No fault divorce

The Divorce, Dissolution and Separation Act 2020 (DDSA 2020) significantly reformed divorce law. It aims to make the divorce process less acrimonious by introducing what is commonly known as 'no fault divorce'. This legislation completely removed the need to assign blame when commencing divorce proceedings.

Historically, in order to obtain a divorce in England and Wales it was necessary for the party applying for a divorce to establish that the marriage had broken down irretrievably and to do that they had to prove one of the 'five facts. Three facts were based on fault, ie adultery, unreasonable behaviour and desertion, and two facts were based on a period of separation (two years' separation with consent or five years' separation without consent). In many cases one of the parties was forced into making fault allegations (adultery or behaviour), not necessarily because that was the real cause of the breakdown or because they wanted to blame their spouse, but because the alternative was to wait at least two years for a divorce with consent, or five years where there was no consent. Most people did not want, or could not afford, to put their lives on hold for that long. Without the divorce being finalised they could not get a final financial order or pension sharing order.

From 6 April 2022, instead of relying on fault or separation, an application for divorce issued on or after that date simply states that the marriage has broken down irretrievably and this does not have to be proved. It is not necessary to rely on fault or separation, and the court does not require evidence of the irretrievable breakdown of the marriage. Your family lawyer will be able to provide specific advice based on your circumstances.

Another change brought about by DDSA 2020 is that an applicant in divorce proceedings cannot apply for the first stage in the process, the conditional order, until a minimum of 20 weeks have passed since the application for divorce was issued.

Terminology

From 6 April 2022, the terminology that is used in the divorce process changed. What was previously called the divorce petition is now called the application. The first stage in the process is the conditional order (formerly decree nisi) and the decree absolute is now known as the final order.

Joint applications

A divorce application can be filed by either or both parties to the marriage, ie a joint application can be made. If a joint application is made, you will be equally responsible for the application. You can agree between yourselves how to pay the court fee for the application.

Circumstances may arise during a joint application such as where one-party refuses to progress the application. In those circumstances an application that has been made jointly by both parties can become an application by one party only, ie it may be switched from a joint to sole application. This can only be done at the stage of applying for either the conditional order or the final divorce order.

Where a joint applicant wishes to proceed as a sole applicant at final order stage, the applicant must give 14 days' notice to the other party of their intention to give notice to the court that they wish the conditional order to be made final.

The online system

If you have a legal representative acting for you in the divorce proceedings, they must use the HM Courts and Tribunals Service (HMCTS) online system to submit certain applications in divorce proceedings. Litigants in person can use either the paper court forms or the online system.

The divorce process

To apply for a divorce, you must have been married for at least a year. It doesn't matter where in the world you were married, but you can only apply for a divorce in England and Wales if either you or your spouse meet certain residence conditions or are domiciled here. Your family lawyer will be able to advise you on this.

The divorce process is generally administrative and online. This means that usually neither of you will need to go to court to obtain a divorce as it generally takes place on paper. The process is simple as long as your spouse does not decide to dispute the proceedings. It is no longer possible to defend a divorce by saying that the marriage has not irretrievably broken down. It is possible to dispute the proceedings, but the grounds are limited to issues about the court's jurisdiction to hear the case or about the validity or subsistence of the marriage. When this happens, a different procedure applies. Disputed proceedings are rare.

If you and your spouse are not in agreement regarding arrangements for children and finances these will be dealt with separately (but at the same time) from the divorce process.

Commencing divorce proceedings

The document that commences the proceedings is called an application. Your family lawyer will need to have your original (or an official copy) marriage certificate to file the application and also an approved translation of what it says if it is in a language other than English. There is a court fee payable to start the process. Divorce proceedings can be issued by one person (a sole application), or jointly by both parties to the marriage.

To start a divorce, you (or your family lawyer, on your behalf) must file an application at court. This may be done using the HMCTS online system. The application is a form that gives the court information about you and your spouse and tells the court that the marriage has irretrievably broken down.

Serving the application

In a sole application, the court (or your family lawyer) sends the application to the respondent (known as service), together with a form for the respondent to fill in called the acknowledgment of service. In the acknowledgment of service, the respondent has to say whether or not they intend to dispute the divorce. The acknowledgment of service has to be returned to the court. If the respondent has no intention of disputing the divorce that may be the end of their part in the process, and all further steps are taken by the applicant. In some cases, however the respondent may want the final order to be made earlier than the applicant would prefer.

