International FAMILY LAW GROUP LLP

The procedure for England's new divorce law

Executive Summary

From 6 April 2022 England and Wales has a new divorce law, so-called no-fault. It is the most significant divorce law change since 1969. It introduces an entirely new basis of obtaining a divorce and a new timetable. It will have different consequences for the applicant and the respondent. It allows joint petitions and joint applications for the final divorce. Service will be invariably by email as default service method. In any event, divorce itself is now an almost entirely online process. However it is the rules which will be of crucial importance in practice and this note explores some of the important changes for practitioners.

The New Divorce Law

The Divorce, Dissolution and Separation Act 2020 introduces no-fault divorce available from 6 April 2022[1]. It covers marriage, civil partnership and nullity. It provides a 26-week time period between commencement of divorce proceedings and the final divorce order being made, although in reality most divorces will take longer because of procedural steps and court delays.

The new no-fault law is very welcome. Some of us as practitioners were actively involved in campaigning for this law in Parliament in 1996 and were very disappointed the no-fault divorce law was not then introduced[2]. All or almost all practitioners are pleased at this new law in principle.

However, as was made clear during Parliamentary progress, there are many problems potentially in its implementation and in practice. One of these is the significant impact on the respondent who will have less, perhaps much less, than the 26-week period of notification of the existence of any proceedings. Some of the problems with the legislation itself are set out in my note at: England's New Divorce Law from April 2022.

Often in family law it is how the law operates rather than just the law itself which has the big

impact on those going through relationship difficulties i.e., the procedural rules as well as the statutory legislation. This note looks at how the new divorce will be or may be in practice. There are still real uncertainties about how the procedural rules will operate and this note is intended to highlight and cause debate in order to ensure the profession is ready in April with agreed interpretations. There are active discussions to understand what is happening so this note will be kept up to date before April 2022.

The New Divorce Procedure and Rules

The rules can be found in the Family Procedure (Amendment) Rules 2022[3]. They amend the Family Procedure Rules 2010, the primary rules of the family court. Reference to the rules in this note are to the FPR albeit as amended by the 2022 rules[4]. They apply to marriage and civil partnership and this note should be read accordingly to the dissolution process of a civil partnership. They apply to nullity and judicial separation both of which are relatively rare and not covered in this note.

Language is crucially important in family matters. Over the past couple of decades there have been multiple attempts to change the family law dispute culture via language and terminology, with mixed success. The rules try again. Whereas presently there are decrees of divorce, they will now be *'divorce orders'.* A decree of nullity is a *'nullity of marriage order'* and a decree of judicial separation is a *'judicial separation order'*. Perhaps more crucially, the originating document of the process, presently the divorce petition, is now referred to as an *'application'.* This makes sense because petition is a very historic word and pretty meaningless to most. But some may feel that an important document such as starting a divorce justifies more than the word application. Very probably it will be referred to as a divorce application.

Divorce at present has a two-stage process, the decree nisi when the court is satisfied the grounds for the divorce have been shown and then six weeks later the decree absolute, the final divorce. The first decree is now to be known as the *'conditional order'* and the second decree as the *'divorce order'*. The petitioner who starts the proceedings is now the applicant although if it is joint applicants, they are applicant 1 and applicant 2.

The process starts with the filing of the divorce application at the court. It's a crucial feature of the new divorce law, and one which is very welcome, that the initial divorce application can be filed by either party or both together. These latter are joint divorce applications[5]. Moreover, each of the next two stages, presently decrees, can be applied for individually or jointly and irrespective of

whether the original application was individual or joint. So it could be that one spouse presents the original divorce application, the other spouse applies for the first decree and then they both apply for the final divorce order, presently known as the decree absolute. The rules have an inevitable complexity because of this.

One of the provisions in the existing law which has for decades been a complete fiction and dead letter is the so-called statement of reconciliation. A document filed by a lawyer stating whether they have discussed prospects of reconciliation and given the names and addresses of persons qualified to help effect a reconciliation. Although some solicitors may conscientiously go through this with their client, it is invariably a pro forma document filed at the same time as the divorce or indeed now part of the divorce papers. There had been argument to scrap it as part of a modern divorce law. Sadly, it survives and is still required, R 7.3.

