28. The Committee have considered very carefully the issue of service and seek views on its proposed approach.

29. The Committee proposes a number of key substantive changes to the Part 6 in respect of service of applications for matrimonial and civil partnership orders. These relate to:

    a. Who is to serve;
    b. Method of service; and
    c. Time period in which necessary steps must be taken to effect service.

30. It is proposed that the amended and new rules in respect of service apply to applications for all forms of matrimonial and civil partnership order (including nullity), to ensure consistency within the Part.

<u>Who is to serve</u>

31. Consultees are referred to new r.6.5. This rule as amended sets out that the **court** should by default serve applications in the first instance (as opposed to the current position where the applicant serves by default). This change reflects the reality of current practice. Further, it is the Committee's view that default service by the court will assist in ensuring swift service on the respondent, particularly in the context of online applications. It would, however, be open to the applicant to elect to serve.

<u>Method of service</u>

32. Consultees are referred to amended draft r.6.4 and new r.6.7A. These rules would allow service by email, with a notice being sent by post confirming that such service has taken place. To serve by email, both the email will need to be sent and the notice by first class post or other method which delivers on the next business day ("a postal notice").

33. The Committee is of the view that service via email would allow for a significantly more efficient and streamlined system which ties in with the reformed online processes for divorce applications. However, the Committee acknowledges that safeguards are required for service by email, so as to ensure that respondents are aware that service has taken place via this method. It therefore proposes that email service be coupled with a postal notice that service has taken place by email. The Committee wishes consultees to be aware that it has considered whether provision in respect of electronic service in PD6A 4.1-4.4 (requiring a respondent to give prior confirmation they will accept service of a document other than an application for a matrimonial or civil partnership order) would provide appropriate means (if amended) for email service of applications for a matrimonial or civil partnership order. It has concluded that it would not, given the very specific nature of an application for a matrimonial or civil partnership order. For example, there may not have been prior contact between the parties before an application is made. In addition, such an approach would likely present practical complexities within the divorce process and opportunities for delay.

34. For the avoidance of doubt, under the amended Part 6, if an applicant does not have a postal address for the respondent (meaning a postal notice cannot be sent) but does have an email address, they would need to make an application for alternative service in the usual way. An applicant could also elect for service to take place via post rather than email, even if they have an email address for the respondent (see new r.6.8).

Time period in which steps must be taken to serve

35. Consultees are referred to draft new r.6.6A and draft new r.6.6B. The Committee is of the clear view that, in the event that the applicant requests to serve the application, there must be a time period in which the applicant must take the required step to serve. Draft new r. 6.6A proposes that an applicant have until 12.00 midnight on the calendar day 28 days after the date of issue of the application in which to complete the required step. The rule sets out a table which shows the step required for each method of service. This new draft rule largely replicates the substance of CPR r.7.5 (although contains a different time period and different method of service).

36. The Committee has given much thought as to whether service should be effected within the 28 day period (and whether evidence of effective service should be considered or be required to be provided by the respondent by way of acknowledgement of service), rather than a requirement for applicants to complete the required step set out in the table at draft new r.6.6A. The Committee is however of the view that any requirement linked to a respondent evidencing service by way of acknowledgement of service within a 28-day period would give the respondent significant power to frustrate or delay proceedings. It would further likely cause a substantial increase in applications in respect of service, were it necessary for applicants to apply to the court for an extension of time if they had not received the acknowledgement of service within the specified time. This would run contrary to the Government's key policy aim for divorce reform, that opportunities for conflict should be reduced.

37. The proposed draft new r.6.6B does however allow for an applicant to apply for an order extending the 28-day period in which the applicant must take the relevant step outlined at draft new r.6.6A. New r.6.6B(4) provides the court with discretion as to how to deal with such an application. If an applicant has taken the relevant step at draft new r.6.6A (other than personal service) but does not receive an acknowledgement of service from the respondent, they would need to apply for alternative service, deemed service or to dispense with service in the usual way. The time limit for a respondent to file an acknowledgement of service is 14 days from the date of service (new r.7.7(1)).

Service outside the jurisdiction

38. Consultees are referred to draft new r.6.41A and r.6.41B**.** The substantive change proposed in relation to service outside the jurisdiction is that, as with domestic service, an applicant have until 12.00 midnight on the calendar day 28 days after the date of issue of the application in which to complete the required step for service (and may apply for an extension of time for serving the application according to new r.6.41B). The required steps are set out at new r.6.41A. Consultees will note that the broad steps required as set out in new r.6.41A(1)(b) are designed to cover a variety of circumstances, to account for the wide and varying methods of service outside of the United Kingdom. The methods by which service out of the United Kingdom may be effected are unchanged by the revised rules.

