



Ministry
of Justice

Reducing family conflict

Government response to the consultation on reform of the legal requirements for divorce

April 2019

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Government response to the consultation on
reform of the legal requirements for divorce

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

April 2019



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Foreword



Divorce is an unhappy event in the lives of too many couples. When it does occur, it has far-reaching impacts on families and children in particular – the consequences of which can in turn shape their own attitudes to relationships, marriage and civil partnerships into their adult lives. I believe that we should do everything we can to try to rebuild relationships before they become irretrievably broken down. However, where couples have taken the decision to divorce, the law should support them. It should allow them to resolve matters

in a constructive way which enables everyone to rebuild their lives after. What the law should not do is entrench misery – either by forcing couples to remain legally bound against their will, or by compelling them to relive the most difficult parts of their relationship. For this reason, I believe that the current law urgently needs reform to reflect life as it is lived, and to ensure better outcomes for those involved. This includes, where possible, helping to ensure that relationships can be saved before they are legally ended.

In thinking through how to achieve this, I have listened to a wide range of views through the consultation. I have reflected on what people have said and also on the overwhelming case for change. It is half a century since the Divorce Reform Act 1969 shaped the law we now have. The Government intends to remove from divorce law those elements that stand in the way of resolving difficulties when, regrettably, the relationship cannot work and requires an orderly, legal ending. We want to bring forward change that will reduce family conflict and increase cooperation, not least when children's futures are at stake.

The reform the Government proposes does not make divorce easier. Divorce will always be one of the hardest decisions anyone has to take. Divorce brings far-reaching effects on children, on the wider family and on other relationships. No law can ever prevent or remove conflict at a time of great personal and family upheaval. What the law can do is to minimise the potential for couples to entrench positions against each other, and to allow proper consideration of the decision. Sometimes, a marriage will still be repairable at the point at which one spouse seeks the divorce. The current law offers little opportunity for repair. The initial decree of divorce can come only a matter of weeks later. Couples may also be deterred from trying to make things work because of the risk that if they live together for too long they will have to wait even longer in the event that they need to divorce, on the basis of having lived apart for the required period of time.

When a marriage or civil partnership has irretrievably broken down, continuing in it can be damaging for the couple and for any children they have. It is vital that the law recognises this and allows people to move on in as constructive a way as possible. People may otherwise walk away from their obligations and responsibilities. The ability to have a positive relationship after separation is particularly crucial for parents, as children's outcomes are improved by cooperative parenting. Supporting better outcomes for children therefore requires removing those elements within the legal process for divorce which can fuel long-lasting conflict between parents.

The Government firmly believes in the importance of the family. Even in the extremely trying circumstances of breakup, we want the law to offer families what stability it can. That is why we are proposing to remove the conflict flashpoints from the law and to introduce a minimum timeframe for the divorce process, so that arrangements for the future can be made in an orderly and considered way. Under the process we have now, a marriage can be brought to a legal end in as little as three months after the first papers go to the court. Obtaining the divorce may be marked by resentment over allegations. It may be marked by the experience of being required to live apart for an extended period. Neither of these is a constructive basis for couples to sort out future arrangements. If a marriage has any chance of survival, it deeply concerns me that the current law skews the odds by incentivising the use of an adversarial process.

The court cannot save marriages or adjudicate on where or why things went wrong. The law must reflect responsibilities properly. That is why we remain concerned by the ability to contest a divorce. A divorce can be refused only for a legal reason and never simply because one spouse does not wish the divorce to proceed. The ability to contest a divorce is rarely taken up, but it can increase conflict and, at worst, can be used to continue one party's coercive and controlling behaviour during the marriage. We also heard during the consultation that many people take the decree nisi from the court as a ruling that the marriage is over. It is, in reality, a confirmation from the court that all the legal requirements have been satisfied and that the relationship can be brought to a legal end if that is what one or both parties wish. It is not too late at this stage to have a change of heart. We have therefore looked again at our initial proposals and agree that the greater part of the minimum timeframe should take place before the court grants the initial decree of divorce. People seeking divorce will have had a better chance to reflect before they then apply again to the court to confirm their intention to proceed.

The law cannot prevent irretrievable breakdown. The Government's proposals deal with this reality by creating the conditions for couples to reconcile if they can – and to move on as constructively as possible in the event that this is not possible.

A handwritten signature in black ink, appearing to read 'David Gauke', written in a cursive style.

Rt Hon. David Gauke MP

Lord Chancellor and Secretary of State for Justice

Executive summary

The consultation paper, *Reducing Family Conflict: Reform of the Legal Requirements for Divorce*, was published on 15 September 2018. It invited comments on the Government's proposals to reduce family conflict in the way marriages and civil partnerships are brought to a legal end. The consultation ran for twelve weeks and closed on 10 December 2018.¹

Approach to reform

The Government's key policy objectives are to ensure that the decision to divorce is a considered one, with sufficient opportunity for reconciliation, and to reduce family conflict where divorce is inevitable. Our reform principles are to make divorce law consistent with the non-confrontational approach taken in wider family law and to recognise that a legal process that does not introduce or aggravate conflict will better support adults to take responsibility for their own futures and, most importantly, for their children's futures.

The current divorce law works against these principles. It incentivises an adversarial process which can undermine efforts to reconcile and which can fuel conflict when making arrangements for dividing assets or for the future care of any children.

Consultation responses

We received over 3,000 responses from a range of individuals and groups. We also heard from interested parties and from experts in the field at consultation events. We appreciate that the issues are at once publicly significant and intensely personal, and we are grateful to those who generously set out their experiences, views and suggestions. We have analysed all responses with the aim of identifying key issues to be considered for how best to reform the law and help people look to the future. These views have informed the Government's response. A summary of the responses received is at **Appendix A**.

We heard support for removing blame from the legal process of divorce, as well as for providing a process that allows couples to have an adequate period for reflection and reconciliation before taking the final legal steps to end the relationship. Marriage is important to society: people understandably had questions about how the proposed revision of the law will work. We have carefully considered and responded to such questions within this response.

The Government's response and reform proposals

The Government believes in the importance of strong family relationships. Sadly, relationships do come to an end. When that happens, hostility and ongoing conflict can only be detrimental to the welfare of individual family members, particularly children. We are clear that when parents have taken the difficult decision to divorce, children's best interests are served by minimising conflict during and after the legal process, to support cooperative parenting.

¹ The consultation paper and its associated impact assessment and equality statement are available at <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/>.

We believe that the reformed law should make sure of two matters: that the decision to divorce continues to be a considered one, giving spouses the opportunity to change course, and that they are not 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. We want a legal process which promotes amicable agreement, which is fair, transparent and easier to navigate, and which reduces opportunities for misuse by abusers who are seeking to perpetrate further abuse.

We intend to bring forward proposals to reform the law to meet these objectives. These proposals include the following:

Retaining the ground for divorce and dissolution and removing the requirement to evidence conduct or separation facts

We will retain the irretrievable breakdown of a marriage or civil partnership as the sole ground on which a divorce or dissolution may be granted. We propose that the legal process for divorce or dissolution should start with a statement of irretrievable breakdown, which will be provided to the court, and that the process for judicial separation should begin with a statement that this is sought. We are clear that the decision to grant a divorce remains a legal decision for the court to make, as divorce creates a fundamental change of legal status that alters people's rights and responsibilities. Where legal safeguards are met, we believe that this statement should be sufficient to satisfy the legal threshold for obtaining a divorce or dissolution.

This statement will replace the current requirement to evidence one of five facts, including conduct-based and separation-based facts. The consultation revealed further evidence that conduct-based facts are at best unnecessary and at worst harmful in terms of driving conflict. It also showed that separation-based facts are not fair for all couples, some of whom cannot afford to live in separate households, without agreeing finances upon divorce. The existing legal requirements around separation can work against the interests of attempting reconciliation.

Providing for the option of a joint application

We intend to make provision for joint applications, alongside retaining the option for one party only to initiate the process. We heard that this would reflect the practical reality that for many couples the decision to divorce or seek a judicial separation is a joint one, and that it could be conducive to a more conciliatory approach to agreeing arrangements for the future.

Removing the opportunity to contest

We believe that the ability to contest a divorce does not serve the interests of either party and that it should be removed. We recognise deeply held concerns that this may seem unfair to a party who does not wish to become divorced. Under the current law, however, a divorce can be refused only for a legal reason and never simply because the respondent wishes to remain in the marriage. This is an important distinction. The current ability to contest is not an effective preventer of divorce or an aid to reconciliation. Instead, it can introduce or aggravate ongoing conflict and can be exploited by domestic abuse perpetrators. We received strong support from groups supporting domestic abuse victims for removing this legal avenue.

In all cases, an application could still be challenged on the bases of jurisdiction, the legal validity of the marriage, fraud or coercion and procedural compliance. We will continue to explore whether existing protections for respondents to a divorce petition or application for a civil partnership dissolution should be strengthened.

Introducing a minimum timeframe

We will introduce a minimum timeframe of six months, measured from petition stage to decree absolute. This will be made up of a new minimum period of twenty weeks (between petition and decree nisi stages) and the existing minimum period of six weeks (from decree nisi to decree absolute). We heard that couples feel divorced when the court grants the decree nisi. Beginning the timeframe before this point is therefore key to allowing for both meaningful reflection and an opportunity to turn back. We will explore safeguards to protect the interests of respondents where there are difficulties with the service of documents to notify the respondent of the petition. As now, a decree nisi will not be granted without satisfactory evidence of service.

We heard a range of views on what the minimum timeframe should be and we recognise that there is a wide variety of circumstances in which couples initiate the legal process of divorce. We believe that an overall minimum period of six months provides a single framework that provides everyone with sufficient time to reflect and, if divorce is inevitable, to agree important arrangements for the future. This timeframe is also broadly in line with other similar jurisdictions. We continue to believe that, as a general rule, clarity and predictability for the legal process would benefit from a single minimum timeframe, without exceptions. However, we consider the court's power to fix a shorter period, where exceptional grounds to expedite the process exist, should be retained.

Retaining the two-stage decree process

We will retain the two-stage decree process (and, for civil partnerships, the two-stage order process). Within this, there is an important role between the stages for the court to investigate matters or refer them to the Queen's Proctor where any procedural irregularity is alleged or suspected. We propose that, as now, it should be necessary to apply separately for the decree nisi and decree absolute, so that a divorce or dissolution is not automatic. This will ensure that the parties retain control and can pull back from the brink at any time.

Retaining the bar on divorce and dissolution applications in the first year

We heard arguments in favour of retaining and removing this provision. On balance, we believe that the bar serves a useful purpose to underline the importance of commitments made at the time of marriage or civil partnership formation. We therefore believe that the bar should be retained without exception.

Modernising language used within the divorce process

We intend to modernise terms used within the divorce process to help make the process easier to navigate. We have heard that various terms – such as “petitioner”, “decree nisi” and “decree absolute” – can cause confusion and concern. We intend to align these with the corresponding terms used in civil partnership dissolutions of “applicant”, “conditional order” and “final order”, which are easier to understand.

Introduction and contact details

This is the Government's post-consultation response following the consultation paper *Reducing Family Conflict: Reform of the Legal Requirements for Divorce*.

It will cover:

- the background to the Government's response
- a summary of the responses to the consultation
- the Government's response and next steps following the consultation.

Further copies of this response and the consultation paper can be obtained by contacting the Reducing Family Conflict team at the address below:

Reducing Family Conflict, Zone 3.23
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: Reducing-Family-Conflict@justice.gov.uk

This response is also available at <https://consult.justice.gov.uk/>

A Welsh language version is available. Alternative format versions of this publication can be requested from Reducing-Family-Conflict@justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process, please contact the Ministry of Justice at the address above.

Background

The consultation paper, *Reducing Family Conflict: Reform of the Legal Requirements for Divorce*, was published on 15 September 2018. It invited comments on the Government's proposals to reduce family conflict caused or worsened by certain legal requirements in the existing processes for divorce and civil partnership dissolution. Our proposals focused on revising these processes so that, when there is no prospect of reconciliation and separate lives are inevitable, the marriage or civil partnership can be brought to a legal end in a dignified and constructive way that will help people look to the future. The principle of conflict reduction applies also to couples who wish to live apart – but remain in their legal relationship – and who accordingly seek a decree of judicial separation (within a marriage) or a separation order (within a civil partnership).

The consultation period ran for twelve weeks, closing on 10 December 2018. We are grateful to all those who took the time to respond to the consultation as well as participate in our consultation events. This paper provides a summary of the feedback received and the Government's response.

