Divorce, Dissolution and Separation Act 2020

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I will be talking about some of the over-arching themes underpinning the Divorce, Dissolution and Separation Act 2020 (DDSA) which, as you all know, comes into effect on 6 April 2022, in the next 10 to 15 minutes.

Sea-Change

The new legislation leads to the biggest change in the divorce landscape in 50 years with the removal of the need to prove "conduct" and the parties seeking to blame each other for the breakdown of the relationship.

Gone is the need to prove 'facts - for example - behaviour, adultery and desertion. The reason for the divorce now will be 'that the marriage has irretrievably broken down'. No further evidence will be needed beyond this statement.

The concept of 'defended divorce' has gone. The only challenge will relate to jurisdiction, validity of the marriage or civil partnership, fraud and procedural compliance.

The overarching aim is to reduce conflict between parties who want a divorce, dissolution or separation.

There has been a recognition over the years of the devastating effect that an acrimonious divorce can have not only on the parties, but also on any children of the family, who may be caught in the middle of the warring adults. The conflict can then feed into issue of finances.

Hand in hand with the aim of reducing conflict is the objective of encouraging cooperation, agreement and amicable resolution between the parties.
It is hoped the new approach will remove a lot of the acrimony and recriminations following separation, and encourage couples to work together collaboratively to settle their finances and children arrangements. Mediation is encouraged.

It is also hoped that in working collaboratively towards a divorce, dissolution or separation at the outset will enable a cultural shift towards couples being able to cooperate with each other at all stages of the process.

Language

Another change is language in the Act - Decree Nisi becomes 'Conditional Order' and Decree Absolute becomes 'Final Order', so the use of plain English rather than the old legal terminology. Defended cases become 'disputed cases'. Petition/Petitioner becomes 'application/applicant'. The language in the Act has been modernised.

Joint/Sole Application

The changes enable a joint or sole application for divorce, civil partnership and judicial separation. In a joint application the parties will be known as 'applicant 1' and 'applicant 2'. Joint applications are encouraged but will not be appropriate in certain circumstances, for example where domestic abuse is an issue and, in that situation, a sole application is available.

There is an ability to change from joint to sole application at conditional and final order stages.

Disputed cases need to be listed for case management within 6 weeks.

A litigant in person or a solicitor acting on behalf of the applicant, can make the application.

There will be the ability to make digital and/or paper applications, which is inclusive for those individuals who do not have internet access.

An application can be made for divorce and a Form A can be issued at the same time, these being two separate applications which will proceed separately.

Parties may apply for a Financial Remedies Consent Order once there is a Conditional Order.

A respondent as well as the applicant can apply for a final order 6 weeks after the Conditional Order has been granted.

A respondent as well as the applicant can apply for a final order after the Conditional Order has been granted, but they must wait an extra 3 months after the 6-week period has expired and make an application - see section 9 (2) of the Matrimonial Causes Act 1973:

"(2) Where a decree of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court, and on that application the court may exercise any of the powers mentioned in paragraphs (a) to (d) of subsection (1) above."

Timescales

The timescales have changed so that a respondent to the application has 14 instead of 7 days to respond, which becomes a more reasonable timeframe.

The minimum 20 weeks period from the date of issue of the application until the conditional order can be applied for, allows time for the parties to reflect and consider the decision, in effect a "cooling off period". If parties are having second thoughts or contemplating a reconciliation, then the court can be informed accordingly.

This 20 weeks period also allows time for the parties to take stock, think about their finances and arrangements for the children and to take legal advice and/or relationship counselling and support.

In special circumstances it may be possible to fast track that 20 weeks timescale, for example if there is a health issue, but this has to be considered by the court following an application.

Costs

Any party can be heard on the issue of costs. The general approach of the group working on the DDSA was that the costs discretion be retained, including the 'clean-sheet' costs rules and a high benchmark being needed for costs orders to be made.

From a policy perspective the FPRC minutes, which are an open record on the gov.uk website for 10 May 2021 record at para 7.4:

"MoJ Policy said that as previously discussed at the Committee's April meeting, both the Working Group and the Committee was of the view that clear guidance, hoped to be President's Guidance, should set out the high benchmark for costs orders being made under the new DDSA landscape, in the context of it being agreed that current 'clean sheet' rules on costs should be retained."

The FPRC minutes on 14 June 2021 at para 7.4 record:

"The draft amendments to rules 7.10 and 7.32 had the effect that any application for costs should not be made in the principal application. Instead, such application in a disputed case should be made at the hearing of the application; or in a standard case, by application notice under Part 18. The purpose of these changes is to discourage speculative applications for costs being made at the outset of proceedings as this could undermine the policy intention to reduce conflict in the legal process of divorce. In a standard case, costs orders should only be made on an exceptional basis, such as where there has been litigation misconduct including for example the deliberate evasion of service by a respondent party."

In circumstances when a respondent does not reply to the application or there is non-engagement then the applicant has to show service of the application and can apply for deemed service.

Forms/next steps

As most of the delegates are aware the divorce reforms will lead to changes to the digital divorce and financial remedy portals. The MOJ digital team are continuing to work to build the new online platform for online applications. It is useful to check the gov.uk ahead of the launch on 6 April to look at any updated guidance.

There will be court forms that must be used from 6 April onwards and the revised Part 6 (Service) and Part 7 (Procedure for Applications in Matrimonial and Civil Partnership Proceedings) of the Family Procedure Rules, and the amendments to the Practice Directions which are consequential to the DDSA will apply. This is probably a topic for Part 2 of this talk.

Further information can be found at https://www.legislation.gov.uk/ukpga/2020/11/contents

Urgent applications that need to be considered after 31st March and before the 6th April will continue to be accepted, and issued where possible, if received by post or email. If you are submitting your urgent application by email, you are asked to use the following email address, onlineDFRjurisdiction@justice.gov.uk.

However, this email address will be unmonitored after 4pm on 5th April 2022.

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