

Chapter 2: Procedure and Drafting in Divorce

Outline	2.1	Introduction	2.7	Decree <i>nisi</i>
	2.2	The application	2.8	Decree absolute
	2.3	Amendments and additions to the application	2.9	The first interview
	2.4	Filing the application	2.10	An overview of the procedure
	2.5	Service	2.11	Summary
	2.6	Application for decree <i>nisi</i>		



Aims of this Chapter

This chapter will enable you to achieve the following learning outcome from the CILEx syllabus:

- 1 Understand how to terminate a marriage and civil partnership

2.1 Introduction

Today, nearly all divorces are undefended. This chapter explains the procedure in undefended matrimonial proceedings. It examines how the documents are to be completed and the steps to be taken to obtain the decree *nisi* and decree absolute of divorce.

Practitioners should now be aware of the good practice principles of the Law Society's *Family Law Protocol* (4th edition), and the Resolution Code of Practice (see www.resolution.org.uk/code/). Broadly, in pursuit of the aim of reducing conflict in divorce and related child matters, the protocol encourages an open, collaborative approach to resolving issues in divorce.

Best practice

The *Family Law Protocol* (Part 9) gives guidance for good practice in divorce and civil partnership dissolution cases. Guides to good practice in family law are also published by Resolution, which are endorsed by the *Family Law Protocol*. Best practice in family cases includes:

- conducting matters in a constructive and non-confrontational way;
- avoiding use of inflammatory language, both written and spoken;
- retaining professional objectivity and respect for everyone involved;
- taking into account the long-term consequences of actions and communications as well as the short-term implications;
- encouraging clients to put the best interests of the children first;
- emphasising to clients the importance of being open and honest in all dealings;

- making clients aware of the benefits of behaving in a civilised way;
- keeping financial and children issues separate;
- ensuring that consideration is given to balancing the benefits of any steps against the likely costs – financial or emotional;
- informing clients of the options – for example, counselling, family therapy, round-table negotiations, mediation, collaborative law, arbitration and court proceedings.

Those conducting such cases must bear in mind that any procedural step taken may impact on other issues, such as children and financial relief. The cultural and/or religious implications of divorce should be considered, such as the obtaining of a religious decree as well as a civil decree.

Prior to the issue of the application, certain steps should be taken as a matter of good practice:

- check that the parties' marriage is recognised in England and Wales;
- notify the respondent or the respondent's solicitors of the intention to commence proceedings at least seven days in advance unless there are good reasons for not doing so;
- provide the respondent or the respondent's solicitors with the fact or facts on which the application is to be based, and the particulars with a view to agreement or the minimisation of potential misunderstandings unless there is a good reason not to;
- avoid naming a co-respondent in an application based on adultery. It adds complexity to the proceedings and can raise the temperature of the dispute.

Examples of good practice will be provided throughout this chapter.

2.2 The application

Matrimonial proceedings are governed by the **Family Procedure Rules 2010 (FPR 2010)** and supplemented by Practice Directions which give guidance on the implementation of the rules.

Refer to **Document 1** of the **Appendix** for a specimen divorce and civil partnership dissolution application (form D8). The supporting guidance notes on completing form D8 are found on the face of the form.

The language used in **FPR 2010** was intended to modernise legal terminology in family cases. However, the **Matrimonial Causes Act 1973 (MCA 1973)** still uses the old terminology and so there are two forms of usage in practice. This has resulted in numerous inconsistencies. Form D8 is referred to in **FPR 2010** as "an application for a matrimonial order". The form itself is called "application for a divorce, dissolution or (judicial) separation", which are all applications for a matrimonial order. Occasionally this document is referred to in practice as the petition; we shall refer to it as the application.

Every divorce application must be started by application form D8 (**PD 5A FPR 2010**). The application is the central document in the case. It is filed by the spouse seeking the divorce (the applicant or petitioner) and is served on the other spouse (the respondent). Accuracy is very important as any defects or omissions can cause unnecessary delay and increased costs. The divorce centres reported that 40 per cent of all applications were being returned because of inaccurate completion by legal professionals.

Every application will begin with the heading in the top right-hand corner with the name of the divorce centre and the case number. These details will be completed by the divorce centre and not the applicant.

The papers should be sent to one of the 11 divorce centres that accept applications. Any centre can be used, not only the one which is local to the parties.

Section 1 – type of application

1.1 The applicant needs to indicate which application they are seeking: a divorce, dissolution of a civil partnership, a judicial separation in the case of married parties or a separation in the case of parties in a civil partnership.