Current law and the case for reform

The current law for obtaining a divorce (or dissolution of a civil partnership) requires the person seeking the divorce to establish one or more of five “facts”, as they are called in statute, to demonstrate that the sole ground for divorce, the irretrievable breakdown of the marriage, is met.² Three facts are based on conduct of the other spouse (adultery, behaviour and desertion), and two are based instead on a period of prior separation (two years if both spouses consent to the divorce and five years otherwise, including where both spouses choose to wait for a longer period). Divorce petitions can be initiated by only one spouse (the “petitioner”). The other spouse (the “respondent”) must then file an acknowledgement and say whether they wish to contest (“defend”) the divorce. Only around 2% of respondent spouses indicate their intention to defend the divorce petition. In practice, a mere handful of such cases actually progress to a final contested court hearing.

The Government set out the case for reform within the consultation paper, explaining how the current law incentivises the making of allegations about the other spouse's conduct. The decision to allege conduct can be driven by a desire to establish that the other spouse is responsible for the breakdown of the marriage. It can also be a decision made by either or both spouses in order to avoid the need to wait a minimum of two years for a separation fact to apply. The Government is clear that, in either situation, the use of conduct allegations creates unnecessary antagonism and anxiety at an already trying time for couples and any children. It can undermine any efforts to help them possibly reconcile and save their marriage. Where divorce is inevitable, it can hamper efforts to resolve, in an amicable way, arrangements for dividing assets and for the future care of any children.

² Four facts are available in the dissolution of civil partnerships (adultery is not available). Differences between divorce and civil partnership dissolution, including terminology, are explained in the following chapter, which summarises the fuller explanation of the law given in the consultation paper. References to divorce and marriage in this response paper are to be taken as references to dissolution and civil partnership unless noted otherwise.

The law encourages spouses to dwell on the events of the past, rather than to look to the future.

The Government also noted that there is wide misunderstanding that allegations of “fault” made within divorce proceedings affect other related proceedings, such as the division of finances and assets or future child arrangements. Such issues are decided through entirely separate legal proceedings involving different legal considerations for the court, and they require different and more specific forms of evidence.

We argued that the alternative option for couples to divorce on the basis of a prior period of separation can, in practice, be difficult for couples who cannot afford to live separately without having separated financial and housing arrangements in place, particularly in circumstances where these matters can be resolved only through the making of a financial order by the court.

On the ability to contest a divorce, we said that marriage is a consensual status and that contesting the legal divorce does not, and cannot, revive a marriage which one party to the marriage regards as being at an end. The ability to contest can also be misused as a malicious controlling tactic by a perpetrator of domestic abuse in order to subject a victim to further ordeal, including the prospect of a court hearing, rather than out of any genuine belief that the marriage is not over.

The consultation proposals

Taking all of these issues into consideration, the consultation paper set out the Government’s intention to replace the current requirement to evidence irretrievable breakdown through one or more “facts” with a process requiring a statement that the marriage has broken down irretrievably. Such a process would, we argued, reduce conflict and allow couples to bring a legal end to their marriage through a more dignified legal process.

We sought views on introducing a minimum timeframe for the legal process of divorce, so that the decision to divorce remains a considered one that provides couples with sufficient opportunity to change course or, where divorce is inevitable, to reach agreement on future arrangements.

Specific proposals detailed in the consultation included:

- retaining the existing sole ground for divorce: the irretrievable breakdown of the marriage
- removing the need to show evidence either of the other spouse’s conduct or of a period of prior separation
- removing the opportunity for the other spouse to contest the divorce application
- revising the current process so that one, or potentially both parties, can initiate the divorce by a statement to the court of irretrievable breakdown
- introducing a minimum timeframe for the legal process of divorce (we sought views on how this should be measured and what the period should be)
- retaining the existing two-stage decree process for divorce (interim and final stages of the decree, which the law refers to as decree nisi and decree absolute)
- retaining the bar on divorce within the first year of marriage

Consultation participation

The consultation paper sought views on these proposals from a wide audience. Responses were received from members of the public, family law practitioners, academics and religious organisations with an interest in the issues raised in the consultation. Responses could be provided online, by email or by post.

The Ministry of Justice also held two associated consultation events to gain feedback from relevant parties and facilitate discussion between them. The first consultation roundtable focused on the effects of the reform proposals. It was attended by a range of groups with direct experience of divorce or with an interest in marriage and divorce from a broader societal perspective. These included public, private and voluntary support services for adults, children and families experiencing relationship difficulties and divorce. The second event focused on the legal, technical and practical issues presented by reform and on the evidence from other jurisdictions for what has worked elsewhere. This was made up of a range of representatives from family law practitioners and academics with expertise in matrimonial law.

Impact assessments

The impact assessment and equality statement accompanying the consultation paper have been updated to take account of evidence provided during the consultation period and impacts identified as part of updated policy proposals.

Summary of the existing law

In the consultation paper, we explained in some detail the current legal process for obtaining a divorce or civil partnership dissolution in England and Wales, as well as the related process in legal separation proceedings. It will be helpful to repeat the essential points so that the Government's reform proposals and people's views during the consultation can be properly understood.

The core of the proposed reform is to retain the irretrievable breakdown of the marriage or civil partnership as the sole ground on which the court can grant a divorce (or dissolution) and to remove the requirement to satisfy the court of one or more "facts", as the law calls them. These facts may be based on the conduct of the other spouse (or civil partner) or on a period of separation. The other proposals we put forward and the questions we asked flowed from this core.

The law governing how people may divorce in England and Wales is set out in Part 1 of the Matrimonial Causes Act 1973.³ (This Act re-enacted the provisions of the Divorce Reform Act 1969, which came into effect in 1971, meaning that the current legal process for obtaining a divorce is now nearly fifty years old.) The court can grant a decree of divorce only if the marriage has broken down and cannot be repaired, which the law calls the "ground" of having "broken down irretrievably".⁴ In divorce, granting a decree of divorce is a two-stage process. The "decree nisi" is the first stage and is a provisional decree. The marriage is brought to a legal end only when the court makes this decree "absolute". There must be an interval of at least six weeks between the two stages of the decree.

Judicial separation is different from divorce and is little used. It is a form of separation that, for example, enables certain financial orders to be made without actually ending the marriage. As in divorce, people seeking judicial separation must give evidence of one or more of the five facts. The decree of judicial separation, however, is a single-stage decree and, because the marriage is to continue, the court does not consider whether the marriage has irretrievably broken down. If people who have judicially separated wish to end their marriage, they must apply for a divorce.

The Civil Partnership Act 2004 makes analogous provision in respect of civil partnerships. The processes are similar in nearly all respects but there are marked differences in terminology. Divorce is called dissolution, judicial separation is simply called separation, and decrees are called orders. In dissolution, the order has two stages but these are called conditional and final rather than nisi and absolute.

It is not possible for both parties to apply jointly for divorce, dissolution or (judicial) separation. The law therefore makes a distinction between the party initiating proceedings and the other party. In respect of marriage, it is a petitioner who makes a petition to the court. In respect of civil partnerships, it is an applicant who makes an application. In either relationship, the other party is always called the respondent.

³ Published at <http://www.legislation.gov.uk/ukpga/1973/18/part/I>

⁴ Matrimonial Causes Act 1973, section 1(1).

For convenience, references to divorce and marriage in this paper will include references to dissolution and civil partnerships as appropriate. (This means, for example, that a reference to spouses petitioning for a decree of divorce includes civil partners applying for a dissolution order.)

The sole ground for divorce

There is only one ground for divorce, defined in statute as being “that the marriage has broken down irretrievably”.⁵ Under the current law in England and Wales, the court cannot issue a decree of divorce unless the marriage has broken down irretrievably. The court cannot hold that the marriage has broken down irretrievably unless the petitioner satisfies it of one or more “facts”. These facts are not automatically sufficient to bring a legal end to the marriage but at least one of them must be proved.

The five facts

A spouse seeking a divorce or judicial separation must choose at least one of these five available facts and give evidence of it in their petition to the court. The same applies to civil partners, except that the adultery fact is not available to them. We repeat the facts below (as they relate to divorce and judicial separation) because there is a certain amount of complexity to them, which we can only outline here.⁶

- (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”).⁷

The first two facts and, on some views, the third fact (desertion) are based on the conduct of the respondent, often described as “fault”. The fourth and fifth facts, based on separation, do not necessitate making allegations about the respondent’s conduct. A separation fact may, of course, be combined with a conduct fact. The law also makes supplemental provisions about the facts.⁸ These supplemental provisions are conditions

⁵ Matrimonial Causes Act 1973, section 1(1). Likewise, section 44(1) of the Civil Partnership Act 2004 provides that the sole ground for dissolution of a civil partnership is “that the civil partnership has broken down irretrievably”.

⁶ The consultation paper set the existing law out in more detail. For authoritative analysis, we again suggest *Cretney and Probert’s Family Law*, ed. Rebecca Probert and Maebh Harding (London: Sweet & Maxwell, 2018).

⁷ Matrimonial Causes Act 1973, section 1(2).

⁸ Matrimonial Causes Act 1973, section 2.

that affect the admissibility of evidence of the facts in certain circumstances (for example, how a total period of separation must be calculated).

Adultery can take place only between the respondent and a person of the opposite sex.⁹ Nonetheless, any kind of marital infidelity can be, and is, cited under the behaviour fact. These two facts are not, however, worded in the same way. Under adultery, the act of adultery is not enough to meet the legal requirement, and the petitioner must also find it intolerable to live with the respondent. Under the behaviour fact – sometimes misleadingly abbreviated to “unreasonable behaviour” – the behaviour itself does not have to be unreasonable, but the behaviour must cause it to be unreasonable to expect the petitioner to live with the respondent. The court must accordingly apply a different test to each fact.

Desertion (which is a rarely used fact) differs from separation in that the respondent must have deliberately left without the petitioner’s consent. Two separation facts are available. If the respondent does not agree to the divorce, five years’ separation is required. If the respondent does agree to the divorce, two years’ separation will be sufficient, but five years’ separation can still be used if the parties have lived separately for that period. It is possible for petitioners to rely on the separation facts if they have been living separate lives under the same roof as the respondent, but the conditions are a matter of case law and must be proved to the satisfaction of the court.

When and how proceedings can be initiated

A divorce petition cannot always be made as soon as the marriage has broken down. This is most obvious where petitions rely on one of the separation facts. In practice, this means that using the adultery or behaviour facts, if they can be applied, will almost always give people a route to a divorce at an earlier opportunity, avoiding the need to wait two or five years.

Regardless of the fact used, there is a bar on all divorce petitions in the first year of the marriage.¹⁰ Petitions for judicial separation, however, may be made at any time during the marriage (provided at least one of the facts can be established).

Spouses and civil partners use the same court Form for all these proceedings.¹¹ Applications for divorce may also be made online.¹² Online applications will be extended in due course to civil partnership dissolution.

There is a need for respondents to acknowledge that they have been served with the petition or application, so that the court can be satisfied that they are aware of the proceedings. If the respondent does not acknowledge receiving the application or petition, the applicant or petitioner must take other steps to demonstrate that they have made every effort to make the respondent aware, so that the court can if appropriate proceed without this acknowledgement (for example, in situations where it has proved impossible to locate the respondent).

⁹ Matrimonial Causes Act 1973, section 1(6).

¹⁰ Matrimonial Causes Act 1973, section (3)(1). The bar is actually a year and a day, as a period of one year from the date of the marriage must expire.

¹¹ The petition is made on Form D8, available at <https://www.gov.uk/government/publications/form-d8-application-for-a-divorce-dissolution-or-to-apply-for-a-judicial-separation-order>

¹² The online service is at <https://www.gov.uk/apply-for-divorce>

Respondents may also choose to answer the petition or application to indicate their wish to contest it. This is formally known in the legal process as defending, but we have been referring to it, for clarity, as contesting. Respondents who wish to contest must complete a different court Form, which is formally known as an “answer” to the petition or application.¹³

The court process

When the court receives a divorce petition or dissolution application, it carries out a number of administrative checks, including to make sure of the legal validity of the marriage or civil partnership and that the court has jurisdiction to dissolve it.

Almost all cases are adjudicated at face value and on the basis of the information provided in the petition or application. In only a handful of cases does the respondent contest the proceedings. In even fewer cases does this lead to a hearing at which the court hears evidence from both parties. Otherwise, if the court is satisfied that the decree nisi should be granted or the conditional order made, a judge will do so.

The court has the power to refer matters to the Queen’s Proctor (in practice, to the office of the Treasury Solicitor, the Head of the Government Legal Service) if, for example, a petition or application is suspected to be fraudulent.¹⁴ The court can also appoint a litigation friend if there is a need in relation to either party’s capacity to understand the proceedings.

When a decree or order can be made final

Although time must be allowed for various matters to be dealt with between the filing of a petition or application to the court and the granting of the decree nisi or making of the conditional order— including for acknowledgement of service and for the court to carry out checks – the law does not require a certain interval. It is therefore possible under the current law that the court may grant the decree nisi or make the conditional order in a matter of weeks. The only waiting period the law requires is between the nisi (conditional) and absolute (final) stages of the decree or dissolution order.