Joint applications

Introduction

39. The DDSA 2020 makes provision for joint applications to be made for divorce, dissolution and separation. The policy intention behind joint applications is that they allow parties to reflect in the legal process the fact that an often difficult decision to divorce or seek a dissolution has nevertheless been a mutual one.

40. The draft amendments to Part 7 of the rules (at **Annex B**) make provision for joint applications, including joint applications at Conditional Order and Final Order stages as provided for by the DDSA 2020.

41. The Committee notes that in Parliament the Government set out its general policy intention to encourage joint applications. The Ministry of Justice's policy objective is therefore that procedure rules relating to this process should not include unnecessary complexities that have potential to undermine or discourage joint applications.

Joint applications and protection against fraud

42. In a sole application a respondent would of course be served with notice of the proceedings. In a joint application, the Committee proposes that a notice of proceedings should be sent to both parties to the application. Consultees are referred to new r.7.7(4), which sets out that where a notice of proceedings is sent to joint applicants under new r.7.5(3), both joint applicants should acknowledge receipt of the notice of proceedings within 14 days of receipt of such notice. This provision has been drafted so as to mitigate the risk of one party to the marriage or civil partnership making a fraudulent joint application.

43. The Committee does however ask consultees to note that it is not proposed that the rules require that the court must be satisfied both parties to a joint application have filed their acknowledgement of receipt of notice of proceedings before it makes the Conditional Order (whether or not the application for the Conditional Order has been made jointly or as a sole application, of which **see more below**). Such a requirement would effectively necessitate rules of service to apply in respect of joint applications, which run contrary to the very nature of a joint application. For example, if parties made a joint application for a Conditional Order, it would seem highly unsatisfactory if, in the event that one party had failed to file their acknowledgement of receipt of their notice of proceedings, that the other party might potentially have to apply to the court for deemed service of the notice of proceedings. Likewise, if a sole application is made for a Conditional Order (the initial application having been made jointly) and the respondent to the Conditional Order application had failed to file their acknowledgement of receipt of the notice of proceedings, it would again seem unsatisfactory that the applicant should have to apply for deemed service of the notice of proceedings in circumstances where the initial application had been joint and was signed by

both parties. In any event, the respondent to the Conditional Order application would need to be served with that application in the usual way (new r.7.9(6)). Consultees may also wish to note that, in cases where the application starts off jointly but only one applicant proceeds with the application for the Conditional Order, the court could under new r.7.10(2)(b)(i) request that the applicant provide further information if it has concerns about the propriety of the original joint application (for example, if there are queries about the address or signatures).

44. The Committee is therefore of the view that any provision that the court must be satisfied that both parties to a joint application have filed their acknowledgement of receipt of notice of proceedings before it makes the Conditional Order would run contrary to the Government's general policy aim to encourage joint applications and avoid complexities that have potential to discourage these.

Joint applications becoming sole applications

45. The DDSA 2020 expressly states that procedure rules may make provision for joint applications to become sole applications.[1] The Government's policy intention behind this was to ensure that if parties choose to make a joint application, each party will have the autonomy to progress the divorce application on their own if they wish (and therefore avoiding a potential disincentive to make a joint application at the outset, were one party able to change their mind and block a joint application from progressing). **For the avoidance of doubt, the legislation does not expressly envisage procedure rules to be made allowing for sole applications to become joint applications**. This is due to Government policy concerns that if sole applications could become joint applications, parties may use this as a bargaining tool, and allow them to go 'back and forth' between joint and sole applications.

46. The framework of the DDSA 2020 envisages two distinct stages at which a joint application can proceed as a sole application: 1) at application for a Conditional Order; and 2) at application for a Final Order. The policy intention behind this is both to give both parties to a joint application the certainty of knowing the application can proceed as a sole application at these two stages.

47. The ability to progress a joint application as a sole application is reflected in draft new r.7.9 (applications for a conditional order – standard proceedings) and draft new r.7.19 (making conditional orders final by giving notice). Consultees will note that these rules allow for a party to a joint application to make a sole application for a Conditional Order or a Final Order where that application is to proceed as a sole application.

48. Consultees may wish to note that the Committee has considered whether it should be necessary to amend an application (in accordance with new r.7.8), if a joint application is to progress as a sole application. However, it is of the view that this is not necessary. The DDSA 2020 envisages that any joint statement of irretrievable breakdown could be treated by the court as if made by one party to the marriage only.[2] Furthermore, if an application were required under new r.7.8 this could cause a significant increase in litigation, judicial work and delays, undermining the joint application process generally.

---

[1] Under the Act, the amended MCA 1973 will state at Section 1(10) that "*Without prejudice to the generality of section 75 of the Courts Act 2003, Family Procedure Rules may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only)*."

