Divorce for a modern age: the Divorce, Dissolution and Separation Act 2020

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1. When a couple concludes that their marriage is over, they are confronted with a divorce regime first enacted in the 1960s[1]. Although it is impressive that the regime has since survived for over 50 years, society has changed radically since then. It is more egalitarian and, arguably, more socially permissive.

2. The current regime infers moral culpability on the part of the defending spouse if a divorce is to be obtained immediately. Otherwise, a couple must wait for at least 2 years from separation before they can apply to the Courts. The developed view is that this is unacceptable. Divorce is a miserable experience; and it should it not be made the more so by a long wait for resolution or a requirement to point the finger of blame if a more immediate termination is required. For many years, the Courts and the legal profession have tried to paper over the problem by engendering a culture of *turning down the heat* in Petitions based on the other party's behaviour and making do with the current law. This is admirable but legislative change is required if a satisfactory regime is to be created. Parliament has been surprisingly reticent to do this. However, finally the law is to be changed. The **Divorce, Dissolution and Separation Act 2020 ('DDSA 2020')** received royal assent in June 2020. The relevant parts come into force on 6th April 2022**.**

The Current Law

Section 1 of the Matrimonial Causes Act 1973 ('the Act') provides that:

(*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

[1] **Divorce Reform Act 1969**; reproduced in **The Matrimonial Causes Act 1973**

*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").

*(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'.*

3. The section prescribes that:

3.1. There is only 1 ground for divorce, that is: *irretrievable breakdown of the marriage*;

3.2. The Court can only find that the marriage has broken down irretrievably if the petitioner establishes 1 of the 5 statutory *facts*, that is*:* adultery, behaviour, desertion, or a relevant period of separation. Counterintuitively, there is no requirement that the relevant *fact* has caused the breakdown of the marriage;

3.3. The Court has a duty to inquire into the fact relied on. If the fact is proven, then the Court shall grant a decree of divorce unless it is satisfied that the marriage has not irretrievably broken down.

Ancient History

4. Until the mid-19th century, the only way to divorce your spouse was through a private Act of Parliament[2] or by annulment; otherwise it was illegal. In 1670, the first divorce was granted in England, by private Act of Parliament, to a Lord Roos, on the grounds of his wife's adultery. Jane Addison was the first woman granted a divorce, in 1801 and again by private Act of Parliament, on the grounds of her husband's adultery with her sister. Between 1670 and 1857, 379 Parliamentary divorces were requested and 324 were granted. Of those 379 requests, eight were by wives, and only four of those were granted.

5. Divorce through the courts was first introduced into England and Wales by the **Matrimonial Causes Act 1857**. The Act allowed legal separation by either husband or wife on grounds of adultery, cruelty, or desertion. In the circumstances, fault had to be established: historically known as the *matrimonial offence*. It required a husband to prove his wife's adultery if he wanted a divorce. Conversely, a wife had to prove her husband's adultery and also that he had either treated her with cruelty, had deserted her, or had committed incest or bigamy. The **Matrimonial Causes Act 1923** granted a wife the right to divorce her husband for adultery alone and thus removed the double standard with respect to the grounds for divorce from English statutes.

6. The current framework of the 5 facts underpinning the single ground of *irretrievable breakdown* was introduced by the **Divorce Reform Act 1969**. In allowing for divorce based on a period of separation, it removed the need to prove a *matrimonial offence.* This was carried over into the Matrimonial Causes Act 1973, which remains the legislation on which we currently rely.

[2] ('Well-Behaved Women Don't Make History": *Rethinking English Family, Law, and History*. Prof. Danaya Wright (19 Wis. Women's L.J. 211 2004))

Modern History

7. Law is generally understood to be a mirror of society and society has undergone substantial change since the 1960s. Despite that, Parliament has had a poor recent record of commitment to divorce reform. Well-informed practitioners will recall that the law on divorce was completely changed by the Family Law Act 1996. However, the provisions of the Act were never implemented and it was subsequently repealed in 2014[3]. Furthermore, Richard Bacon MP's 'No Fault Divorce Bill' introduced into the House of Commons in 2015 failed to get a second reading in 2016.