There is no distinction made here between a same-sex marriage and a heterosexual marriage.

1.2 The applicant needs to indicate which documents are being sent with the application. It is expected that the original marriage or civil partnership certificate will be sent or a certified copy of the same.

If the marriage or civil partnership certificate is in a foreign language it must be translated and certified or authenticated by the person who did the translation.

Section 2 – details of the applicant

2.1 The applicant must give their current name. If their name has changed since marriage, this needs to be indicated and a change of name deed or statutory declaration should be attached to the application.

2.2 The applicant can request that their details be kept confidential from the respondent. By ticking the correct box on the form, the applicant's address can be input onto form C8 and it will not appear on the face of the application. This can be important if the applicant does not want the respondent to know where the applicant lives, for example, in domestic abuse cases.

2.3 If the applicant does not mind that their address and contact details appear on the face of the form, it should be input here.

2.4–2.8 The applicant should indicate whether they have instructed a solicitor. If so, the applicant's solicitor's details should be input. If the solicitor is acting in a pay-as-you-go capacity, or under a legal help form, their details should not be input here as the applicant is acting in person.

2.9 If there is no solicitor acting for the applicant, an address should be input here. This can be any address in the UK, either a home or business address. If the address is outside the UK the applicant is informed that the rules about service of documents are different. This does not prevent the applicant giving an address outside the UK as the address for service.

Section 3 – the respondent’s details

3.1 The respondent’s name should be input. If their name is different from that shown on the marriage or civil partnership certificate, a change of name deed or statutory declaration should be submitted.

3.2 The address given for the respondent should be their home address. Unless the applicant has been given another address at which the respondent would like papers to be sent, the address at 3.2 will be the address for service.

3.3 If the respondent would like to be served other than at their residential address it is perfectly acceptable to nominate another address (**r6.12 FPR 2010**).

3.4 The alternative address should be input at 3.7. If the respondent has given the address of a solicitor (**r6.11 FPR 2010**), their details and address should be input at 3.4–3.7. There is no requirement that the respondent must be served at his or her residential address, unless no other address for service has been provided.

If the respondent does not nominate an address for service, the applicant should serve at the respondent’s last or usual residential address (**r6.13(2) FPR 2010**). However, if the applicant knows that the respondent no longer lives at the last or usual address, the applicant must take reasonable steps to ascertain the respondent’s last or usual address. Where a current address cannot be found, the applicant needs to consider making an application for service at an alternative place or an alternative method for service (**r6.13(4)(b) FPR 2010**).

Section 4 – details of the marriage or civil partnership

4.1 The applicant should indicate if the marriage or civil partnership took place outside the UK.

4.2 The applicant should indicate whether the application is to be issued without sending the original marriage or civil partnership certificate. The notes show that this can be done if an application using form D11 is sent to the divorce centre with the correct fee. **para 3.2 Practice Direction 7A (PD 7A) FPR 2010** sets out the procedure in more detail. Ultimately the original marriage certificate or a certified copy will need to be submitted to the divorce centre.

The blank text box at 4.2 will need to be completed to show the place at which the marriage or civil partnership took place. This must correspond exactly with the place as it is written on the document. If not, the application will be rejected.

4.3 Insert the date of the marriage or civil partnership.

4.4 Insert the full names of the parties to the marriage or civil partnership. This must be as it appears on the marriage or civil partnership certificate.

© 2019 Copyright CILEx Law School Limited

All materials included in this CLS publication are copyright protected.

All rights reserved.

Any unauthorised reproduction or transmission of any part of this publication, whether electronically or otherwise, will constitute an infringement of copyright. No part of this publication may be lent, resold or hired out for any purpose without the prior written permission of CILEx Law School Ltd.

WARNING: Any person carrying out an unauthorised act in relation to this copyright work may be liable to both criminal prosecution and a civil claim for damages.

This publication is intended only for the purpose of private study. Its contents were believed to be correct at the time of publication or any date stated in any preface, whichever is the earlier.

This publication does not constitute any form of legal advice to any person or organisation.

CILEx Law School Ltd will not be liable for any loss or damage of any description caused by the reliance of any person on any part of the contents of this publication.

Published in 2019 by:
CILEx Law School Ltd
College House
Manor Drive
Kempston
Bedford
United Kingdom
MK42 7AB

British Library Cataloguing in Publication Data

A catalogue record for this manual is available from the British Library.
ISBN 978-1-84256-1114-0