

EXPLANATORY MEMORANDUM TO
THE DIVORCE, DISSOLUTION AND SEPARATION ACT 2020
(CONSEQUENTIAL AMENDMENTS) REGULATIONS 2022

2022 No. 237

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument, the Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022, is to make necessary changes to existing primary and secondary legislation consequential upon the Divorce, Dissolution and Separation Act 2020 (“the 2020 Act”). These changes are primarily to reflect new terminology associated with divorce, dissolution and separation proceedings in the 2020 Act, as well as to add a jurisdictional ground for the newly created joint applications. The intention behind the reforms in the 2020 Act are to reduce conflict in divorce, dissolution and separation proceedings thus reducing the impact on families. This instrument will reflect these changes in existing legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The instrument has the same extent as the instruments amended.

5. European Convention on Human Rights

- 5.1 The Minister Tom Pursglove MP has made the following statement regarding Human Rights:

“In my view the provisions of the Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is being made to make the consequential legislative changes to existing pieces of legislation which have been affected by the passing of the 2020 Act. The 2020 Act revised the legal process in England and Wales for married couples and civil partners to obtain a divorce, dissolution or separation. It amended certain provisions in the Matrimonial Causes Act 1973 and the Civil Partnerships Act 2004, which are the main statutes governing these proceedings.

7. Policy background

What is being done and why?

- 7.1 These Regulations make amendments to primary and secondary legislation as a result of reform brought about by the 2020 Act.
- 7.2 Paragraphs 1, 2 and 8 of the Schedule amend the jurisdiction grounds for divorce and dissolution consequential on the introduction of joint applications for divorce, dissolution, judicial separation and separation orders under the 2020 Act.
- 7.3 The remaining amendments in the Schedule are consequential on the amendments made to the Matrimonial Causes Act 1973 (c. 18) by the 2020 Act updating the terminology in relation to divorce applications.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 Divorce applications have historically been, and can still be, disputed on jurisdictional grounds. There are existing jurisdictional grounds for sole applications, but there are currently no specific jurisdictional grounds associated with joint applications as joint applications have been brought into legislation only through the 2020 Act.
- 7.5 Additionally, existing terminology in legislation refers to petitions for divorce. Following the 2020 Act there is no longer a petition, nor ‘petitioner’ only applicants, so this terminology is now obsolete.
- 7.6 Antiquated language too, such as ‘decree nisi’ and ‘decree absolute’, is present in existing legislation, but has been updated by the 2020 Act.

Why is it being changed?

- 7.7 As set out below, the Government held a 12-week consultation in September 2018, the Government response to which, published in April 2019, concluded that the existing adversarial approach to divorce was detrimental to families and children. The Government’s policy intention behind the reformed law, which in turn has resulted in the consequential amendments contained in this instrument, is that the decision to divorce should be a considered one, and that separating couples should not be put through legal requirements which do not serve their or the state’s interests and which can lead to ongoing conflict and poorer outcomes for children.
- 7.8 The amendments contained in this instrument will ensure that these changes are consistent across existing legislation and full effect can be given to the 2020 Act.

What will it now do?

- 7.9 The 2020 Act has introduced a new option of a joint application for cases where the decision to divorce is a mutual one, in addition to retaining the current ability of one party to initiate the legal process of divorce. The amendments made by this instrument will add to existing jurisdiction grounds, a specific ground for a joint application namely the habitual residence of either party. This is consequential on the 2020 Act introducing joint applications and replicates the joint application ground in Council Regulation No. 2201/2003 (Brussels IIa). Before the end of the implementation period, divorce jurisdiction in England and Wales was based upon Brussels IIa. Brussels IIa was revoked by SI 2019/519 and the other six jurisdiction grounds contained in Article 3 of Brussels IIa were replicated in English and Welsh domestic

law via amendment to the Domicile and Matrimonial Proceedings Act 1973. The joint application jurisdiction ground was not replicated at that time only because joint applications were not available before the 2020 Act. Now the 2020 Act is introducing joint applications, this change is being made.

The 2020 Act has also updated the terminology used, for example replacing terms such as “decree nisi”, “decree absolute” and “petitioner” with “conditional order”, “final order” and “applicant”. This instrument will ensure those language changes are reflected across existing legislation.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 This legislation is consequential on the 2020 Act, as such, a consultation is not being undertaken on this instrument. The reform contained in the Act on which this is consequential was widely consulted on by the Government in a 12-week public consultation in September 2018. The Government responded to the consultation in April 2019. The Government’s consultation paper, response and associated documents can be found at consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/. These set out the Government’s assessment of the evidence leading to the conclusion that the existing requirement to make allegations about conduct can introduce or worsen ongoing conflict and be harmful to children who may be involved.

11. Guidance

11.1 Guidance is not required on this instrument. Comprehensive guidance is being developed on processes and procedures which will be put in place by the 2020 Act to which this instrument relates. Guidance is being developed for the public, legal professionals and caseworkers. Guidance for the public will be available on Gov.uk when the 2020 Act is implemented. Guidance on how to use the new application forms associated with these changes will be embedded in the forms themselves.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 There is no direct approach to monitoring of this legislation planned. Courts will continue to monitor the number of divorces, dissolutions and separations being granted in line with existing data collection.
- 14.2 The instrument does not include a statutory review clause as it is not subject to this duty.

15. Contact

- 15.1 Rachel Ferrari at the Ministry of Justice. Telephone: 07562431714 or email: rachel.ferrari1@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Neal Barcoe, Deputy Director for Family Justice Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Tom Pursglove MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.