8. By the time the appellate Courts were tasked with deciding the fate of Mrs Owen's *behaviour* petition in **Owens v Owens[4],** the legal profession was ready for change. When the case came before the Court of Appeal in 2017 Sir James Munby P reflected on the enormous social change that had occurred since the Divorce Reform Act 1969[5]. The case law had moved (albeit slowly) to respond to those changes with, by example: the death of the doctrines of unity between husband and wife[6]; a husband's immunity from prosecution for rape[7]; and the principal of marital equality[8].

9. The majority of society would consider it wrong that a married couple seeking to terminate an unhappy relationship should have to prolong or aggravate their misery: either by waiting for 2 years to obtain a divorce or having to rely one of the 3 fault grounds of behaviour, desertion or adultery. Munby P put it slightly differently when he began his judgement in ***Owens*** with a reflection on the current unacceptable state of the law: *'… Parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage, though some people may say it should be'.*

10. Modern Courts have tried get around the problem with a consensual and collusive manipulation of the procedure for divorce under **section 1(2)(b)** (the *behaviour* ground). The current Acknowledgement of Service of the Petition Form poses the question: 'DO YOU INTEND TO DEFEND THE CASE?' If the Respondent answers:

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[3] See the House of Commons Briefing Paper (published on 2nd October 2018): Part 2 of the Family Law Act 1996 would have introduced "no-fault divorce" and required the parties to a divorce to attend "information meetings" with a view to encouraging reconciliation where possible. In 2001, following a series of information meeting pilot schemes, the then Government concluded that the provisions were "unworkable". The relevant provisions in Part 2 have now been repealed (https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01409).

[4] **([2017] EWCA Civ 182)** and subsequently **([2018] UKSC 41).** The Central Family Court had refused to grant Mrs Owens a divorce even though it found that her marriage had irretrievably broken down. In 2016 HHJ Tolson QC concluded that she had failed to satisfy the court her husband had behaved in such a way that she could not reasonably be expected to live with him. Both the Court of Appeal in 2017, and the Supreme Court in 2018, upheld the first instance decision.

[5] §§86 to 89 of the Judgment in the Court of Appeal.

[6] Midland bank Trust Co Ltd v Green (no.3) ([1982] Ch 529).

[7] R v R ((Rape: Marital Exemption) ([1992] 1 AC 599).

[8] White v White ([2001] 1 AC 596).

'NO', then pursuant to **FPR 7.20(2),** the Court has to decide whether the applicant is entitled to a decree. Under the special procedure thereby engaged, the Court has simply to ask the question: '*assuming the facts alleged are true, does what is pleaded amount to unreasonable behaviour within the meaning of section 1(2)(b)?* Munby P recorded that many successful Petitions are anodyne in the extreme[9]. Indeed such an approach is encouraged the Law Society's Family Law Protocol and Resolution's 2016 Guide to Good Practice on Correspondence. He cited recent data so as to highlight how few divorce petitions were now defended. In the year to January 2017, there were 113,996 Petitions for Divorce. Of those, only 760 (0.67%) were defended by Answer. Although there is no empirical data, he assessed the number that went to a contested hearing at 0.015% (being 'a mere handful')[10] [§98].

The Birth of the Divorce Bill

11. The majority of the Supreme Court Justices in ***Owens*** expressly invited parliament to "*consider replacing a law which denies Mrs Owens a divorce in the present circumstances*".

12. Academics joined the call for reform[11]. So did the press. For a number of months prior to the Supreme Court ruling in ***Owens***, the Daily Telegraph began running a campaign to reform *no fault divorce.* The Supreme Court judgment made most headlines on 25th July 2018[12].

