



BRIEFING PAPER

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Divorce, Dissolution and Separation Bill 2017-19: Committee Stage Report

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Summary

The [Divorce, Dissolution and Separation Bill](#) (the Bill) was introduced in the House of Commons on 13 June 2019 as Bill 404 of 2017-19. Information about the Bill is provided on the [Bill page on the Parliament website](#).

In short, the Bill would:

- replace the requirement to provide evidence of conduct or separation facts with a new requirement to provide a statement of irretrievable breakdown;
- remove the possibility of contesting the decision to divorce, as the statement of irretrievable breakdown would be taken as conclusive evidence that the marriage has broken down irretrievably;
- introduce a new option of a joint application;
- introduce a minimum overall timeframe of six months into the divorce process;
- enable the Lord Chancellor, by order, to adjust the time periods;
- update terminology.

The law relating to judicial separation, and to dissolution of civil partnership and separation of civil partners, would be amended in a similar way.

A [Commons Library briefing paper](#), published for Second Reading of the Bill in the Commons, provides background information.

[Second Reading](#) of the Bill took place on 25 June 2019. The Bill is supported by Labour and the Liberal Democrats.

The Bill was considered by a [Public Bill Committee](#) in two sittings on 2 July 2019. At its [first sitting](#) the Committee heard evidence from witnesses. The Public Bill Committee also received written submissions which are available on the [Bill page on the Parliament website](#).

At its [second sitting on 2 July 2019](#), the Public Bill Committee conducted a line-by-line consideration of the Bill. No amendments had been tabled. The Bill was scrutinised by way of clause stand part debates. All clauses were ordered to stand part of the Bill without any division. The Bill was reported without amendment.

1. Introduction

1.1 The Bill

The [Divorce, Dissolution and Separation Bill](#) (the Bill) was introduced in the House of Commons on 13 June 2019 as Bill 404 of 2017-19. Information about the Bill is provided on the [Bill page on the Parliament website](#).

For the purposes of Standing Order No. 83J, the Speaker has certified Clauses 1 to 5 of the Bill as relating exclusively to England and Wales on matters within devolved legislative competence.

In short, the Bill would:

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- remove the possibility of contesting the decision to divorce, as the statement of irretrievable breakdown would be taken as conclusive evidence that the marriage has broken down irretrievably;
- introduce a new option of a joint application;
- introduce a minimum overall timeframe of six months into the divorce process;
- enable the Lord Chancellor, by order, to adjust the time periods;
- update terminology.

The law relating to judicial separation, and to dissolution of civil partnership and separation of civil partners, would be amended in a similar way.

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1.2 Second Reading

[Second Reading](#) of the Bill took place on 25 June 2019.²

Introducing the Bill, David Gauke, Lord Chancellor and Secretary of State for Justice, said that it was “for anyone who agrees that the end of a relationship should be a time of reflection, and not of manufactured conflict”.³ He also said that the Bill was “by no means anti-marriage” but that it would minimise the conflict between the parties when a marriage did come to an end. This, he continued, would benefit children:

The truth is that when a marriage or indeed a civil partnership has sadly broken down and is beyond repair, it stops benefiting society and the people involved. At worst, continuing in a legal

¹ [Commons Library analysis: Divorce, Dissolution and Separation Bill 2017-19](#), Number 08590, 19 June 2019

² [HC Deb 25 June 2019 cc575-602](#)

³ [HC Deb 25 June 2019 c575](#)

relationship that is no longer functioning can be destructive to families, and the law ought to deal with the reality of marriage breakdown as constructively as possible. The current law does not do that. The requirements of the divorce process at present can often give rise to a confrontational position, even if the decision to divorce is mutual. The incentive to make allegations at the outset, to avoid otherwise waiting for two years' separation, becomes ingrained. Divorce is traumatic, and children are inevitably affected when their parents separate—that goes without saying. I agree that marriage has long proved its worth for bringing up children, but the reality is that not all marriages last. The law should deal with that reality as sensibly as it can. When a marriage has failed, we have to take a serious look at how to reduce conflict for everyone involved, not least for children. Research shows that it is conflict between the parents that has been linked to greater social and behavioural problems among children, rather than necessarily the separation and divorce itself.⁴

