

Divorce

I want a divorce – what are the grounds?

From **6 April 2022** England and Wales has a new divorce law - **The Divorce, Dissolution and Separation Act 2020** introduces no-fault Divorce. It covers Marriage, Civil Partnership and Nullity.

It is the most significant change in this area of law since 1969. The new system aims to update the divorce process into the 21st Century, with the aim of trying to avoid confrontation where possible and reducing its damaging effect on children in particular. As well as introducing an entirely new basis of obtaining a divorce and a new timetable, the new Legislation introduces all new language surrounding the procedure for Divorce. Formerly, you would have been required to prove the irretrievable breakdown of the marriage. This was evidenced through one of the following facts being proven:

- Adultery
- Unreasonable behaviour
- Desertion by one party
- Two years' separation with the consent of the spouse; or
- Five years' separation without consent.

The new Act removes all this. There is now only one ground, that being that the marriage has irretrievably broken down. The Act will remove the need to show that the other spouse was in some way at 'fault' or 'blame' for the marriage breaking down. The intention going forward is that the new process will assist with resolving issues, with less confrontation as between the parties, as well as less Court involvement. It is hoped that the Act will make for a more efficient and collaborative approach between couples and solicitors, with less conflict.

Parties are now able to apply either individually or jointly. There will be a need for one or both applicants to sign a **sole or joint statement** that the marriage has broken down and cannot be saved. This statement will be conclusive evidence provided to the Court of the irretrievable breakdown of the marriage. The statement will be sufficient to allow the Court to make an order for divorce. Importantly, this **statement will also stop one spouse contesting a divorce.**

There is now an in-built timetable into the process of 26 weeks, and this is explained further below.

New Language/Jargon Busting

Updated Term	Historic Term	Meaning
Application	Petition	This is the physical document. It is the physical form that must be completed, and it is submitted online, along with the fee of £593 to the Court
Applicant	Petitioner	The applicant is one of the parties to the marriage or civil partnership who submits the application to the court. They will be known as the Applicant throughout the process and in a sole application, the other party will be known as the 'Respondent'. In a joint application, the parties applying together will be known as 'Applicant 1' and 'Applicant 2'.
Conditional Order	Decree Nisi	A Conditional Order is a document that says that the Court does not see any reason why the parties cannot divorce, end the civil partnership, or annul the marriage. This can be applied for after the 20-week period has expired (see below "How long will it take to get divorced?")
Final Order	Decree Absolute	A Final Order is the legal document that ends the marriage/civil partnership. 43 days (6 weeks and 1 day) must pass from Conditional Order before the Applicant can apply for a Final Order. If this is applied for after 12 months from the Conditional Order being made, the Applicant will have to explain the reason for this to the Court. Once received, the parties will be able to re-marry or enter another Civil Partnership.
Disputed	Defended	The new law has narrowed the grounds that a Respondent can defend the application.
Separation Order	Separation Order	This document confirms that the parties to a marriage are legally separated. The language used within this document has been updated to bring it in line with that used for civil partnerships (known currently as a separation order), and to be consistent with the other terminology now being used.
Nullity of Marriage	Decree of Nullity	This is the document that declares that the marriage is void or voidable (this means that no valid marriage exists or existed between two parties). Nullity of Marriage Orders are, in the first instance, conditional and then made final.

What paperwork is needed?

How the new legislation is used will have different consequences for the Applicant and the Respondent. It allows joint applications to be made for the first time. It must be noted that the decision whether to apply jointly needs to be made at the start of the process. If a sole application is made, it will not be possible to turn this into a joint application. It is possible however, for a joint application to then move forward as a sole application only.

In joint applications, both parties will apply for their divorce, dissolution or (judicial) separation application together. Parties will be equally responsible for the application. They will be known as Applicant 1 and Applicant 2. This differs from sole applications where the parties are referred to as Applicant and Respondent as in sole applications. This option allows couples to apply together, reducing complexity. Whilst joint applications are strongly encouraged, there are some instances where it might not be appropriate to do so, for example where a party has experienced domestic abuse from the other party. In these circumstances, sole applications are still available as set out above.

