

Has divorce, dissolution and separation act 2020 had a positive or negative effect on divorce cases being brought in England and Wales

This essay will be discussing the effects that the *divorce, dissolution and separation act 2020* has had on divorce cases being brought in England and Wales. This will first define what the *DDSA 2020* is, the changes it brought and effects it had. Following on from that it will go through the benefits that it has brought with it, the concept that as the legal process has updated to meet newer needs the changes could be seen as necessary and what negative aspects have arisen or potentially could.

The divorce dissolution and separation act 2020 was a reformation act introduced to change how divorces and dissolutions were handled in relation to civil partnerships and marriages within the United Kingdom. Its main goal is to make divorces easier to conduct and remove aggravating factors. The main changes within this act are the introduction of the no fault divorce, simplifying the agreement that the marriage is over, and removing the necessity of producing aggravating facts. Introducing the ability to jointly apply for a divorce and also introducing a minimum overall time frame from the start of the process to the end (House of commons library, 2020). That was introduced to give time for reflection over whether the marriage is truly over. In regard to costs other than the starting fee for the process, the court maintains its prior role. Meaning that once the divorce is over they have the full control of which partner is entitled to what ' court has a wide discretion in relation to the award of costs', 'A respondent who opposes the making of a costs order or disputes the amount of costs claimed must file a witness statement in response and the court will normally deal with the application without a hearing' (Lexisplus, 2023). In regards to starting this process, all that is needed is a starting fee of 500 pounds and to apply on a gov.uk site.

To begin one benefit this has had on divorce proceedings is the fact it has put an emphasis on mediation. This is a benefit as through no fault divorce it is a required step and while it may not work for everyone it's another step that could make people reconsider their choices '*Mediation aims to assist Participants to reach the decisions they consider appropriate to their own particular circumstances.*'(Lexisplus, 2023). This step will allow the couple a chance to learn what the options are for maintaining or ending the marital relationship through an unbiased third party '*In all cases, the Mediator must seek to ensure that the Participants take part in the Mediation willingly and without fear of violence or harm.*'. Following on from this point in March 2023, the government and Family Procedure Rule committee intend to commit proposals that will strengthen existing provisions around attendance to Mediation Information and assessment Meeting (MIAMS). The goal of this is to encourage more people to attend mediation and more out of court means. The final aspect of this is that under s10 Childrens and Families Act 2014 it has been made

a requirement for a person who wishes to apply for an order in family proceedings to attend a Mediation Information and assessment Meeting (MIAM), *'The mediator will try to persuade the respondent to attend a MIAM, although the respondent is not compelled to attend'*. Overall the benefit provided by all of this is the attempt for reconciliation Outside of the courts and a more civil approach.

Following on from that is the greater sense of privacy granted by a no fault divorce which can prevent lives from being negatively tarnished *'When private details of a divorce become public, the impact on divorcees' lives can be devastating'* (Grande, N 2023). More transparency on the family court has shown a very negative impact on the lives of individuals that get targeted. A contemporary example of this can be seen in Angelina Jolie and Brad Pitt's divorce. This divorce had *'everything in the public eye from allegations of abuse, changes of lawyers, and Jolie's former investment firm calling Pitt a 'petulant child' over conflict surrounding Jolie'* and in a way you could say this type of spectacle is bred by the adversary nature of divorce proceedings.

Moving on I would like to discuss a specific case that in my opinion defines a failure of the Matrimonial Causes Act 1973. This was what dictated divorces prior to the Divorce, dissolution and separations act 2020. The specific case is the Owens v Owens (2018), in this case The wife attempted to divorce her husband however *'The wife petitioned for divorce under section 1 of the Matrimonial Causes Act 1973 1 on the ground that the marriage had broken down irretrievably in that the husband had behaved in such a way that she could not reasonably be expected to live with him, within the meaning of section 1(2)(b)'* After reviewing her 4 most relied upon examples of her husband's negative reactions, the judge did not find them compelling and believed she was exaggerating aspects of them. Therefore the judge dismissed her petition on the basis that the wife had failed to prove within the meaning of section 1(2)(b) of the 1973 Act that she could be reasonably expected to live with him. Following on from this *"Both the Court of Appeal in 2017, and the Supreme Court in 2018, dismissed Mrs Owens' appeal."* After explaining this case the reason why I believe it is a positive for no fault divorce, is the fact that clearly, this marriage has broken down. However due to the old system despite the husband defending the marriage, the future of that marriage serves no one if the wife is truly so unhappy. With no fault divorce however that gives the opportunity to avoid the wife lifting her grievances for a judge to go through and instead would grant a divorce outside of the public eye.

