



HODGE JONES & ALLEN

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A GUIDE TO DIVORCE AND SEPARATION

From 6 April 2022, the Divorce, Dissolution and Separation Act 2020 came into force. This introduced the long awaited “no fault” divorce. This replaces the old system of fault based divorce which has been in place since 1973.

How will no fault divorce work?

The sole ground for divorce is the irretrievable breakdown of the relationship. The requirement to provide evidence of one of the five facts (such as adultery, behaviour etc.) in support of a divorce, have now been replaced with a simple requirement to provide a statement of irretrievable breakdown.

When can I apply for a divorce?

You can apply to the court for a divorce or to end a civil partnership after you have been married for at least one year.

How do I apply for a divorce?

One party, the applicant, will submit an application to the court for the divorce.

It is possible to make a joint application where the couple both agree that the relationship has irretrievably broken down.

One party will still be able to submit a sole application if their partner is not in agreement.

Can I contest or defend a divorce or dissolution?

No, under the new scheme there is no way to contest or defend an application once it has been made other than on very limited grounds eg a challenge to the jurisdiction or a challenge as to the validity or subsistence of the marriage or civil partnership.

What happens after I issue the application for a divorce or dissolution?

The new procedure introduced a minimum period of 20 weeks from the start of proceedings, i.e. when the court issues the application, to when the first part of the divorce, called the Conditional Order, can be made. This is meant to be a period of reflection for both parties to consider:

- Whether they truly want to separate permanently
- To enable them to make arrangements to divide finances

- To agree all financial matters, including maintenance payments and child maintenance if applicable
- Agree if possible shared care arrangements for children
- Agree on parenting going forwards

After the Conditional Order is made, there is a six week period between that Conditional Order and when the Final Order can be applied for.

The Final Order is the final stage of the divorce or dissolution and once it is granted by the court, the divorce or dissolution is finalised.

It will still be the case that it is usual not to apply for the Final Order until financial arrangements have been finalised and recorded in a Consent Order (if by agreement) or there has been a Final Order made by the court at a final hearing.

The Applicant will not apply for a Final Order; can I apply?

Both parties can jointly apply for a Final Order. If one party makes the application alone then that party must provide to the other party, 14 days' notice of their intention to apply for the Final Order.

Can I separate legally if I have been married less than a year?

If you have been married for less than a year, it is possible to commence judicial separation or annulment proceedings.

This will not terminate the marriage and is usually most appropriate for people who do not wish to have a termination of their marriage or civil partnership for religious reasons.

It is also possible for parties who have separated within one year of marriage to agree a financial settlement pending any divorce, by way of a Separation Agreement.

Are there still jurisdiction requirements?

Yes, any application to deal with financial provision will be linked to the divorce proceedings.

It is therefore crucial to carefully consider the jurisdiction in which the divorce proceedings are commenced as there can be significant differences in the way that a court treats assets or awards maintenance.

The courts in England and Wales can only deal with divorce proceedings where one of the following applies:

- Both parties are habitually resident in England and Wales
- Both parties were last habitually resident in England and Wales and one party still lives there
- The Applicant is habitually resident in England and Wales and has lived there for at least one year before the application is filed
- The other party is habitually resident in England and Wales
- The Applicant is domiciled and habitually resident in England and Wales and has been living in England and Wales for at least 6 months before the application is filed
- Both parties are domiciled in England and Wales

**For more information please contact us on
0808 239 5575 or email contactus@hja.net**



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180 North Gower Street, London NW1 2NB

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