Though the Matrimonial Causes Act 1973, which consolidated earlier statute, continued the provision that six months must elapse between the grant of decree nisi and decree absolute,¹⁵ it also continued a power to shorten this period. This power was exercised in 1972 to set the minimum period as six weeks. This is now the period that applies and there is similar provision for civil partnership dissolution.¹⁶ In practice, however, the progression between stages of the decree takes longer for a number of reasons including dealings between parties and legal representatives.

There is also provision for the court to fix a shorter period in any particular case. This power is used relatively rarely but it is used, usually in cases where someone wants to

¹³ The answer is made on Form D8B, available at <https://www.gov.uk/government/publications/form-d8b-answer-to-a-divorcedissolutionjudicial-separation-or-nullity-petitionapplication>

¹⁴ Matrimonial Causes Act 1973, section 8.

¹⁵ Matrimonial Causes Act 1973, section 1(5).

¹⁶ For civil partnership dissolution, section 38 of the Civil Partnership Act 2004 provides that a conditional dissolution order may not be made final for a six-week period. This section also makes provision to amend this period, but not beyond six months.

finalise the divorce before death, or where a person is, for example, due to give birth and wishes to remarry before the child is born.

A petitioner or applicant may apply after the minimum period for the decree nisi (or conditional order) to be made absolute (or final). This is done by giving notice of the application to the court. If after six weeks of the decree nisi being granted the petitioner does not make the application, the respondent must wait three months after the decree nisi before being allowed to do so.¹⁷

When the court receives an application for a decree absolute, the court will make the decree nisi absolute if it is satisfied of a number of matters, for example that no appeal against the making of the decree nisi is pending.

¹⁷ Matrimonial Causes Act 1973, section 9(2).

Approach to reform

In framing its proposals for consultation, the Government was clear that it had looked again at the provisions in Part 2 of the Family Law Act 1996 and had concluded that it would not be feasible to reintroduce them. That remains our view, and our proposals did not seek to mirror those provisions. We instead made proposals to replace the “fact” requirement for demonstrating irretrievable breakdown of a marriage with a revised process which is not open to apparent manipulation and which does not introduce or aggravate conflict. Achieving these important objectives is possible, we believe, without moving to an entirely new legal process, as was the case with the 1996 Act.

It is clear from consultation responses that there is support for removing blame from the legal process of divorce. There is also broad support for a process that allows couples to have an adequate period for reflection and for the possibility of reconciliation before taking the final steps to bring a legal end to their marriage. The Government has thought carefully about how to achieve those objectives.

We believe that there are aspects of the existing legal process that could be retained and modified so that the needs of couples could be better met, and to help ensure both that the institution of marriage is supported and that the decision to divorce is a considered one. Where divorce is inevitable, the legal process should be as painless and amicable as possible. It should also be easier for parties without legal representation to navigate. The legal process should not be adversarial and should reflect the reality that for many couples the decision to divorce is often a shared one. The current law places the onus on one party to initiate the divorce process and is based on an adversarial approach, with parties on opposing sides. Yet it is a legal fiction that the court will investigate who is at fault for the breakup of the marriage. That is not in any way the role of the court. The court only has to be satisfied that a legal threshold for divorce has been met. The facts used to establish this may not reflect the true reason or reasons for divorce. It is clear from responses to the consultation, and from academic research, that there is a wide public misconception about how divorce law works in practice.

The experience of the Family Law Act 1996 is that overly ambitious and complex reform is difficult to put into practice. The provisions in that Act would have introduced a new, compulsory meeting at the start of the divorce process, followed by various minimum periods that had to elapse before the divorce could be granted. Divorce under that law would have taken a minimum of either 12 months (for couples without children) or 18 months (where there were children of the marriage). During those periods, couples would have been unable to finalise arrangements for sharing property and other assets. The Government has reviewed the evidence, and it seems clear that in many cases the decision to initiate divorce proceedings is a considered one. The law should not therefore seek to prolong the legal relationship for longer than is necessary to ensure that appropriate arrangements are made for the future. But the law can – and should – have a role in providing couples with an opportunity to reflect on that momentous decision and to pull back from the brink if they decide that reconciliation is achievable. There is an inherent tension in a legal process that seeks to meet these two aims, and inevitably some compromise is needed.

In the context of our proposal to make modifications to the existing legal process, some respondents to the consultation asked why the Government did not put forward the option of retaining the conduct-based facts for “unreasonable behaviour” (as it is sometimes, but misleadingly, abbreviated) and adultery, with reduced periods for the separation facts. They cited the law in Scotland, where the conduct-based facts (except for desertion, which was rarely used) have been retained and the separation facts were reduced from two years to one (where both parties agree) and from five years to two (otherwise). These changes were made through the Family Law (Scotland) Act 2006.

The law in Scotland is not directly comparable to the law of England and Wales in key respects. In Scotland, there is a simplified divorce procedure for couples with no children and no financial claim against each other. The use of conduct-based facts in Scotland has also been considerably lower historically than in England and Wales even before the changes made through the Family Law (Scotland) Act 2006 to remove desertion and reduce the periods of separation. The fact most often used in Scotland is separation for two years. The reasons for this and for the much lower use of the one-year separation fact are unclear, but they may relate to the way that financial arrangements are settled.

The use of conduct-based facts in England and Wales, by comparison, remains high: three-fifths of divorce petitions are based on conduct. It is not clear that reducing the periods for the two separation facts, as was done in Scotland, would result in a significant reduction in the use of conduct-based facts. Couples would still have the incentive to use a conduct-based fact as an alternative to waiting for a minimum separation period of one year to elapse before seeking a divorce, which would still involve a further additional period of time from petition for the divorce process to complete. A spouse intent on causing distress to the other spouse could still use a conduct fact to do so. The Government is persuaded by the evidence from Resolution – whose members represent many family solicitors – that more fundamental reform is needed to reduce conflict in divorce. We see no justification for retaining a legal process that incentivises the making of conduct-based allegations which may bear little or no reality to the real reasons for the breakdown of the marriage. These real reasons may not be due to the actions of one party only. The law should encourage both parties to think about the future rather than focus on past events.

The Government will make analogous changes to the legal requirements for judicial separation (in the case of a marriage) and separation (in the case of a civil partnership) where the requirements are mirrored and where it makes sense to do so.

Summary of consultation responses

A total of 3,372 responses to the consultation paper were received from a range of sources, including individuals, groups and representative bodies. These included members of the public (2,916 respondents, 87% of the total), family law practitioners such as members of the judiciary, family lawyers, mediators and social workers (238 respondents, 7%), and academics and organisations with professional interest (65 responses, 2%). A detailed summary of responses is set out at **Appendix A** and a full breakdown of respondents at **Appendix B**, including a list of organisations which responded. Given the qualitative nature of many of the proposals and responses, this includes summaries of substantive arguments made, alongside percentage agreement and disagreement.

Due to the self-selected nature of consultations, those who chose to respond may not represent the views of the public more generally or of the sectors or organisations within which they worked. It was clear from consultation responses that some respondents had direct experience of the legal process of divorce. Others referred to indirect experience through friends or relatives who had divorced. The level of understanding (and misunderstanding) of how the existing law works in practice varied widely.

It was also clear from consultation responses that there were concerns about the implications of the Government's proposals for marriage and the family. Some groups who objected to the Government's proposals encouraged their supporters through online guides to respond to particular questions and make certain points in argument. A surge of late responses in the final two weeks of the consultation appears to have been prompted by this. The strong support earlier in the consultation for replacing the five facts, which was running at 70% of respondents in favour, was overturned at the end of the consultation by the impact of these later responses.

The concerns raised involved opposition based on a Christian view of marriage and divorce. The Government acknowledges and respects these views. Some of the objections – often arising from sincere convictions – were based on a misunderstanding of how the current divorce law operates in practice (although misunderstanding was not limited to these groups). The law on formation of marriage provides for marriage either through a civil ceremony or through a religious ceremony, including marriages solemnized by the Church of England. However, the law on divorce is secular and makes no general distinction between divorces of marriages according to how they were entered into. While we acknowledge views on the religious aspects of marriage vows, these are matters of conscience for the individuals in the marriage and are not matters that concern the legal requirements for divorce. Opposition to reform by Christian groups must be seen alongside the views of respondents more generally, who were broadly supportive of our proposals to reduce conflict.

There was strong support for reform from those organisations with direct experience of the divorce process. These included family law bodies, relationship support groups, and public and voluntary sector bodies and groups, some of whom represent large groups of members (including the Association of District Judges, the Law Society, the Bar Council, Resolution, the Family Mediation Council, Relate, Women's Aid and Cafcass).

Not all respondents answered every question. Some responded directly to the questions, some answered only parts of questions, and others commented more broadly on the overall content of the consultation rather than on our specific proposals. Each response, however, was read in its entirety, counted and categorised. Joint responses or responses on behalf of large membership groups were counted once. The figures reported here do not include those responses which did not address specific consultation questions, but the wider analysis of consultation feedback considered the views expressed.

Consultation responses and content from the roundtable discussions were analysed to identify views on the impact of the reform proposals and options for more detailed proposals within the broad reform we identified in the consultation, and to gauge levels of support by different groups of respondents.

A brief overview of responses to key proposals is set out below. Full summaries of responses to each question are at **Appendix A**.

The legal requirements for divorce

The consultation sought views on the proposal to introduce a notification of irretrievable breakdown of the marriage as the basis of the divorce application. This would retain the sole ground for divorce of irretrievable breakdown of the marriage, but remove the requirement to give evidence for this through use of a “fact”.

There was broad support for retaining the **ground for divorce** of irretrievable breakdown of the marriage, which was seen to provide a clear and logical threshold. Some expressed concerns about whether the definition is subjective without specific supporting evidence. Others suggested that initial notification, followed by affirmation of the wish to proceed with a divorce after a minimum period has elapsed, is sufficient evidence of irretrievable breakdown. Some concerns seem to have arisen from where, for brevity, we had referred to the statement of irretrievable breakdown to the court as a “notification” rather than a petition or application, as the term “notification” could be misunderstood to imply that this would not remain a formal, court process.

Many respondents noted that **conduct-based facts** cause pain and conflict through assigning “blame”, which in many cases may in reality lie on both sides. Relate, the pre-eminent relationship counselling organisation, argued that removing the facts “will have huge benefits to the wellbeing of individuals, children and families”. Cafcass, an organisation that works to protect the interests of children who are the subject of proceedings in the family court, noted that the current requirements can increase conflict between parents, with negative effects on their child’s psychological development and emotional wellbeing. Cafcass said that this proposal would “help shift the focus away from blame and on to arrangements for children and financial matters”.

Legal professionals said the current system was discredited, with irrelevant or invented facts used to game the system and meet the legal threshold. Some noted that those without legal advice may be disadvantaged by this practice, as they are often not aware that facts relied on are only relevant to whether the divorce should be granted: they do not usually have a bearing on any related proceedings for dividing financial assets or for child arrangements. Those opposed to removing the facts felt that doing so would enable divorce without any responsibility being attributed for why the marriage came to an end, and that it would damage the institution of marriage and lead to an increase in the divorce rate. As we explain in the impact assessment, we do not expect the divorce rate to

increase in the long term, but there may be a short-term transitional increase in the volume of divorces.

Some thought that ending the availability of conduct-based facts would remove the right of “innocent” parties to name the “guilty” party. The role of the court, however, is not to adjudicate on who was at fault for the breakdown of the marriage, only to satisfy itself that the legal threshold of irretrievable breakdown is established. Groups representing victims of domestic abuse also said there is no benefit to stating the specific reasons for seeking a divorce and that it can, in fact, often place victims at further risk, through raised tensions and retaliation for allegations about conduct which have been made in order to secure a divorce.

Some agreed with removing conduct-based facts, but felt there were good reasons to retain **separation-based facts**, to ensure sufficient consideration of whether to seek a divorce before starting the legal process. Others argued that these facts discriminate against couples who cannot afford to run two households without obtaining a court order to divide assets.

Providing options for sole and joint divorce proceedings and removing the opportunity to contest the divorce

The consultation sought views on whether provision should be made for joint notice to be given by both parties to the marriage, and on whether to remove the opportunity to contest the divorce, including on any exceptional circumstances where this should remain an option.

There was strong support for **introducing joint applications**, as an important symbol of a mutual decision to divorce, and to encourage constructive cooperation from the beginning of the divorce process. For families who make child arrangements in and out of court, Cafcass has suggested that joint applications will provide a stronger foundation for cooperation in making arrangements for children. Some suggested that parties should be able to join an application that began as a sole application, or change their mind and leave a joint application.