13. In July 2018, Baroness Butler-Sloss introduced a Lords' Private Member's Bill, which required the Lord Chancellor to review the law relating to divorce and judicial separation and to the dissolution of civil partnerships and the separation of civil partners.

14. On 15 September 2018, the Justice Secretary, David Gauke, published a consultation paper, **Reform of the Legal Requirements for Divorce**[13]; following which the government announced its intention to proceed with planned changes to divorce legislation.

[9] §93 of the judgment.
[10] §98 of his judgment.
[11] The Exeter-based academic, Prof. Liz Trinder, chaired a project to report on how the current fault-based divorce ground operates in practice and explore reform. Her 2018 paper, '*No Contest: Defended Divorce in England and Wales*'[11] was based on a comprehensive review of 550 divorce files and made a number of damning findings.
[12] The Sun recorded: *'BANNED FROM DIVORCE Wife trapped in 40-year 'loveless marriage' with millionaire is REFUSED right to divorce him by Supreme Court'.* The Daily Mail led with: *'Unfaithful wife, 68, who wants to divorce her mushroom farmer husband of 40 years is forced to stay 'unhappily' married to him after losing Supreme Court fight.*
[13] https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/

15. On 25th June 2020, the **Divorce, Dissolution and Separation Act 2020** received royal assent. The relevant passages come into force on 6th April 2022.

The New Statutory Framework for Divorce

16. The new Act amends the wording of 1973 Act by substitution, rather than by abolishing it. S.1 of DDSA 2020 provides as follows.

'For section 1 of the Matrimonial Causes Act 1973 (divorce on breakdown of marriage) substitute—

1 Divorce on breakdown of marriage

(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'.

17. The new terms of the 1973 Act retain a single ground for divorce: being *irretrievable breakdown*. However, with a single sweep of the drafting pen, the *5 facts* have been removed and replaced with a simple requirement that the Applicant(s) make a statement that the marriage has broken down irretrievably.

18. The court will take the statement of irretrievable breakdown to be conclusive evidence that the marriage has broken down irretrievably. The Court has no right to adjudicate on their entitlement to a divorce except to the extent that the parties must correctly follow the procedure.

19. Courts will therefore hand over the right to declare *a marriage is at its end* to the parties themselves; a further quiet revolution in principle.

20. Crucially, the Act now recognises joint applications for divorce; a revolution in principle. Now both parties can collectively end their marriage; just as they collectively entered into it.

21. The language has changed. *Petitions* are out; replaced by *applications for a divorce order*.

22. The main provisions apply to England and Wales only.

Procedure

23. The procedure is prescribed by the rest of the new **s.1 MCA 1973.** In particular, **subsections 1(4) and (5)** will now provide that**:**

(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.

….

24. The process is therefore designed to take no less than 26 weeks in total from the application for a Divorce Order in that:

24.1. From 20 weeks after the start of the proceedings, the applicant(s) may confirm that *they wish the application to continue.*

24.2. Once so confirmed, the Court is entitled to grant a *conditional order of divorce;* and

24.3. No less than 6 weeks after the *conditional order*, the Court may make a *final order of divorce.*

25. This regime replaces decree nisi and decree absolute of divorce. A reem of minor amendments are made to other legislation referring to the old language[14].

26. The new **sections 1(6) and (7) MCA** allow the Lord Chancellor to shorten or lengthen either stage in the process by statutory instrument but any change cannot take the overall period beyond 26 weeks.

27. The Act provides flexibility in the process.

27.1. In *a particular case* the Court dealing with an application for a divorce order may shorten the statutory timeframe (**section 1(8)**); although no further statutory guidance is given as to what such a *particular case* might involve; and

27.2. The new **Section 1(10) MCA** allows for a mechanism whereby 2 parties initially apply for a divorce order but ultimately only 1 party choses to progress it. This mechanism is created by a new **FPR 7.9(3)**. This subtle provision illustrates the purpose of the new law; namely, making divorce as painless and easy as possible.