Joint applications for divorce and dissolution can be made digitally or on paper and can be made by the parties representing themselves (known as litigants in person) or by a solicitor or solicitors on behalf of one or both parties. Where either one or both joint applicants have instructed a solicitor, the application must be made by the solicitor through the digital service, unless there is one solicitor acting for both applicants – in this instance the paper forms must be used.

Along with the usual methods of service (i.e. by first class post to last known address; personal service; service upon your solicitor), the new rules provide for email as the primary service method (although if email is used as the default method of service of the application for a divorce, a notice confirming service must be sent to the Respondent's postal address, by first class post or other service that provides for delivery on the next business day). In any event, divorce itself is now an almost entirely online process.

If we represent you in these proceedings, we must use the digital system to make the application. Usually, the Court will serve the application (in the UK). If served by email then a postal notification that service has taken place via email, must be sent. This is in letter format to the Respondent's postal address to advise that an application has been made to the Court. There is a link to the application in the email serving the application. If the Application is served by the Sole Applicant, the rules are more complicated. The rules make provision for the Application to be served within 28 days of issue; it is possible to make an application to Court to extend the time for service in certain cases and we can advise you in that regard. It is essential, however, to pay attention to the time scales now applied to such applications and these are explained more fully below.

We will prepare your divorce application. To do this, we will need to take some personal details about you and your spouse, and any relevant children. We will also need your original marriage certificate, which is sent to the Court. Your marriage certificate will not be returned by the Court. If you don't have it, we can apply online to obtain a duplicate for a small fee.

How long will it take to get divorced?

From the date that the Applicant files the application, a 26-week time frame begins. This is only applied to the Applicant. As soon as the Application has been issued, the Applicant cannot apply for the Conditional Order until 20 weeks has passed since issue. This is now being referred to as the 'cooling off period' designed to allow parties a time for reflection and, importantly, to coordinate practical arrangements for the children and begin the process of financial settlement. We will assist you throughout this process. Please also refer to flow charts provided for further information.

Once 20 weeks have passed, an application is made to the Court, thereafter a Conditional Order is granted by the Court. This Order confirms that you are entitled to a Divorce/Dissolution of Civil Partnership.

Once this has been granted, a further 6 weeks and 1 day must pass before applying for the Final Order.

Problems may arise if, and where, the Applicant delays in serving the Application and there may well be valid reasons to do this. We can advise you accordingly. In normal circumstances, after service has been effected, the Respondent has 14 days from service to acknowledge the proceedings. The Application may be made by one or both parties and the next orders may be applied for jointly or individually. There are procedures that must be accorded to, and we can advise you upon these.

As with the old procedure, whilst it will take 20+ weeks to get to the Conditional Order stage, it is still anticipated that the Final Order will not be applied for until there has been settlement of any Financial Proceedings. To protect the parties' future individual financial positions post-Divorce, Dissolution etc, it is still vitally important to secure the Financial Remedy Order to extinguish any financial claims, deal with dissolution/sharing of pensions etc before the Final Order in the Divorce/Dissolution is granted.

So, whilst it is fair to say that there is a 26-week period from Application to Final Order, each case will very much turn on its own facts. It will be necessary to engage in financial disclosure to deal with settlement of matrimonial finances in the usual way. The warning remains to **delay the Final Order if the finances remain unresolved**, because whilst one remains married to the other party, they will inherit any death in service benefit or widow/widower's pension if the other party died, which, once the Final Order is granted, they almost certainly would not.

If you are the Respondent in divorce proceedings, you should not remarry until the finances have been resolved to your satisfaction and a court order confirming the agreement reached, granted. This is because the law limits the claims that a Respondent can make to the court after remarriage.