

## Guide to No Fault Divorce

The 6<sup>th</sup> April 2022 sees the introduction of arguably the most significant reforms to the Divorce process in England and Wales for some 50 years.

Frequently referred to as 'No Fault Divorce', the Family Team at Wilson Browne Solicitors welcome these reforms for our Clients, however acknowledge that they are not without their own limitations, the full of extent of which is yet to be seen.

### Background

The introduction of the Divorce, Dissolution and Separation Act 2020 has been long awaited, with Family Law practitioners advocating for these reforms for many years.

The aim was to update the legislation so as to encourage amicable separations, rather than force parties into a point scoring, finger pointing process.

Under the previous legislation, when a couple had been separated for less than two years, it was a requirement that one party 'blame' the other party for the breakdown of the marriage as part of the divorce application, by either evidencing a party's adultery, or setting out examples of a party's unreasonable behaviour.

This 'blame game' unnecessarily made an already stressful process that much more acrimonious. It must also be questioned whether this was an accurate representation of separations day to day.

Sadly, some couples drift apart with no real fault on either side. Equally, many couples would argue that the blame should be shared equally between them both.

The previous divorce process made no such allowances for these circumstances and so parties were forced into bitter applications, or a minimum two year wait.

This animosity was also infiltrating proceedings which occur as a result of a parties' separation, including children arrangements and separating the matrimonial finances.

These processes require the parties to work together if an agreement is to be reached quickly and cost effectively.

However, if you are starting from a point of animosity in the divorce process, these bad feelings inevitably infiltrate these wider issues increasing costs, timescales and stress.

## The Reforms

The new legalisation removes the 'fault' and 'blame' from the divorce process. A statement confirming the irretrievable breakdown of the marriage will be sufficient to satisfy the Court that the divorce should progress.

This will create a much more neutral process, benefiting all parties involved, in particular any children of the family.

Another positive of removing the requirement to blame one party reduces the Judiciary's involvement in the process which, practically, has the real possibility of reducing court delays in the long term, but equally, provides parties with the autonomy to decide whether their marriage has broken down irretrievably.

The legislation goes further than removing blame, but actually enables parties to make a joint application, seeing parties actively working together from the outset.

It is also no longer possible to contest a divorce except in the most limited circumstances, which will be few and far between.

The legislation has also introduced some practical reforms, such as updating archaic language. We will see the end of 'Decree Nisi' and 'Decree Absolute', replaced instead by 'Conditional' and 'Final Order' respectively.

Significantly, perhaps in recognition of the Judiciary reducing their involvement in the process, a compulsory 20 week 'reflection' period after the application is made has been introduced to ensure that no party makes an application in 'haste'.

There is a further 6 week wait between the Conditional and Final Order. The divorce process has therefore been lengthened, with a new minimum overall timeframe of six months.

## Limitations

While these developments are undoubtedly welcomed by the Family Law sector, and long overdue, there are concerns throughout the industry that these reforms are not without their own limitations.

For example, the online portal is not yet complete, and with an influx of applications expected from those parties who have delayed their proceedings until the 6<sup>th</sup> April 2022, it is yet to be seen whether the technology will manage the initial demand.

However, despite the limitations, there is no doubt these reforms are dragging an outdated process into the present day, encouraging parties to focus on the more important issues following a separation, such as the children and finances, rather than blame and conflict.

Because ultimately, what will matter more to parties in 10 years' time? The reason for the divorce? Or the happiness of the children and financial security? For the first time, the focus will be on the latter. And rightfully so.