Defended proceedings are now *'disputed'* proceedings and see below.

Some of the elements of the existing law are simply irrelevant under the new law. There can be no separate applications in relation to the same marriage or civil partnership, R 7.4, for the primary reason that if the person initially starting the proceedings doesn't proceed, the other party can. If one party commences the proceedings, the original divorce application cannot be amended to be a joint application; they simply apply for the final decrees together.

Provisions on service and timing with the respondent

Probably the most controversial element of the new law as it went through Parliament was the revelation that divorce as a consequence of a 26-week period only applied to the applicant, presently named the petitioner, and not to the recipient, respondent. Many countries around the world have no-fault divorce based on a period of notice to both parties. This was the process provided by our Parliament in 1996. This is how the Ministry of Justice consultation had been understood. But this is not what is the law. It is suspected many practitioners are still unaware of it.

The 26-week period is divided into 20 weeks from the issuing of the divorce application to the opportunity to apply for the first decree, conditional divorce order, presently known as the decree nisi. Once this has been granted, there is as at present another 6 weeks before the final divorce order can be applied for when the parties are finally divorced. The respondent will be fully aware of the final 6-week period. But as the matter went through Parliament, there was opposition to the respondent not being aware of the existence of the divorce proceedings throughout the initial 20

weeks. It was argued that the respondent should have the opportunity to reflect and consider, perhaps to engage in reconciliation or at least negotiation about the arrangements throughout this entire 20-week period. Instead with no obligation to serve immediately[6], there was real worry that respondents may not be served until well into the 20-week period, possibly late in that period. A commitment was made by government that this would be investigated and dealt with in the rules. It hasn't, at least hasn't adequately. Now these rules are published, it looks very much as if respondents may in some cases not be aware of the divorce proceedings until very late in that 20-week period.

The new rules provide, R6.6A, that where the applicant serves the divorce papers, service must occur by midnight 28 days after the date of issue of the divorce application. It must be hoped that good practice in all, but exceptional cases, is that service indeed occurs within 28 days. The respondent would then have 16 weeks before the first decree could be applied for.

But what if the applicant for the divorce doesn't serve in those 28 days?

There is provision, R 6.6B, to apply for an extension of time to comply if not served in 28 days. That application should be made within the 28 days or, where an extension order is allowed, within the period specified by that order, R 6.6B (2). The latter is worrying because it anticipates the application for the extension of time is not made within the 28 days.

More worryingly still, the rules, R6.6B (3) specifically anticipate that where an applicant has a so-called good reason for not making the application for an extension of time to serve the respondent within 28 days of issuing or within any other time permitted by any court order, they can still make an application for an extension of time. Why? At the very least, compel any application for an extension of time to be within the initial 28 days and then extended by the court if good reasons can be given.

When the court is considering an application for an extension of time, it must consider all the circumstances including whether the court failed to serve the application, the applicant has taken reasonable steps to comply with service and the applicant has acted promptly, R 6.6 (4). What is troubling is that there is no reference in the rules to what will happen if, for example, the court is not satisfied the applicant has acted promptly. For example, he or she may have put the divorce papers in their proverbial back pocket and simply done nothing about it for much of the 20 weeks. What was made explicitly clear in the parliamentary discussions is that the court in those circumstances would not thereby extend the 20-week time. If for example the court felt the applicant for the divorce had deliberately delayed by 10 weeks in serving, the court has no power

apparently to extend the 20-week period by another 10 weeks. It can't reset the 26-week timetable. This seems therefore a weak and ineffectual provision and discrimination to respondents. What the rules should have said is very simple, as below.

The next reference is what the respondent must do on receiving the application, R 7.7[7]. As now, file an acknowledgement of service within 14 days of service. No longer would the acknowledgement say the respondent is defending the grounds of the proceedings as there can be no opposition; it is no-fault. But the acknowledgement identifies the respondent and certainly verifies there is no dispute about jurisdiction of the court or status of the relationship. If there is, an answer must be filed within 21 days from the date when the acknowledgement of service was required i.e., 35 days from the date of service. See below on the process of disputed divorces.