Other Amended Statutory Frameworks: *Judicial Separation*

28. These changes to the divorce legislation are reflected in the new approach to proceedings for a decree of judicial separation under **s.17 Matrimonial Causes Act 1973[15]**.

[14] For instance: Family law Act 1996, the Inheritance (Provision for Family and Dependants) Act 1975 and the Children Act.

29. Under the current legislation, a Petitioner must prove the existence of one of the 5 divorce *facts* in order to obtain a Decree of JS. They do not have to establish *irretrievable breakdown* because judicial separation is not designed to end the marriage.

30. **Section 2 of DDSA 2020** changes the law by amendment of **s.17 MCA 1973.** Under the amendment either or both parties will now be able to apply for a judicial separation *order*. They do so simply by stating in their application that *they seek to be judicially separated from the other party or* (on joint application) *from one another*. The Court must then make an order (**section 2(2) DDSA 2020**). There are no prescribed time limits. Crucially, the need to establish one of the 5 *facts* has been abolished.

Civil Partnerships

31. The changes to the principles of terminating a marriage and decrees of judicial separation will be mirrored in amendments to the framework for civil partnerships.

32. Currently, the grounds for granting a civil partnership dissolution order (under **s.44 of the Civil Partnership Act 2004**) largely reflect the law on divorce*:*

    32.1. The only permitted ground for dissolution is *irretrievable breakdown* of the partnership following which a dissolution order is made.

    32.2. The court cannot find that the partnership has irretrievable broken down unless 1 of 4 statutory *facts* are proven. These are the 5 divorce *facts* under **MCA 1973 s.1(2)** but not including adultery.

33. **Section 2 of DDSA 2020** changes the law by amendment of **s.44 CPA 2004.** Now, either or both parties can now apply for a civil partnership dissolution order. The applicant(s) must state in their application that *the civil partnership has broken down irretrievably*. The Court will then take that statement to be conclusive evidence that the partnership has broken down irretrievably and make a dissolution order (**section 3(5)** by amendment of CPA). The need to establish one of the 4 *facts* has been abolished.

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[15] Conventionally used where the parties have strong moral, cultural or religious reasons for not wanting a divorce. The parties remain married but the JS decree relieves them of their duty to live together and allows applications to be made for financial remedy. If either party subsequently wishes to end the marriage, then a petition for divorce can be filed later. If a decree of judicial separation has already been granted, the party obtaining a divorce it is not prevented from filing a divorce petition on the same or substantially the same facts.

34. **Section 4 of DDSA 2020** amends **s.37 CPA 2004** so as to establish the same timetable for first making a conditional dissolution order and then making that final. It ensures that a final order is made no less than 26 weeks after the application is made.

35. **Section 5 of DDSA 2020** changes the framework and grounds for granting civil partnership separation orders so that the new regime mirrors that for judicial separation orders.

Decrees of Nullity

36. There are no substantive changes to the rules on void and voidable marriages or to the grounds for granting decrees of nullity. There are however changes to the timetables and nomenclature **(now 'a nullity of marriage order'). The changes are found in Part I of the Schedule to DDSA 2020 (§12).**

Significant Consequential Amendments

37. **Part I of the MCA 1973** (sections 1- 20) currently contains several provisions designed to supplement the Court's approach to *irretrievable breakdown* and the 5 statutory *facts*. A number of these provisions have now been amended or abolished. This paper is not intended to set out an exhaustive list and the reader is directed to the **Schedule to DDSA 2020 (Part I).** The important changes are these:

    37.1. **MCA 1973 s.2;** *supplemental provisions to the facts raising presumption of breakdown*[16]*.* This section is redundant because the Court must now accept as conclusive any statement that the marriage has irretrievable broken down.

    37.2. **MCA 1973 s.5;** *refusal of decree based on 5 years separation decree on the basis of financial hardship.* This has been omitted as redundant.

