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No fault divorces to be introduced in Guernsey

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No Fault Divorce – Matrimonial Causes (Bailiwick of Guernsey) Law, 2022

The States of Guernsey has published legislation introducing what is commonly known as "no fault divorce", as well as other practical and procedural changes to the divorce process.

Under the current law, which dates back to 1939 but which has been amended over the years, there is one ground for divorce: that the marriage has irretrievably broken down. This is demonstrated in one of five ways:

1. That Respondent has committed adultery, and the Petitioner finds it intolerable to live with them;
2. That the Respondent has behaved in such a way that the Petitioner cannot be expected to live with them (commonly referred to as "unreasonable behaviour");
3. That the Respondent has deserted the Petitioner for at least two years;
4. That the parties have lived apart for at least two years, and the Respondent consents to the divorce; and
5. That the parties have lived apart for five years or more (whether or not the Respondent consents).

At present, the only way to obtain a divorce without a period of separation is if the other person has committed adultery or unreasonable behaviour. This can sometimes lead to difficulties as, if there has been no adultery or unreasonable behaviour, the parties must live apart for at least two years before they can legally be divorced, even if both agree that the marriage is at an end.

The new legislation will bring Guernsey into line with the recent change of law in the UK, and allow for a divorce without a period of separation if either party decides the marriage is over. It will also remove the ability for a person to defend a divorce.

In terms of procedure, there will still be a "cooling off" period of 60 days from the time the divorce petition is made to the granting of a Provisional Order of Divorce. A Final Order of divorce would follow around 32 days later, meaning the process takes around three and a half months.

Crucially, it is hoped that by removing the need to allege unreasonable behaviour or adultery, the process will be less emotionally fraught for parties during what will inevitably already be a difficult period.

It is anticipated that the new law will come into effect in 2023. The Court will retain the power to order the division of finances upon divorce, so parties should seek legal advice prior to beginning the process.

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