The rules then go on to the process of applying for the conditional order, R7.9, and here is an impact of the opportunity to delay service. Any party or both parties can apply for the conditional order at the end of 20 weeks from the issuing of the divorce application provided that the time for filing the acknowledgement of service had expired, with no notice of intention to dispute the proceedings. In other words, if the respondent was served 18 weeks after the issuing of the proceedings, the applicant for the divorce can apply for the next stage of the divorce two weeks later i.e., the 14-day period for the acknowledgement of service after service occurred and as the 20 weeks have elapsed.

Crucially there seems no requirement that the service of the divorce papers takes place either within the initial 28 days or any further period permitted by a court order. There seems no suggestion that would be bad service i.e., ineffectual in accordance with the rules. In the consultation on the rules, representations were made that if this was not present it would be the green light to divorce applicants to delay serving when it suited them, and this had been contrary to the intentions of Parliament. But it seems this is still permitted.

There may be many reasons to delay serving. These are opportunities given to the applicant, presently the petitioner, which lawyers may need to use tactically for the benefit of their client however much it might be against the original spirit of the intention of the no-fault divorce. Reasons might include:

- An anxiety in the context of domestic abuse that a perpetrator, the respondent, would have much of the 20 weeks to create difficulties for the applicant, the victim. This was the

strong reason given to Parliament by a couple of domestic violence organisations. It might be thought that court protection orders would be available. Of course, there is rightful sympathy with victims. But this anxiety seems to have convinced Parliament that all respondents should have the same treatment and therefore an impact on all cases of divorce

- A concern that where there are international connections, a respondent may commence proceedings abroad and at the same time delay or halt the English proceedings. If the English proceedings are significantly delayed in service on the respondent, it minimises the opportunity of the respondent to take legal advice, commence proceedings abroad and delay the English proceedings before the conditional order or final divorce order. This will be a significant reason tactically to delay service. This will cause huge unhappiness and frustration for family lawyers abroad when their clients are presented with English divorce papers and have only a couple of weeks until the first divorce order could be pronounced. It doesn't present English family law in a very good light internationally[8]
- A hope that delayed service will cause a delay in bringing forward financial claims by the respondent, perhaps well after the conditional order or even final divorce order[9]. But this situation has a real likelihood that the final divorce order will be granted before the final financial order. If then one party dies before the final financial settlement, the other now former spouse making financial claims would no longer be automatically entitled to

death benefits from pensions and policies and would have to make claims against the estate. This is far more complicated and precarious. Parliament was urged to include a provision that the final divorce would not be granted whilst there were active financial claims if there would be any material prejudice to either party by the final divorce before the final financial settlement. Promoters of the legislation encouraged the existing law to stay; it is very hard to delay the final divorce merely because financial matters are unresolved and invariably only occurs in complicated big-money cases[10]. It is likely there will be many more applicant spouses[11] made financially vulnerable and lose out as a consequence of this new law. See below on s10.2

- The simple wish by one party, carrying over the animosity of the breakdown of the marriage, to cause maximum distress and upset to the other party then finding out as late as possible that divorce proceedings had been underway for several months.

One of the compelling reasons for the new no-fault divorce was removing opportunities for accusations of blame. Creating a better environment in which family disputes could be resolved. Sadly, it's difficult to conceive of a more bitter environment than one spouse issuing a divorce petition and then doing nothing about it for perhaps four months, continuing marital life, perhaps going on holidays, making joint plans and in all other ways not giving any indication to the other spouse that they had already issued a divorce and then after perhaps 16 weeks serving the divorce. The recipient spouse would then find out that within a month the first decree of divorce would be pronounced. This will create huge hostility which is likely to overflow into disputes regarding children and finances. This must not happen. But it can happen as a consequence of the way the new law and the rules are framed. There is arguably a huge burden on the family law profession to make sure divorces are served in the 28-day initial time period. To make sure this new divorce law is a *'better way'* rather than actually worse than before.

Once the conditional order has been granted by the court, either party or both parties can apply for

the final divorce order, presently the decree absolute, six weeks later. At the moment only the petitioner, applicant, can do so and it is a simple paper or online application. Either can apply. Where the conditional order was applied for jointly but only one seeks the final divorce order, R 7.20.2 now require that 14 days before this application for the final divorce order, notification of intention to do so must be served on the other party. This is one of the instances throughout the new rules providing for openness and transparency in the mixture of sole and joint applications at each of the three stages.

