



No Fault Divorce – Upcoming Changes to Divorce Law in England and Wales

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The Government's reform, known as the No Fault Divorce Law, under the Divorce, Dissolution and Separation Act 2020, is scheduled to take effect on 6 April 2022. This significant legislation will revamp the existing divorce process in England and Wales.

Current Divorce Law

Under the current law, there is only one ground to divorce which is that a relationship has irretrievably broken down. When a spouse is applying for divorce (the petitioner), they must rely on one or more of five facts to prove that the relationship has irretrievably broken down.

The current facts for a divorce petition are:

- Adultery;
- Unreasonably behaviour;
- Desertion (after two years);
- Two years separation by consent; and
- Five years separation (no consent needed).

Facts such as adultery and unreasonable behaviour require the petitioner to assign blame to the other spouse for the marriage breakdown. This can lead to the other spouse defending the divorce because they disagree with the reasons provided in the divorce petition. It can inflame tensions between spouses and make co-parenting more difficult. The current divorce law has been critiqued for failing to understand that couples can make a joint decision to separate and that sometimes no one party is solely at fault for the end of a relationship.

Alternatively, under the current law, a couple faces waiting two years to use a 'blameless' fact to divorce, such as where the parties separate by consent. In some cases a petitioner may have to wait up to five years, from the date of separation, to apply for divorce if the other spouse's consent cannot be obtained. Understandably, the current divorce process has been criticised by many for either requiring blame to be assigned to one party or leaving the parties in limbo for several years for a 'blameless' option. Both options can add unnecessary conflict and stress to an already emotionally difficult process.

The government have accordingly sought to reform the divorce process to remove the concept of 'fault' with new legislation, the Divorce, Dissolution and Separation Act 2020, which is intended to come into force on 6 April 2022. The legislation will apply to dissolution of civil partnerships as well as to divorce.

New 'no fault' divorce

The key changes to the new divorce process include:

- The new law will allow couples to apply for divorce without having to give a reason or assign blame, they will simply be required to provide a statement that confirms that the relationship has 'irretrievably broken down';
- Divorce petitions will no longer be based on a spouse's adultery or unreasonable behaviour (even if the petitioner wanted it to!);
- It will change the language used to make things clearer – a Decree Nisi will be referred to as a 'conditional order' and Decree Absolute will now be referred to as a 'final order';
- A couple will be able to make a joint application for divorce if they wish to do so;
- Where just one spouse applies, the other spouse can no longer defend a divorce petition or stop the divorce (apart from in very specific circumstances, such as fraud); and
- The parties will have to wait six months, from the date of the divorce petition, before the court will grant a final order for divorce (previously known as the Decree Absolute).

The six month wait between the date of the divorce petition and the court granting a final order for divorce is to provide couples with a period of reflection for them to consider whether divorce is really right for them. It is therefore thought that while the no-fault divorce process will remove unnecessary contention by removing 'blame' and 'fault' from the petition, the new procedure is unlikely to be much quicker than the current process, and certainly will not provide a 'quickie divorce' option.

Parties can use this six month waiting time to discuss arrangements for their children (if applicable) and the financial side of the divorce (which is separate to divorce proceedings). Many couples may not wish to apply for the final order for divorce until they have reached a legally binding financial settlement, either through voluntary negotiations or through the court's process.

Are you wondering whether to issue now or wait?

We understand that considering separating from your spouse can be a difficult and emotional choice to make. The additional decision as to whether to wait until April 2022, and the introduction of the new no-fault divorce, will likely be a personal decision and will depend on your circumstances. If you are unsure or would like advice on whether to wait or not then please contact our team of [divorce solicitors](#) on [01202 786153](tel:01202786153) or email Online.Enquiries@LA-Law.com to arrange for advice on the circumstances.