[2] *Ibid.*

Safeguard in respect of sole applications for a Final Order, when parties have previously made a joint application for a Conditional Order

49. Consultees are referred to the draft new r.7.19(1)(c), which sets out that where a Conditional Order has been made in favour of both parties, but the application for the Final Order is to proceed by one party only, that party may give notice to the court that they wish the Conditional Order to be made final. This is subject to new r.7.19(2) which sets out that such party must first give the other party to the marriage or civil partnership 14 days' notice of their intention to give notice to the court that they wish to make the Conditional Order final. The party giving notice must file a certificate of service after serving the notice (r.7.19(3)). This rule has been drafted to address the possibility that a party who has previously been a party to a joint application (expecting to make a joint application for the Final Order) might become a respondent to an unexpected sole application for the Final Order without first having the opportunity to make an application under s.10(2) of the MCA 1973 (special protection for respondent), as amended by the DDSA 2020.

50. The Committee wishes to highlight to consultees that s.10 of the MCA 1973 has been amended by the DDSA 2020 so as to provide that special protection is available to **all** respondents (whereas the current law provides that such protection is only available to respondents in separation cases). This includes circumstances 'where the Conditional Order has been made in favour of both parties but one of the parties has since withdrawn from the application' (it being envisaged that 'withdrawal' of the application would be when notice is given of application for the Final Order).[3] By requiring a new sole applicant to give 14 days' notice of an application for the Final Order in these circumstances, new r.7.19 would give the new respondent the opportunity and sufficient time to make an application under s.10(2) in the event they wanted the court to consider their financial position after the divorce pursuant to s.10(2). Consultees are asked to note that new r.7.19(4)(e)-(f) sets out that the court will make the Conditional Order final if it is satisfied (amongst other things) that no application to prevent the Conditional Order being made final is pending and the provisions of s.10(2) MCA 1973 do not apply or have been complied with.

51. For the avoidance of doubt, the Committee does not consider it necessary for a notice period for applications for a Final Order to apply to sole applications which have either been a sole application from the outset or have become a sole application at Conditional Order stage. This is because it considers that, in a case where the application for a Conditional Order has been made solely, the respondent will be notified by the Conditional Order that the applicant may after six weeks apply for the Final Order (as is currently the case). The respondent would therefore have a six-week period in which to apply under s.10(2) of the MCA 1973 if they wish. Conversely, a party to a joint application who is expecting to make a joint application for the Final Order might *unexpectedly* receive a sole application for the Final Order without having had the opportunity to make an application under s.10(2) MCA 1973. For this reason, and in such circumstances, the Committee believes a notice to the other party is a necessary requirement.

---

[3] Under the Act, the amended MCA 1973 will state at Section 10(2)):

(2) The following provisions of this section apply where—

(a) on an application for a divorce order a conditional order has been made and—

(i) the conditional order is in favour of one party to a marriage, or

(ii) the conditional order is in favour of both parties to a marriage but one of the parties has since withdrawn from the application, and

(b) the respondent has applied to the court for consideration under subsection (3) of their financial position after the divorce.

Case management hearings in disputed cases

52. Consultees are referred to new r.7.14 regarding case management hearings in disputed cases. Consultees will note that new r.7.14 sets out that where a respondent files an answer under new r.7.7(5), obtains permission to file an application under new r.7.12(1)(a)(ii) or files an application for a matrimonial or civil partnership order under new r.7.12(1)(b) or new r.7.24, the case must be listed for a case management hearing.

53. New r.7.14 contrasts with **current** r.7.20(4) which sets out that, **on application for a Decree *Nisi***, 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.

54. New r.7.14 therefore proposes that case management hearings in disputed cases be listed earlier than provided for in current rules. The main reason for this is that, if the current rule linking the listing of a case management hearing to the application for Decree *Nisi* were to be retained, the introduction of the 20-week minimum period between the start of proceedings and when the applicant is able to apply for the Conditional Order (in applications for a divorce or dissolution order) would mean there would be a very long period of time before the case would be listed for a case management hearing. The Committee is therefore of the view that it makes sense for such hearings to be listed by the court at the earliest opportunity so as to ensure that appropriate directions can be made. The Committee also understands that it is the current practice of HMCTS if an Answer is filed to refer a case to a judge before an application for the Decree *Nisi*, meaning the matter is listed for a case management hearing before the application. The proposed changes at new r.7.14 therefore would seem to reflect the reality of current HMCTS practice.

