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No Fault Divorce

11 APRIL 2022

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On 6 April 2022 the Divorce, Dissolution and Separation Act 2020 came into force after years of campaigning. The bill was first introduced in August 2015, but despite near-unanimous support from the legal profession and charities, it was pushed to the back of successive government agendas. The changes apply equally to the dissolution of civil partnerships.

Divorce Proceedings before 31 March 2022

Divorces initiated before 31 March 2022, remain subject to the old provisions set out in the Matrimonial Causes Act 1973, which required parties seeking a divorce to attribute blame for the breakdown of the marriage or to have been separated for a considerable period. The five factual bases were:

Adultery.

Unreasonable behaviour.

Desertion.

Two years' separation (where both parties consented to the divorce).

Five years' separation.

Interestingly, adultery as defined in this legal context could not be committed by two people of the same sex (regardless of whether the parties to the marriage or civil-partnership were opposite-sex or same-sex), so in that circumstance, petitioners would have applied under unreasonable behaviour, as opposed to adultery.

Most divorces were uncontested by Respondents and so avoided judicial scrutiny of the factual and evidential bar or the material underlying the application. In practice, to avoid unnecessary delay, many relied on allegations that their partner had behaved in such a way that they could not reasonably be expected to live with them. The case of *Owens v Owens* [2018] UKSC highlighted the difficulties with this outdated approach. In the Court of Appeal the then-President of the Family Division, Sir James Munby, spoke of widespread consensual and collusive manipulation of the statutory scheme adopted by court users, practitioners and judges alike to circumvent the law as it was. In *Owens v Owens*, the petition for divorce was dismissed after it was held that the examples of the behaviour relied upon were not sufficient to satisfy the test for unreasonable behaviour despite the low bar which had become commonplace in uncontested practice. In the Supreme Court, Lord Wilson, Lady Hale and Lord Mance all expressed unease at the eventual outcome.

The New Regime

Section 1 of the new Act enables one or both parties to a marriage to apply to the court for an order which dissolves the marriage on the sole ground that it has broken down irretrievably. Unlike the old law, the parties do not need evidence to support this assertion and the court will instead “take the statement to be conclusive evidence that the marriage has broken down”.

20 Week – Cooling Off Period

A cooling-off period has been introduced – twenty weeks must elapse between the initial application for divorce and confirmation that the application is to continue. Only then may the court grant a conditional order (formerly known as a decree nisi) and a further six weeks between the conditional order and final divorce order (formerly referred to as a decree absolute). This is intended to allow parties to take legal advice and reflect on their decisions. In reality, there were significant lapses of time in the previous mechanism, so it is unlikely that this element will have much practical impact.

A simplified Process

The changes make divorce more straightforward and accessible for lay people. The administrative costs of divorce are not cheap, even without the instruction of lawyers (the fee was recently raised to £593, payable by all bar those with an exemption), and given that it is unlikely that eligibility for Legal Aid will expand in the future, a move to a less complicated process is welcome.

Domestic violence charities have welcomed the changes for their potential to free victims of abuse from relationships they are trying to leave. The ability of parties to contest divorce under the old law was believed by many to enable abusers to use legal proceedings to further entrap and manipulate their partners. On the other hand, however, it could be argued that victims will no longer be able to have their abuser's behaviour documented and recognised as the basis for the divorce.

Above all, it is hoped that this change will allow couples to avoid unnecessary animosity and recrimination as they navigate a life change which is emotive by its very nature. Parties will be enabled to focus exclusively on the future, in particular on financial separation and arrangements for the care of any children. These issues will in all likelihood remain contentious in many cases, but perhaps can be more neutrally approached when parties have not been compelled to ascribe blame for the breakdown of the marriage itself.

Conclusions

The law on financial remedies remains unchanged, and an order in those proceedings will still become effective on receipt of the final divorce order.

Finally, the new regime reflects the reality of modern life, and the common occurrence of a marriage that simply hasn't worked out. There isn't always blame, and in those situations the old framework forced people either to manipulate the system by creating a basis for the divorce under one of the "behaviour" gateways, or to remain married until the requisite period elapsed.

There is overwhelming support for the new system from most legal practitioners, and time will

tell whether the number of early applications suggests that couples have been actively waiting for the new route to become available before ending their unions.

Jointly written by **Alexandra Davey** and **Rebecca Thomas**.

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