The final divorce order is granted and the marriage is then at an end.

Is there an answer in the Civil Procedure Rules?

Might however there be an answer to this conundrum and confusion be found in the Civil Procedure Rules? I am grateful to my iFLG former colleague, Fleur Claoue de Gohr, with her recent Bar civil litigation course for drawing my attention to the similarity with the CPR.

The new FPR 6.41B reads as follows:

(1) The applicant may apply for an order extending the time for compliance with rule 6.41A.

(2) The general rule is that an application under paragraph (1) must be made (a) within the period for service specified by rule 6.41A; or (b) where an order has been made under this rule, within the period specified by that order.

Compare this with CPR r.7.6(2):

The general rule is that an application to extend the time for compliance with rule 7.5 must be made (a) within the period specified by rule 7.5; or (b) where an order has been made under this rule, within the period for service specified by that order.

This similarity is surely too close to be coincidental. It must have been intentional. A deliberate crossover.

Moreover, I understand that under the CPR and application for extension of time made outside the relevant period, here 28 days, has a far lesser chance of success because there would also be an application for relief from sanctions and similar. But the essential feature is that service upon the respondent is only good service if within the stipulated period in the rules or any period of extension given by a court.

However, if the rules committee was intending to bring civil litigation practice across into this new arena in the context of no-fault divorce, other elements do not match nor make it likely. As I understand it, within civil litigation an application for an extension of time to serve may be struck out as it may constitute an abuse of process. This is highly unlikely to happen again in the new divorce context. But if it were struck out, it would certainly start the time running again.

More likely in the civil litigation context, where there is a stipulated timetable for service according to statute or statutory instrument, the time is simply extended to run from the later date of service. But this power to the Family Court doesn't appear anywhere in the statute or the rules. If the family court judge felt that the petitioner, applicant, had deliberately delayed in service, there seems no power to extend the 20 week period. Unless the whole divorce application were to be struck out, at the moment it seems the court is powerless.

It might be possible to argue that service outside the 28 days or any extended court period would be bad service. Again there is nothing in the rules. Crucially this is not mentioned at all in the notification of service or the acknowledgement of service form. So respondents will be unaware. For completeness there should also have been a question on the acknowledgement of service namely not only has service taken place within the 28 days or any extended period. It looks like in conspiracy of silence to make sure respondents are not aware.

Moreover, when the court is considering an application for a conditional order, it should make sure that not only has service occurred but that it occurred within 28 days or any extended period by court order. Otherwise, the conditional order should be refused because arguably there has not been good service. Will this be on the checklist for judges in considering the application for the first decree? In any event, what can they do if they are dissatisfied with the actions of the applicant regarding service on the respondent? Completely reset the timetable? Seemingly not. Again it is unclear.

This process also gives rise to another issue. If service occurs outside the 28 days but within a period extended by the court, the respondent will then see the application for the extension and

the statement in support. What would happen if the applicant had misled the court. For example it said that attempts to find the respondent had proved difficult whereas the respondent could show the applicant knew where the respondent was at all times and could have served within the 28 days. This would be a basis for setting aside the order granted on the basis of misleading and inaccurate information. What would the court then do? As before, it seems powerless to reset the timetable. It's difficult to see what it can do other than merely accept the situation, perhaps with the costs order which could be equally pointless.

These really are areas where the profession should have know well in advance what is likely to happen. If the crossover from the CPR is the intention, which would be commendable in itself, nevertheless many other questions are therefore raised going to the whole heart of the intended divorce process of 20 weeks from issuing the divorce application. What will happen is that the profession will work this out in the months following introduction of the law and rules, perhaps with judicial intervention. This is highly unsatisfactory for everyone.

Methods of service: expectation of email

Under English law, various methods of service are permitted. Personal service where the papers actually touch the recipient. Service by first class post to last known address. Service on a solicitor. Other methods of deemed service or substituted service. Into this mix in the past 20 years, and more frequently of late, has been email service. Initially this was email as a form of substituted service because the papers were then sent to a physical address and the email was more by way of notification. It is now one of the primary forms of service. Indeed, other forms of social media are also sometimes used.