There was support for **removing the ability to contest** within the legal sector and groups representing domestic abuse victims, but there were concerns raised by some members of the public and Christian representative groups. Those in support of removal noted that a marriage requires two people to be committed to it, and that use of the opportunity to contest is often not about saving a marriage but about contesting the alleged facts. The opportunity to contest could also be misused as a malicious way of creating frustration or delay, or as a bargaining chip. Those opposed to removal were against what they felt was “unilateral” divorce, which they suggested risked the abandonment of vulnerable spouses. Others argued that fairness should allow each party to have their say and either party to have an opportunity to seek reconciliation or have it recorded that the divorce was not their choice.

The **exceptional circumstances in which a respondent should be able to contest the divorce** that were suggested mainly related to options that did not contest the divorce itself, but included basic matters to be raised in any court application, such as litigation capacity, a coerced or false application, or jurisdiction.

A minimum timeframe for the divorce process

The consultation sought views on the timeframe for the divorce process, including on:

- whether to retain the bar on divorce within the first year of marriage
- whether to retain the two-stage decree process
- what minimum period would be most appropriate to reduce conflict during the divorce process, how that should be measured, and whether it should be reduced or extended in any circumstances.

There was broad consensus for retaining the **bar on divorce** within the first year of marriage to ensure that couples enter marriage as a serious commitment. There was also support for retaining the **two-stage decree process** to allow time for reflection and making arrangements.

There was a range of views on the **minimum time period**, although the consensus was that this should be measured to include time between petition and decree nisi (rather than only between decree nisi and decree absolute), as couples consider themselves divorced when the decree nisi is granted. Relate argued that this could support opportunities for reconciliation by removing any sense that divorce was a “foregone conclusion”. Many stakeholder groups commented that six months overall was sufficient to allow consideration and arrangements, but that longer periods could cause hardship and conflict. In particular, domestic abuse support groups suggested as short a time as practicable. Those opposed to reforms proposed a minimum period of one or two years, depending on whether the application was joint or sole, or on whether the couple had children. Some specific circumstances to expedite or delay the final divorce were suggested, although others noted that the court should retain discretion in this area.

Other related considerations

The consultation sought views on:

- whether the minimum period on nullity cases should also reflect reformed minimum periods in divorce and dissolution cases
- whether specific related provisions should be retained
- whether there were further considerations relating to the impact of the changes.

Many respondents felt they were not able to respond to the question on **nullity**. Experts in nullity were of the view that these timeframes should not be extended, given their separate legal considerations. Nullity cases include those where a new minimum period would be inappropriate, such as in cases of forced marriage.

There was no consensus on whether **specific related provisions** should be retained. Some in the legal sector commented that the requirement to certify that they have discussed the possibility of reconciliation is ineffective in practice, while other respondents felt that this was a useful opportunity to prompt consideration of reconciliation and should be extended to those without legal representation.

Positive **potential impacts** noted included improved wellbeing for divorcing couples who want to move forward without assigning blame, which for parents would improve their

ability to focus on their children's needs; simplification of the system to make it easier to navigate; and benefits for victims of domestic abuse, who were considered by some to be disproportionately disadvantaged by the current system. Potential negative impacts suggested included concerns in relation to how marriage is seen by society, and to how it might lead to increased divorce rates and the abandonment of vulnerable spouses and children. We have addressed concerns and outlined the wider evidence base in our impact assessment, which is being published alongside this consultation response.

Other views included that while this change may be necessary to reduce family conflict, it may not be sufficient. Some argued that wider changes within the divorce and separation space, including funding for support services, would be needed to bring a further reduction in conflict for children. Earlier help for married couples, before they reach the point of seeking a divorce, was also suggested, as well as marriage preparation help. Change to financial provision on divorce has also been suggested by those who see financial disputes as a source of conflict between divorcing couples. Use of "nudging" online to encourage making child arrangements, alongside improved signposting for out-of-court support options, was also suggested.

The Government's response

The Government believes in the importance of strong family relationships and believes that hostility and ongoing conflict can only be detrimental to the welfare of individual family members, particularly children. We fully recognise that people have an interest in the law on family relationships and that many couples have made a consenting commitment through marrying or forming a civil partnership. Some of them will see no prospect of their legal relationship ever coming to an end, and others will be going through divorce or will have been divorced. That is why we held a full public consultation. We were keen to hear the experiences and understand the views of a wide range of people.

The Government is therefore grateful to everyone who responded to the consultation, particularly to those who generously set out detailed points for us to consider. It has not been possible to acknowledge all those individuals and groups who provided detailed responses.

We appreciate that issues in family law are at once publicly significant and intensely personal. We have therefore been mindful of giving very careful consideration to all the responses, and at **Appendix A** we summarise in more detail what was put to us in response to our proposals. In this section, we refer to some of the points that we have weighed up in further shaping those proposals.

The legal requirements for divorce

Retention of the sole ground for divorce (question 1)

The Government's consultation paper proposed to retain the irretrievable breakdown of the marriage or civil partnership as the sole ground for divorce or civil partnership dissolution.¹⁸ Most people who responded to the consultation agreed.

This sole ground has been in the statute law of England and Wales since the Divorce Reform Act 1969, and Parliament endorsed its continuation during passage of the Family Law Act 1996. The ground had been considered at length prior to both these Acts, by the Government, the Law Commission and others. It has become the requirement of many jurisdictions, regardless of any other evidential criteria on which they allow the granting of a divorce. The Government shares the widely-held belief that a marriage should in no way be able to be ended lightly. **The Government therefore continues to believe that it is right to retain irretrievable breakdown of the marriage as the sole ground on which a divorce may be granted.** Retaining the centrality of irretrievable breakdown supports the Government's belief that divorce should continue to be unavailable for frivolous reasons or because of temporary difficulties or challenges faced by a couple in making their marriage or civil partnership work.

As the Government set out in its consultation paper, allegations made about spousal conduct are not necessarily proof that they are the cause of irretrievable marital breakdown. The connection between the fact used in the divorce petition and the

¹⁸ Matrimonial Causes Act 1973, section 1(1); Civil Partnership Act 2004, section 44(1).

breakdown may be tenuous. It is also a distraction both from attempts to reconcile and from cooperation in agreeing future arrangements.

Replacement of the five facts with a statement of irretrievable marital breakdown (question 2)

We heard views from those involved with divorcing couples that the use of one or more supporting facts was at best unnecessary and at worst harmful in terms of driving conflict. The Family Law Bar Association noted that use of conduct-based facts will “polarise couples, heighten acrimony and unhappiness, and this will then have a knock-on effect on any children of the marriage”. Other legal advice groups noted the confusion caused for their clients, as “fault” is very rarely relevant in ancillary proceedings. Relate, the pre-eminent relationship counselling organisation, argued that removing the facts “will have huge benefits to the wellbeing of individuals, children and families”. Cafcass, an organisation that works to protect the interests of children who are the subject of proceedings in the family court, noted that the current requirements can increase conflict between parents, with negative effects on their children’s psychological development and emotional wellbeing. Cafcass said that our proposal would “help shift the focus away from blame and on to arrangements for children and financial matters”.

We appreciate that some respondents believed that parties who were “wronged”, as they saw it, should have an opportunity to set this out by using a conduct-based fact, but we also heard arguments from groups representing victims of domestic abuse that – on balance, given the limited legal effect of this and its risk of heightening conflict – this is unnecessary as part of the process of obtaining a divorce.

We also heard arguments from groups who supported removal of potentially harmful conduct-based facts but who opposed removal of separation-based facts, on the basis that these ensure that an application for divorce is not rushed into without due consideration. While we agree with the need for proper consideration before a divorce is finalised, we do not think that the separation requirement is fair for couples who cannot afford, for practical and financial reasons, to separate without agreeing finances upon divorce. This was raised as a concern within consultation responses, and it echoes previous findings by the Law Commission, which also found that a strict test of separation worked against the interests of attempting reconciliation.¹⁹ It also ignores the reality that, for many couples, the decision to seek a divorce is a considered one that has taken some time to reach by the point at which the petition is filed. The alternative option available to these couples to live “separately” within the same house requires difficult and artificial living conditions. This has been found previously by Government to be “confusing and harmful to children”.²⁰ We believe that the introduction of a minimum timeframe for the divorce process will provide a fair process for all divorcing couples, while ensuring that the decision to divorce remains considered.

¹⁹ Law Commission, *The Ground for Divorce*, Law Com No.192 (London: HMSO, 1990), para.2.12: “It is unjust and discriminatory of the law to provide for a civilised ‘no-fault’ ground for divorce which, in practice, is denied to a large section of the population. A young mother with children living in a council house is obliged to rely on fault whether or not she wants to do so and irrespective of the damage it may do.”

²⁰ Lord Chancellor’s Department, *Looking to the Future: Mediation and the Ground for Divorce*, Command Paper Cm 2799 (London: HMSO, 1995), p.11.

We noted in the consultation paper that it is only in the most exceptional cases that allegations about the respondent's conduct or claims about having lived separately are put under the scrutiny of cross-examination at a court hearing. Family law practitioners who have direct experience of supporting parties through the legal process have widely acknowledged this and, in the consultation, provided useful detail about the reality of how the legal process works in practice.

We propose that the legal process for ending a marriage or civil partnership should start with a statement that the marriage or civil partnership has irretrievably broken down. In the consultation paper we in places referred this as a "notification" process. A number of responses to the consultation questioned what role the court would have in a legal process of divorce without supporting facts to consider. We are clear that the decision to grant a divorce remains a legal decision for the court to make. A divorce is a fundamental change of legal status that will alter people's rights and responsibilities. The court must be satisfied on a number of areas, including that it has the jurisdiction to grant a divorce, that there is a legal marriage for it to dissolve, and that the statutory bar on divorce within the first year of marriage does not apply. These are important legal safeguards. **Where these legal safeguards are met, we propose that a statement to the court from one party to a marriage that the marriage has irretrievably broken down should be sufficient on its own to satisfy the legal threshold for obtaining a divorce.**

To satisfy the legal threshold for obtaining a judicial separation (which does not require the relationship to have irretrievably broken down), we propose that the fact requirement is replaced with a statement to the court from one party to the marriage that a judicial separation is sought.

Providing options for sole and joint divorce proceedings

Providing for the option of joint applications (question 3)

There was considerable support in consultation responses for a revised legal process that enables a divorce to be initiated jointly by both parties to the marriage, reflecting the reality for many couples that the decision to divorce is one that is made jointly. Such a process would be more equitable and could be conducive to a more conciliatory approach to agreeing arrangements for the future around finances and any children of the marriage.

Some respondents argued that it should only be possible to obtain a divorce where both parties agree and make a joint application, arguing that divorce should never be a unilateral decision. The Government has considered this issue carefully. We are clear that it would not be right to deny a party the right to obtain a divorce if their spouse does not agree. A requirement that a divorce application should always be made jointly would not prevent the breakdown of a marriage and would not prevent one party from ending the relationship in all practical senses. It would, however, mean that party remaining in a legal relationship against their wishes, with no ability to seek orders as to the division of assets and no option for remarriage in the future. For these reasons we have rejected this approach.

The Government does, however, see merit in making provision for joint applications for divorce should a couple wish to do so. The ability for one party only to initiate the process would remain. The Government therefore intends to introduce provision for joint applications. In principle, our broad approach is to enable a joint application to be made at the outset of the proceedings. The process should also provide for a sole application to become a joint application where the other party to the

proceedings gives notice to this effect to the court. In this way, the law will allow a more amicable approach to the legal ending of the marriage. Some respondents suggested that provision for joint applications could help change popular views that divorce must necessarily be confrontational.

A related question arises as to whether the law should allow a joint application to become a sole application if one party subsequently withdraws their consent. A sole applicant may withdraw their divorce petition at any time before the decree nisi is granted. It would seem appropriate to allow a party to a joint application to do the same, and to provide the ability for a party to withdraw from a joint application. The application would then proceed as if it had been a sole application from the beginning, with acknowledgement of service.

Providing for a joint application means that there would be joint applicants to the proceedings rather than an applicant and respondent. The procedure and divorce process for joint divorce applications will require careful thought to address, for example, procedural issues around ensuring that both applicants are aware of all stages of the proceedings.

Updated terminology

A further issue relating to the divorce application is its structure and content and the use of outdated terminology. Although we did not specifically seek views on this in the consultation, we are aware from practitioners and consultation responses that the language used is confusing and can cause unnecessary concern. The terms “petition” and “petitioner” are not well understood by the public. Most other court proceedings begin with the making of an “application” by an “applicant”. We also heard concerns that “decree nisi” and “decree absolute” make the legal process difficult to understand. The corresponding orders in respect of civil partnership dissolution of “conditional order” and “final order” are easier to understand.

The Government has considered the case for removing outdated language in divorce legislation and intends to modernise this language.

