



An Insight into the New No-Fault Divorce Law Commencing 6 April 2022

Introduction

From 6 April 2022 there will be a huge change in the way couples divorce in England & Wales when the new no-fault divorce law pursuant to the Divorce, Dissolution and Separation Act 2020 comes into effect.

This no-fault approach to divorce has been long awaited and is welcomed by most clients and family law professionals.

For the first time it enables joint applications for divorce by a couple as well as applications by one of the parties. However, if an application is started in one spouse's name it cannot then become a joint application. In contrast, an application made in joint names can later proceed (at the Conditional Order Stage - currently referred to as Decree Nisi or Final Order stage- currently referred to as Decree Absolute) as an application in the name of one spouse upon at least 14 days' notice to the other spouse.

The new law applies to marriage, civil partnership, judicial separation, and nullity cases, although digital applications will initially only apply to divorce and dissolution applications where there is not one solicitor acting for both spouses. Applications for judicial separation, nullity, or applications where one lawyer acts for both spouses will therefore still need to be made as paper applications and be emailed or posted to Court.



Where this article refers to divorce it applies equally to dissolution, judicial separation, and nullity cases (save in respect of the methods for making an application as referenced above). It also only relates to divorces in England & Wales. Other parts of the UK, including Scotland or Ireland have different laws.

The New Law

From 6 April 2022, anyone wanting to apply for a divorce will still need to have been validly married for at least a year and ensure they have sufficient connection (jurisdiction) to divorce in England & Wales. The jurisdictional grounds can be seen here.

However, applicants will no longer be required to state a fact in support of their assertion that the marriage has broken down irretrievably. Instead, all divorce applications after 6 April 2022 will be started on the same no-fault basis of *'irretrievable breakdown of the marriage'*. The only scope to dispute an application will be based on validity of the marriage, or jurisdictional grounds (i.e., having the right to commence divorce in England & Wales, including if the marriage or civil partnership is already legally ended).

It also introduces a minimum 20-week period from the date of filing the divorce application (not the date it is served) before an applicant can apply for a Conditional Order. (This 20-week period does not apply to nullity or Judicial Separation proceedings).

Service of the divorce application should take place by midnight 28 days after issuing an application otherwise a court order is needed to extend this period. However, because the 20-week period before an application for a Conditional Order can be made will not be extended a number of respondents (the spouses receiving the application) may have considerably less than 20 weeks' notice of the divorce proceedings. This might not only cause bad feeling between the spouses, but potentially also financial loss.

Email will now be used as default service by the Courts with a notice also being sent to the recipient spouse for them to complete to confirm they received the application by email.

It is then necessary for the applicant or joint applicants to wait at least 6-weeks from the Conditional Order to apply for a Final Order.

Save for exceptional circumstances where it can be shown there is an urgent need to expedite a divorce process, a divorce under the new law cannot therefore be completed within a minimum of



a 26-week period.

The Government will be issuing a comprehensive Information pack about the new Divorce Law shortly. It will also include copies of the new court forms.

Why many couples are waiting to divorce after 6 April 2022

Most couples want to approach their divorce process as amicably as possible. They feel laying blame for the breakdown of their marriage entirely on the other spouse is unfair and means discussions about children or finance start on the wrong footing. Therefore, where possible and where there is no prejudice caused by delay to them in starting divorce proceedings, those planning to divorce are increasingly stating a preference to wait for the new law.

Consequently, there might be rather a '*rush*' of divorce applications made on or immediately after 6 April 2022. This might cause delays in processing applications under the new law.

Why Do Some Couples Want or Need to Start Divorce applications before 6 April 2022?

For some it might be strongly advisable to commence a divorce application urgently (i.e., before 6 April 2022).

This particularly arises where there is more than one country where a divorce application can be started. The laws in two countries, particularly for financial outcomes can differ enormously (with England & Wales often being deemed the more generous to the weaker financial spouse). In such cases securing one spouse's favoured country can require that spouse to issue a divorce application urgently, and unfortunately usually without informing their spouse of their intention to do so (to avoid their spouse issuing proceedings in their chosen country first). Even post Brexit, issuing in a spouse's favoured country first in time often enhances their chances of securing their favoured jurisdiction.

For other couples, they might have already started completing the current court application forms and just want to avoid re-doing others.



