

NEW PRACTICE DIRECTION

This new Practice Direction supplementing the Family Procedure Rules 2010 is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Lucy Frazer QC MP, Parliamentary Under-Secretary of State, Ministry of Justice.

This new Practice Direction comes into force on 14 January 2019.

Signed:

Date:

Sir Andrew McFarlane

The President of the Family Division

Signed:

Date:

Lucy Frazer QC MP

Parliamentary Under-Secretary of State, Ministry of Justice

PRACTICE DIRECTION 36L – PILOT SCHEME: PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE CERTAIN STAGES OF CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER

(1) After Practice Direction 36K, insert the new Practice Direction 36L, as set out in the Schedule to this document.

SCHEDULE

PRACTICE DIRECTION 36L – PILOT SCHEME

PROCEDURE FOR USING AN ONLINE SYSTEM TO COMPLETE CERTAIN STAGES OF CERTAIN PROCEEDINGS FOR A MATRIMONIAL ORDER

This Practice Direction supplements FPR Part 36, rule 36.2 (Transitional Arrangements and Pilot Schemes).

Scope and interpretation

- 1.1. This Practice Direction is made under rule 36.2 and sets up a Pilot Scheme to allow for certain applications and stages in certain matrimonial proceedings to be completed using the online system.
- 1.2. This Practice Direction comes into force on 14 January 2019.
- 1.3. Subject to paragraph 1.4, this Practice Direction supersedes Practice Direction 36E, which is revoked from the date this Practice Direction comes into force.
- 1.4. Practice Direction 36E will remain in force in relation to any applications commenced under the Pilot Scheme referred to in that Practice Direction, and this Practice Direction (and any that supersede it) will not apply in relation to such applications.
- 1.5. The Pilot Scheme applies where all of the following conditions are met:
 - a) the application is for a matrimonial order which is a decree of divorce made under section 1 of the 1973 Act;
 - b) the application is not unsuitable for the online system (as explained in paragraph 1.6);

- c) the applicant chooses to use the online system as described in this Practice Direction;
 - d) the application does not at any time become a defended case (should the application become a defended case it will exit the Pilot Scheme and this Practice Direction will no longer apply to it);
 - e) the application is started in the family court; and
 - f) the application is filed in the period commencing 14 January 2019 and ending 13 January 2020.
- 1.6. HMCTS may conclude that certain individual or categories of applications are not suitable for the online system, and such categories are to be specified in guidance issued by HMCTS and published on GOV.UK.
- 1.7. Following the making of an application online, certain other stages under Part 7 of the Rules (including an applicant's application for decree nisi under FPR 7.19(1)) may be completed online where HMCTS selects the application to test new features of the online system. The online system will notify the applicant straight away if the application has been selected. The technical capacity of the system will widen in stages and so, while some types of applications made online in accordance with paragraph 1.5(a) may not be selected to test new features at the outset, they may be selected for testing as the system develops.
- 1.8. For the avoidance of doubt, where an application has not been selected to test new features under paragraph 1.7 then an applicant will be asked to complete relevant further stages under Part 7 of the Rules using the paper forms prescribed in PD 5A.
- 1.9. In this Practice Direction-
- a) the "online system" means Her Majesty's Courts and Tribunals Service's online system to allow for specified applications and stages in matrimonial proceedings to be completed online;
 - b) "new features" means any features of the online system that are in an earlier stage of development, and that are only available for certain applications as described in paragraph 1.7.

Purpose of the Pilot Scheme

- 2.1. The purpose of this Pilot Scheme is to assess the use of new practices and procedures to allow for certain stages in certain matrimonial proceedings to be completed using

the online system. It is intended that future Practice Directions will establish other Pilot Schemes to allow for other specified stages in those proceedings, and for other types of matrimonial proceedings, to also be completed using the online system.

Modification of the FPR and Practice Directions during operation of the Pilot Scheme

- 3.1. During the operation of the Pilot Scheme the Family Procedure Rules 2010 and the Practice Directions supporting the Rules will apply to cases falling within the Pilot Scheme as modified by paragraphs 4.1 to 12.7. This Practice Direction contains provisions that apply generally to applications in the Pilot Scheme, and also specific additional provisions that apply to applications selected to test new features.

