

No-fault divorce is here, what is it and how does it change divorce proceedings?

Following the biggest change in divorce law for over 50 years, our family team outline what the new criteria is for starting divorce proceedings in England and Wales.

Eligibility

To be eligible to start divorce proceedings in England and Wales you must meet the following criteria:

- A couple must have been married for at least one year.
- One or both parties to the marriage (the applicant(s)) must be a resident of, or domiciled in, England or Wales. Residence is determined based on where someone lives most of the time. A person is domiciled in a country if they consider their permanent home is there, even if they currently live in another country.
- There is only one ground for divorce, which is that the marriage has irretrievably broken down.

Joint or Sole Applicants

An application can be made by one spouse (a sole application) or by the couple together (a joint application).

If the application is:

- A sole application, the person who starts the divorce proceedings is known as the applicant and the other spouse is known as the respondent.
- A joint application, the spouses together are the applicants and there is no respondent.

An application that begins as a joint application can be changed to a sole application if one of the spouses decides they no longer wish to pursue divorce proceedings or refuses to progress the proceedings. However, an application that begins as a sole application cannot be changed to a joint application.

The benefit of applying jointly is that the solicitors for each applicant discuss the content of the application prior to submission to court to ensure everyone is happy and this can avoid lots of back and forth. So, if you think your spouse may also wish to divorce, it is worth discussing with them the option of making a joint application.

The procedure for a sole application

How do you start proceedings?

Once the sole application is finalised, it is submitted to the court online, together with an image of your marriage certificate and the court fee. A statement of truth is included in the application, which confirms that the contents of your application are true and that you understand you could be held in contempt of court if you knew any information given in your statement of truth was not true.

On receipt of these documents the court issues the application which starts the divorce proceedings.

Applying for costs

Generally, judges discourage costs applications unless a respondent (your spouse) has held up the divorce, for example, by evading the application being served on them, so causing you to incur unnecessary costs. In a straightforward case, the guidance is for each party to pay their own costs. If there are circumstances that mean it is appropriate for your spouse to pay your costs, then a cost order application must be made at the same time or before the application for a conditional order. (See below for more information on when a conditional order can be made)

Who tells my spouse that I have started divorce proceedings?

If you decide to proceed with a divorce, once you have approved the draft application for divorce, it is good practice to send a copy to your spouse before submitting the application to the court. This allows your spouse to express any concerns they may have about the contents of the application.

If this is not possible then the issued application and other documents produced by the court will be sent (served) on your spouse or their solicitor within 28 days. Your spouse or their solicitors should then acknowledge receipt of the application within 14 days. They can do this online.

Can my spouse dispute the divorce?

It is possible for a spouse (respondent) to dispute the divorce, but on very limited grounds, such as the validity of the marriage. If your spouse disputes the proceedings, there will be court hearings to decide whether or not the divorce proceedings can continue or whether they should be dismissed.

Applying for the first stage divorce order (conditional order)

A divorce order is made in two stages. Provided your spouse is not disputing the proceedings, twenty weeks after the divorce application is issued, you can apply for the first stage of the divorce order, called the conditional order. In the application for the conditional order, you must confirm that you wish to proceed with the divorce, and that everything in the divorce application remains unchanged or, if not, what has changed.

Applying for the final order of divorce

Once six weeks (and one day) have passed from the day the conditional order was made, you can apply for the final divorce order. This brings your marriage to an end, and you are then formally divorced.

If you do not apply for the final order, your spouse could apply, but only after three months from the first day you could have applied.

However, you should not apply for the final divorce order until any application for financial orders has been resolved or agreement has been reached about financial matters and the agreement has been made into a court order.

The procedure for a joint application

How do you start proceedings jointly?

Before issuing the joint application, the draft application is sent to your spouse or their solicitors to check over and add any details that are necessary. The application is then sent back to you or your solicitors to review any additions.

When the joint application has been finalised, it is submitted to court together with an image of your original marriage certificate and court fee. A statement of truth is included in the application, which confirms that the information both you and your spouse have given in your application are true and that you both understand that you could be held in contempt of court if you or your spouse knew any information given in your statement of truth was not true.

What happens once the joint application is issued?

On issuing the application, the court produces a notice of proceedings and emails and posts this to each applicant or to their solicitors. Each applicant must acknowledge receipt of the notice of proceedings within 14 days from the application being issued.

Applying for the first stage divorce order (conditional order)

A divorce order is made in two stages. Twenty weeks after the divorce application was issued, you and your spouse can apply for the first stage of the divorce order, called the conditional order. In the application for the conditional order, you must each confirm that you wish to proceed with the divorce, and that everything in the divorce application remains unchanged or, if not, what has changed.

If one of you no longer wishes to apply for divorce or simply refuses to progress the divorce proceedings, the other applicant can make the application for a conditional order on a sole basis. The application then becomes a sole application and the spouse who is no longer participating in the proceedings is called the respondent from this stage of the proceedings.

Applying for the final order of divorce

Once six weeks have passed from the day the conditional order was made, you and your spouse can apply for the final divorce order. This brings your marriage to an end, and you are then formally divorced.

If one of you at this stage no longer wishes to apply for divorce or simply refuses to progress the divorce proceedings, the other applicant can apply for a final divorce order. However, that applicant must first formally inform the other spouse of their intention to make the application. They can only apply for the final divorce order fourteen days after they have informed their spouse of their intention to apply. This is to allow the other spouse an opportunity to apply to court to prevent the final divorce order being made until financial matters have been resolved.

Applying for a financial order

Whether you are applying as a sole applicant or jointly you should not apply for the final divorce order until any application for financial orders has been resolved or agreement has been reached about financial matters, and this has been made into a court order.