

An Insight into the New No-Fault Divorce Law Commencing Today 6 April 2022

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NO-FAULT DIVORCE

Introduction

From today (6 April) there will be a huge change in the way couples divorce in England & Wales when the new no-fault divorce law pursuant to the divorce, Dissolution and Separation Act 2020 comes into effect.

This no-fault approach to divorce has been long awaited and is welcomed by most clients and family law professionals. For the first time it enables joint applications for divorce by a couple as well as applications by one of the parties. However, if an application is started in one spouse's name it cannot then become a joint application. In contrast, an application made in joint names can later proceed at the Conditional Order Stage (formerly referred to as Decree Nisi) or the Final Order stage (formerly referred to as Decree Absolute) as an application in the name of one spouse upon at least 14 days' notice to the other spouse.

The new law applies to marriage, civil partnership, judicial separation, and nullity cases although digital applications will initially only apply to divorce and dissolution applications where there is not one solicitor acting for both spouses. Applications for judicial separation, nullity, or applications where one lawyer acts for both spouses will therefore still need to be made as paper applications and be emailed or posted to the Court.

Where this article refers to divorce it applies equally to dissolution, judicial separation, and nullity cases (save in respect of the methods for making an application as referenced above). It also only relates to divorces in England & Wales. Other parts of the UK, including Scotland or Ireland have different laws.

The new law

From 6 April 2022, anyone wanting to apply for a divorce will still need to have been validly married for at least a year and ensure they have sufficient connection (jurisdiction) to divorce in England & Wales. The jurisdictional grounds can be seen [here](#). They will remain the same after April 2022.

However, applicants will no longer be required to state a fact in support of their assertion that the marriage has broken down irretrievably. Instead, all divorce applications after 6 April 2022 will be started on the same no-fault basis of 'irretrievable breakdown of the marriage'. The only scope to dispute an application will be based on validity of the marriage, or jurisdictional grounds (i.e., having the right to commence a divorce in England & Wales, including if the marriage or civil

partnership is already legally ended).

It also introduces a minimum 20-week period from the date of filing the divorce application (not the date it is served) before an applicant can apply for a Conditional Order. This 20-week period does not however apply to nullity or judicial separation proceedings.

Service of the divorce application should take place by midnight 28 days after issuing an application otherwise a court order is needed to extend this period. However, because the 20-week period before a Conditional Order can be made will not be extended, some respondents (the spouses receiving the application) may have considerably less than 20 weeks' notice of the divorce proceedings. This might not only cause bad feeling between the spouses, but potentially also financial loss.

Additionally, email will now be used as a default service by the Courts with a notice also being sent to the recipient spouse for them to complete to confirm they received the application by email.

It is then necessary for the applicant or joint applicants to wait at least 6-weeks from the Conditional Order to apply for a Final Order.

Save for exceptional circumstances where it can be shown that there is an urgent need to expedite a divorce process, a divorce under the new law cannot be completed within a minimum of a 26-week period.

Why the move is welcomed

Most couples want to approach their divorce process as amicably as possible. They feel laying blame for the breakdown of their marriage entirely on the other spouse is unfair and means discussions about children or finances start on the wrong footing. Therefore, where possible and where there is no prejudice caused by delay to them in starting divorce proceedings, those planning to divorce are increasingly stating a preference to wait for the new law.

There might be a bit of a '*rush*' of divorce applications made on or immediately after 6 April 2022, as many have deferred starting divorce proceedings so they can use the new law. This might cause delays in processing applications under the new law. Further information about the new divorce process can be found [here](#).

Advice

If you require any advice on the new divorce procedure IFLG would be happy to help.

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