MODIFICATIONS THAT APPLY GENERALLY TO APPLICATIONS IN THE PILOT SCHEME

Modification of Part 5 FPR

- 4.1. For rule 5.1, substitute-

- “5.1
- (1) Where the Pilot Scheme referred to in Practice Direction 36L applies, and subject to that Practice Direction, the following stages in matrimonial proceedings shall be completed online by the parties in the manner specified by the online system-
- (a) the application for a decree of divorce (including an amended application if relevant);
 - (b) the acknowledgment of service;
 - (c) the applicant’s application for a decree nisi; and
 - (d) the notice that the applicant wishes the decree nisi to be made absolute.
- (2) Each party must at each stage provide all the information requested, including any documents that the online system or court requires, in a manner specified by the online system or by the court.”.

- 4.2. Omit rule 5.2.

Modification of Part 6 FPR

- 5.1. In Rule 6.15-

(a) For paragraph (1) substitute-

“(1) An application is deemed to be served if-

- (a) subject to paragraph (2), a paper acknowledgment of service, signed by the party served or the solicitor acting on that party’s behalf, is returned to the court office; or
- (b) the respondent or co-respondent completes the acknowledgment of service using the online system referred to in Practice Direction 36L.”

Modification of Part 7 FPR

6.1. For rule 7.6(1) substitute-

“7.6

- (1) Where the applicant is legally represented, the legal representative must complete and provide with the application, in a manner specified in the online system referred to in Practice Direction 36L, a statement certifying whether the legal representative has discussed with the applicant the possibility of a reconciliation and given the applicant the names and addresses of persons qualified to help effect a reconciliation.”.

6.2. For Rule 7.8(2)(a) substitute-

“(a) details of how to respond to the application; and”

6.3. In Rule 7.12-

(a) in paragraph (1) for “The” substitute “Subject to paragraphs (2A) to (2C), the”;

(b) after paragraph (2) insert-

“(2A) A respondent and co-respondent may choose whether or not to use the online system to complete and file an acknowledgment of service. Details of how to respond online will be provided in the letter sent to them in accordance with 7.8(2)(a).

(2B) If a respondent or co-respondent chooses not to use the online system then they must contact HMCTS (using the details provided in the letter sent to them) to request a paper form for acknowledging service.

(2C) Where paragraph (2B) applies, the acknowledgment of service must be filed within 7 days beginning with the date on which the respondent or

co-respondent received the paper form for acknowledging service. The amended deadline for filing the acknowledgment will be notified to all parties.”.

- (c) in paragraphs 3(a) and 4 references to “signed” and “sign” are to be read as references to the name of the individual being, or having been, recorded against the statement of truth included in an acknowledgment of service which has been completed online in accordance with paragraph (2A).

Modification of Part 17 FPR

7.1. In rule 17.2(6), for “The statement of truth” substitute “Subject to paragraph (6A), the statement of truth”.

7.2. After rule 17.2(6) insert-

“(6A) Where a statement of truth is included in an application or acknowledgment of service completed using the online system referred to in Practice Direction 36L-

- (a) the party must file with the court an application or acknowledgment of service which includes the name of the person who the online system requires to sign a statement of truth recorded against the statement of truth; and
- (b) the court may require the party to produce a copy of the application or acknowledgment of service containing the signature of the person referred to in sub-paragraph (a) at a later date.”.

Modification of Part 29 FPR

8.1. After rule 29.13(1) insert-

“(1A) Where the pilot scheme referred to in Practice Direction 36L applies, service under paragraph (1) or otherwise may be effected by the court sending each party an email, to the address given for service in accordance with Practice Direction 6A, containing a weblink from which the order may be accessed and downloaded.”

Disapplication of Practice Direction 5B

9.1. Practice Direction 5B does not apply in relation to an application which can be made online under the Pilot Scheme referred to in Practice Direction 36L.

Modification of Practice Direction 6A

10.1. In paragraph 4.2(b)-

(a) in paragraph (iii) for “; or” substitute “;”;

(b) in paragraph (iv) for the full-stop substitute “; or”; and

(c) after paragraph (iv) insert-

“(v) confirmation given, by the party to be served, within the online system referred to in Practice Direction 36L that that party is willing to accept service by email and stating the email address for such service.”

10.2. In paragraph 10.1-

(a) for “send” substitute “provide”; and

(b) omit “photographic or scanned”.

Modification of Practice Direction 7A

11.1. For paragraph 1.1 substitute-

“1.1 Where the Pilot Scheme referred to in Practice Direction 36L applies, an application for a matrimonial order must be made as required by the online system referred to in that Practice Direction and in accordance with rule 5.1.”.