Richard Burgon, Shadow Secretary of State for Justice and Shadow Lord Chancellor, welcomed the Bill and said that Labour supported the introduction of a no-fault divorce procedure. He added: "The existing procedure and law managing divorce and the dissolution of civil partnerships is not fit for purpose and is in clear need of updating."⁵

Wera Hobhouse, Liberal Democrat Spokesperson for Justice, said that the Liberal Democrats "very much welcome the changes".⁶

Members spoke both for and against the Bill. For example, Anne Marie Morris (Conservative) called it a "long overdue reform" and said, "I certainly commend it".⁷ However, Fiona Bruce (Conservative) considered that the Bill would "do even less than current procedures to help to promote dialogue and potentially therefore reconciliation". She said that it would make divorce a less considered decision, "with no reason needing to be explained". She added:

It will do nothing to reduce the ongoing conflict that arises from financial disputes. It will increase divorce rates and reduce marriage rates.⁸

1.3 Public Bill Committee

The Bill was considered by a [Public Bill Committee](#) in two sittings on 2 July 2019.

Membership of the Public Bill Committee

The Public Bill Committee consisted of the following Members:

Chairs: Dame Cheryl Gillan, Steve McCabe

Bim Afolami, (Con)

Bambos Charalambous, (Lab)

Robert Courts, (Con)

⁴ [HC Deb 25 June 2019 c576](#)

⁵ [HC Deb 25 June 2019 cc580-1](#)

⁶ [HC Deb 25 June 2019 c586](#)

⁷ [HC Deb 25 June 2019 c584](#)

⁸ [HC Deb 25 June 2019 c588-593](#)

Rosie Duffield, (Lab)

Hugh Gaffney, (Lab)

Kate Green, (Lab)

Peter Heaton-Jones, (Con)

Eddie Hughes, (Con)

Anna McMorrin, (Lab)

Paul Maynard, (Parliamentary Under-Secretary of State for Justice)

Melanie Onn, (Lab)

Victoria Prentis, (Con)

Yasmin Qureshi, (Lab)

Andy Slaughter, (Lab)

Craig Tracey, (Con)

Anne-Marie Trevelyan, (Con)

Matt Warman, (Con)

Evidence

At its [first sitting](#) the Committee heard evidence from the following witnesses:

- Aidan Jones OBE, Chief Executive, Relate;
- Nigel Shepherd, Former Chair of Resolution and Member of the National Committee, Resolution;
- David Hodson OBE, Law Society Family Law Committee member and partner at International Family Law Group LLP, The Law Society;
- Professor Liz Trinder, Professor of Socio-legal Studies, University of Exeter; and
- Mandip Ghai, Senior Legal Officer, Rights of Women.⁹

The Public Bill Committee also received written submissions which are available on the [Bill page on the Parliament website](#).

⁹ [PBC Deb 2 July 2019 cc3-24](#)

2. Public Bill Committee debate

At its [second sitting on 2 July 2019](#), the Public Bill Committee conducted a line-by-line consideration of the Bill.¹⁰ No amendments had been tabled. The Bill was scrutinised by way of clause stand part debates. All clauses were ordered to stand part of the Bill without any division. The Bill was reported without amendment.

Shadow Justice Minister, Yasmin Qureshi, confirmed that the Opposition welcomed the legislation, adding that this was one reason why no amendments or new clauses had been tabled.¹¹

2.1 Clause 1: Divorce: removal of requirement to establish facts etc

Most of the debate in Public Bill Committee concerned Clause 1.

The Bill would provide for a period of 20 weeks between the application for divorce and confirmation by one or both parties that they wish the application to continue. Eddie Hughes (Conservative) considered this “reflection period” to be “clearly of huge importance”:

One key measure by which the success or failure of the removal of fault in the legislation will be judged will be the extent to which it creates a better environment within which couples can rethink and save their marriage.¹²

Based on evidence submitted to the Committee, Eddie Hughes asked a number of questions about how the period would be calculated:

First, in a case in which one member of a couple initiates divorce proceedings, if the 20-week clock starts ticking from the moment that they initiate, as clause 1 currently proposes, the other spouse will on some occasions inevitably end up with less than a 20-week reflection period. That is clearly neither fair nor transparent. Will the Government amend the Bill so that it is clear that the 20-week clock will only start to tick from the moment it is clear that both members of the couple know about it?

