PUMP COURT
CHAMBERS

'No Fault Divorce'

An up to date overview of the timetable, proposals and key changes arising from the Divorce, Dissolution and Separation Act 2020 ("DDSA 2020")

- Bill received Royal Assent on 25 June 2020
- Biggest reform of divorce law in fifty years and will reduce conflict between couples legally ending a marriage or civil partnership.

IMPLEMENTATION

- Chris Philp confirmed on 07.06.21 the Government's indicative timetable of autumn 2021 was 'ambitious' and reforms will come into force on the common commencement date of 6 April 2022;
- Draft rule amendments produced by The Family Procedure Rule Committee
- Produced for consultation 16.12.20 – 02.03.21 & being analysed.

RATIONALE

- The Government's key policy aim behind the DDSA 2020 is to reduce conflict within the legal process of divorce, dissolution and separation, which can be particularly damaging for children.
- Promote individual autonomy.
- Reduce length, cost and hardship of divorce proceedings.

Currently,

- Ground for divorce or for dissolution of a civil partnership is that the marriage or civil partnership has irretrievably broken down.
- Requirement to demonstrate 1 of the 5 statutory facts: adultery, behaviour, desertion, or a relevant period of separation (2 years with consent, 5 years without).
- Often framed as the concept of "fault", causes further stress & upset to the detriment of outcomes for the parties and any children.
- The Court has a duty to inquire into the fact relied on. If proven, the Court shall grant a decree of divorce unless it is satisfied that the marriage has not irretrievably broken down.
- Respondent can defend the divorce.
- *Owens v Owens* [2018] UKSC 41 prompted wide calls to reform the law.

PUMP COURT
CHAMBERS

KEY CHANGES TO APPLICATIONS FOR DIVORCE AND DISSOLUTION

- **Replace the requirement to provide evidence of conduct or separation "facts" with a new requirement for the applicant(s) to provide a statement of irretrievable breakdown.**
  - No explanation or evidence of the breakdown of the marriage is necessary.
  - No requirement, indeed no longer possible, to raise allegations of adultery, desertion and bad behaviour.
  - The court will not be required to look into the irretrievable breakdown (beyond considering whether the statement requirement has been complied with).

- **Remove the possibility of contesting the decision to divorce or dissolve the civil partnership, as the statement of irretrievable breakdown is to be taken as conclusive evidence that the marriage or civil partnership has broken down irretrievably**.
  - The court must take the statement to be conclusive evidence that the marriage has broken down irretrievably and make a divorce order.
  - A respondent will also no longer be able to defend a divorce or dissolution application or dispute a 'fact'.
  - Divorce or dissolution proceedings could still be challenged but for limited reasons such as
    - jurisdiction (whether the court has jurisdiction to entertain proceedings for a divorce or dissolution order etc.)
    - the existence of the marriage or civil partnership (whether there is a valid marriage or civil partnership to dissolve)
    - fraud and procedural compliance (including service).

- **Introduce a new option of a joint application** in addition to retaining the current ability of one spouse alone to initiate the legal process of divorce or dissolution;
  - where the decision to divorce or dissolve the civil partnership is mutual and couples wish to cooperate from the outset;
  - Family Procedure Rules may make provision for the procedure for a joint application to become a sole application to prevent one party to a joint application preventing or excessively delaying the progression of those proceedings to a final divorce or dissolution order (new s.1(10) of the MCA 1973 (and equivalent provision in the Civil Partnership Act 2004)).

- **Retain the current 2 stages of a divorce and dissolution application, but introduce a new minimum timeframe of six months (26 weeks) in 2 stages**. This is made up of a new minimum 20-week period between the start of proceedings and confirmation to the court that a conditional divorce or dissolution order should be made (presently decree nisi), combined with the existing minimum six-week period between the making of the conditional dissolution or divorce order and the making of the final order (presently decree absolute).
  - Balancing the rights of both parties, in the absence of showing one of the five "facts", ensuring that the decision to seek divorce or dissolution is a considered one (not a kneejerk reaction).
  - NB. The commencement of the 20-week period is fixed by the DDSA 2020 as being **from the start of proceedings NOT from the date of service**.
  - Possibility of statutory instrument to adjust the minimum time periods between the start of proceedings and progression to conditional order of divorce/dissolution

stage and between the conditional order of divorce/dissolution and final order of divorce/dissolution (should policy considerations indicate this is appropriate). Subject to the proviso that the total statutory period may not exceed 26 weeks (six months).

