



## NO FAULT DIVORCE – THE END OF THE BLAME GAME

**Landmark divorce reform following the case of Owens v Owens 2018 will remove the need to blame a spouse.**

The Divorce, Dissolution and Separation Act 2020, which passed into law on 25 June 2020, will introduce “no fault” divorce in England and Wales for the first time. This note looks at what it will mean for couples who divorce after these changes come into effect.

### CURRENT LAW

Under the current law, there is no way for couples to start the divorce proceedings without apportioning blame to one spouse. The only way to obtain a divorce without apportioning blame is to wait for at least two years (if both parties consent to the divorce) or five years (if one party does not consent to the divorce). Otherwise, for an immediate divorce, parties have to rely on a blame-based facts to prove that their marriage has irretrievably broken down, either:

- One spouse has committed adultery and the other finds it intolerable to live with them; or
- One spouse has behaved in such a way that the other cannot reasonably be expected to continue to live with them.

(The other blame-based fact is that one spouse has deserted the other for a period of at least two years. That however, does not facilitate an immediate divorce.)

The current system also allows spouses to easily defend the divorce or cross-petition which leads to court hearing, significant delays and significant costs.

### THE NEW LAW: WHAT ARE THE CHANGES?

#### Applying for divorce

In the future, spouses will be able to apply for a “Divorce Order”. This will dissolve the marriage on the ground that the marriage has broken down irretrievably. Crucially, neither spouse will have to demonstrate the irretrievable breakdown by relying on one of the old blame-based facts. Under the new system, the parties need only send a statement to the court which will be treated as conclusive evidence of the irretrievable breakdown. It will still be possible for one spouses to apply for a divorce, however, the new legislation will permit couples to jointly apply to the court for a divorce and separate as amicably as possible, and without apportioning blame.

### The New Procedure

The new procedure has been simplified and the previous archaic language has been modernised, making it easier to understand the process from the outset. The process will still involve the two stages of Decree Nisi and Decree Absolute. However “Decree Nisi” will become a “Conditional Order” of divorce and “Decree Absolute” will become a “Final Order” of divorce.

Further, the new legislation also removes the ability for one spouse to contest the divorce.

### Timescales

A new minimum time period of 20 weeks will be introduced. This means that 20 weeks must elapse from when the divorce application is filed with the court, before parties can apply for a Conditional Order. The purpose of this window is to allow spouses a period of “meaningful reflection”. If, after the spouses have reflected, they still wish to progress the divorce, they must confirm this to the Court when they apply for a Conditional Order. The Conditional Order will not be made final until at least six weeks have passed. Therefore, in theory, the whole process could take 26 weeks.

It is possible to apply to shorten the timescales in exceptional circumstances. By the same token, the spouses may also delay an application to make the Conditional Order into a Final Order, if the spouses are still resolving the financial aspects of the divorce.

### WHEN DO THE CHANGES APPLY?

Whilst the new statutory framework has been approved, guidance notes, procedures, updated forms and court IT systems still need to be put in place to accommodate the changes. No formal date has been announced for the launch of the new law but it is expected and hoped that the new legislation will apply from autumn 2021.

### NEW ONLINE DIVORCE PORTAL

Our team are able to progress divorces under the current law using the online court portal. Having been involved in the pilot, we have been using the portal for over two years. It facilitates a quicker and more efficient way of progressing a divorce, and provides quicker outcomes for our clients than alternative methods of lodging petitions.



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### KEY CONTACT

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