It was not therefore surprising that the new rules anticipate email service as the default method[12]. This is R 6.7A. It can be on the respondent's usual email address or on a specific email address provided by the respondent for the purposes of service. But what is very curious and seems counterintuitive in a digital online divorce process is the requirement in R 6.7A (2) that where an application is served by email, a notice confirming such service must be sent to the respondent's postal address, by first class post or other service which provides for delivery on the next business day. Why? If it is an anxiety that the email address is not the correct one or it hasn't actually happened, then this raises questions about the email service in principle. But having to send the documents, which are likely to be online anyway, by physical post is an additional burden. Moreover, what might happen if the papers come back as e.g., *'not known at this address'* It would seem then that the complete requirements for service haven't been satisfied and yet the email

may well have got through. This seems to create unnecessary procedural problems.

If there is no acknowledgement of service, then the applicant must prove service. If it was by email, then the court will want to be satisfied that it was either the usual or a specific email address and doublecheck the address and that it was likely to have been received. So why add to the burden by way of this extra requirement? It's difficult to see and it may well not survive long in the new process.

The rules, R 6.8, set out provisions where service will be effected by the court office. It again anticipates email service. The court office will not engage in multiple attempts at service, R 6.8.5.

Service out of the jurisdiction is to be undertaken by the applicant, not the court office, R 6.41A. There are then similar rules for seeking an extension of time for service, R 6.41B.

Costs

At present in a fault-based divorce, the court may make costs orders against the respondent e.g., in situations of adultery or unreasonable behaviour. These may be in the order of £1,000 – £2,000 in London in even an uncontested standard divorce. With no-fault divorce, the expectation is that these costs orders would fall away. Why should somebody be responsible for costs if they have not been at fault? Rule 7.32 makes provision for costs. Its content is certainly reduced from the draft in consultation a year ago. Either party can apply for costs in any disputed case.

It's the standard, uncontentious case where there must be a worry. It says in a standard case i.e., without any dispute about jurisdiction or other procedure, an application for costs should be use Part 18 procedure. Of course, if one party deliberately tries to evade service or makes service difficult or necessitates unnecessary court applications then costs orders may be appropriate on that discrete issue. But it is very hard to understand what circumstances might be appropriate for one party, obviously not at any fault in the breakdown of the marriage, should be responsible for the costs of the other. Costs orders are really keenly felt. They are perceived as an active condemnation and judgement against the party compelled to pay the costs of the other. It must be hoped that good practice will be that no costs orders will be sought in respect of a conventional, standard divorce, otherwise the act of applying for costs may destroy the very benefit of no-fault. [13]

Procedure for disputed cases

With no opportunity to defend the grounds of proceedings such as adultery or unreasonable behaviour, there will not as such be defended proceedings. There may be other issues in dispute hence defended cases are now disputed cases, defined in R 7.1.3. It covers nullity issues. It includes where the validity or subsistence of the marriage or civil partnership or the jurisdiction of the court is disputed, and an answer filed to this effect has not been struck out. These are probably the primary areas where there will be any dispute on the divorce under this new law.

A standard case is other than a disputed case i.e., no dispute on the divorce itself going through. Even so when considering the application for the conditional order, the court may not be satisfied with the steps taken and may list for a case management hearing, R 7.10.2.2.2. At that hearing, the court will consider what further evidence is required and give directions.

Procedure in a disputed case is dealt with in R 7.12 onwards.

There are initial provisions about not making separate applications for orders in respect of the same marriage or civil partnership, to avoid unnecessary duplication because either party can seek the conditional order and final divorce order and other reasons.

The court can require further information when there is a disputed case, R 7.16. The rules state what should happen in the case management hearing in a disputed case, R 7.17.

Seeking the final divorce order

This procedure is set out in R 7.19. Apart from the intricacies of a joint request for a conditional order but then only one party seeking the final divorce order, where notice has to be given, it largely follows present law and procedure. If there has been 12 months after the conditional order, there has to be an accompanying notice saying why the application was not made earlier, R 7.19.5. This invariably arises where through sense and good practice, it is agreed there would be no application for the final divorce order until financial matters were fully sorted, and any pension orders put in place. Provisions also continue for delaying the divorce order, on application, when the parties were married in a particular religious usage, presently only within the Jewish faith, until the religious divorce has been granted, R 7.23.

