

Finally! End of the divorce blame game

Lawyers welcome no-fault separation law but demand further reforms, writes Catherine Baksi



Calls for change mounted in 2018 when the Supreme Court ruled that Tini Owens could not divorce her husband, Hugh
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Law

Heralded as the biggest shake-up of divorce law in half a century, the Divorce, Dissolution and Separation Act 2020 will finally come into force next week.

It aims to reduce conflict by removing the need for one party to make allegations about the other's conduct. Lawyers have broadly welcomed the end of the "blame game" but are calling for wider reforms to improve the way that disputes about financial provision and children are handled.

Under the present law, which has existed since 1973, unless parties have been separated for at least two years — rising to five if one spouse does not agree to divorce — one partner must accuse the other of bad behaviour. Experts say that this requirement has increased acrimony and damages children involved.

At the moment only one partner can file for divorce. The new system allows couples to apply together. It is rare for one spouse to refuse the other's application to divorce at present, making up less than 2 per cent of cases, but this option will be removed. It will still be possible to challenge applications in limited circumstances, for example if there is evidence of fraud, lack of jurisdiction or procedural irregularities.

The act removes the archaic language of the old process and introduces a 20-week "reflection period" that starts once the divorce petition is issued. After that time, couples must apply for a "conditional order", replacing the decree nisi. Six weeks later, they must apply for a "final order", instead of a decree absolute. The updated law, according to Liz Trinder, a professor at the University of Exeter, creates a "triple lock" that requires parties to affirm their intention to divorce on three separate occasions.

At present, it is possible to get a divorce in 12 to 14 weeks. Taking into account processing times, under the new system, it will take a minimum of 30 weeks. Graham Coy, a partner at Wilsons Solicitors, argues that there should be a way to reduce this timescale in certain cases.

Organisations including *The Times* and the Marriage Foundation have campaigned for the divorce laws to be changed for decades. Plans to introduce no-fault divorce were initially outlined in the Family Law Act 1996.

The impetus for the change came in 2018 when the Supreme Court ruled that Tini Owens must remain married to her husband, Hugh, who contested their divorce, until the couple had been separated for five years.

A draft bill was delayed by Brexit and the general election, and implementation of the act, which received royal assent in June 2020, was also delayed.

Simon Beccle, a partner at Payne Hicks Beach who acted for Tini Owens, argues that no-fault divorce, "should have been brought in over a quarter of a century ago".

Lawyers anticipate a surge in applications as many clients have waited for two or three years for the change to come into force.

The Ministry of Justice is also launching a new online divorce application system. The old portal will be switched off today and the new system will not go live until April 6, leaving a five-day gap. David Lister, a partner at Simpson Millar, predicts that the gap could have "severe repercussions" for parties needing to make an urgent application, for example to secure a freezing injunction to stop a partner transferring money.

With only a week before it goes live, lawyers are concerned that the online system, which they claim has not yet been completed, may crash under the volume of applications. Extra resources must be made available for the next six months while this short-term spike works its way through the system, says Juliet Harvey, chairwoman of the family lawyers group Resolution. Ministry officials say that the digital system is on track to open on time and has been designed to handle a large volume of cases, adding that urgent applications can be submitted by post or email.

Lawyers warn that the flood of divorce applications will increase disputes about financial matters and children, adding to the strain on the courts. This month Sir Andrew McFarlane, president of the family division of the High Court, said that the “volume of outstanding work” in family courts was at an “all-time high” and those working in the system were operating at the “extent of their capacity”.

Calling for more investment, Charles Hale QC, a barrister at 4PB, warns that the backlog of cases coupled with the expected increase in work, will “produce a perfect storm”.

Most lawyers agree that the changes mark a positive shift away from a litigious approach. A lot of lawyers’ time was spent on the wording of divorce petitions, says Amy Radnor, a partner at Farrer & Co, which wrongly gave parties the impression that courts attached weight to the reasons behind divorce.

Yet many believe that the reformed law does not go far enough. This month Baroness Deech said in the House of Lords: “The new no-fault divorce law is coming into force, but the most miserable and litigious part of it will remain: the law about splitting assets and paying maintenance. That law is so bad that the [justice] ministry is paying couples £500 each to mediate and avoid it.” Without reform, the no-fault divorce law “will fail to achieve its aims”, she added.

Lawyers also insist that the Ministry of Justice should reduce the £593 fee for getting divorced. Harvey says the sum is “by the government’s own admission disproportionately higher than the cost to run the service”, and James Roberts QC, the vice-chairman of the Family Law Bar Association, brands it “prohibitively expensive”.

Officials say that the money is used to fund the courts and to provide free services to some users — and that there is a fee remission scheme for those who cannot afford to pay.