55. Consultees are also asked to note that Chapter IV of draft amended Part 7 (Disputed Proceedings) purposely does not include provision for applications for Conditional Order in disputed proceedings. This is because the progress of the case would be governed by subsequent directions given at the case management hearing (subject of course to the 20-week minimum period). However, the Committee seeks the views of consultees as to whether they consider that specific provision for applications for Conditional Order should be provided for in Chapter IV.

Consultation

Disputed cases

56. Consultees are referred to the Paragraphs 19-23 above in respect of disputed cases, which set out the issues to which the questions below relate.

Question 1: Do you consider that there are any grounds other than those set out at r.7.1(3)(b) which should be included in the definition of 'disputed case' for matrimonial and civil partnership proceedings? *Please answer "Yes" or "No" and give full reasons and examples (if applicable) to support your answer. If you are unable to answer this question, please state "Don't know".*

Service

57. Consultees are referred to the Paragraphs 24-38 above in respect of service, which set out the issues to which the questions below relate.

Method of service (domestic)

Question 2: ***Do you consider the proposal that a postal notice which notifies the respondent that service has taken place by email (amended r.6.4 and new r.6.7A) would provide a sufficient safeguard for respondents in respect of email service?*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 3: ***If you have answered "no" to Question 2, do you consider further safeguard(s) might be necessary? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Time period in which steps must be taken to serve (domestic)

Question 4: ***Do you consider that the proposed 28-day time limit on an applicant taking the required step to serve (new r.6.6A) and ability to apply for an extension (new r.6.6B) effectively encourage prompt service in the context of the new 20-week minimum period? Please explain your reasons.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 5: ***If you have answered "no" to Question 4, do you consider further provision in the rules may be needed? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Service outside the jurisdiction

Question 6: ***Do you consider that there would be any specific issues that may arise in relation to service outside the jurisdiction if the proposed 28-day time limit on an applicant taking the required step to serve outside the jurisdiction at new r.6.41A is imposed? Please explain your reasons.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 7: ***If you have answered "yes" to Question 6, do you think amended provision could address the issue(s) identified? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 8: ***Do you consider that the required steps at new r.6.41A(1)(b) to serve within the 28-day time limit outside the jurisdiction are clear enough in the context of the wide range of methods of international service? Please explain your reasons.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 9: ***If you have answered "no" to Question 8, do you consider further clarity on these steps is needed? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Joint Applications

58. *Consultees are referred to the Paragraphs 39-51 above in respect of joint applications, which set out the issues to which the questions below relate.*

Joint applications and protection against fraud

Question 10: ***Do you consider the provision new r.7.7(4) (which sets out that where a notice of proceedings is sent to joint applicants under new r.7.5(3), both joint applicants should acknowledge receipt of the notice of proceedings within 14 days of receipt of such notice) provides a sufficient safeguard against potentially fraudulent joint applications?*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 11: ***If you have answered "no" to Question 10, are there other safeguards you consider may be needed? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Safeguard in respect of sole applications for a Final Order, when parties have previously made a joint application for a Conditional Order

Question 12: ***Do you consider that the draft new provision at new r.7.19(2)-(3) (that where the Conditional Order is in favour of both parties but the application is to proceed by one party, that party must first give to the other party 14 days' notice of their intention to apply for the Final Order, filing a certificate of service after serving notice) provides a sufficient safeguard to ensure a party who has previously been a party to a joint application for Conditional Order is aware of the other party's intention to make a sole application for the Final Order and to provide them with the opportunity to make an application under s.10 of the MCA 1973, as amended by the DDSA 2020, if appropriate in their particular case?*** *Please answer "Yes" or "No" and give full reasons and examples (if applicable) to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 13: ***If you have answered "no" to Question 12, are there other safeguards you consider may be needed? If so, please explain.*** *Please answer "Yes" or "No" and give full reasons and examples to support your answer. If you are unable to answer this question, please state "Don't know".*

Case management hearings in disputed cases

59. *Consultees are referred to the Paragraphs 52-55 above in respect of case management hearings in disputed cases, which set out the issues to which the questions below relate.*

Question 14: ***Do you consider provision at new r.7.14 regarding the listing of case management hearings in disputed cases to be a necessary rule change, given the introduction of the 20-week minimum period between the start of proceedings and when the applicant can make an application for a Conditional Order?*** *Please answer "Yes" or "No" and give full reasons and examples (if applicable) to support your answer. If you are unable to answer this question, please state "Don't know".*

Question 15*:* ***Do you consider that it is unnecessary for Chapter IV (Disputed Proceedings) to include specific provision for applications for Conditional Order in disputed cases, given the fact that the progress of the case would be governed by the court's directions at the case management hearing (subject to the 20-week minimum***

period)? *Please answer "Yes" or "No" and give full reasons and examples (if applicable) to support your answer. If you are unable to answer this question, please state "Don't know".*