Delaying the final divorce until financial settlement

As set out above, this is one of the primary concerns about the new divorce law which seemingly allows respondents to have relatively little notice, minimum a couple of weeks, of the imminent pronouncement of the first decree and the final divorce six weeks later. In that time, few respondents will have commenced Form A application for financial provision and obtained court-based disclosure. Yet if one party dies after the decree absolute and before the financial settlement, the other will have no automatic entitlement to pension and policy benefits. Where sense prevails, there is at the moment good practice to agree the final divorce order will not occur until the financial settlement and any consequential pension sharing arrangement. But this good practice is just that. Practice not law. If points of law are taken, the opportunity to delay the final divorce until the financial settlement has occurred is quite limited, set out in s10.2 MCA[14]. Case law[15] has made it clear that it is very limited to big-money cases with particular complexities.

In Parliament, the Law Society argued for reform that there would be no final divorce order if there were ongoing financial claims and any risk of material prejudice to either party by the final divorce order before the settlement. This was opposed by the promoters of the legislation, arguing for the present law to remain. Unfortunately, it was unsatisfactory now and will be even more unsatisfactory under the new law.

The test, s10.3, is that the court should not make the final divorce order unless satisfied the applicant should not be required to make any financial provision for the respondent or that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances. The former rarely applies in circumstances where there will be a needs-based order or sharing assets. It is the latter where there has been previous litigation. If there has been no financial provision because the financial proceedings have barely started or financial provision proposed has not been settled by a court pending maybe disclosure or adjudicating if it is fair and reasonable, it is hard to see why this sort of application should not succeed. Unfortunately, it comes with the baggage of a couple of decades of case law authorities which have not been kind to the financially vulnerable party in modest asset cases simply seeking to protect their position and have no final divorce until finances especially pensions are sorted out.

In the context of this new divorce law and the clear prejudice to the respondent inherent in the process, it is surely appropriate now to re-examine that case law and to reset the interpretation of this statutory provision so that if there might be material prejudice by the granting of a final

divorce before the financial settlement then a s10.2 order should be made. In any event pending new case law, good practice by the profession should be for agreed delays in the final divorce until the financial arrangements are fully in place.

See also the excellent paper by Rhys Taylor and Steve Webb, experts in divorce pension work, drawing attention to the potential and adverse impact on the sharing of pensions, especially on women, by the new divorce law[16]. This was fully anticipated during both the parliamentary passage and in the consultation on the rules and Parliament was warned about this yet no provisions and safeguards have been included in the law. It is crucially important there should be new case law under s10.2.

Existing proceedings on 6 April 2022: transitional provision

Rule 29 of the SI provides that the new rules do not apply to proceedings that were issued before the rules came into force. In other words, for divorce, civil partnership dissolution, nullity and judicial separation proceedings commenced on or before Tuesday, 5 April 2022, existing law and existing rules of procedure will continue to apply. It will be interesting to see whether there is any rush for the issuing of proceedings under the present law in late March.

Moreover, the Ministry of Justice have indicated that the court service will stop taking divorces under the existing law at 4 PM on Thursday, 31 March 2022[17]. Thereafter and until 6 April 2022, new divorces will only be accepted if urgent reasons given. It should be sent by email to onlineDFRjurisdiction@justice.gov.uk with full explanation and even then only up until 4 PM on 5 April 2022.

The digital journey

The Ministry of Justice have produced a very good information pack, produced for those involved in the consultation process. It is difficult to know why it hasn’t been made public. It is a very helpful explanation for lawyers and lay parties. Apparently it will be produced on about 6 April 2022 and should be read carefully.

Where the applicant is represented, the digital service must be used. If a party in person, they can use the digital service or the new D8 form. Curiously, if it is a joint divorce application with one solicitor acting for both, the paper form must be used and not digital although hopefully this will change soon.

For fees exemption on a joint application, both must qualify. Moreover, if it is a joint application even if they agree to share the fee, only one party can pay through the digital service.

If there is an urgent application for a confidential or final order, there is still recourse to paper applications.

The forms have not yet been released but they have been seen by those involved in the consultation process and they are a significant improvement in very many ways.

Digital processes not available for judicial separation or nullity.