The application can be served on the respondent by email, but when that happens the rules provide that it is also necessary to send them notification by post. The application must be served on the respondent within 28 days after the date of issue of the application.

In the case of a joint application, the court will send a copy of the notice of proceedings to both parties once the application has been issued. Applicant 1 and Applicant 2 must acknowledge receipt of the notice of proceedings within 14 days of receiving it.

Steps for the respondent

There are strict deadlines for the steps that need to be taken after the application is served on the respondent. An acknowledgment of service form (which the respondent will have received from the court with the issued application) must be completed and filed by the respondent. The respondent has 14 days to file the acknowledgment of service, beginning with the date on which the application was served on them.

The acknowledgment of service asks the respondent if they intend to dispute the proceedings. A respondent who wishes to dispute the proceedings must file and serve a document called an answer within 21 days from the date by which the acknowledgment of service is required to be filed. The answer should set out on what grounds the respondent disputes the application. Disputed proceedings are generally rare.

Applying for the conditional order

The applicant(s) must confirm to the court that they want to proceed with the application. The first stage in the process is a conditional order. That confirmation cannot be given to the court unless 20 weeks have elapsed from the start of proceedings.

Your family lawyer will file an application for a conditional order at court. A conditional order is the first stage in the divorce. The application states that everything in your application is true and that you want to proceed with the divorce. A conditional order means that the court has agreed that you are entitled to a divorce but has not yet made it final. After the court has received your application for a conditional order, the court will consider the application and issue a certificate telling you when the conditional order will be made.

Conditional orders are made in open court. This means the judge reads out a list of names of people whose divorces have got to conditional order stage that week. Although anyone can go to court to hear this if they want to, you do not have to attend court when this happens, and people usually do not attend. At any time after the conditional order is made, the court is able to make a binding financial order regarding your financial arrangements on divorce, either by consent or as a result of separate financial court proceedings. The court will not make a binding financial order unless you or the respondent ask it to, or your separate financial court proceedings have reached a conclusion.

Applying for the final order

Once the court has made the conditional order, there will then be a further six weeks until the final divorce order can be applied for. It is the final order that formally ends the marriage. Not everyone should apply for final order as soon as it is available. It may not be sensible to apply immediately if, for example, financial arrangements are not yet settled. You should discuss your specific circumstances with your family lawyer as in some cases the grant of final order will prevent certain types of financial claims being made. If the respondent is keen to end the marriage and the applicant has not applied for the final order, the respondent can ask the court for permission to do so after a certain period of time. The court will usually grant such an application unless there are particularly pressing reasons not to do so. In certain special circumstances the court may delay the grant of a final order.

Costs

Prior to 6 April 2022, the court was sometimes asked to consider making an order for costs in favour of a successful petitioner in 'fault decree' proceedings, ie proceedings based on adultery, unreasonable behaviour or desertion. DDSA 2020 removes fault-based concepts from the process. From 6 April 2022, many applications are likely to be undisputed and will not involve any consideration by the court of the

reasons for or responsibility for the breakdown of the marriage. Where an application is disputed, the grounds for opposition will be limited to issues about the court's jurisdiction to hear the case or about the validity or subsistence of the marriage. Therefore, while the court will retain a discretion to make a costs order against either party, the circumstances in which an order for costs will be appropriate are very limited. Parties should try to agree at the outset who is to be responsible for the costs of the divorce, including the court fee.

Children and finances

For the purposes of any financial or children's arrangements that need to be made, it does not matter who starts the divorce proceedings. You can ask the court to make orders about money and/or children if necessary, during the divorce, but these legal processes are separate from the divorce itself. This guide only deals with the divorce procedure. You should note however that if you are considering getting remarried you should speak to your family lawyer before doing so as that may affect your ability to make an application for financial provision.

How long will the divorce take?

Your family lawyer will be able to advise you how long your divorce is likely to take. This can vary depending on the current timescales for the court dealing with your divorce, and whether each step in the divorce is taken promptly and financial arrangements do not hold things up. There is a minimum overall timeframe from the divorce application to final order of 26 weeks. This is made up of a minimum timeframe from the issue of the divorce application to conditional order of 20 weeks plus a minimum timeframe from conditional order to final order of six weeks. The process may well take longer but your family lawyer will keep you updated as you go along.

Implications in relation to your Will

It is important to note that divorce may mean that certain provisions in your Will do not work as you might have intended them to. You will need to make a new Will after final order (or in contemplation of divorce) to ensure your wishes are carried out in the event of your death.