

## Changes to the Divorce Law in April 2022

The divorce law in England and Wales is due to undergo a major change when the [Divorce, Dissolution and Separation Act 2020](#) finally comes into force on April 6<sup>th</sup> 2022. In simple terms, this new law will make it possible for couples to agree a 'no fault' divorce rather than, as is now the case, one party having to establish that the other is to blame for the irretrievable breakdown of the relationship, citing grounds such as adultery, unreasonable behaviour, desertion, a two year separation if both parties agree to the divorce or a five year separation if one party doesn't agree to the divorce. There are many problems inherent in the existing system and the changes are entirely positive, but they do present couples who are currently contemplating divorce proceedings with something of a dilemma; do they press ahead with their divorce under the existing law or do they wait until the process is simplified next year?

The best way to answer this question is to detail the changes that are being introduced and the flaws in the existing system which they have been designed to deal with. The most obvious flaw in the law as it stands is that it involves the concept of 'fault', which is to say that one of the parties has to be shown to be to blame for the marriage ending. In many cases, of course, the decision to end a marriage is mutual, and the parties generally opt to cite unreasonable behaviour on the part of one of them as the reason for the end of the marriage, as this is sufficiently vague as to be applicable in some form or another in almost all cases. On many occasions, what would otherwise have been a fairly amicable process can be soured by the need to decide which party has been unreasonable and what form this unreasonable behaviour has taken. This rancour can then spill over into other areas of the divorce process, such as agreeing a financial settlement or deciding on childcare arrangements. Perhaps even more problematic than the need to establish blame on the part of one party is the fact that, under the law as it stands, it is possible for one party to stop the other being granted a divorce for at least five years, even if this means forcing them to stay within a marriage which has broken down irretrievably. The fact that this is a genuine problem rather than a theoretical possibility was demonstrated by the case which is generally seen to have persuaded the government to finally act on reform of the law. The case in question was [Owens v Owens](#) in 2016. This was a case in which the Family Court initially accepted that the marriage had irretrievably broken down, but nonetheless refused to grant the divorce on the grounds that Mrs Owens – who was seeking it – had failed to convince the court that Mr Owens had behaved in a manner which rendered it unreasonable to expect her to carry on living with him. Thus, a marriage which was clearly making at least one party unhappy, and had unquestionably ceased to be a union, was maintained on life support by the courts due to the fault based design of the existing laws. That a clearly unfair – albeit legally sound - ruling was upheld by the Court of Appeal and the Supreme Court may well have been enough to force the hand of the government in and of itself, but further impetus to the calls for change was provided by the wording of the Supreme Court ruling which explicitly called for parliament to 'consider replacing a law which denies Mrs Owens a divorce in the present circumstances'. As it was, the ruling meant that Mrs Owens was forced to wait five years from her separation from Mr Owens until she could be legally divorced. The government responded to the plea contained in the ruling in the form of a 2018 consultation paper entitled 'Reducing Family Conflict: Reform of the Legal Requirements of Divorce'. The consultation process resulted in the changes which come into force in April 2022.

Under the new divorce law couples who are separating will no longer have to demonstrate that one of the five grounds for divorce has been satisfied. Instead, they will simply have to present a statement of irretrievable breakdown, and this statement can be presented jointly or by one of the parties. If the statement is presented by only one party, the right to contest the divorce (or a separation or dissolution) will no longer exist. Changes will also be made to the language surrounding divorce, to remove some of the arcane legal terminology and replace it with plain English. To this end, the phrase 'Decree Nisi' will become 'Conditional Order', while the 'Decree Absolute' will be known as the 'Final Order' and the 'Petitioner' will become the 'Applicant'. Another new feature will be the introduction of a minimum period of 20 weeks from the start of proceedings to the date of the Conditional Order. This is intended to offer both parties a chance to think carefully about whether divorce is right for them, although the period between the Conditional Order and the Final Order will remain at six weeks as it is currently.

The aim of these changes is to simplify the procedure and foster a more constructive approach to the process, rather than one which hinges upon 'blame', at the same time as encouraging couples to focus more on issues such as finances, property and children. Above all, the new system will stop the stress and expense of contested divorces, ending the situation seen in *Owens v Owens*, in which one party refuses to accept the other party wants a divorce.

Clearly, these are all hugely welcome changes to a law which reflected an arcane view of marriage and had been allowed to remain unchanged for far too long after its many faults had become clear. The question facing anyone currently seeking a divorce is whether they should proceed under the existing law or wait until the changes come into force. Given the positive nature of the changes this might seem like a non-question, but there may be other factors which tip the balance in favour of starting the divorce proceedings as soon as possible. These factors include the following:

Financial disputes – if the parties are in dispute regarding the finances involved then they may ultimately turn to the Family Court to make a financial order which settles the dispute. An order of this kind can't be made until the divorce petition is actually underway, however, and delaying until April 2022 may prove to be a risky option. This is particularly true if it is felt that one party may take the opportunity to seize, hide or displace assets in a manner detrimental to their spouse, or if there is a severe financial imbalance between the parties which would result in financial hardship for one whilst waiting to start the proceedings.

Financial agreements – in many cases the divorcing couple are able to reach an agreement on their finances rather than spending the time and money needed to seek a financial order. No matter how amicable the agreement is, however, it will not become legally binding until a Judge has approved it, and this cannot happen until the Decree Nisi (henceforth to be known as the Conditional Order) has been granted. This will mean that between now and the Conditional Order, sometime after April 2022, the agreement will remain non-binding and thus open to abuse.

Convenience – for many couples the thought of waiting until April 2022 until they can move on with their post-divorce life will be pretty much unacceptable. Once it has been agreed that the marriage has ended, both parties will wish to get the necessary arrangements in place and look to the future. If the couple have both agreed to go through with the divorce the

practical advantages of the new law may be outweighed by the emotional damage of staying in limbo for the better part of a year. The same logic applies, albeit more urgently, to those couple living in a relationship which might be described as toxic.

Delays – it's fairly widely predicted that the change in the law will lead to a rush of people opting to take advantage of the new, more streamlined, system. This could well lead to delays in processing applications in and of itself, but when it is combined with the COVID inspired backlog which Family Courts are already working through there's a genuine risk that the 'simpler' process, at least during the initial rush, ends up taking longer than the existing process. In addition to any surge in demand it has to be assumed that the new law, despite its positive aspects, suffers a few 'teething problems' as it is bedded in.

Perhaps the simplest way of looking at it is that a couple who would be keen to launch joint proceedings under the new law could well proceed on the basis of the current law provided they can agree on the grounds – i.e. unreasonable behaviour – and what those grounds consist of in an amicable fashion before issuing the petition. If a couple still wish to wait for April 2022, on the other hand, it will still be possible to agree arrangements for childcare in the meantime, and to negotiate a framework for a financial settlement to be legally ratified at a later date. Since it's a decision which rests on very finely tuned considerations of trust and the degree to which both parties agree on the details of the divorce, the best advice, as ever, is to seek expert legal advice and think very carefully before making a decision.