

No Fault Divorce – Coming Soon

What is it?

“No fault divorce” is the headline used to describe the Divorce, Dissolution and Separation Act 2020, which is new legislation that will overhaul the law in relation to divorce and dissolution in England and Wales. As the headline suggests, the law is changing to introduce the ability to divorce without fault.

There is no change to the sole criteria for divorce: the irretrievable breakdown of the marriage, but there are significant changes to how this is demonstrated. The new law will require a simple statement to be submitted by either one or both of the parties to the marriage, stating it has irretrievably broken down. This is a marked contrast to the existing law, where it is necessary to rely on one spouse’s fault (by demonstrating adultery, unreasonable behaviour or desertion) or to wait a period of at least two years after separation, provided both parties consent to a divorce, or five years without consent.

When is it coming?

Although the Divorce, Dissolution and Separation Act 2020 gained Royal Assent in June 2020 and has been well publicised, the framework in which it will operate will not come into effect until 6th April 2022. It is only then that it will become possible to proceed with a divorce under the new law. Until then the existing rules apply.

Will it be easier to obtain a divorce?

In principle it should become more straightforward to obtain a divorce under the new rules. There will no longer be a need to fine tune the drafting of a divorce petition, the daunting prospect of a defended divorce should become a thing of the past and it seems likely that the issue of who divorces who will largely fall away. There will also be a change in the language used with the removal of archaic terms such as decree nisi, decree absolute and petitioner; those being replaced by conditional order, final order and applicant respectively. While online systems are already in place to deal with the divorce process, they are expected to be updated to make the process smoother and easier to navigate.

Will it be quicker to get a divorce?

Obtaining a divorce will not be faster under the new rules, despite it being widely expected that the process will become smoother and more efficient. In fact, save for the inefficiencies in the current system creating delays, the new system is likely to see the process actually take longer from start to finish.

There will still be a two stage process, with the new stages of conditional order and final order replacing the old decree nisi and decree absolute. The requirement to wait six weeks between the two is also retained in the new law. However, there is now the introduction of a minimum period of 20 weeks between the divorce application and the conditional order being introduced in the new law, so as to provide a period of reflection. In other words, the new framework will require at least six months from application to final order. While in theory the current system can be quicker, as there is no set timeframe between the petition and decree nisi, the reality is it often takes at least that long anyway. It must also be considered that the final divorce order (currently decree absolute) is often delayed in any event to allow financial matters to be properly addressed.

Should a divorce be delayed so as to use the new law?

There is no one-size fits all answer to this question and each set of circumstances should be considered carefully. There may be some merit in holding off until the new law can be used if it is expected that the only options available to divorce now would result in a contested process. However, if you are considering divorce it is always sensible to seek specialist advice as soon as possible. All the consequences of any delay must be considered carefully, as it is possible that a delay could be prejudicial in relation to issues concerning the children or finances (whether to an individual or even possibly to both parties from a tax perspective).

Why are family law practitioners so excited by the change in law?

Most family law practitioners have campaigned for this change in the law for many years, so as to end the “blame game”. By avoiding the need to make allegations of fault on divorce it is hoped that conflict will be reduced and more people going through divorce will be able to address the wider issues, such as arrangements for children and finances, in a calmer and more constructive manner. It is anticipated that families will benefit significantly by moving away from a focus on why the relationship broke down and who did what; instead encouraging a more forward thinking approach.

Statement of Breakdown - There will no longer be a requirement to provide evidence of a ‘fact’ around behaviour or separation. This will be replaced with a requirement to provide a statement of irretrievable breakdown and no further evidence will be required. This statement can be provided solely or jointly.

Grounds for divorce - The new legislation will retain the need for ‘irretrievable breakdown’ as the sole ground for divorce.

Consent - There will no longer be a need to ‘consent’ to the divorce. The court will be satisfied with the statement of irretrievable breakdown as conclusive evidence that the marriage is over.

Length of divorce - There will still be the two-stage legal process analogous to the decree nisi and decree absolute stages, but couples will now need to wait a minimum of 6 months from making the application to final decree (20 weeks from application stage to first decree, 6 weeks from then to final decree). This provides a period for reflection and the opportunity to reconcile. Where divorce is inevitable, it will better enable couples to reach agreement on practical arrangements for the future such as for any children and resolution of their finances. Courts will retain the power to expedite the process where appropriate.

User friendly - The language of the new law will now be in plain English to be more user friendly. ‘Decree Nisi’ will be replaced with ‘Conditional Order’, ‘Decree Absolute’ will be replaced with ‘Final Order’ and ‘Petitioner’ will become ‘Applicant’.

Joint Application - There will now be an option of a ‘joint application’ for divorce alongside retaining the option for one party to initiate the process.

Civil Partnerships - The changes will also apply to the dissolution of Civil Partnerships.

Heather Weavill and Steven Barratt at Alison Fielden & Co have many years experience of family law and can assist in all types of family cases, they can be contacted on 01285653261 or by email to Family@alisonfielden.co.uk.