Conclusion

The new no-fault divorce law has been more than 25 years overdue. Parliament decided in the Family Law Act 1996 that no-fault was perfectly appropriate. It has been a huge frustration that it was not introduced and then we have had to wait so long. It is at last available. This is excellent news.

But the no-fault divorce itself has come laden with elements of procedure and real disadvantages to one of the parties involved. There may well have much less than the intended 26 weeks notification, the original expectation being that it would be irretrievable breakdown shown by 26-week period of notice. That notice is now only between the applicant and the court. It had been expected the rules would require service in a short period after issuing or only thereafter if a court extended time. The initial reading of the rules dashes those hopes. Even if there is crossover from the CPR, yet more questions then arise about what the court should be doing if there was service out of time or the court had been misled in granting an extension. The new land and rules give opportunities for service very late in the initial 20-week period. This will produce hardship and injustice in a number of categories of cases including international cases where there is a potential forum dispute and where pension sharing, and similar orders are sought, potentially increasing even more the prejudice to women in respect of pensions on divorce. It will produce real bitterness and animosity when one party discovers the other party has been sitting on divorce papers over

several months yet continuing on with family life. There is real pressure now on the legal profession to work with these rules to make sure the new divorce law hasn't facilitated and created as many injustices and animosities as it was intended to remove.

Recommended good practice across the profession at a very early stage will be essential.

Nevertheless, lawyers have a duty to advise their clients on tactical opportunities which exist in law, as handed down by Parliament, and this new law and accompanying rules provide those opportunities.

This new no-fault divorce law, removing the need for blame, is excellent. But the benefits of this no-fault divorce cannot be allowed to be derailed by the several failings in the law and rules however much that risk presently exists.

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

Citations

[1] A curious date in the middle of a week. But the start of the new fiscal year. Certainly, there is some overflow e.g. capital gains transfers during the fiscal year of permanent separation. However relatively little

[2] As well as being involved in the 1996 parliamentary reform I have been actively involved in the passage of this legislation and then consultation on the rules in my capacity as a member of the Law Society Family Law Committee. This note is however only my opinion and views and does not represent any other organisation

[3] 2022 No 44 and at https://www.legislation.gov.uk/uksi/2022/44/pdfs/uksi_20220044_en.pdf

[4] R7 FPR has been completely replaced. This note does not cover where existing procedure is replaced

[5] This will carry particular professional challenges for a solicitor, now for the first time in English family law history being asked jointly to lodge a divorce petition for both parties. This should not be a problem if a one-off instruction. It will cause initial professional concerns if e.g., each party is instructing a separate solicitor regarding financial, or children matters and the parties then agree to go ahead with a joint petition. They won\'t want to instruct a separate lawyer but will both parties and both lawyers feel comfortable with one lawyer then acting for them both on the filing of the petition? Might instead they do it together online without involving lawyers? Probably not if

there is distrust. This situation is very new and will need great care and professional caution
[6] There is presently no obligation in family law to serve divorce petitions or other initiating papers in any set period of time. It's only a matter of the applicant or petitioner deciding. This becomes unjust in a timetable-based law
[7] Curiously if it is a joint divorce application, both must file acknowledgements of service R 7.7.3. Similarly, if a joint divorce application and only one party seeks the conditional order, the application must be served on the other party, R 7.9.6
[8] It can be presumed that English family lawyers would be incensed if facing the same abroad, thereby putting them and their clients at a real disadvantage
[9] Rights of occupation in the marital home are lost on the final divorce order
[10] *Thakkar* [2016] EWHC 2488 (Fam)
[11] Often but not always women who already suffer as a result of pensions issues on divorce
[12] R6.6A specifies methods of service of the divorce application
[13] With the divorce issue fee at £593, there may be good reasons to agree to split between the parties but on the basis then of a joint divorce application. But if not agreed in advance, there should be no costs orders
[14] As amended by the new divorce legislation
[15] *Thakkar* [2016] EWHC 2488 (Fam)
[16] On point paper: *"You've got mail"* – the new divorce law and its potential impact on the sharing of pensions in England and Wales
[17] The article by my iFLG colleague and partner, Lucy Greenwood Last Dates for filing Divorce Applications Using Existing Law

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