- (A similar delegated power (subject to the same bar on making the overall period longer than 6 months) is already in place for the current minimum timeframe between conditional order and final order in respect of civil partnerships, and a slightly different power, expressed as one to shorten the period from six months (and therefore not to be used to extend it beyond six months), is in place for the current minimum timeframe between decree nisi and decree absolute for divorce.)
- Discretion to the court in a particular case to shorten the 26-week period, so as to make either the conditional or the final order, or both, earlier than the period specified in the statute.

- **Special protection for respondent: delay to the making of a final divorce or dissolution order pending resolution of finances**.
  - 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 (currently only applies 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'.
  - The respondent to a sole application should apply under s.10(2) if they want the court, prior to making the final divorce order, to consider their financial position after the divorce.
  - Pursuant to s.10(2) Where a conditional order has been made in favour of one party or both parties but one has since withdrawn from the application and the respondent has applied to the court for consideration of their financial position after the divorce. The court must not make the divorce order final unless it is satisfied
    (a)that the applicant should not be required to make any financial provision for the respondent, or
    (b)that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances.
  - The court must consider all the circumstances including:
    (a)the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage, and
    (b)the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.";
  - The court may still make the divorce order final if
    (a) it appears that there are circumstances making it desirable that the order should be made final without delay, and
    (b)the court has obtained a satisfactory undertaking from the applicant that they will make such financial provision for the respondent as the court may approve.

- Shift from Thakker v Thakkar [2016] EWHC 2488, but requires the respondent to have made an application under MCA 1973 s.10(2)[1].

- **Rule prohibiting divorce or dissolution within one year of the marriage or civil partnership retained.**

- **Update terminology:**
  Making law more accessible, and more consistent between divorce and dissolution of civil partnership.
  - Petition for divorce ⇒ application for divorce order;
  - Petitioner ⇒ applicant;
  - Decree nisi ⇒ conditional order;
  - Decree absolute ⇒ final order.

- The relevant changes above are **also reflected in the changes being made to applications for separation orders** (in both the Matrimonial Causes Act 1973 and equivalent provision in the Civil Partnership Act 2004). This removes the 'fact' requirement in separation proceedings and replaces this with a statement that the applicant(s) seek to be judicially separated. Provision is also made for both joint and sole applications for separation orders.

- **Minor changes** are also being made **in relation to proceedings for nullity** of marriage (on grounds that the marriage is void or voidable, on grounds of defects in process, lack of capacity to marry, lack of observance of the necessary formalities, etc.) principally to provide the Lord Chancellor with a power to amend the minimum time period before a conditional nullity of marriage order can be made final. This will align the position with that currently found in the 2004 Act for nullity of civil partnerships, and replaces a power that currently exists in the Matrimonial Causes Act 1973 for the High Court to amend the period.

CHANGE IN PROCESS/ PROCEDURE

- DRAFT as outcome of consultation awaited.
- The consultation paper outlined the most substantive changes proposed by the Committee, most notably in respect of Parts 6 and 7 of the FPR 2010, namely service (both within and outside the jurisdiction) and procedure for applications (particularly with the advent of the joint application). Other key changes include the definition of disputed cases and the listing of case management hearings in disputed cases. There are amendments to other Parts of the FPR, but these tend to be consequential.
- The Committee and the President of the Family Division in due course will consider whether new Practice Directions may be needed, as well as amendments to existing Practice Directions.

[1] Mr Thakker, with patchy disclosure and international assets, on the one hand claimed to be a billionaire and on the other stated his personal wealth was limited to less than £500,000. Mrs Thakker did obtain a delay on the pronouncement of the decree absolute, but Moor J reiterated that decree absolute will only be postponed in exceptional circumstances.