Removal of the opportunity to contest and exceptions to this (questions 8 and 9)

In the consultation paper, the Government set out its reasons for proposing to remove, as a general rule, the ability to contest a divorce. The ability to contest has negligible effect in the vast majority of proceedings. Only 2% of respondents indicate their intention to contest the divorce, and in very few of these cases do respondents pursue their intention all the way to a court hearing.²¹ In the majority of all cases that are initially contested, the disagreement is about the allegations the petitioner has made to evidence a particular fact: only in a minority of such cases is contesting a divorce a matter of protesting that the marriage has not irretrievably broken down.²²

²¹ Unpublished data from HMCTS cited in [2017] Owens v Owens EWCA Civ 182, para.98. Available at <https://www.judiciary.uk/judgments/tini-owens-v-hugh-john-owens/>. This paragraph sets out that in the year to January 2017, notice of an intention to defend was given in 2,600 of the 113,996 petitions in England and Wales (about 2.28%), and of these only 760 had an Answer filed (0.67%).

²² Liz Trinder and Mark Sefton, *No Contest: Defended Divorce in England and Wales* (London: Nuffield Foundation, 2018), p.40. In only 12% of sampled defended cases did the respondent disagree that the relationship was over.

The Government also set out its concern that the ability to contest a divorce offered abusive respondents a way to continue exerting coercion and control on their spouse during the legal process.

We were also conscious that some people and groups would on principle oppose removing the ability to contest. This was a proposal where most people responding to the consultation had clear views. How those views divided largely reflected the different conceptions of marriage. For those holding that marriage is a lifelong contract, and preferably not dissoluble at all, the proposal generated concern. For others holding that marriage is a voluntary union that demands consent and mutuality in the relationship and that one party should not be involuntarily tied to the other, the proposal was welcomed.

We acknowledge that it may at first sight seem unfair that a marriage can come to a legal end without both parties agreeing to it. Under the current law, however, the court will grant the decree of divorce if the fact or facts alleged have been made out. What the court has never been able to do is withhold the decree merely because the respondent wished to remain in the marriage. If a divorce could be refused because the respondent felt the marriage vows inviolable, that would leave the petitioner trapped in a marriage in which they were no longer willing to be a part, and to a spouse to whom they had effectively abdicated any moral responsibility.

Some respondents who objected to removing the ability to contest raised concerns about spouses who were vulnerable for one reason or another. Some raised the example of a respondent who was receiving medical care. In this example, we recognise the potentially heightened distress to the respondent. That said, such a respondent could be in a better position on divorce than if the petitioner had simply walked out of the marriage, as divorce allows the court to order financial provision for the future.²³ When it does so, the court has a statutory duty to consider a number of matters including any physical or mental disability and the financial needs, obligations and responsibilities of each party.

The ability of the court to order financial provision for vulnerable respondents also addresses concerns raised by some respondents relating to removing the current provision (which applies to divorces relying on five years' separation) to oppose the grant of a decree of divorce if it would cause grave financial or other hardship to the respondent.²⁴ This usually relates to financial hardship. We believe that the required protection in such cases can be addressed under the court's current flexibility when determining financial provision on divorce, or by delaying the grant of decree absolute, and therefore believe it should not prevent a divorce from taking place.

Some respondents raised the example of a respondent – or a petitioner, for that matter – having diminished capacity to understand the legal process. Under the proposal, as now, the court would have the power to stay proceedings or to appoint a litigation friend.

²³ The court can order financial provision during a marriage where one party has neglected to maintain the other party or any child of the family. Applications can be made under various statutory provisions (such as section 27 of the Matrimonial Causes Act 1973), but the financial orders available do not have the full extent of those available on divorce.

²⁴ Matrimonial Causes Act 1973, section 5(1).

In all cases, a divorce application could still be challenged on the bases of jurisdiction, validity of the marriage, fraud or coercion and procedural compliance. The court's power to refer matters to the Queen's Proctor also strengthens this safeguard.

As it was noted in the judgment of the Supreme Court in the case of *Owens v Owens*, contested divorces have been successfully contested in the appellate courts in only a very tiny number of cases, and never because the person contesting the divorce did not want the marriage to end but because, for example, the particular allegations did not substantiate the legal fact. The current ability to contest is therefore neither an effective preventer of divorce nor an aid to reconciliation. It can also introduce or aggravate ongoing conflict and it can be exploited by domestic abuse perpetrators. We received strong support from groups supporting domestic abuse victims for removing this legal avenue. **The Government therefore continues to believe that the ability to contest a divorce on other bases, such as disagreement with the other party's decision to divorce, does not serve the interests of either party.**

The Government does, however, appreciate that the proposal to remove the ability to contest did give rise to misgivings among many people who responded to the consultation. The Government shares their belief in the social and familial importance of marriage but differs from them in its understanding of the significance of being able to contest divorce and of how it works in practice. The introduction of the possibility of making either a joint or sole application could provide for a limited form of dissent by allowing spouses to put it on the record that the decision to divorce was not a joint one. **The Government will, however, continue to explore whether existing protections for respondents to a divorce petition should be strengthened.**

A minimum timeframe for the divorce process

Retention of the bar on divorce petitions in the first year (question 10)

The Government proposed in its consultation to retain the bar on divorce within the first year of marriage.²⁵ We said that this was an important measure that underlines the importance of marriage. Under the current law, this is an absolute bar with no exceptional circumstances available. Such a bar is not common in other jurisdictions. As we explained in the consultation paper, the bar (originally three years with certain exceptions) was introduced only with the passing of the Matrimonial Causes Act 1937. The duration of the bar was reduced to one year with the passing of the Matrimonial and Family Proceedings Act 1984, which also removed the availability of exceptions. This followed a recommendation by the Law Commission.²⁶

Some respondents to the consultation said that the bar was no longer necessary because of the tendency for couples to cohabit before marrying or forming a civil partnership. These respondents put forward the argument that precipitate divorce based on a sudden change to a cohabiting relationship upon marriage was therefore increasingly unlikely.

²⁵ Matrimonial Causes Act 1973, section 3(1). Section 41(1) of the Civil Partnership Act 2004 bars applications for dissolution orders "before the end of the period of 1 year from the date of the formation of the civil partnership".

²⁶ Law Commission, *Time Restrictions on Presentation of Divorce and Nullity Petitions*, Law Com. No.116, Command Paper 513 (London: HMSO, 1982), p.12.

Many respondents to the consultation who spoke of the importance of the institution of marriage, however, said that it was important to retain this bar in order to provide the opportunity for newly married parties to work at adjusting to married life and at overcoming any early difficulties. Some spoke from personal experience and said that, having made the effort to work at overcoming these early difficulties, they had gone on to have a strong and enduring marriage. There was concern that removing the bar would result in the failure of many more marriages at an early stage because it would be too easy to “throw in the towel”. Some respondents believed that the bar should be lengthened, some to three years, which had been the previous position, or even to five years or more.

Some respondents, however, felt that the one-year bar should be retained but that exceptions should be provided for where a spouse is convicted of a serious criminal offence and in cases of domestic abuse.

While we appreciate the case for assisting victims of domestic abuse to end their legal relationship with an abusive spouse, we note that legal protection is afforded through the various protective orders that already exist to support victims at any time in the marriage (such as non-molestation orders and occupation orders,²⁷ and the domestic abuse protection orders that the Government has proposed²⁸).

The provision for exemption criteria could reintroduce problems identified in the current system where allegations can be manipulated, contested, and used by parties for bargaining positions. This runs counter to our objectives of removing sources of conflict and minimising the adversarial nature of the legal process.

On balance, the Government believes that the bar serves a useful purpose and should be retained without exception. We will, however, further explore the issue of expediting minimum timeframes.

Retention of the two-stage decree process (question 4)

The Government proposed in its consultation paper to retain the two stages of the divorce decree. Currently, the court grants the decree initially as the decree nisi – a provisional recognition that the marriage has irretrievably broken down – and cannot make it absolute until an interval of six weeks has passed from the granting of the decree nisi. It is only at the stage of the decree absolute that the marriage is brought to a legal end. Both stages of the decree of divorce require an application.

We reasoned that the two-stage process gave an important interval between stages of the decree, both for couples to consider the implications of divorce and for the court to investigate any matters or refer them to the Queen’s Proctor (who has the power to “show cause” against the granting of a decree if, for example, a petition is suspected to be fraudulent).

During the consultation, we heard support for this approach to allow reflection and time to make arrangements. We also heard good arguments for replacing the two-stage decree process with a single, final decree. The two-stage decree was, some people said, largely

²⁷ Occupation orders could, for example, include a requirement for the spouse to continue to pay the rent or mortgage on the property.

²⁸ These orders have been proposed as part of the draft Domestic Abuse Bill, which is available at <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

a peculiarity of the law in England and Wales and had not been considered necessary in most jurisdictions. It could also leave people with the mistaken impression that the decree nisi marked the end of the marriage and that attempts at reconciliation even at this late stage would therefore be futile. That opportunity for mistake might well be less for civil partners, to whom the name of the conditional order (the equivalent of the decree nisi) gives a clearer indication of its nature. In both divorce and civil partnership dissolution, there is no prompt in the court process to apply for the decree or order to be finalised at the six-week stage. The Government's proposed reform, however, is not a radical reshaping of divorce law but instead an incremental change that will support families through the legal process when a marriage cannot be salvaged.

We believe that the two-stage process remains helpful in offering an additional check on the decision to divorce, both for couples to reconsider and for the court to refer suspected abuse of the process. The two-stage decree process, which requires a total of three separate applications at petition, nisi and absolute stages, continues to provide a higher level of protection than it would in a process which had fewer stages or in which decrees were granted or made absolute automatically.

The current process allows only the petitioner to apply for the decree at the decree nisi stage. Either party may apply for the decree to be made absolute, but the respondent must wait three months to apply for it to be made absolute (if the petitioner has not done so) after its granting as the decree nisi. The Government will give further consideration to this distinction, including how it would work if the original application had been made jointly.

Introduction of a minimum timeframe and exceptions to this (questions 5 and 6)

The Government proposed in its consultation paper to introduce a minimum timeframe for the divorce process, to give couples sufficient time to consider the implications of the decision to divorce and to agree practical arrangements for the future, for them and for any children. We sought views on the detail of this, such as the start and end points, the duration, and any exceptions that should be provided for. We also noted that the current process does not specify any period between petition and decree nisi (which in practice depends on a number of variables), but that it does specify a legislative minimum period of six weeks between decree nisi and decree absolute. We sought to test a proposal of extending this current minimum period.

The start point of a minimum timeframe

The key change following consultation is how the Government thinks the minimum timeframe should be measured. The broad consensus was that starting the timeframe at decree nisi would be unhelpful for a number of reasons. We heard that many couples take the court's decree nisi as a signal that the marriage is effectively over. As this makes parties feel divorced, reconciliation after this stage is less likely. Furthermore, the time between petition and decree nisi is highly variable in practice and can be delayed if the respondent does not acknowledge service of the petition (because they cannot be located or are unwilling to engage in the legal proceedings). This adds an element of uncertainty for parties. We also know that digitisation of the divorce process is likely to reduce the time from petition to decree nisi, and we are concerned that this could result in some parties rushing to divorce before the prospect of reconciliation has been fully explored.

The Government will begin the minimum period at the start of the court process so that it runs before the court grants the initial decree. We believe that this will better

support the objective to ensure that the decision to divorce remains a considered one, providing opportunities for couples to change course. It would also support the objective to make the legal process transparent and easier to navigate, by giving clarity to divorcing couples about timeframes for the whole legal process from its initiation. This could support better outcomes for adults and their children, by maximising the opportunity for the parties to agree arrangements for the future before the divorce is finalised.

The precise start point was subject to debate. We heard important arguments that it could be unjust to start the clock from the initial application if the respondent was not served swiftly or genuinely could not be found for several months. We have seen examples of other jurisdictions with minimum periods which avoid this: they begin the timeframe from the date that the respondent acknowledges the application or, failing this, the date that there is evidence that the respondent should be aware of the application (“effective service” or “deemed service”), or when the court decides that this is not possible (where service is “dispensed” with).²⁹ However, while there are existing procedures for the court to grant deemed service or dispense with service in England and Wales, these can be lengthy processes. It requires separate applications to the court and can make it complex for people to navigate.

We know how important it is for both parties to be aware of the application and have sufficient time for reflection and making arrangements. We understand the case for having particular regard to respondents in cases under the existing law where the application is unexpected, and we believe that our proposal offers a more certain space in which to come to terms with the initiation of proceedings. However, starting the clock from the moment that the respondent acknowledges the petition could incentivise uncooperative spouses to delay the divorce. It would introduce control of the timetable to the respondent, and it could therefore be particularly damaging in cases where the applicant is a victim of domestic abuse. We are clear that all proposals must be considered in light of the objective to reduce opportunities for misuse of the legal process by abusers as a way to perpetrate further abuse.

