



No Fault Divorce Procedure

The Divorce, Dissolution and Separation Act 2020

The Divorce, Dissolution and Separation Act 2020 came into force on the 6 April 2022. This is the first change in the law for nearly fifty years since the Matrimonial Causes Act 1973. The changes apply to divorce and dissolution of a civil partnership.

The Ground for Divorce or Dissolution of Civil Partnership

The ground for divorce will remain the same that the marriage has irretrievably broken down. However it will no longer be necessary to prove one of the five facts of: adultery, unreasonable behaviour, desertion, two years separation and consent or five years separation to prove that the marriage has irretrievably broken down.

Procedure

Notice is served in the Divorce Application that the marriage has irretrievably broken down. You have to be married for one year and the court has to have jurisdiction for the application to be made.

The Applicant or Applicant one, if there is a Joint Application pays the Court Fee, currently £593. It is expected that the parties will agree the costs between them and an order for costs is only likely to be made by the court in particular circumstances, although the costs can be referred to in financial discussions or applications.

A spouse can only dispute (defend) the divorce on very limited grounds such as the validity of the marriage or disputing jurisdiction, so effectively the Applicant can obtain a divorce without the other spouse being able to object. A Joint Application for Divorce can be made or changed to a Sole Application by either spouse.

The terminology for divorce proceedings has changed. The **Divorce Application** (Petition) must be served on the other spouse or their solicitors, usually by the Court by email and post within 28 days. The other spouse or their solicitors must complete an Acknowledgment of Service within 14 days to confirm receipt of the Divorce Application. In the Acknowledgment of Service the other spouse can indicate whether they wish to dispute the proceedings and if they do, they have 35 days to file an Answer. In a Joint Divorce Application, both Applicants or their solicitors must complete and file an Acknowledgement of Service within 14 days.

The Applicant/s must wait **20 weeks** after making the Divorce Application before they can apply for the first of the two-part divorce order, called the **Conditional Order** (Decree Nisi). In the application for the Conditional Order, you must confirm that everything in the Divorce Application remains unchanged and you wish to proceed with the divorce.

Once **six weeks** have elapsed from the day the Conditional Order was given, the Applicant/s will be able to apply for the **Final Divorce Order** (Decree Absolute). This brings the marriage to an end.

Safeguarding Pensions and Finance

Neither spouse should not apply for the **Final Divorce Order** until all **applications for financial orders**: transfer of property, lump sum, maintenance for spouses and children (if the court has jurisdiction) and pension orders have been made.

If there is likely to be a **Pension Sharing Order** you should not apply for the Final Divorce Order (Decree Absolute) until 28 days after the Final Financial Order. The spouses should give each other an Undertaking not to apply for the Final Divorce Order (Decree Absolute) until 28 days after the final Financial Order to safeguard pension assets and the implementation of the Pension Sharing Order.

The Re-marriage Trap

Please note that both spouses must make the application for the finances to be resolved prior to remarriage or the spouse who has remarried without doing so will not be able to make a financial claim within divorce. Any maintenance payments or claims for maintenance stop on remarriage.

Will a no-fault divorce speed up the divorce procedure?

Whilst The Divorce, Dissolution and Separation Act 2020 will remove some delays, as there will be no arguments over the “reasons” for the divorce, this is not an instant divorce, as the procedure has a built-in cooling-off period. The law lays down a minimum allowable period of 20 weeks between the Application and the Conditional Order, and another six weeks between the Conditional and Final Order. This means that even the smoothest divorce will take at least six months to complete.

The government says this minimum period not only gives an opportunity for couples to reconcile but also gives breathing room to discuss practical arrangements for children and finance if the separation and divorce is inevitable.

The new law doesn't change the legislation on children or finances. This means expert legal advice and representation will still remain vital for anyone going through the divorce or dissolution of civil partnership process.

Lisa Broddle, l.broddle@srb.co.uk

Partner, Solicitor, Family and Collaborative Lawyer, Accredited Family Mediator
Stone Rowe Brewer LLP, Stone House, 12-13 Church Street, Twickenham, Middlesex TW1 3NJ

Tel: 020 8891 6141 Fax 020 8744 1143 DX 200006 Twickenham www.srb.co.uk

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