



NO-FAULT DIVORCE AND THE TIMESCALES

For family lawyers, there's been no hiding from the news surrounding the biggest shake up to divorce law since 1979.

HIGHLIGHTS

- New legislation becomes law on 6 April 2022
- Additional 20 week 'cooling off period'
- If the divorce petition has been issued by 31 March 2022, you will remain in the 'old system'
- Always get legal advice if thinking about commencing divorce proceedings

You may or may not be aware of the new no-fault divorce being introduced in April 2022. In broad summary, there will no longer be a requirement to evidence the reason for the breakdown of the marriage or civil partnership. Irretrievable breakdown will be proved by the very fact that an application has been made to end the marriage. A previous article considering the law changes in more detail can be found [here](#).

Here at Wilson's, we have backed the much needed reform to the 'blame game'. We are confident this, together with the support we provide to our clients, will go a long way to help making the ending of a marriage/civil partnership and all that it entails, less stressful. We hope it will help parties to focus on ending a chapter of their lives in the most constructive way possible.

The purpose of this note is to highlight the pressing questions we are receiving from our clients about what to do if they are already in proceedings, or thinking about starting a divorce.

When does no-fault divorce come into place?

The date we have all marked in red in our diary's, is 6 April 2022. This is when the legislation, the Divorce, Dissolution and Separation Act 2022, becomes law.

But what if I'm in divorce proceedings already?

If you are, then you, or your spouse, will have petitioned for divorce on the soon to be 'old' system, whereby to prove the marriage had irretrievably broken down, you had to select one of the five facts.

If the divorce petition has been issued by the Court, by the 31 March 2022, you will remain in the 'old system'.

I haven't yet sent my divorce petition, but I'm about to do so

There is still time to send a petition to the Court under the current law, should you wish, but you should seek advice about whether or not that is a good idea. Any divorce petition must be processed by the Court by 4pm on 31 March 2022 to proceed on the 'old' system.

This date applies to whether you are submitting your petition online, via the portal, or by post.

There are various web-based organisations offering on-line, no-fault, divorces but it is always sensible to obtain specialist legal advice before embarking on this process.

Should I start a divorce now or wait until 6 April 2022?

There is nothing stopping you commencing proceedings now if you so wish. You should bear in mind that this could result in your spouse feeling more aggrieved than normal, given it will be explained to them you could have waited a few more weeks and relied on no-fault.

Legal advice should be taken in all circumstances.

What happens between 31 March 2022 and 6 April 2022?

The online portal and postal system will be closed, and applications will not be accepted. If an application is extremely urgent, and must be submitted in this time, we can advise you about your options.

Can I still send a petition to the Court myself?

In short, yes, but there is a lot to consider when doing so. Commencing divorce proceedings should not be considered a tick box exercise. In fact, ticking or not ticking a box may lead to serious consequences later down the line.

Within the new system, it will also now be possible for parties to make a "joint" application, which stems from the aim of making the process less contentious. Albeit you can still make a sole application if you so wish. It follows that you will need to consider carefully how you apply, and as such, we strongly recommend that you seek our advice before doing so, as we can help you every step of the way.

Notwithstanding the comparative ease of online, no fault, divorce, this remains a legally complex process. It is crucially important that you obtain legal advice about divorce and related matters before submitting an application online.

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Is the Court fee still the same?

The fee payable when you submit a petition is £593, and this fee remains. What is changing, however, is that the fee falls to the person submitting the petition, known as the applicant. In the case of a joint application, the logic is that the fee will be split equally.

Previously whilst the petitioner (now called the applicant) paid the fee, there was an option to ask your spouse to make a contribution not only to the Court fee but your legal fees. The new system seems to steer the applicant away from requesting a contribution and again, this needs to be considered carefully.

Will a no-fault divorce be quicker?

In theory, the timescales are, in fact, increasing. At present, the main timescale restraint is following the making of Decree Nisi (now referred to as a Conditional Order) you have to wait 6 weeks before you can apply for the Decree Absolute, the document that formally dissolves the marriage (now referred to as a Final Order).

Under the no-fault system, there is an additional 20 week 'cooling off period' from the commencement of proceedings, and applying for the Conditional Order. The main purpose is so parties can reflect, use this time to hopefully agree a settlement about the finances, and secure that agreement in a Court Order.

This 20-week period is in addition to the 6-week period from the Conditional Order and applying for the Final Order, just like the old system. In exceptional circumstances it may be possible to apply to the Court to expedite matters. In general, however, the new system will take a minimum of 26 weeks/six months. In practice, a divorce proceeding under the old system will often take that long in any event.

An important point to note is that a party can still apply to the Court, as with the current system, to delay the Final Order being made due to the finances not having been resolved. This will be especially important if there are pensions which need to be shared.

Do I still need to sort the financial issues?

Yes. As with the current fault-based system, being divorced does not mean that you or your spouse can no longer bring a claim for the financial issues to be resolved in the future. It is very important that you take legal advice about this to understand the situation with regard to your particular relationship and assets.

So what shall I do?

If you are thinking about commencing divorce proceedings, please call us to discuss your options and we will provide you with tailored advice as to what application to use, and when to send it.

What we want you to take away from reading this, is that whilst the reform is long overdue, and welcomed, the importance of seeking legal advice is more important than ever.

Contact us

Call the team on 01722 412 412 or email enquiries@wilsonslip.com for further information.