11.2. For paragraph 1.2 substitute-

“1.2 The application must be completed according to the detailed guidance contained in the online system. It is especially important that the particulars provide evidence to show why the applicant is entitled to a decree of divorce. The particulars should, however, be as concise as possible consistent with providing the necessary evidence.”.

11.3. After paragraph 1.3 insert-

“Applications for matrimonial orders received via the online system: timing

1A.1 When an application is received via the online system referred to in Practice Direction 36L and is recorded by Her Majesty’s Courts and Tribunals Service software has having been received at or after 4.31pm

and before or at 11.59pm, the date of filing will not be before the next day that the court location to which the application has been sent via the online system is open for business.

1A.2 When an application is received via the online system referred to in Practice Direction 36L, an acknowledgement of receipt will automatically be sent to the applicant. This acknowledgement of receipt does not constitute a notice that the application has been issued.”.

11.4. In paragraph 3.1-

(a) for the heading of, and first sentence of, paragraph 3.1, substitute-

“Proof of marriage

3.1 The online system referred to in Practice Direction 36L sets out the documents which must accompany an application for a matrimonial order and the way in which those documents may be provided (for example, the online system may allow for documents to be posted, or to be uploaded and submitted online with the application).”;

(b) in the second sentence of paragraph 3.1 omit “or civil partnership”;

(c) in sub-paragraph (a)(i)-

(i) omit “or civil partnership”; and

(ii) omit “or civil partnership registration”; and

(d) in sub-paragraph (a)(ii), omit “or civil partnership registration”.

11.5. In paragraph 4.1-

(a) for “An applicant for a matrimonial or civil partnership order” substitute “Where the Pilot Scheme referred to in Practice Direction 36L applies, an applicant”; and

(b) omit “form”.

Modification of Practice Direction 17A

12.1. Omit paragraphs 1.5 and 2.3.

12.2. In the heading to paragraph 3.1 and in paragraphs 3.1, 3.7, 3.8 and 3.10 references to “sign”, “signs”, “signed” and “signing” are to be read as references to the name of the person being, or having been, recorded against the statement of truth included in an application or acknowledgment of service filed in matrimonial proceedings to which the pilot scheme referred to in Practice Direction 36L applies.

12.3. For paragraph 4.1 substitute-

“4.1 Where an application or acknowledgment of service completed using the online system referred to in Practice Direction 36L contains a statement of truth, with the name of a person who is unable to read or sign the document recorded against it, the application or acknowledgment of service must be accompanied by a certificate made by an authorised person.”.

12.4. In paragraph 4.3-

(a) for sub-paragraph (a) substitute-

“(a) that the content of the online application or acknowledgment of service has been read to the person before completion of the statement of truth required by the online system;”;

(b) for sub-paragraph (e) substitute-

“(e) that that person confirmed in the presence of the authorised person that it was their belief that the contents of the online application or acknowledgment of service were true.”

12.5. For the Annex substitute-

“Certificate to be used where a person is unable to read or sign an online application or acknowledgment of service filed in matrimonial proceedings to which the pilot scheme in Practice Direction 36L applies.

I certify that I [name and address of authorised person] have read the contents of the online [application][acknowledgment of service] and the statement of truth to the person whose name is recorded against the statement of truth, who appeared to understand (a) the [application][acknowledgment of service] and approved its contents as accurate and (b) the statement of truth and the consequences of making a false statement, and orally confirmed that this was the case in my presence.”.

ADDITIONAL MODIFICATIONS THAT APPLY TO APPLICATIONS SELECTED FOR THE TESTING OF NEW FEATURES

Additional modification of Part 7 FPR

12.6. In Rule 7.19-

- (a) for paragraph (1) substitute-

“(1) An application may be made to the court, using the online system described in Practice Direction 36L, for it to consider the making of a decree nisi in the proceedings –

- (b) in subparagraph (b) omit “or civil partnership”.

- (c) in paragraph (2)(b) omit “or civil partnership”;

- (d) in paragraph (3)-

- (i) omit “form”; and

- (ii) for “be accompanied by a statement setting” substitute “set”.

- (e) in paragraph (4)-

- (i) omit “, conditional order, a decree of judicial separation or a separation order”;

- (ii) for “be accompanied by” substitute “include”;

- (iii) in subparagraph (c) for “the” substitute “a paper”.

12.7. In Rule 7.32-

- (a) after “court” insert “, using the online system described in Practice Direction 36L,”.