38. On the other hand, some of the old provisions have survived the amendment:

    38.1. An application for a divorce order cannot be made less than a year after the marriage **(**per **MCA 1973 s.3);** and

[16] For instance: s.**2(1) MCA 1973**: 'One party to a marriage shall not be entitled to rely for the purposes of section 1(2)(a) above on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months'.

38.2. Provisions shall continue for requiring the applicant's legal representative to certify whether he has discussed possible reconciliation **(**per **s.6).**

39. The draughtsmen have amended the existing wording of **MCA 1973 s.10** to create a new safeguard for financially vulnerable respondents to an application for divorce:

39.1. The new **s10(2) and (3)** apply where a conditional order for divorce has been made and the respondent has applied for consideration of their financial position.

39.2. In those circumstances, the 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. Appropriate is defined as 'reasonable and fair or the best that can be made in the circumstances.' The Court must look at all the circumstances including a familiar checklist at the new **MCA 1973 s.10(3A).**

Procedural Changes

40. Accompanying the commencement of the new substantive law are:

40.1. Procedural amendments introduced under **The Family Procedure (Amendment) Rules 2022 (SI 2022 No.44 (L.1)) ('FP(A)R 2022').** The relevant changes will come into force with the new law on 6th April; and

40.2. 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 (https://www.gov.uk/government/news/new-divorce-laws-will-come-into-force-from-6-april-2022). Thereafter, the new service will not be available until 6th April 2022.

The Family Procedure (Amendment) Rules 2022

41. Predictably, these principally concern 3 aspects of divorce procedure in the FPR.

42. **FP(A)R rr.6 to 20** amend **Part 6 of the FPR** in respect of service of the application for a matrimonial or civil partnership order within the jurisdiction.

43. The highlights are:

43.1. **Rule 10** inserts a new **r.6.6A into the FPR** to deal with the time for serving an application by the applicant and a new **r.6.6B into the FPR** to deal with applications for an extension of time to serve the application.

43.2. **Rule 11** inserts a new **r.6.7A into the FPR** to enable *email* service of the application on the respondent.

43.3. **Rule 20** inserts a new **r.6.21A into the FPR** to deal with situations where the court fails to serve the applicant the application by email.

44. **Rule 21** inserts new rules into the FPR concerning service of an application for a matrimonial or civil partnership order outside the jurisdiction. It sets new timescales (**r.6.41A**) and provides for applications to extend time for service (**r.6.41B**).

45. **Rule 22** substitutes an entirely new **FPR7 ('Procedure for Applications in Matrimonial and Civil Partnership proceedings').** The **FP(A)R 2022** sets out the new part in its entirety in the Schedule. It prescribes the procedural framework for bringing matrimonial orders including proceedings where a joint application is made. At the moment, there are no associated Practice Directions.

46. Furthermore, there are currently no new Court forms to accommodate the change in the substantive law or the new rules.

The new FPR Part 7

47. The guidance in this paper is not intended to be an exhaustive review of the rules; there is no substitute for reading them. However, the *headline* points are these.

48. The new Part 7 is easy to navigate, being divided into Chapters in chronological order. The overall framework will look familiar to those used to the existing rules.

49. **Chapter 2** deals with **starting proceedings**.

49.1. 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**). Together with other provisions[17], this

[17] For instance, the new FPR 7.12(a)

is designed to restrict the number of applications in play at any one time. Service of applications can still be performed by the parties or by the Court and new provisions are made for service by e-mail.

49.2. Where an application is made jointly for a divorce order, the Court will still send Notices of Issue to the parties individually (**FPR 7.5(3)**). Despite the collaborative approach engendered in a joint application, this recognises that the parties remain distinct.

49.3. If represented, the applicant(s) is still required to confirm by certificate that reconciliation has been considered before issuing[18]. The rules make additional provision to accommodate reconciliation further down the process: the initial application can be withdrawn prior to service[19]; applications for a conditional order must include a statement that there has been no change in circumstances at the time of applying[20] and if the parties reconcile between the conditional and final orders being made, they can apply to set aside the conditional order (by rescission pursuant to **FPR 7.34**).