We believe that provision of a minimum timeframe would be most clear, transparent and easy to navigate if it began at a fixed point in time from the beginning of the legal process in each case. For this reason, **we will bring forward proposals to introduce a minimum period that begins at the initial application stage**. We will further explore implications of a minimum timeframe in cases where there are service difficulties. As is the present position, applications will not be able to progress to decree nisi without satisfactory evidence of service (including where service is deemed or dispensed with).

The end point of a minimum timeframe

We heard views that a minimum timeframe for reflection should end when the decree nisi is granted, the point at which parties feel divorced. However, in general there was support from family law professionals to retain the clear six-week minimum period between the decree stages for its separate purposes: these allow financial orders to be made, allow some couples to finalise a religious dissolution where this is necessary, and allow referral of any matters to the Queen’s Proctor. Some noted concerns that parties, especially those without legal advice, may be unaware of the need for the decree to be made absolute. **Given the retention of the two-stage decree process, we believe that the minimum**

²⁹ Jens Scherpe and Liz Trinder, *Reforming the Ground for Divorce: Experiences from Other Jurisdictions* (London: Nuffield Foundation, 2019).

timeframe should end at the final decree. This will give clarity to divorcing couples about the point at which the divorce is finalised.

As under the current system, we believe that making the decree absolute should not be automatic at the end of the minimum period. We have heard that the re-affirmation required by the current process – described as a “triple opt-in”, with applications required at petition, for decree nisi and for decree absolute – is unusual when compared with international jurisdictions. These typically include either one or two active steps. However, we want to provide opportunities to change course so that the decision to divorce remains considered. **We believe that it is right to retain the three decision points for applicants as it keeps the important safeguards of the existing process and requires the applicant’s confirmation and reconfirmation of the original application.**

Duration of a minimum timeframe

We heard a broad range of views on what the duration of the minimum timeframe should be. These reflected different views on what the role of the law should be when an individual or couple takes the decision to divorce, and on whether a minimum timeframe should provide time for reflection or time for making arrangements for the future. We heard that many couples jointly take time before making the difficult decision to make the application, and we also heard of difficulties caused when the application is unexpected by one party, who may need time before they are required to make decisions about the future. Relationship support organisations noted that there is no single ideal timeframe for couples and families to work through problems, although couples could benefit from an adequate period for reflection, which must be longer than six weeks.

The reality is that there is a wide variety of circumstances in which couples divorce, and the law must create a single framework that caters for everyone. Evidence from international legal processes without a “fault” element demonstrates variety both in duration and purpose of a time period: six months is in line with Finland, Sweden and California, is longer than in Spain and Colorado, and is shorter than the minimum one-year separation periods in Germany, Australia and New Zealand.³⁰ Within our consultation, many key organisations broadly supported six months as a reasonable period to meet the emotional and practical needs of divorcing couples, but noted that there could be problems if this was longer. This was suggested particularly in cases where couples have been separated for a long time prior to making the application, where there are children who benefit from certainty and stability, or where there has been domestic abuse.

We have also considered arguments about the possible consequential financial impacts on divorcing couples of introducing a lengthy minimum period. Some concerns were raised about introducing a delay in resolving financial relationships, which may be needed in order to live in two separate homes. We recognise that the court can make most financial orders only once the decree nisi has been granted, and that these can come into effect only after the decree is made absolute. However, in cases where there is a more urgent need for financial provision before the divorce is finalised, there is already provision for the court to make interim orders.³¹ In other cases we believe that, where appropriate, the additional time before decree nisi could maximise the opportunity for the parties to

³⁰ Jens Scherpe and Liz Trinder, *Reforming the Ground for Divorce: Experiences from Other Jurisdictions*.

³¹ Section 22 of the Matrimonial Causes Act 1973 provides for the court to “make an order for maintenance pending suit”. Such an order may, for example, be for one spouse to make monthly payments to the other while the divorce proceedings are continuing.

agree plans for financial arrangements. This could protect against adverse consequences from finalising a divorce while there are outstanding financial matters, such as pension-sharing rights.³² **We believe that providing for a minimum period of sufficient length would maximise the opportunity for divorcing couples to agree important arrangements for the future.**

Similarly, where divorcing couples have children, the provision of sufficient time could be helpful to encourage parties to consider and agree child arrangements. Research has found that separating couples require time to inform themselves about tools for reaching agreement, or family dispute resolution options where that is proving difficult, so that they can make appropriate choices and prepare for them.³³ This should be balanced against the need highlighted by groups that work with children of ensuring that children do not suffer any unnecessary delay to achieving a new certainty and stability. We recognise the important sentiment behind calls to require child arrangements to be agreed before the final decree is granted. However, the requirement for the court to consider arrangements that parents proposed to make for their children as part of the divorce process, and if necessary to exercise its powers under the Children Act 1989, was removed from legislation in 2014 as it proved ineffective in practice, being only a snapshot in time and not reflecting the changing needs of children over time.³⁴ **We will explore options for information sharing and signposting to encourage divorcing parents to make informal child-centred arrangements during the legal process of divorce, where making such arrangements is safe and appropriate.** In other cases the child's welfare may require that a separate application is made to the family court.

We have tested the expected time impact of introducing different minimum periods, ranging from three to twelve months between petition and final decree stages and inclusive of the current requirement of six weeks between decree stages (see the impact assessment for the options modelled). Under the current process, some divorcing couples progress from petition to final decree in three or four months. Regardless of any legislative reform, this will be made faster by 2020, when the end-to-end digital divorce process for users is fully online. Compared with both current and fully online timings, any new minimum timeframes would make the process slower for the majority of cases, but quicker for those who had previously waited for two or five years' separation. **We will bring forward proposals for a minimum timeframe of six months. This would be made up of twenty weeks (four and a half months) between the start of the proceedings and decree nisi stage, and six weeks (one and a half months) between decree nisi and decree absolute.** We will also consider whether to introduce a power to amend this period by secondary legislation, which currently applies to the six-week minimum period between decree nisi and decree absolute.

³² Emma Nash, 'The Final Decree of Divorce: Timing Is Absolutely Everything', *International Family Law Group LLP* (website), January 2017. Available at: <https://www.iflg.uk.com/guidance/final-decree-divorce-timing-absolutely-everything>

³³ Anne Barlow, Rosemary Hunter, Janet Smithson and Jan Ewing, *Mapping Paths to Family Justice: Briefing Paper and Report on Key Findings* (Exeter: University of Exeter, 2014).

³⁴ The Children and Families Act 2014 removed the requirement for the court to consider on divorce or dissolution whether to exercise its powers under the Children Act 1989, and the requirement for parties to provide a statement of arrangements.

Circumstances for a reduced timeframe

There was no consensus in consultation responses about whether to provide for exceptions or variations to a minimum timeframe, or under what circumstances. Many responses recognised that parties who had been previously separated may feel that a minimum period for reflection was unnecessary, but on balance felt that the benefits of a single, clear process for all parties outweighed this concern. Almost without exception, international jurisdictions that make use of a waiting period require a single period regardless of whether the application was made by one party or jointly.³⁵ This avoids the creation of a bargaining position between parties – such as by agreeing to a joint petition on condition of a more favourable financial settlement – or the incentivising of coerced or fraudulent joint applications. **We continue to believe that a single minimum timeframe should apply, irrespective of whether a couple has lived separately or applied jointly, to make the legal process easier to navigate and reduce sources of conflict.**

However, two common themes raised suggested that an expedited process should be allowed in cases of domestic abuse or terminal illness. We will address these in turn. First, we heard calls for, and concerns about, providing for exceptions or for an expedited process in cases of domestic abuse. Concerns included the potential for this to create the unintended consequences of increased allegations and contested evidential thresholds (which we noted above in discussing the one-year statutory bar on divorce).

We recognise that victims of domestic abuse may wish to end their legal relationship with an abusive spouse as soon as possible. The Government is determined to ensure that all victims of domestic abuse have access to the support they need, including victims within an abusive marriage. There are a range of protective measures available to victims in the family court, including various types of protective orders such as non-molestation orders and occupation orders.³⁶ The Government also recently consulted on this important issue and published a package of measures and a draft Domestic Abuse Bill on 21 January this year to support victims of domestic abuse.³⁷ This includes proposals for a new protection order, which draws together the strongest elements of existing orders and can be applied for by victims, police or relevant third parties on the victim's behalf. The package also includes a wide range of supportive measures intended to sit alongside the legislation that will help further support victims in this position.

The provision for exemption or expedition criteria could reintroduce problems identified in the current system, where allegations can be manipulated, contested and used by parties for bargaining positions. This runs counter to our objectives to remove sources of conflict and minimise the adversarial nature of the legal process. **We believe that, as a general rule, clarity and predictability for the legal process would benefit from a single timeframe, without exceptions.**

³⁵ Jens Scherpe and Liz Trinder, *Reforming the Ground for Divorce: Experiences from Other Jurisdictions*.

³⁶ Occupation orders could include a requirement for the spouse to continue to pay the rent or mortgage on the property.

³⁷ Further detail on the legislative measures included in the draft Domestic Abuse Bill can be found at <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

Second, the court has an existing power to expedite the making of the decree absolute, and this has been used in cases where one party is terminally ill (and wishes to remarry before their death).³⁸ This currently applies only to the six-week period between decree nisi and decree absolute. **We consider the court's power to fix a shorter period between decree nisi and decree absolute, where grounds for expedition exist, should be retained and we will further consider grounds for expedition, including whether a similar power should apply to the period to decree nisi.**

Circumstances for a delayed timeframe

While the legal process can take longer than any set minimum period if the necessary applications are not made, we heard arguments that specific provision should be made to allow proceedings to be paused or to delay the granting of the final decree. In general, these applied to cases that are already provided for under the current law. These include the court's ability to adjourn proceedings if there is a reasonable prospect of reconciliation,³⁹ and where it is in a party's interests to have the religious dissolution of the marriage concluded before the lawful divorce.⁴⁰ **We plan to retain these provisions to delay the granting of the final decree.**

Minimum timeframe: key points

- The Government will bring forward proposals to introduce a six-month minimum timeframe for the legal process, measured between petition and final decree stages. It would be made up of twenty weeks between petition and decree nisi stages and six weeks between decree nisi and decree absolute, and it would account for difficulties with service.
- Measuring between these fixed points would provide a clear and consistent timeframe for all divorcing couples that covers the whole legal process. This would provide time for considering the decision to divorce, with sufficient opportunity to change course or to agree arrangements for the future.
- The divorce will not be automatic at a fixed date at the end of the minimum timeframe, but will require the applicant to continue to affirm their decision to seek a divorce through a further application. This keeps the important safeguards of the existing process.
- The Government believes that the minimum timeframe should apply equally to all applications, but will further explore the current, and potential future, grounds for expedition of minimum timeframes.

³⁸ Matrimonial Causes Act 1973, section 1(5). In cases where an application is made to expedite the grant of a decree, the court sets out how proceedings are to be conducted at Rule 7.32 of the Family Procedure Rules and gives further guidance at paragraphs 8.1–8.4 of the associated Practice Direction 7A. (The Rule is published at https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_07 and the Practice Direction at https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_07a)

³⁹ Matrimonial Causes Act 1973, section 6(2).

⁴⁰ Matrimonial Causes Act 1973, section 10A.

Other related considerations

Nullity alignment (question 7)

The Government's consultation paper did not put forward proposals for changing the process for decrees of nullity but did seek views on whether the period between the stages of the nullity decree should be aligned with that between the stages of the divorce decree. We sought views on this because we had an open question on whether the period between decree nisi and decree absolute should be extended from the current six weeks. We did, however, note that there were significant differences between the law on nullity and the law on divorce.

Decrees of nullity are comparatively rare, and the distinctions in nullity law – such as between void and voidable marriages – are not always intuitive to grasp.

Following consideration of those responses to the consultation that provided a narrative on this question, **the Government agrees that the process for nullity should remain as it is.** The ending of a marriage through a decree of nullity differs radically from its ending through divorce. A petition for nullity may be made at any stage of the marriage, including in its first year, but only on eight very specific grounds. There is no requirement for the parties to consider reconciliation during the process. Nullity therefore differs significantly from divorce, and it would not be appropriate to make changes to the nullity process to align it with a revised process for divorce.

In nullity proceedings, the marriage is not required to have broken down irretrievably, but one of the specific grounds must be met. Some groups, including the Family Law Bar Association, noted that lengthening the process would not help victims of forced marriage seeking a decree of nullity on the ground of invalid consent.

Retention of other requirements (question 11)

As proposed in the consultation paper, the Government will retain the power of the Queen's Proctor to intervene in proceedings or "show cause" against making a decree nisi absolute.⁴¹ We will retain the power to make rules of court requiring legal practitioners to certify whether they have discussed the possibility of reconciliation.⁴² There was general agreement about their retention from people who responded to these questions, though some commented that the provision about certifying discussion might in some way be bolstered or extended to cases without legal representation.