PUMP COURT
CHAMBERS

Overview of the Application Process

1. Application for a divorce, judicial separation, dissolution or separation order with statement of irretrievable breakdown and statement of reconciliation.
    - 20 week 'period of reflection' begins.
    - May withdraw application at any point before service (FPR 2010 r.7.6)

2. Serve application on respondent within 28 days (this does not impact/interrupt the 20 weeks), with form for acknowledging service and notice of proceedings
    - In case of a joint application, the court must send a copy of the notice of proceedings to both parties.

3. Within 14 days of service:
    - The respondent must file an acknowledgement of service (which must be signed by R/ his legal representative, include his address for service and indicate whether he intends to dispute the proceedings)
    - Joint applicants must both acknowledge receipt of the notice of proceedings.

4. The R who intends to dispute the proceedings must file and serve an answer within 21 days of the date on which the A/s is required to be filed (an answer is not required where case is not disputed but costs are).

    - Can amend application at any time before an application for a conditional order is made (eg. sole application becomes joint).

5. Application for court to consider the making of a conditional order accompanied by statement stating whether any changes in info in application, confirming truth & where A/s signed by one party, confirming that party's signature:
    1. For nullity, judicial separation or separation
        a. at any time after the time for filing the acknowledgment of service has expired, provided that no party has filed an A/s indicating an intention to dispute the proceedings; 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. For divorce or dissolution:
        a. at any time after the end of the period of 20 weeks from the date on which the application was issued provided that:
        b. the time for filing the acknowledgment of service has expired and no party has filed an acknowledgement of service indicating an intention to dispute the proceedings; and
        c. in any other case, the time for filing an answer to every application for a matrimonial or civil partnership order made in the proceedings has expired.
    3. Application may be made by A or in case of a joint application by both parties or one only. If by one joint applicant, the application must be served on the other party.

6. If satisfied that the applicant(s) entitled to the conditional order, the court must so certify and direct that the application be listed before a judge for the making of an order at the next available date. If not so satisfied, direct what needs to be provided/ what steps need to be taken or list for CMH. If costs are sought, certify A entitled to costs if so satisfied or make no direction about costs if not satisfied they are entitled.

7. Unless rule 7.20 applies (essentially Intervention of Queen's Proctor, in which case an application will be required to make a conditional order final), conditional orders will be made final by giving notice of a wish to make the conditional order final:

    1. By party in favour of whom conditional order is made;
    2. Jointly by both parties is whose favour conditional order is made;
    3. An applicant who is the joint recipient of a conditional order (providing 14 days' notice has been given to other joint applicant, and a certificate of service of this notice must be filed)

8. The draft rules provide 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.

    - NB. if the notice is received more than 12 months after the making of the conditional order, it must be accompanied by an explanation in writing stating why the application has not been made earlier.

Procedural Changes

Part 6: Service

- 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).
- Anticipated 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.
- **Who is to serve**
    - The new r.6.5: the **court** should by default serve applications in the first instance (as opposed to the current position where the applicant serves by default).
    - Default service by the court will assist in ensuring swift service on the respondent, particularly in the context of online applications.
    - It is, however, open to the applicant to elect to serve.
- **Method of service**
    - Amended draft new r.6.4 and r.6.7A, which allow for 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").
    - Service via email would allow for a significantly more efficient and streamlined system which ties in with the reformed online processes for divorce applications.

- Notice by post to provide a safeguard, so as to ensure that respondents are aware that service has taken place via this method.
- The Rule Committee considered whether to require a respondent to give prior confirmation they will accept service by email but decided against, given the very specific nature of this type of application. There may not have been prior contact between the parties before an application is made. Such an approach would likely present practical complexities within the divorce process and opportunities for delay.
- 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, an application for alternative service is required 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**
  - **For service in the jurisdiction (and Northern Ireland and Scotland):**
    - Per the draft new r.6.6A & r.6.6B in the event that the applicant requests to serve the application, the applicant must take the required step to serve by 12.00 midnight on the calendar day 28 days after the date of issue of the application.
    - 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).

Method of Service	Step Required
First class post, document exchange or other service which provides for delivery on the next business day	Posting, leaving with, delivering to or collection by the relevant service provider
Personal service under rule 6.7, by someone other than the applicant personally	Leaving it with the person to be served (BUT this must not be served by the applicant himself or herself).
Email service under rule 6.7A	Sending the application by e-mail and sending the notice by posting, leaving with, delivering to or collection by the relevant service provider

    - The Committee considered 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.