Before we get to the negative aspect of this law I would like to mention the idea that this is just the natural progression of this law. You could say that the reforms made in the DDSA 2020 have been a long time coming as *'It was anticipated that the Family Proceedings Rules 2010 which came into force on 6 April 2011 would bring about long-overdue changes ... The Family Proceedings Rules 1991 only permitted the special procedure to apply to divorce and judicial separation and not nullity'* (Lexisplus, 2023) this is in reference to how the proceedings of divorce occur. The FPR 2010 was the introduction of online submission and dealings with divorce. This has now been surpassed by the DDSA 2020 which has made the process more straightforward. Moving on 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.' (House of Commons Library, 2019). Moving on it would appear that prior to its introduction the concept of no-fault divorce was popular. *Some senior members of the judiciary, family mediation Task Force Resolution and times newspaper have called for its introduction.* On 9th April 2019 the government published its response to a consultation and confirmed reformation would be introduced removing the legal requirement of spousal allegations for divorce or to have lived separately for five years. In October 2017 a report from the Nuffield Foundation which is a funded research project led by a professor from Exeter university recommended *removing fault entirely from divorce law and replacing it with a notification system'*. The overall point of this section is the concept that good or bad in regards to divorce this change to the legal system appears to be inevitable. This is focused on the streamlined nature, reliance on mediation promoting a less confrontational approach to proceedings. Whilst also aiming to stay out of the courts as much as possible.

Following on from this is the negative aspects no fault divorce has had on divorce cases. The first aspect is the removal of transparency and clarity that some judges have found with the changes. This can be seen from *'Mostyn J said that it should be the norm for divorcing couples in financial remedy proceedings to not be anonymised, and that it would be an exception to be so'* and also *'but were also aware of the balance that needed to be struck and the potential for conflict whereby if parties in family proceedings were named, they may inevitably be driven into more closed arenas such as arbitrations and private financial dispute resolution hearings, which would represent a blow against open justice anyway'* (Grande, N 2023). The issue Mostyn J has is that the anonymity within financial proceedings goes against open justice.

Another issue with making divorce easier is the issue that it could inadvertently cause more to occur. The barriers surrounding divorce in and of themselves are a deterrent. Even if the new system is less adversarial the negative factors that underlie divorce can still have an effect on friends/ family and children *“arguments of those who oppose the introduction of no-fault divorce include that the institution of marriage should be supported; the risk of the divorce rate increasing if it is perceived to be easier to get a divorce; and the negative impact of family breakdown.”* (House of Commons Library, 2019). What this is getting at is the fact that even if divorcing becomes easier there's still an effect on family dynamics especially if a child is involved. Just because the parents are able to easily split up doesn't mean the child won't still feel the absence of a parental figure.

The final negative aspect is focused upon the European Human rights act. When reading them the right to marriage is laid out however, *‘The Court has confirmed, on a number of occasions, that the ordinary meaning of the words “right to marry” covered only the formation of marital relationships but not their dissolution, the right to divorce has also not been included in Protocol No. 7 to the Convention, which was opened for signature in 1984’* (Guide on Article 12 of the European Convention on Human Rights Right to marry, 2022). Through this it could be argued that the dissolution of marriage and civil partnerships through nullity and divorce, should not be made easier. Instead it would be more prudent to streamline marriage instead or focus on more proactive ways to prolong marriage or giving help to struggling relationships.

Overall I believe the streamline nature that the DDSA 2020 has provided is a positive addition to divorce cases and the way it promotes mediation and avoidance of the court proves a benefit to divorce cases. The fear of ease of access to divorces promoting fear of more is understandable however the benefits in my opinion outweigh the negatives. In conclusion the divorce, dissolution and separation act 2020 has had and will continue to have a positive effect on law cases in the UK.

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