The Government will also retain the ability under section 10A of the Matrimonial Causes Act 1973 for either party to a specified religious marriage to ask the court to withhold the making of the decree absolute until the religious authorities have dissolved the marriage. We did not refer to this provision in the consultation paper but spoke to a number of stakeholders during the consultation and are happy to confirm its retention. The provision was introduced through the Divorce (Religious Marriages) Act 2002 with the purpose of offering protection for people who, while legally free to remarry following the court's final

⁴¹ Matrimonial Causes 1973, section 8. We were particularly pleased to hear during the consultation from people who had first-hand knowledge of how the power of the Queen's Proctor is used in practice.

⁴² Matrimonial Causes Act 1973, section 6(1).

decree, would not be religiously free to do so without the approval of the religious authorities.

In our proposal to replace the existing five facts with a statement of irretrievable breakdown of the marriage, we suggested that certain provisions that were contingent on the five facts would be repealed because they would no longer apply. Some of these provisions were requirements that directly related to the admissibility of the facts, such as the conditions for reckoning a period of separation. The Government continues to propose repeal of the provision for refusal of a decree in cases relying on five years' separation on the grounds of grave hardship to the respondent, for the reasons given above.⁴³ The Government also continues to propose repeal of the general provision for relief for respondents (which depends on proof of one of the five facts).⁴⁴

Another provision we had suggested for repeal was the provision for special protection for respondents in cases relying on two years' or five years' separation.⁴⁵ This provision enables a respondent to ask the court to delay the making of the decree absolute on consideration of financial provision for them. Although this provision is rarely taken advantage of, the Government will give further consideration to extending it to respondents in all cases (or to both parties following a joint application).

Impact assessment (question 12)

The impact assessment accompanying this paper has been updated to take account of evidence provided during the consultation period and any impacts identified as part of our updated policy proposals. It also considers other suggested options for reform against the Government's objectives for reform.

We have expanded qualitative details on the detrimental effects of the current law of divorce on couples and any children, which has been bolstered by consultation responses from groups which work with such couples and families across the legal, voluntary and public sectors. The consequent anticipated **wellbeing benefits for adults and children** have been updated within the impact assessment. In particular, the benefits for victims of domestic abuse are set out following engagement with groups representing victims and advising them during the legal process of divorce, including Women's Aid and Rights of Women.

We have also considered **concerns about the negative impact of divorce itself on children**. While we do not anticipate that the reforms will affect the long-term rate of divorce (see below), we want to address these concerns. We know that marriage can be the basis of a successful family life. However, families come in many shapes and sizes, and sometimes separation can be the best option for a couple and for their children. Children who experience parental separation vary widely in their experiences. The weight of evidence indicates that children's outcomes are affected by the quality of the relationship between the parents, not the structure of the family: key protective factors against adverse outcomes from separation include low parental conflict during separation, cooperative parenting post-separation, competent and warm parenting, and social

⁴³ Matrimonial Causes Act 1973, section 5. This provision applies strictly to grave financial or other hardship resulting from the dissolution of the marriage. It cannot apply if this hardship results from estrangement or abandonment.

⁴⁴ Matrimonial Causes Act 1973, section 20.

⁴⁵ Matrimonial Causes Act 1973, section 10(2)–(4) and Civil Partnership Act 2004, sections 48(2)–(4).

support.⁴⁶ We intend to support these better outcomes for children by removing those elements within the legal process for divorce which create or exacerbate conflict between parents.

We heard concerns that the reforms would make it easier for spouses to abandon their partners and children, with particular concerns raised about the possible impact of this on **vulnerable parties**. The impact assessment and equality statement set out that we have found no evidence that this risk will be affected by the proposed changes. We are clear that the current law on divorce does not protect against a spouse making a decision to divorce, regardless of the reason for that decision, and that a marriage requires two consenting parties to want to remain within it. In cases of divorce where a respondent is vulnerable, the various existing provisions which protect them will be retained.⁴⁷

We have updated the impact assessment to address concerns raised that the introduction of similar divorce laws in other jurisdictions led to an increase in the **divorce rate**. Divorce rates are affected by a wide range of factors: specific impacts of changes in the law are difficult to identify, particularly where these changes reflect corresponding social changes.⁴⁸ The most recent research into this area has found that while it is common to have temporary effects in response to policy and legislative change, long-term divorce rates are not increased by so-called “no-fault” divorce laws.⁴⁹

While we appreciate views from those who are concerned about protecting the **status of marriage**, there is no evidence that the fact requirement or the ability to contest protect marriage. Instead, the weight of evidence shows that conduct-based facts have the potential to make divorce more painful and acrimonious, and separation-based facts are effectively unavailable to those who cannot afford to run two households without having separated financial arrangements in place. We believe that retaining the sole ground for divorce of irretrievable breakdown ensures that there is still a high and logical threshold, and that introducing a minimum period will assist decisions to remain considered and allow sufficient opportunity for couples to change course.

⁴⁶ Gordon Harold, Daniel Acquah, Ruth Sellers and Haroon Chowdry, *What Works to Enhance Inter-Parental Relationships and Improve Outcomes for Children*, DWP ad hoc research report no.32 (London: Early Intervention Foundation, 2016). Ann Mooney, Chris Oliver and Marjorie Smith, *Impact of Family Breakdown on Children’s Well-Being: Evidence Review* (London: Institute of Education, University of London, 2009). Cassandra Brown, ‘Ameliorating the Effects of Divorce on Children’, *Journal of the American Academy of Matrimonial Lawyers* vol.22 (2009): 461–82.

⁴⁷ These include the possibility for a litigation friend to be appointed on behalf of a spouse who lacks capacity and the separate consideration of financial provision on divorce, within which the court must have regard to any physical or mental disability of either of the parties to the marriage when making decisions about whether and how to make a financial order.

⁴⁸ John Haskey, ‘Facts and Figures: Grounds for Divorce Since the 1969 Divorce Reform Act in England and Wales’, *Family Law* (August 2018): 1006–15.

⁴⁹ Justin Wolfers, ‘Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results’, *American Economic Review* vol.96 no.5 (December 2006): 1802–20. Betsey Stevenson and Justin Wolfers, ‘Marriage and Divorce: Changes and Their Driving Forces’, *Journal of Economic Perspectives* vol.21 no.2 (Spring 2007): 27–52. Liz Trinder, Debbie Braybrook, Caroline Bryson, Lester Coleman, Catherine Houlston and Mark Sefton, *Finding Fault?: Divorce Law and Practice in England and Wales* (London: Nuffield Foundation, 2017).

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Appendix A: Detailed summary of responses by question

1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce?

Summary of responses to question 1

Response	Number of respondents	Percentage
Yes	1,959	69%
No	747	26%
Undecided	136	5%
Total responses:	2,842	

Those who agreed noted that the retention of this ground showed that marriage is important and does require a high threshold of irretrievable breakdown before couples can exit from it. They argued that it was simple, logical and sufficient, setting out the circumstances behind seeking a divorce, without going into the specific reasons for the breakdown, which are subjective.

Some of those respondents who disagreed that the ground should be retained were against being required to give any justification to the court. Others felt that “irretrievable” and “breakdown” required definitions and could be subjective.

It was evident that some respondents were unclear on the current legal requirements and the nature of the consultation: a number of respondents who disagreed that the ground should be retained also wanted the facts to be retained. They made wider points of disagreement with any change to the law, which they believed was aimed at making divorce easier. They felt that grounds should include the current five facts to recognise that marriage is a serious, lifelong commitment, and that couples should be required to explain the reason for a breakdown and take responsibility for this.

2. In principle, do you agree with the proposal to replace the five facts with a notification process?

Summary of responses to question 2

Response	Number of respondents	Percentage
Yes	546	17%
No	2,614	80%
Undecided	99	3%
Total responses:	3,259	

Until the huge increase in the response rate in the last two weeks of the consultation, support for the proposal to replace the five facts was running at 70%. This increase in the response rate coincided with campaigns by groups who objected to the Government’s proposals and encouraged their supporters through online guides to respond to particular questions and make certain points in argument.

Many who agreed with the proposal to remove the five facts believed that this would reduce conflict and benefit both parties as well as any children in the marriage. They noted that the use of **conduct-based facts** leads to increased animosity. They argued that, in reality, there is often no single “reason” for a divorce and that usually no one “side” is solely to blame. Some felt that the removal of the option to “blame” would help parties focus on making arrangements for separated lives as constructively as possible.

Practitioners within the field noted that the current system has been discredited and, in practice, the facts used may be made up or not reflect the true reason for the marriage breakdown. They also noted that those who do not have legal advice to understand this practice are disadvantaged. Further confusion is reportedly caused as there is a common misconception, which is uncorrected without legal advice, that facts relied upon have a bearing on the outcome of divorce or related proceedings such as financial settlements and child arrangements.

Groups representing victims of domestic abuse said that while some victims feel that it is cathartic to note “fault” in the petition, on balance, when they are aware of the limited legal effect of this, there is no benefit and in fact it can place victims at risk through raising tensions. They also noted that some victims are forced to put their life on hold for two to five years and remain in a legal relationship with their abuser to avoid the turmoil of setting out traumatic or potentially inflammatory details through the divorce process.

Other groups and respondents noted that some people use the opportunity intentionally to cause upset through publicising their views and allegations. Some respondents felt that the personal reasons behind a divorce can be kept private, and they recognised that there could be different and more appropriate venues to work through anger and disappointment felt within the painful process of divorce.

Some respondents were in favour of removing conduct-based facts, but felt there were good reasons to retain **separation-based facts** to ensure sufficient consideration of

whether to proceed with divorce. However, others noted that these discriminate against couples who cannot afford to run two households without arranging divorce finances. The alternative – leading separate lives within the same household – was described as difficult, artificial and damaging for any attempts to reconcile or share time with children.

Those who disagreed with the proposal felt that the five facts should be retained to protect the institution of marriage and demonstrate that breaking lifelong marriage commitments should require clear stated reasons and evidence. They felt that the proposals would make divorce easier and trivialise it into an administrative process that could be entered into lightly or for “frivolous” reasons. Some raised concerns that it would fail to protect against sham marriage and could risk the abandonment of vulnerable people within marriage.

Some who were undecided suggested that making a statement of irretrievable breakdown could be an option alongside the current facts, as they believed that facts can allow closure if there has been significant “fault” such as domestic abuse or adultery and, in extreme cases, ought to be taken into consideration within financial settlements.

3. Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party?

Summary of responses to question 3

Response	Number of respondents	Percentage
Yes	1,392	58%
No	583	24%
Undecided	434	18%
Total responses:	2,409	

In general, there was support for the law to acknowledge that the intention to divorce was held by both parties. However, it is clear from some comments that there were different interpretations of what this question was asking. Some respondents who both agreed and disagreed thought that this proposal would prevent applications by one party only. Some disagreed or did not respond on the basis that they disagreed with the premise of a system involving a statement of irretrievable breakdown, but commented that divorce should be a joint decision. Some argued that if a sole statement was permitted, then the right to contest should be retained.

Those who agreed for an option to give joint notice believed that it could be a positive symbolic choice, particularly for children of the parties, to show that it is a collaborative decision and that no one person is driving the divorce. Some solicitors noted that clients already ask for this, as the decision to divorce is often mutual. It was noted that there would need to be processes to allow change, such as for a “sole” application to become a “joint” application, and vice versa, if parties changed their minds.

Some felt that joint applications should be incentivised through a shorter minimum time period, to encourage a consensual beginning to the divorce process that would hopefully set the tone for making arrangements for the future. However, others noted a potential risk if either type of application was treated differently within the process, as this could be used as a threat or leverage within financial or child arrangements.

4. We have set out reasons why the Government thinks it helpful to retain the two-stage decree process (decree nisi and decree absolute). Do you agree?

Summary of responses to question 4

Response	Number of respondents	Percentage
Yes	2,299	88%
No	165	6%
Undecided	162	6%
Total responses:	2,626	

Those who agreed with retaining the two-stage decree process demonstrated consensus in their comments, noting that this allows time for reflection and consideration, as well as time to agree arrangements for children and finances. Some solicitors noted that they have had clients reconcile during this period, but others noted that reconciliation was rare.

Many felt that parties have usually already taken a long time to consider before initiating divorce, but agreed that the process allows for a clear “transition period” to make child and financial arrangements. Some noted that this was particularly important to allow protection for the economically weaker of the two parties, including time to make pension sharing orders. Some suggested that there should be a clear expectation or requirement for parties to agree arrangements in the intervening period.

Respondents who disagreed felt that the two stages added needless delay, cost and confusion. Some undecided respondents suggested that stages might be different depending on whether the application was from one party or was joint.

