

DIVORCE, DISSOLUTION AND SEPARATION BILL: FACT SHEET

Introduction

1. Marriage will always be of vital importance to society, and it is deeply sad for those involved when a marriage breaks down irretrievably.¹ When people take the difficult decision to divorce, the legal process should seek to minimise the potential for conflict and should not make things worse.
2. The current legal process for divorce incentivises one spouse to make allegations about the other's conduct to avoid otherwise waiting to divorce on the basis of at least two years of separation. Such allegations can set the scene for acrimony and conflict during the legal process and afterwards. This can be especially damaging for any children of the relationship. Instead, the legal process should better support couples to reflect on the decision to divorce, to reconcile if they can, and if they cannot do so to move forward as constructively as possible. This is particularly important for parents, as conflict is damaging to children's life chances. Those life chances are improved by co-operative parenting and positive parenting relationships.
3. The Divorce, Dissolution and Separation Bill reforms the legal requirements and process for divorce. It removes conflict flashpoints from that process and introduces a new minimum period of 20 weeks between the start of proceedings and when confirmation may be given by a party of their wish for the court to proceed to grant the conditional order of divorce (decree nisi). The existing six-week period between conditional order and final order of divorce (decree absolute) will be retained. These two timescales will mean that a divorce in most cases will not be finalised in less than six months.

What is the current legal process for divorce?

4. The sole ground for divorce is that the marriage has broken down irretrievably. Currently, the law requires a person seeking a divorce to satisfy the court that the legal test of irretrievable breakdown is met by citing in the divorce petition one or more of five "facts". Three facts are based on the conduct of the other spouse (adultery, 'unreasonable behaviour', and desertion), and two are based on a period of separation prior to filing the petition for divorce (two years if both spouses consent to the divorce, five years otherwise). In this factsheet we refer to these as conduct and separation facts.
5. The current legal process of divorce can only be initiated by one spouse (the 'petitioner'). The other spouse (the 'respondent') must then acknowledge that they have received (been 'served with') the petition and state whether they disagree with the divorce and intend to contest ('defend') it. Only around 2% of respondents indicate an intention to contest, and only a handful of such cases progress to a final court hearing in front of a judge. A respondent's decision to contest is most often driven by their desire to dispute allegations made in supporting particulars evidencing a conduct fact, rather than disputing that the marriage has irretrievably broken down. At worst, the ability to contest can be used to cause cost and delay to a spouse who wants to obtain a divorce, and can be a means for a perpetrator of domestic abuse to continue coercive or controlling behaviour through the legal process.
6. The court must be satisfied of at least one of the five facts in order to hold that the marriage has broken down irretrievably. If one of the five facts is made out, it must grant the decree of divorce. Under the current law, the court must in nearly all cases accept at face value the detail of what is alleged by the petitioner in support of the chosen fact, unless the supporting particulars are clearly deficient or the respondent contests the divorce. The court has no practical means by which to

¹ References to marriage include civil partnerships, and references to divorce include dissolution of a civil partnership and to judicial separation, where appropriate and unless stated otherwise.

investigate whether an alleged fact is true. It is concerned only with whether the supporting particulars meet the legal test for the fact.

7. Granting a divorce is a two-stage process in which the court will first grant a conditional decree (the “decree nisi”). This signifies that the court is satisfied that the marriage has irretrievably broken down and so can be brought to a legal end. To finalise the divorce and legally end the marriage, the petitioner must wait for at least six weeks from the granting of the decree nisi and can then apply to the court for the final decree of divorce (the “decree absolute”).
8. There is relatively little opportunity built in to the current legal process for a couple to reflect on the implications of the decision to divorce or, where divorce is inevitable, to plan and agree arrangements for the future. While there is a minimum six-week period between conditional and final decrees, there is no minimum overall timeframe for the legal process of divorce.

What are the proposed changes?

9. The Bill revises the existing legal processes for divorce, dissolution, and separation set out in the Matrimonial Causes Act 1973 and the Civil Partnerships Act 2004. Detailed information about the individual provisions in the Bill is available in the Explanatory Notes. Key measures will:
 - Retain the sole ground of irretrievable breakdown but replace the requirement to provide supporting evidence of a conduct or separation fact with a new requirement to provide a statement of irretrievable breakdown. No further evidence will be required.
 - Remove the possibility of contesting the decision to divorce. The court will take the statement of irretrievable breakdown to be conclusive evidence that the marriage has broken down irretrievably.
 - Introduce a new minimum period of 20 weeks between the start of proceedings and confirmation to the court that the conditional order should be made, and retain the current minimum timeframe of six weeks between conditional order and final order.
 - Enable the Lord Chancellor to adjust the time periods between the start of proceedings and confirmation that a conditional order should be made, and between the conditional order and final order of divorce, so long as the total does not exceed 26 weeks (six months).
 - Introduce a new option of a joint application for cases where the decision to divorce is a mutual one. The current ability of one spouse only to initiate the legal process of divorce will be retained.
 - Update terminology used, for example replacing terms such as “decree nisi”, “decree absolute” and “petitioner” with “conditional order”, “final order” and “applicant”.

Territorial extent

10. The main provisions in the Bill extend and apply to England and Wales only. Some minor and consequential amendments to various statutes include provisions that extend and apply to Northern Ireland and/or Scotland or apply to Wales only. These amendments are strictly to amend references to decrees from, or proceedings in, England and Wales. In addition, since certain amendments have UK-wide extent, the clause that introduces these amendments also does, as does the power to make further consequential amendments, the commencement and transitional provision and the short title.

Commencement

11. It is proposed that the Act will come into force by commencement order after Royal Assent.