

# Changes To Divorce Law

From 6 April 2022 no-fault divorce came into effect in England and Wales. This is a long-awaited change to family law as it sees the need for blame as a basis for divorce removed.

## Divorce Before April 2022

Up until April 2022 when parties made the decision to divorce, the law in England and Wales required a divorce to be based on the “fault” of the other i.e., blame if one or both parties did not want to wait until they had been separated for a minimum of 2 years. This meant that even if both parties agreed that the marriage was over mutually one would have to accept being “blamed” for either their behaviour or adultery as the reason for the breakdown of the marriage (the two facts that were available to obtain on a divorce immediately). This would sadly often increase tension and acrimony between the parties with no other options available unless they were to wait for a minimum of 2 years.

## What Has Changed?

From 6th April 2022 with no-fault divorce, the only ground for divorce is that the marriage has “irretrievably broken down”. This means the law no longer requires blame to be apportioned and to fit your particular circumstances into one of the 5 facts that you previously had to prove i.e., no need to cite behaviour or adultery or a wait for the minimum 2-year separation period.

In addition, further crucial changes are:

- the respondent to the divorce is now unable to contest the divorce (except on limited grounds relating to jurisdiction or validity of the marriage)
- if you and the other party both agree the marriage has broken down irretrievably then a joint application for divorce can now be made. This was never previously the case and hopefully will pave the way for more amicable resolutions for parties both in relation to the divorce itself and then other issues that need to be resolved such as children or financial matters
- changing the legal language around divorce to simplify and make more accessible to those outside the legal progression

## Why Is This Good Progress?

The previous divorce laws requiring parties to attribute blame or wait for a long period of time often resulted in creating acrimony when such acrimony could be avoided and increased mistrust and hostility at a time when emotions are often running at their highest.

Even if the parties agreed to use behaviour as a fact, a bitter taste could be left in reading allegations of one parties’ behaviour and having to take the blame and increase the stress in having to provide highly personal information as to why a marriage has broken down. The reasons for breakdown of marriages are often complex and unique and to offer no ability to simply say that you both agree the marriage is over – without waiting for 2 years or more -was unsatisfactory in particular when there are often issues that need resolving on separation such as financial matters which require the court to have a divorce petition to be able to finalise.

It is hoped the introduction of this new law will encourage couples to work together in resolving the other issues that arise on separation. By removing the need to apportion blame at the outset it is hoped that the parties will be able to undertake their negotiations about what are likely to be the more pressing and central issues of children and financial matters in a more collaborative manner as the initial hostility created by an unnecessary “blame” divorce petition is removed.

In summary the benefits are:

- reducing the conflict as to who should be the applicant, who should accept blame and agreeing those details if possible
- reducing the need to detail the precise reasons for the breakdown of the marriage preserving privacy

- removing the ability for those who may be abusive to exert further control by preventing the other person from obtaining a divorce

### **How Will It Work?**

Under the new law either you, your spouse or both of you together can apply for a divorce – the grounds are that the marriage has broken down irretrievably. As before no proceedings for divorce can commence within the first year of marriage.

There is now a new minimum overall timeframe of 6 months which is comprised of:

- a waiting period of 20 weeks from start of proceedings until the applicant can apply to proceed with the divorce. This is an application for a conditional order (previously known as a decree nisi). This has been introduced to ensure that there is a suitable period of reflection before the divorce can be proceeded with.
- after a minimum of 6 weeks from the grant of that conditional order, the applicant can apply to the court to make the final order (previously called the decree absolute).
- please note that this is the minimum timeframe. How long your particular divorce will take will depend on your circumstances as time will be needed for negotiations concerning the other issues that need to be resolved on divorce such as financial matters and of course to factor in the court's time in processing and administration.

### **Will No-Fault Divorce Impact The Financial Settlement?**

Even under the previous divorce laws the cause of the divorce rarely had any impact on a financial settlement, and this has not changed with the new law. Financial matters are dealt with in accordance with the matrimonial causes act 1973.

It is important to understand that the divorce itself does not resolve the financial claims that each of you have against each other. These financial claims must be dealt with, and a financial order obtained (most usually by consent) so that it is legally binding. You should not simply divorce without resolving financial claims, even if you feel you have no assets or matters are fully agreed between you, and it is imperative that you take legal advice on this aspect before any divorce is concluded.

### **Will No-Fault Divorce Impact What Happens To The Children On Separation?**

This new law has no impact on how children matters are resolved. On separation it is for the parents to come to an agreement about what is best for their children and if they disagree then legal advice should be taken as to the appropriate options available.

For more information on no-fault divorce please contact us.