- It was considered 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 &
  - would likely cause a substantial increase in applications in respect of service,
  - contrary to the Government's key policy aim for divorce reform, that opportunities for conflict should be reduced.
- An applicant can apply for an extension to the 28-day period. The proposed draft new r.6.6B(4) provides the court with discretion as to how to deal with such an application. Like other applications for extension of time in the Rules, the application must be made before the expiry, supported by evidence setting out what steps have been taken to comply, whether applicant has acted promptly, etc. It may be made without notice.
- 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)).

- **For service outside the jurisdiction (not NI or Scotland) including EEA**
  - The substantive change proposed in relation to service outside the jurisdiction is that, as with domestic service, an applicant has 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, which mirrors r.6.6B).
  - The required steps are set out at new r.6.41A. The broad steps required (at 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.

Method of Service	Step Required
Where service is to be effected by a method provided for by rule 6.45 r.6.45 remains unchanged	The steps required by rule 6.46(2) r.6.46(2) remains unchanged
Where service is to be effected by another method permitted by the law of the country in which it is to be served	Sending or delivering the application to, or leaving it with, the person to be served in accordance the law of the country in which it is to be served

Part 7

- Part 7 has been restructured, but not re-written. Now divided into seven Chapters:

    1. Chapter I – Application and Interpretation;
    2. Chapter II – Rules about Starting Proceedings;
    3. Chapter III – Standard Case;
    4. Chapter IV – Disputed Case;
    5. Chapter V – Proceedings after Conditional Order (Standard and Disputed Case);
    6. Chapter VI – Provisions Specific to Nullity Proceedings;
    7. Chapter VII – General Provisions.

- Aim to provide clarity in respect of which rules apply generally, and which have more limited application – eg. specifically to standard case proceedings/ disputed case proceedings/ nullity etc.
- **Costs in respect of matrimonial and civil partnership order applications**
    - Court fee costs (currently £550, mention of increase to c.£590. No confirmation).
    - The new online divorce system will cut administration costs for the courts, so certainly the Law Society have proposed this be reflected in lower application fees.
    - The existing rules on costs appear to continue to apply as no substantive changes were proposed in the draft amendments.
    - The Committee considered
        - the extent to which current orders for costs are predicated on the five facts;
        - whether the abolition of the five facts will remove the basis on which such costs orders are currently made;
        - whether therefore there should be a general 'no order as to costs' rule, with exceptions;
        - whether, if no rule changes are made, it would be unlikely that costs orders would be made (given the five facts no longer exist) or whether costs will continue to be relevant in certain cases.
    - The Committee 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 determine whether rule changes may be necessary.
    - The desirability of issuing interim Guidance in this area more generally is something which the Committee will consider as part of plans for implementation.

Disputed Cases

- A new r.7.1(3)(b) sets out the definition of a disputed case for matrimonial and civil partnership proceedings (excluding nullity proceedings). It is limited to 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 (ie. A 'cross petition').
- This clearly signals that respondents will no longer have the ability to 'defend' a divorce or dissolution application or dispute a 'fact'.
- 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 (draft new r.7.12(1)(a)): ie. Under the current draft, cross petitions are disputed – to avoid 'cross-applications' becoming standard practice. (The Law Society has suggested that as parties are permitted to pursue a joint application (and a joint application can be converted into a sole application), perhaps cross petitions could be converted into a joint petition, rather than to automatically provide in the rules that it is disputed. But note notes below on 'Joint applications becoming sole applications'.)
- Consideration was given to 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 Committee considered the above draft definition wide enough to cover answers where various jurisdiction related disputes are raised. Specific provision in relation to forum disputes and stay applications was not considered necessary in circumstances where the court would expect the party who seeks a stay to do so by application under Paragraph 9 of Schedule 1 of the Domicile and Matrimonial Proceedings Act 1973 (to stay proceedings), rather than by answer, and, where if a stay is granted, no steps could be taken. In such circumstances, the rules for progressing a 'disputed case' would not apply.
- Whether a case is defined as 'disputed' or 'standard' it could be challenged on procedural grounds including fraud and procedural compliance.