Many noted that the period before the first decree is granted (between the petition for divorce and the decree nisi) would be the opportunity for reflection, as parties feel emotionally divorced once a decree nisi is granted. Some noted that there is actually a three-stage process for applications which should be made clearer: the original application and the applications for the decree at its provisional and final stages.

Irrespective of whether the respondent felt the two-stage process should be kept or removed, many noted that the terminology was archaic and unclear.

5. What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured? Please give your reasons in the text box.

Summary of responses to question 5

Response	Number of respondents	Percentage
No minimum	26	1%
Less than six weeks	26	1%
Six weeks	360	12%
Three months	239	8%
Six months	297	9%
Nine months	172	5%
One year	1,044	33%
Two years or more	162	5%
Not a fixed period	398	13%
Undecided	404	13%
Total responses:	3,128	

We asked a deliberately open question in order to understand people's views of the divorce process as a whole. These figures should therefore be read with caution as respondents provided minimum timeframes for different parts of the divorce process. For example, many of those who proposed six weeks suggested that this would mirror current arrangements requiring six weeks between decree nisi and decree absolute, which they argued worked well. However, the current timeframe only measures the time between decree nisi and decree absolute. Other suggested timeframes covered the entire divorce process (from petition to decree absolute) or the time from application to when the court initially approves a divorce (from petition to decree nisi).

The rationale behind the policy was considered by some respondents, as some did not consider that the time period would affect levels of conflict but should instead reflect the time needed to make the necessary practical arrangements. There were mixed views on what might affect conflict: some suggested that drawing out the process risks increasing hostility as divorcing couples want certainty about the future; others noted that time should be provided to "let the dust settle" so that decisions can be made with clear heads, particularly if the decision to divorce is a shock to one party who may be grieving the loss of the relationship. In particular, there were mixed views on whether children benefit from shorter or longer timeframes, if these involve making proper arrangements to avoid an uncertain future, or whether the wait itself constitutes a period of uncertainty which should be over as soon as possible to enable families to move on.

Those who felt that there should be no minimum period or that it should be less than six weeks argued that individuals should be free to make their own decisions and get a

divorce as soon as practicable in each case. Many noted that the decision to divorce is usually well thought through before the application is made and parties should not be forced to “reflect” further. Those who selected three months in general felt that six weeks was too short, but six months too long, particularly if it was a joint application.

Respondents who felt that the minimum period should be six months noted that this enabled sufficient time for parties to consider rationally the implications and sort practical arrangements. Others noted that this could enable reconciliation, or at least allow both parties to come to terms with the ending of the marriage and reduce uncertainty before the divorce is granted – particularly if it was unexpected by one party.

Those who selected nine months or longer felt that this would enable counselling or mediation and proper reflection to enable reconciliation where possible. In particular, those suggesting a year or more felt that this would more properly reflect the importance of both marriage and divorce as significant life decisions, particularly in cases involving children or where one party wishes to remain in the marriage.

Those who were undecided or suggested that there should be no single “fixed” period suggested different timeframes depending on: whether the application is joint or not; how complex the necessary arrangements are to make; how long parties have been separated for; whether there are children involved and how old they are; and whether there has been domestic abuse.

6. Are there any circumstances in which the minimum timeframe should be reduced or even extended?

Summary of responses to question 6

Response	Number of respondents	Percentage
Yes	1,204	51%
No	581	24%
Undecided	595	25%
Total responses:	2,380	

Possible reasons for reducing the minimum timeframe included cases featuring:

- domestic abuse
- child abuse
- criminal offences
- terminal illness of either party, or their new partner
- the imminent birth of a child with a new partner
- joint agreement that the period should be reduced
- fully sorted financial or child arrangements.

Those who felt there should be no exceptions argued that exceptions would make the system too complicated and cause uncertainty. Others suggested that it could incentivise manipulation or false allegations to qualify for a shorter timeframe.

Extension of a minimum timeframe was seen as unnecessary by some respondents, as a minimum does not prevent proceedings from lasting longer if required. Other respondents noted possible reasons for delaying the final granting of a divorce:

- outstanding arrangements for children or finances (especially if financial orders are requested)
- capacity issues and protection of the vulnerable from harm or exploitation
- to ensure a religious dissolution is obtained (as currently provided for in legislation).

Many legal professionals suggested retaining the current flexibility for the court to determine exceptional cases, to either expedite or delay the divorce in appropriate cases.

7. Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?

Summary of responses to question 7

Response	Number of respondents	Percentage
Yes	542	26%
No	542	26%
Undecided	1,024	49%
Total responses:	2,108	

Many respondents said that they did not know anything about nullity cases or did not understand the question. Those who thought that nullity and divorce timeframes should be consistent suggested that this would provide simplicity, although some noted the need to consider nullity for void and voidable marriages separately.

Those who answered that nullity timeframes should be different demonstrated expertise in the law of nullity. They set out the different legal considerations that make any extended timeframe within divorce cases (to allow for reflection and making arrangements) inappropriate in nullity cases. Examples included cases where the marriage was never valid or where it was forced or coerced.

8. Do you agree with the proposal to remove the ability to contest as a general rule?

Summary of responses to question 8

Response	Number of respondents	Percentage
Yes	484	15%
No	2,644	83%
Undecided	55	2%
Total responses:	3,183	

Those in favour of the proposal to remove the ability to contest a divorce noted that marriage requires two people to be committed to it. They argued that if one person contests a divorce that the other is intent on, this in itself shows that the marriage has irretrievably broken down. Others who agreed with removing the ability to contest noted its misuse, as contesting can be driven by a malicious motive to create frustration and delay, to control the other person, or to create a bargaining chip in relation to financial or child arrangements, rather than being used to demonstrate a desire to stay married. This was of particular concern to groups supporting victims of domestic abuse, as it can be misused as an avenue to perpetrate post-separation abuse. Those in favour noted the negative impact of cost, delay and stress on individuals involved, as well as the use of court time and resources.

Those who disagreed with the proposal argued that it would seem unjust if one party was not given a voice or provided with an opportunity to “fight for the marriage”. They suggested that the law should ensure that no single party has unilateral power to end a marriage. Others felt that this change would make divorce too easy, enabling unfair desertion and risking the wellbeing of those who are sick, poor or old, or other “innocent parties”. Others were against divorce in a broader sense, and felt that parties should be able to block divorce, given what they saw as its negative impact on families.

Some people who were undecided suggested that it was the cost of defending a divorce that makes this option little used, but that many would like to dispute allegations made against them or have their disagreement with the divorce noted. Others suggested that contesting is normally about allegations made to substantiate conduct-based facts, and therefore it would make sense to remove the ability to contest if the facts are removed.

9. [If yes to question 8] Are there are any exceptional circumstances in which a respondent should be able to contest the divorce?

Summary of responses to question 9

Response	Number of respondents	Percentage
Yes	130	27%
No	264	56%
Undecided	79	17%
Total responses:	473	

Of those who had agreed that the ability to contest should be removed, the majority did not believe exceptions should apply to the ability to contest the divorce. Several considered that exceptions often noted were about finances, in which the court already has sufficient powers to make financial provision. Others argued instead that if one party would be significantly economically disadvantaged, there should be provision to pause or delay the final order or decree absolute, rather than “contest” the divorce, until financial matters are resolved.

Those who believed that some exceptions should apply to either prevent or delay divorce noted that this should apply to cases where concerns included the following (although we note that many of these relate to aspects that are handled by the court separately, and do not relate to contesting irretrievable marital breakdown):

- mental capacity of the person seeking the divorce, or the respondent
 - jurisdiction
 - validity of the marriage
 - possible coercion of the person seeking the divorce
 - exceptional financial hardship or vulnerability
 - religious or cultural reasons to delay until religious requirements are met
 - likely immigration issue if a spousal visa is relied upon to remain
-

10. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place?

Summary of responses to question 10

Response	Number of respondents	Percentage
Yes	2,685	89%
No	259	9%
Undecided	75	2%
Total responses:	3,019	

There was general consensus of support for retaining the bar on divorce within the first year of marriage. Those who agreed noted that this would help recognise that marriage is a serious choice and should be entered into with a significant degree of commitment. Some noted that marriage does often involve a period of adjustment and that couples should be helped to give the marriage a chance to settle. Others noted that it could help minimise fraudulent marriage.

Suggested exceptions included cases where the marriage involved domestic abuse or severe financial hardship, or where it had been forced or coerced (although we note that in the case of forced marriage it is possible to have the marriage annulled and there is no bar on seeking annulment in the first year of the marriage).

Those who felt the bar should be removed noted that people should have personal freedom to marry and divorce when they choose to do so. They noted that people make mistakes and should have an opportunity to rectify them quickly. Others noted that the bar is outdated from a time when most couples did not cohabit before marriage.

11. Do you have any comment on the proposal to retain these or any other requirements?

The requirements identified were the power of the Queen’s Proctor to “show cause” against making a decree nisi absolute; the power of the court to make rules requiring legal practitioners to certify that they have discussed the possibility of reconciliation; the power of the court to stay proceedings if there is a prospect of reconciliation.

Some respondents within the family law sector suggested that the requirement to certify whether parties have discussed the possibility of reconciliation is ineffective and serves no practical purpose. Others noted that this was a helpful provision to ensure that reconciliation is considered at all points, and that it should be extended to those without legal representation.

Other views included that while this change may be necessary to reduce family conflict, it is not sufficient. Wider changes within the divorce and separation space, including funding for support services and relationship counselling, would be needed

to further reduce conflict for children. Suggestions included earlier help for married couples before they reach the point of seeking a divorce, as well as marriage preparation and education for children about quality relationships. Other respondents noted that related proceedings, such as financial and child arrangements, are unaffected by these changes and can by themselves cause conflict.

Technical concerns around service requirements were raised, to ensure that respondents are aware of proceedings and to clarify what the process would be if a party's location was unknown. Other process-related concerns included clarity of requirements within forms and online systems, and concerns about the accessibility of divorce based on the court fee.

12. We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.

Potential positive impacts noted included:

- improved equality on the grounds of sexual orientation, given that the current legal definition of adultery is specific to the gender of those involved
- improved mental and emotional wellbeing for those divorcing, allowing them to move on without assigning blame
- simplification of the process and improved equality between parties irrespective of ability to afford a lawyer, with the potential for reduced costs associated with legal advice
- improved accessibility of the divorce process for victims of domestic abuse, and reduced opportunities for abusers to use the process to perpetrate post-separation abuse.

Potential negative impacts noted included:

- allowing divorce to proceed against the wishes of one party could lead to the abandonment of vulnerable spouses, including those who are older, disabled, or in a weaker financial position
- the possibility of increased number of divorces, if the changes led to a reduced status of marriage. This was often described alongside concerns about the negative impact of divorce on children's outcomes and wider societal outcomes.

Appendix B: List of respondents

The table below outlines who responded to the questions in the consultation paper.

Respondent type	Number of respondents	Percentage
Member of the public	2,916	86.5%
Family law practitioner	239	7.1%
Religious leader	147	4.4%
Organisational response	45	1.3%
Academic	20	0.6%
Parliamentarian	5	0.1%
Total responses:	3,372	

The following lists of family law practitioners and other groups include both those who responded to the consultation questions (and who are counted in the table above) and those who provided other comments.

Family law practitioners

- Association of Her Majesty's District Judges
- Association of Women Solicitors London
- Bar Council
- Birmingham Law Society
- Cafcass (Child and Family Court Advisory and Support Service)
- Centre for Child and Family Law Reform (His Honour Michael Horowitz QC)
- Chartered Institute for Legal Executives
- Family Law Bar Association (FLBA)
- Family Mediation Council
- Family Mediation Matters
- Law Society
- National Association of Child Contact Centres
- National Family Mediation
- Resolution

Other groups with a professional or social interest

- Amicable
- Archbishops' Council of the Church of England
- Board of Deputies of British Jews
- CARE (Christian Action Research and Education)
- Care for the Family
- Catholic Bishops' Conference of England and Wales
- Centre for Social Justice
- Christian Concern
- Christian Democratic Party
- Christian Institute
- Christian Medical Fellowship
- Christian People's Alliance
- Church in Wales
- Coalition for Marriage
- Families Need Fathers
- Family Education Trust
- Family Federation for World Peace and Unification
- Gospel Standards Societies
- Marriage Foundation
- Mosaic Lives Ltd
- Muslim Women's Network UK
- OnePlusOne
- Oxford Centre for Religion and Public Life
- Parenting Together
- People Matter
- Relate
- Rights of Women
- Support 4 the Family in UKIP
- Tavistock Relationships
- The Divorce Surgery
- Voice for Justice UK
- Welsh Women's Aid
- Wesleyan Reform Union of Churches
- Women's Aid

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