



GUIDE TO NO FAULT DIVORCE

Introduction

After a long campaign by many couples and family law organisations, 'no fault divorce' will finally be introduced in England and Wales in April 2022.

This new and less acrimonious divorce procedure will bring about much-anticipated reforms to an area of legislation that has remained largely unchanged for almost 50 years.

No fault divorce looks set to bring about a more constructive approach to separation and divorce promoting amicable dealings and reflection.

To help you consider the benefits of no fault divorce before its introduction, we have produced this short and helpful guide.

This document is not comprehensive, and it is strongly advised you seek professional legal advice if you are considering a separation or divorce.

The current system of divorce

Couples wishing to divorce in England and Wales or end a civil partnership must rely on one or more 'facts' that prove the relationship has 'irretrievably broken down'.

These facts are:

- Unreasonable behaviour.
- Adultery (not available for civil partnership dissolution).
- Desertion.
- Separation for at least two years with the consent of both parties.
- Separation for at least five years.

As a result, you must wait either a minimum of two years or start a divorce based on the 'fault' or the wrongdoing of the spouse or civil partner.

Where one spouse or civil partner disagrees with the divorce or the facts relied upon to launch a petition, they can contest the divorce and delay it – and in some cases, prevent their spouse from moving on or seeking financial support and settlement.

For years it has been argued that this system is outdated and unnecessarily combative, especially as many divorces involve no significant conflict within the relationship.

In such cases, couples often rely upon some form of unreasonable behaviour from one of the parties. However, this often means blame is apportioned where it doesn't need to be.

The solution – No fault divorce

The Divorce, Dissolution and Separation Bill, which introduces no fault divorce, will keep the sole ground of irretrievable breakdown of the relationship but it removes the requirement to establish one or more facts to prove irretrievable breakdown.

The new rules will also update much of the archaic language used within divorce proceedings so that it is easier for couples to understand and deal with the process.

For example, under the new legislation:

- Decree Nisi will become a Conditional Order
- Decree Absolute will become a Final Order
- Petitioner, i.e. the person applying for divorce, will become the applicant.

Under the new law, separating spouses will also be able to jointly apply for a divorce order where the couple both agree that the relationship has irretrievably broken down – further reducing the need for conflict.

Where one party wishes to bring an application for divorce this will also be permitted via a sole application even if their spouse or civil partner does not agree.

Commencing the process will be sufficient grounds to prove that the marriage or civil partnership has suffered an irretrievable breakdown, which means the ability to contest a divorce, dissolution or separation will be abolished.

To give a couple time to plan for the divorce and consider their actions, the new legislation will also introduce a new minimum period of 20 weeks from the start of proceedings to when the 'Conditional Order' can be made.

The existing six-week period between the Conditional Order (currently the Decree Nisi) being issued and when the Final Order (currently the Decree Absolute) can be made, will remain the same.

Impact of no fault divorce

Many see the introduction of no fault divorce as an end to the 'blame game'. Similar systems of divorce around the world have shown that separations tend to be less acrimonious where both parties can move on free of blame.

This is especially the case where both parties agree and decide to make a joint application for divorce or dissolution, allowing them to have a completely amicable separation.

The change will also eliminate the stress of having a divorce contested, which should save considerable time, costs and worry.

The longer period given to couples divorcing via the extended process is also intended as a period of reflection for both parties to consider whether they truly want to separate and also, potentially, to consider the separation of finances and other responsibilities, such as the care of children and provision of maintenance.

The process for getting divorced should have little or no consequence on final financial settlements or children matters, other than reducing the need for additional conflict during the separation period.

Time to wait?

Many couples experiencing difficulties within their relationship may be wondering whether they should wait for the introduction of no fault divorce.

While it is certainly a more amicable and less complicated path to achieving a divorce or dissolution of a civil partnership, those who are ready and able to divorce now should not wait.

At the moment, most divorces proceed without any significant issues between both parties if they both agree that the relationship has irretrievably broken down.

While it may seem unfair or difficult to apportion blame on one party, it is usually symbolic and will not affect the outcome of the divorce, including the financial settlement or arrangements for children.

For those struggling to get another party to agree to a divorce, however, the introduction of the new rules may soon offer a lifeline that allows them to move on with their lives and settle complicated financial and child arrangements.

If you are considering a divorce or the end of a civil partnership you should seek professional legal advice to ensure you have guidance on the best approach for you and your family.

How we can help

Our dedicated Family and Relationship team specialise in a wide range of family law matters, from simple separations to multi-national divorce proceedings and financial settlements.

The team have been involved in the fight for no fault divorce for many years now and are eager to help couples navigate this new legislative regime once implemented in 2022.

If you would like advice on no fault divorce or any other divorce, civil partnership dissolution or any other family law matters, please contact us.



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Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this document tailored to suit your specific circumstances please contact a member of our team. This guide was correct at time of publication and is not a substitute for legal advice.

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