



Response to consultation on draft changes to the Family Procedure Rules arising from planned implementation of the Divorce, Dissolution and Separation Act 2020

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

As a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Consultation response

Before responding to the consultation questions we have commented on issues not addressed elsewhere.

Costs

We note that no change is proposed to the provisions for costs and we are grateful to the Committee for setting out its thinking behind this decision. We are of the view that the Committee should reconsider this decision in respect of standard cases.

It is difficult to envisage the basis upon which a party could successfully claim costs for a standard divorce under the new system. However, the rules relating to costs are not straight forward and self-represented parties who do not understand the rules may make unfounded applications, and this is likely to lead to unnecessary conflict and confusion.

Currently all that is required to claim costs is to tick a box on the petition. We receive calls from women responding to a divorce who need advice because the court has ordered her to pay costs for a divorce that she cannot afford to pay. Often these callers are survivors of domestic abuse. The current rules will leave the door open for perpetrators to attempt to claim costs as part of their abuse.

Even in non-domestic abuse situations it will be tempting for applicants to tick the box claiming costs from the other party because they do not wish to pay, or in response to conflict between the parties, or because they do not understand the rules relating to costs. This may then lead to a dispute on costs and satellite litigation, which the Committee aims to avoid.

In light of the above we recommend:

1. The introduction of a “no order as to costs” rule for **standard cases** to avoid the possibility of costs being used as a weapon for either conflict or abuse, and to avoid satellite litigation.
2. If, for some reason, the Committee decide against introducing a “no order as to costs” rule for standard cases then the option to claim costs simply by ticking a box on the application should be removed. The applicant should be required to provide reasons for the claim. Clear guidance on the rules relating to costs should be provided to unrepresented parties. This is to reduce the chances of applicants claiming costs without a real basis for doing so.

We agree it would be sensible to review and further consult upon the operation of the costs rules after a period of time.

Fees

It is important to ensure that divorce fees are affordable for all, including those on lower and middle incomes. Some people will be dissuaded from applying for a divorce because they cannot afford the fee and are not eligible for help with fees. This problem is particularly acute for survivors of domestic abuse, for whom divorce is a key step in cutting ties with the perpetrator. Introducing an exemption for those who can provide evidence of domestic abuse, similar to the exemption currently available to survivors for Mediation Information and Assessment Meetings, may go some way in removing the costs barrier for survivors.

We recommend:

1. The Commission or other appropriate body review the fee remission scheme eligibility criteria to ensure that divorce is affordable for all, including those on lower and middle incomes.
2. The Commission or other appropriate body consider introducing an exemption to divorce fees for those who can provide evidence of domestic abuse.

Who is to serve

We welcome rule 6.5 which sets out that the court should by default serve applications. We understand that in some limited circumstances it might be necessary for the applicant to serve applications. We are also aware of concerns raised by other organisations in relation to applicants deliberately or inadvertently delaying service and the impact this has on the 20 week time period. One possible solution would be to remove the provision which allows the applicant to elect to serve, so that service will always be by the court unless the court directs the applicant to do so. If this is not possible, we suggest the Committee consider how it might be made clear to applicants that they should only elect to serve if it would be impractical for the court to do so, and whether applicants who elect to serve should be required to provide a reason.

Consultation questions

Disputed cases

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?

No.

Service

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?

Yes. The notice should include instructions on what to do if the email has not been received.

Question 3: If you have answered "no" to Question 2, do you consider further safeguard(s) might be necessary? If so, please explain.

N/A

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?

Yes. The applicant should also be notified that an application for a conditional order is likely to be refused if the application has not been served in accordance with the rules.

Question 5: If you have answered "no" to Question 4, do you consider further provision in the rules may be needed?

N/A

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?

At Rights of Women we have limited experience of cases which require international service so we have not offered a response to this question.

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.

N/A

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.

At Rights of Women we have limited experience of cases which require international service so we have not offered a response to this question.

Question 9: If you have answered “no” to Question 8, do you consider further clarity on these steps is needed? If so, please explain.

N/A

Joint Applications

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?

Yes, for the reasons set out in the consultation paper.

Question 11: If you have answered “no” to Question 10, are there other safeguards you consider may be needed? If so, please explain.

N/A

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?

Yes however 14 days will only be sufficient if the respondents are made aware of their right to make an application under s.10 of the MCA 1973 on the notice. This will then give respondents sufficient time to seek legal advice or find information on their options and make an application should they wish to do so. If the respondent's right to make the application is not brought to their attention on the notice then there is a risk that they will not find out about it until it is too late.

In our experience there are many self-represented parties who are not aware of the consequences of a final order. The notice that is sent to the respondent following a conditional order on a sole application, and the notice that is sent to the applicant(s) following a conditional order, should also include a prompt to seek advice and information on finances before applying for a final order.

Question 13: If you have answered "no" to Question 12, are there other safeguards you consider may be needed? If so, please explain.

The rules should specify the information that must be included on the notice (see answer to question 12), or the rules should specify that the notice be given using a specific form which includes the information.

Case management hearings in disputed cases

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?

Yes, for the reasons set out in the consultation paper.

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)?

Yes, for the reasons set out in the consultation paper.

Rights of Women

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