A few might also feel they want to attribute fault for the breakdown of their marriage to their spouse. It's important to be aware that it's highly unlikely apportioning blame to a spouse will have any bearing whatsoever on the outcomes of children or financial matters.

- Court Cut-Off Dates for Filing a Divorce Application under the current law
- There are significant practicalities for the Courts' regarding the changing law
- In addition to new court forms. There will also be a completely revised digital divorce application process

Consequently, to apply for a divorce before 6 April 2022 it is necessary to be aware of the court cut-off dates for filing divorce applications under existing law.

<https://www.gov.uk/government/news/new-divorce-laws-will-come-into-force-from-6-april-2022>

Summary of the Cut-Off dates for Filing under the Existing Law

- All paper applications (on forms which are completed manually and posted) must be received by the court by 4pm on the 31 March 2022
- Where an application for Help with Fees is going to be made, users will need to do so by 17 March
- All digital applications must be submitted online by no later than 4pm on the 31 March 2022. The digital system for applications will not allow applications to be submitted after this time and will not accept new applications until 10am on the 6 April 2022 under the reformed law
- If the application needs to be issued urgently between 31 March and 6 April and this email address has been allocated by the Court to receive divorce applications:



onlineDFRjurisdiction@justice.gov.uk.

📧 Urgent applications will be issued where possible, if received by post or email, before 4pm on the 5 April. **This email address will be unmonitored after 4pm on 5 April 2022**

Any applications received by the dates referenced above cannot be guaranteed to be issued ahead of the 6 April, and so there is a risk they will be returned to the sender, who will have to apply on the new form under the new law). It is strongly advisable to file any divorce applications as soon as possible before the cut-off dates referenced above.

Caution About Issuing an application for Divorce before 6 April Without taking Legal Advice

It is always advisable to consult with a specialist family lawyer before issuing a divorce application, particularly if you have complex or significant assets/income or an international dimension to your case.

It's also important to know your legal rights and obligations before commencing divorce proceedings to avoid unwittingly prejudicing your position.

The respondent to an application i.e., the spouse receiving the divorce application, will be automatically notified by the Court usually by email that you have issued a divorce petition unless you opt to arrange service of the petition on the respondent yourself. The timing of service on a respondent can be important and so if this is a concern, legal advice should be sought prior to starting a divorce application.

Some common questions and answers about what to consider before issuing divorce proceedings before 6 April 2022

(This is not a complete list of factors to consider)



Q: Does issuing an application for divorce before 6 April 2022 make a difference to the outcome of any financial/children issues related to divorce?

A: In almost all cases fault attributed to the irretrievable breakdown of a marriage makes absolutely no difference whatsoever to the outcome of financial or child issues in England & Wales.

Q: If a divorce involves an international couple, does it matter where they divorce or how quickly they issue an application for divorce?

A: Yes for international couples when either spouse has sufficient connection to divorce in another country, they need to consider (urgently) with a specialist family lawyer in any relevant country, which country will provide the best outcome for them. There are often very different outcomes in other countries, particularly for financial matters. If an application for divorce is made in a country with less favourable outcomes for the applicant, it could irreparably prejudice their position.

Q: What information can an applicant spouse who has the option of issuing divorce in another country share with their spouse prior to making a divorce application?

A: It is not advisable to say anything to their spouse where there are options for issuing a divorce in another country until the applicant has secured their favoured jurisdiction for divorce. To do so could pre-empt their spouse to issue in the country more favourable to them.

Q: Could making an application for divorce immediately prior to the end of the tax year in England & Wales make a difference to the tax payable on any related financial order or settlement?



A: It can do so. 5 April is the end of the tax year in England & Wales. Some generous tax reliefs on divorce, particularly for capital gains run from the tax year in which the couple separate. The latest a separation date can possibly be is the date on which an application for divorce is filed. Consequently, owing to the fact an application for divorce is being made right at the end of a tax year might mean capital gains arise upon the disposal or transfer of assets to a spouse, which could otherwise have been avoided. An accountant will be able to advise about these risks. Its therefore sensible to take advice urgently from an accountant if you have assets which might incur capital gains upon disposal or transfer. Further information about the new divorce process can be found here.

Advice

The Ministry of Justice have published an information pack here. Whilst correct at date of publishing, the content may be subject to change.

If you have any doubts about whether you or someone you know should issue a divorce application before 6 April 2022, the author of this article, Lucy Greenwood would be happy to help.

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