



guide



Your questions answered

NO FAULT DIVORCE

The new no-fault divorce law is due to be implemented in April 2022 which will remove the need to blame one of the parties when seeking a divorce.

What is the main benefit of no-fault divorce?

The new UK no-fault divorce will have a real impact on reducing the areas that divorcing couples need to argue about and research has shown that the current need to find fault heightens tensions and creates unnecessary animosity. It will help those who decide that their marriage or civil partnership is beyond hope of reconciliation to deal with the legal and practical consequences without getting caught up in the “blame game”.

Needing or wanting to blame creates an unnecessary distraction for many people engaging in the divorce process where the focus should be on reaching a resolution as quickly and painlessly as possible.

Removing blame helps parents avoid unnecessary conflict when deciding on future arrangements for their children. It can be heart breaking to see a parent use their children against the other parent, for example, by denying contact or making frequent negative comments about their ex. Taking blame out of the legal process with this reform will help people to shift their focus away from “why it happened” towards a mindset of “what do we need to do now to move forward?” and will bring a more dignified divorce law into the 21st century.

The campaign for no-fault divorce

The campaign for no-fault divorce has been running for many years, championed by Resolution, an organisation primarily for family lawyers who have seen the damage that blame can cause to separating couples.

Resolution and many other individuals and organisations that work with or have observed the impact of relationship breakdowns have long campaigned for a better way for people to separate. A way which focuses on less confrontational, non-litigious ways of reaching financial settlements and discussing arrangements for their children. No-fault divorce is a significant step along that road.

What is the current divorce law and why does it need to change?

Currently the overall ground for divorce is that the marriage has broken down beyond repair based on one of 5 reasons: adultery, unreasonable behaviour, desertion, 2 years' separation with consent or 5 years' separation (with or without consent).

Currently, if both parties are not prepared to wait for agreement for a 2 year separation or 5 year separation with no consent, one party has to initiate proceedings for divorce and provide a fault with the other party, listing either adultery, unreasonable behaviour or desertion.

If a couple wants a divorce without delay, one of them must agree to take the blame. The person filing the petition must document examples of the other's behaviour and present this as evidence to the court. The court will then decide whether they believe this behaviour resulted in the breakdown of the marriage. Listing the details to present to court can become acrimonious and may lead to conflict, which in turn could affect financial settlements and arrangements for the children.

Many people believe that being at fault for the breakdown of the marriage will affect the court's decision on dividing assets. The simple truth is that "bad" behaviour is rarely taken into account when calculating what a financial settlement should be.

In situations where one spouse wants to divorce but the other spouse refuses to accept the marriage is over, the current system means the couple will have to wait 5 years to get divorced. This is highlighted in the high profile case of *Owens vs Owens* where the Supreme Court noted that the current law left the wife "trapped in [a] loveless marriage". The Justices suggested that Parliament revisit the issue. He said:

"The institution of marriage will always be vitally important, but we must never allow a situation where our laws exacerbate conflict and harm a child's upbringing."

"Our reforms will stop divorcing couples having to make unnecessary allegations against one another and instead help them focus on separating amicably."

"By sparing individuals the need to play the blame game, we are stripping out the needless antagonism this creates so families can better move on with their lives".

When will no-fault divorce become law in the UK?

The current Divorce Reform Act was brought into force in 1971. Now over 50 years old, it is thought by many to be an out-dated fault based divorce system. Campaigners have been asking for a divorce procedure that reflects more modern relationships.

No fault divorce first came onto the political agenda back in 2015, when Conservative MP Richard Bacon presented the House of Commons with the No Fault Divorce Bill.

The Government published its response to a public consultation [Reducing Family Conflict: reform of the legal requirements for divorce](#) in April 2019 and the Bill was first introduced in June 2019.

The Divorce, Dissolution and Separation Bill finished its journey through the House of Commons and was passed in June 2020. The Justice Secretary and Lord Chancellor Rt Hon Robert Buckland QC MP told MPs that "at this early stage, we are working towards an indicative timetable of implementation in April 2022".

What are the key facts about the no-fault divorce law changes?

The change in the law will simplify the process of divorce and you will no longer have an option to contest the divorce.

It will bring divorce law in line with Government's approach to family justice – which tries to avoid confrontation wherever possible and aims to reduce its damaging effect on children in particular.

The new legislation will replace the five facts for divorce with a new requirement to provide a statement of irretrievable breakdown. This irretrievable breakdown of marriage will be the sole ground for divorce.

This statement counts as conclusive evidence and cannot be contested.

It will introduce an option for a couple to make a joint application.

It will be modernised and written in plain English making it easier to understand. For example, the "petitioner" will now be called the "applicant", "decree nisi" will be changed to "conditional order" and "decree absolute" will be changed to "final order".

There will be a notice period beginning from the start of proceedings (when one person applies for divorce). There will be a minimum period of 20 weeks between the application and the conditional order and then another 6 weeks between the conditional and final order.

All these changes are also applicable to the dissolution of civil partnerships.

Does no-fault divorce mean we can have a “quickie divorce”?

No. The no-fault divorce will take at least 6 months to complete, allowing for the statutory notice period of 20 weeks from the application to the conditional order and then 6 weeks between the conditional order and final order.

The idea behind this is so that couples have an opportunity to discuss and finalise practical arrangements such as finance and childcare, but also allows some breathing space and time for reflection to consider reconciliation.

Will it be cheaper to get divorced when there is no blame?

It makes logical sense that if your separation is less contentious, then the **legal costs** will be lower, but remember that there are often financial arrangements to sort out as well as dissolving the legal marriage or **civil partnership**.

With a no-blame culture in place, it is hoped that this will encourage more constructive discussions leading to better and therefore less expensive outcomes.

Should I wait for no-fault divorce?

So if you are considering commencing divorce proceedings, is it worth waiting for the new law to come into effect (due April 2022)?

After all, it will do away with any need to attribute blame for the breakdown of your marriage, potentially reduce any animosity, and make it much more likely that arrangements for any dependent children and finances will be sorted out amicably.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowfamilylaw.co.uk

The following two scenarios highlight why waiting for a no-fault divorce could be a good idea.

Scenario 1:

You recently separated from your spouse. Your spouse is unlikely to consent to a divorce and hasn't committed **adultery**.

Under the present law, your only options are to wait until you have been separated for five years, or to allege that your spouse has behaved unreasonably.

You would rather not take the latter course, but waiting for five years would be unbearable, so you are considering issuing an 'unreasonable behaviour' divorce petition.

How about just waiting until no-fault divorce comes in instead? You will not need to make any allegations against your spouse, and will not need their consent to a divorce.

Scenario 2:

You want to issue divorce proceedings on the basis of your spouse's 'unreasonable behaviour'.

However, they don't want a divorce, and you are certain that they will take strong objection to any allegations you make, making it much longer, more expensive, and more stressful.

Why not wait until no-fault divorce comes in, instead of issuing the divorce now? That way, you will not need to make any allegations against your spouse, who will not be able to defend the divorce.

If you are thinking about divorce and need some advice as to whether to wait for the no-fault divorce, please contact our family lawyers who will be able to give guidance and support.