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Topics

- 1. Ancient and Modern History
- 2. The Current Law: s.1 Matrimonial Causes Act 1973
- 3. Amendments to the Current Law (per DDSA 2020)
- 4. The new rules

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2. The Current Law:
s.1 Matrimonial Causes Act 1973

(1) Subject to section 3 below, a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say —

- a) That the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- c) That the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- d) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as "two years' separation") and the respondent consents to a decree being granted;
- e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as "five years' separation").

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2. The Current Law: s.1 Matrimonial Causes Act 1973

- (3) *On a petition for divorce, it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.*
- (4) *'If the court is satisfied on the evidence of any such fact as is mentioned in subsection (2) above, then unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to section 5 below, grant a decree of divorce.*

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2. The Current Law: s.1 Matrimonial Causes Act 1973

The section prescribes that:

- 1. *Irretrievable breakdown of the marriage* is the only ground for divorce.
- 2. The Court can only find that the marriage has broken down irretrievably if the petitioner establishes 1 of the 5 facts.
- 3. There is no requirement that the relevant fact has caused the breakdown of the marriage.
- 4. The Court has a duty to inquire into the fact relied on.

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3. Amendments by s.1 DDSA 2020

The new s. 1 Matrimonial Causes Act 1973

- (1) *Subject to section 3, either or both parties to a marriage may apply to the court for an order (a "divorce order") which dissolves the marriage on the ground that **the marriage has broken down irretrievably**;*
- (2) *An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably;*
- (3) *The court dealing with an application under subsection (1) must:*
 - (a) *Take the statement to be conclusive evidence that the marriage has broken down irretrievably, and*
 - (b) *Make a divorce order*

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3. Amendment: the New Statutory Framework

- (4) A divorce order—
 - (a) is, in the first instance, a conditional order, and
 - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.

- (5) The court may not make a conditional order unless—
 - (a) In the case of an application that is to proceed as an application by one party to the marriage only, that party has confirmed to the court that they wish the application to continue, or
 - (b) In the case of an application that is to proceed as an application by both parties to the marriage, those parties have confirmed to the court that they wish the application to continue;
 and a party may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings.

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3. Amendment: the New Statutory Framework

- The Act provides flexibility in the process.
 - In a particular case the Court dealing with an application for a divorce order may shorten the statutory timeframe (new s.1(8)); and
 - The new Section 1(10) MCA allows for a mechanism whereby 2 parties initially apply for a divorce order but ultimately only 1 party chooses to progress it. This mechanism is implemented by a new FPR 7.9(3).

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3. Amendments to Dissolution & Separation

- Dissolution of Civil Partnerships (s.44 CPA 2004)
 - Removal of 4 facts.
 - Irretrievable breakdown proven by a mere statement.

- Judicial Separation (s.17 MCA)
 - Removal of the 5 facts.
 - Proven by recording the parties seek to be judicially separated from the other party (or one another).
 - Similar reform made to Civil Partnership Separation Orders.

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3. Amendments: Nullity (Void & Voidable marriages)

- No substantive changes to the rules on void and voidable marriages or to the grounds for granting decrees of nullity.
- Changes to the timetables and nomenclature (**now ‘a nullity of marriage order’**).
- See Part I of the Schedule to DDSA 2020 (§12).

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3. Consequential Amendments: what stays & goes?

- What goes:
 - Old s.2 MCA 1973: *‘supplemental provisions to the facts raising presumption of breakdown’*
 - Old s.5 MCA: *‘refusal of 5 year decree based on hardship’*
- What stays:
 - Old s.3 MCA: *no application within a year of marriage.*
 - Old s.6 MCA: certifying discussions about possible reconciliation.

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3. Amendment s.10 MCA:

- A financial safeguard for respondents to an application for divorce:
 - New **s10(2) and (3)**: Where a conditional order for divorce has been made and the respondent has applied for consideration of their financial position.
 - Court cannot make the divorce order **final** until is satisfied that: *either* no financial provision is required for the respondent *or* if it is, the applicant is making appropriate provision.
 - Consider all the circumstances including s.10(3A) criteria.

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4. The New Rules

- Accompanying the new substantive law are:
 - Procedural amendments introduced under **The Family Procedure (Amendment) Rules 2022 (SI 2022 No.44 (L.1))**. Largely amending **FPR 6 and 7**.
 - HMCTS's on-line service for applying for divorce. The old service will be unavailable from 31st March 2022 and *saved applications* will need to be uploaded by 4pm

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4. The New Rules: FPR 6 amended in part

- Amendments to deal with:
 - Who can serve and be served with an application (**r.6.5**). The time for serving an application by the applicant (**FPR r.6.6A**).
 - Applications for an extension of time to serve the application (**r.6.6B**).
- A new **r.6.7A FPR** enables *email* service of the application on the respondent by the Court or the applicant.

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4. New Rules Ch. 2 (rr7.2-7) Starting Proceedings

- A person may not make more than 1 application for a divorce order unless *either* the first application has been concluded (by dismissal or determination) *or* the court gives permission (**FPR 7.4**).
- The respondent to an application has 14 days to file an Acknowledgement and a further 21 days to file an Answer if the claim is disputed (**FPR 7.7**).

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4. The New Rules

- Alternative tracks: Standard and Disputed Cases.
- Disputes cases defined as **(FPR 7.1(3)(b))**:
 - Where the validity of the subsistence of the marriage is disputed;
 - Jurisdiction is in issue; or
 - The Respondent has already filed an application for a divorce order which has not been disposed of.

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4. New Rules Ch. 3 (rr7.7-11) Standard cases

- Applicant(s) may apply for CO no less than 20 weeks after the application for a divorce order is made provided that there has been no signal of intention to defend **(FPR 7.9)**.
- Applications allowed by either or both applicants.
- Court will check entitlement.
 - If entitled to a CO, the Court will *direct that the application is listed before a Judge at the next available date.*
 - If not, list for case management hearing.

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4. New Rules Ch. 4 (rr7.12-17) Disputed cases

- Disputes cases defined **(FPR 7.1(3)(b))**.
- *Cross-applications* limited to circumstances where **(FPR7.12)**:
 - The original (index) application has been dismissed.
 - The Respondent's own application seeks different relief from the original; or
 - The Court gives permission.
- Detailed provision for the Trial of the dispute **(FPR 7.13 – 7.17)**.

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4. New Rules Ch.5: Proceedings after CO

- Either or both of the applicants can apply to make the CO into a FO.
- **FPR 7.19 (4)** requires the Court will make FO except in a prescribed circumstances.
- Most might be summarised as *compliance with the procedural requirements*.
 - The parties have not reconciled (& applied for rescission).
 - There is no appeal pending in relation to making the CO.
 - No party has applied to prevent the CO being made into an FO.

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4. New Rules Ch.5: Proceedings after CO

- Have the parties have co-operated in relation to **s.10A(2) MCA 1973** (dissolution of religious marriages)?
- Does **s.10(2) of the MCA 1973** does apply?
- If it does, the Court must be satisfied that (**s.10(3)**):
 - *Either* the applicant does not need to make financial provision for the respondent; or
 - If the applicant does, financial provision has been by the applicant for the respondent that is reasonable and fair or the best that can be made in the circumstances.

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Conclusion



'The institution of marriage will always be vitally important, but we must never allow a situation where our laws exacerbate conflict and harm a child's upbringing. By sparing individuals the need to play the blame game, we are stripping out the needless antagonism this creates so families can better move on with their lives.'

The former Justice Secretary, Robert Buckland QC MP



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