49.4. 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**).

50. As under the existing rules, the process then divides into 2 tracks, depending on whether the case is undefended ('Standard Cases') or defended ('Disputed Cases'). The full force of the changes brought about to the substantive law by the **DDSA 2020** is reflected in the narrow definition of 'Disputed Cases' (per **FPR 7.1(3)(b**)) being:

50.1. Where the validity of the subsistence of the marriage is disputed;

50.2. Jurisdiction is in issue; or

50.3. The Respondent has already filed an application for a divorce order which has not been disposed of.

51. **Chapter 3** prescribes the procedure for taking **undefended (Standard) cases** to the conditional Order stage:

51.1. Reflecting the substantive timeframe established by **the new s1(5) MCA 1973,** the applicant(s) may apply for a conditional order ('CO') no less than 20

[18] Old FPR 7.6. new FPR 7.3.
[19] New FPR 7.6
[20] New FPR 7.9(4)(a).

weeks after the application for a divorce order is made provided that there has been no signal of intention to defend (**FPR 7.9**).

51.2. Reflecting the new **s1(10) MCA**, the application for a CO can be made by either or both applicants. This recognises that the application is originally made jointly, one of the parties cannot derail the process by subsequently withdrawing consent.

51.3. Under the new **FPR 7.10**, the Court will then check that the applicant(s) is entitled to a CO and, where appropriate *direct that the application is listed before a Judge at the next available date.* Where the Court is not satisfied that the applicant is entitled to a decree, it will list the matter for a case management hearing. This process is of course similar to that under the old FPR 7.20 ('Certificate of Entitlement to a Decree').

52. **Chapter 4** prescribes the procedure for taking defended **(Disputed) cases** to the CO stage. I have already set out above the limited basis on which a Respondent is entitled to dispute an application (per **FPR 7.1(3)(b**)). In addition, **FPR 7.12** limits the grounds on which a Respondent (in the index suit) can bring a *cross application.* This is only permissible where:

52.1. The original (index) application has been dismissed.

52.2. The Respondent's own application seeks different *relief* from the original. This is presumably designed to protect the economically vulnerable Respondent where the original application makes no provision for ancillary financial relief; or

52.3. The Court gives permission.

53. The Chapter then makes detailed provision for the Trial of the dispute (**FPR 7.13 – 7.17**). Reference should be made for the detailed provisions in that respect.

54. **Chapter 5** sets out the **proceedings after the Conditional Order** has been made**.**

55. The existing rules already make provision for intervention in Petitions by the Queens Proctor and interested 3rd parties. It is not proposed to explore that regime in this paper further. Suffice to say, those rights to intervene have largely survived the rule change [see **FPR 7.18**].

56. Once again, either or both of the applicants for a divorce order can apply to make the CO a Final Order ('FO'). **FPR 7.19 (4)** requires that the Court will make a CO into an FO except in a set of prescribed circumstances. They might be appropriately summarised as *compliance with the procedural requirements*. The more straightforward are these:

56.1. The parties have not reconciled with an ensuing application for recission.

56.2. There is no appeal pending in relation to making the CO.

56.3. No party has applied to prevent the CO being made into an FO.

57. The court must also be satisfied that the parties have co-operated with each other in relation to s**.10A(2) MCA 1973** (dissolution of religious marriages).

58. The Court must also be satisfied that **s.10(2) of the MCA 1973** does not apply or (if it does) has been complied with. On that basis, the Court must be satisfied that:

58.1. Either the applicant does not need to make financial provision for the respondent; or

58.2. 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.

59. This last provision illustrates the pragmatism intended by the new rules. It caters for the parties' future after a divorce process that is now designed to be as painless as possible. As Robert Buckland QC MP put it when he was promoting the original Bill in Parliament:

> *'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'*

60. After a long journey, our divorce legislation will now be fit for a modern age.

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19 March 2022

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