Standard Cases

- The current reference to 'undefended case' in Part 7 (at new r.7.1(3)) has changed in the draft amendment to 'standard case'. These are all matrimonial or civil partnership proceedings other than a disputed case. The Committee wanted to avoid 'undisputed' for any potential implication by default that most cases are disputed. 'Standard case' will more accurately reflect the reality; the vast majority of proceedings (hence 'standard'), with only very few 'disputed' cases, given the limited grounds (as set out above).

Joint applications

- General policy intention to encourage joint applications. The Ministry of Justice's policy objective therefore that procedure rules relating to this process should not include unnecessary complexities that have potential to undermine or discourage joint applications.
- The draft amendments to Part 7 make provision for joint applications, including joint applications at Conditional Order and Final Order stages as provided for by the DDSA 2020.
- Joint applications and protection against fraud
    - In a sole application a respondent is served with notice of the proceedings.
    - In a joint application, the draft rules provide (new r.7.7(4)) that a notice of proceedings be sent to joint applicants, which both should acknowledge receipt of within 14 days (new r.7.5(3). Thus mitigating the risk of one party making a fraudulent joint application.
    - However note that the draft rules do not require the court to be satisfied both parties have filed their acknowledgement of receipt 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 necessitate rules of service to apply in respect of joint applications, which run contrary to the very nature of a joint application.
    - 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).
- Joint applications becoming sole applications
    - The DDSA 2020 expressly states that procedure rules may make provision for joint applications to become sole applications.
    - Thus 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. This avoids a potential disincentive to make a joint application at the outset, as one can proceed with a sole application in the event the other party changes their mind. The reluctant joint applicant cannot block a joint application from progressing.
    - **NB the legislation does not expressly envisage procedure rules to be made allowing for sole applications to become joint applications** due to 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.
    - Two distinct stages at which a joint application can proceed as a sole application: 1) at application for a Conditional Order (draft new r.7.9); and 2) at application for a Final Order (draft new r.7.19 on making conditional orders final by giving notice). The aim is to give both parties to a joint application the certainty of knowing the application can proceed as a sole application at these two stages.
    - No need to amend an application (in accordance with new r.7.8), if a joint application is to progress as a sole application. 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.
    - If an application to amend 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.

- Safeguard in respect of sole applications for a Final Order, when parties have previously made a joint application for a Conditional Order
    - 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 (draft new r.7.19(1)(c)).
    - This is subject to new r.7.19(2): 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.
    - 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 (not just in separation cases), as outlined above.
        - Requiring a new sole applicant to give 14 days' notice of request for Final Order in these circumstances 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).
        - The draft rules provide 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.
    - There is no requirement to give notice of an application for a Final Order in respect of a sole application which has either been sole from the outset or became sole at Conditional Order stage as 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, notice to the other party is anticipated to be a necessary requirement.

Case management hearings in disputed cases

- The new r.7.14 provides 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.
- This contrasts with current provision (r.7.20(4)), which provides for the listing of a case management hearing in a defended case later - **on application for a Decree *Nisi***.
- The main reason for the change results from the requirement of 20 weeks between the start of proceedings and when the applicant may apply for the Conditional Order. This would result in significant delay in listing the case management hearing. Instead, the rules provide for listing of the CMH at the earliest opportunity so as to ensure that appropriate directions can be made.
- In reality this reflects the current practice of HMCTS, whereby if an Answer is filed, the case is automatically referred to a judge (before any application for the Decree *Nisi)*.
- Note, at present, the draft 'Disputed Proceedings' chapter does not include provision for applications for a Conditional Order, on the basis that directions as appropriate would be made at the case management hearing (subject of course to the 20- week minimum period). However, the consultation specifically sought the views of consultees as to whether specific provision for applications for a Conditional Order should be provided for in Chapter IV.

Please do take note that these are **anticipated changes** as a result of the draft amendments which went out to consultation. The conclusion of the consultation is awaited and I will update these notes in due course.

In the event that I or one of the team at Pump Court can assist you further, please do not hesitate to make contact through s.gentleman@pumpcourtchambers.com

Charlotte Street
Pump Court Chambers
e. c.street@pumpcourtchambers.com

"Charlotte is thorough in her preparation, tenacious in her approach and skilled at managing clients."
Legal 500, 2021