Secondly, in order for the 20-week reflection period to work well, it is plainly important that a good part of the 20-week period, if not all of it, is made a litigation-free zone, so that the focus can be on mediation. That must extend to ancillary financial litigation. Will the Government amend the Bill so that at least most of the 20-week period, if not all of it, is made a litigation-free zone, including ancillary financial litigation?

Thirdly, will the Government consider changing the point in the process at which the partner seeking the divorce should lodge their statement of irretrievable breakdown? Having it at the start, as the Bill proposes, makes it extremely difficult for the other partner to respond constructively if the intention is for a period of reflection.

Finally, mindful of the importance of the 20-week period referred to in clause 1 for reconciliation and mediation, what new

¹⁰ [PBC Deb 2 July 2019 cc27-40](#)

¹¹ [PBC Deb 2 July 2019 c29](#)

¹² [PBC Deb 2 July 2019 c28](#)

provisions will the Government make to ensure that all couples are offered effective reconciliation and mediation specifically during this period, in an effort to increase the numbers of divorce proceedings that are not concluded, thereby increasing the number of marriages saved?¹³

While supporting the legislation, Yasmin Qureshi asked the Government to consider two things:

- The reintroduction of legal aid for early advice:

In cutting legal aid, the Government failed to recognise that solicitors who provide early advice are a significant source of referral to mediation, avoiding costly court hearings. Without early advice from a solicitor, many people do not know that the option of mediation exists, or even how to access it.¹⁴

The Shadow Minister also spoke of the increase in the number of litigants in person in the court system since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- The bar on applying for divorce in the first year of marriage:

This rule can leave women who are suffering domestic abuse trapped during that year. Has the Minister listened to the concerns of charities acting for survivors of domestic abuse?¹⁵

Junior Justice Minister, Paul Maynard, stated “a core Government belief: that marriage is vital to our functioning as a society”.¹⁶ He said that he wanted to make it clear that “the legal process for divorce cannot save a marriage when the relationship has already irretrievably broken down”.¹⁷

Paul Maynard spoke of other initiatives related to divorce which might provide an opportunity for signposting couples towards mediation:

...there is more going on to reform the divorce process than just what is in the Bill. There are a number of online initiatives to try to make the process smoother for those going through it, and one thing that we will look at is what changes we can make to that online process to signpost people towards mediation of some sort, counselling and so on, to make sure that they are aware of the broad range of options available to them, which they might not have thought of when they initiated the divorce process.¹⁸

The Shadow Minister addressed concerns about the starting point for the 20 week “period of reflection”:

We have explored this at some length during the consultation. Starting the time period from the acknowledgement of service, as some have suggested, could incentivise an unco-operative party to delay a divorce and could enable a perpetrator of domestic abuse to exercise further coercive control, which is why we have erred on the side of starting it earlier than that.

¹³ [PBC Deb 2 July 2019 cc28-9](#)

¹⁴ [PBC Deb 2 July 2019 cc31-2](#)

¹⁵ [PBC Deb 2 July 2019 c32](#)

¹⁶ [PBC Deb 2 July 2019 c33](#)

¹⁷ [PBC Deb 2 July 2019 c34](#)

¹⁸ [PBC Deb 2 July 2019 c36](#)

It is also worth flagging the caveat that we should bear in mind at every stage of this process. When we talk about mediation at this stage of a divorce process, it is often around finances or childcare. The mediation that my hon. Friend and I might think of as laymen is more a form of marriage counselling and relationship support. We should always be careful about that: when we initiate a divorce proceeding, mediation takes on a slightly different meaning from what it might perhaps have during a marriage. As I mentioned ..., 20 weeks allows people more time to sort out their finances, in as constructive a way as possible.¹⁹

In relation to the bar on divorce in the first year of marriage, Paul Maynard said that the Government had consulted on this issue “and there was certainly no broad consensus or hard and fast evidence either way”:

Faced with a lack of consensus and a lack of hard evidence at this stage that the bar causes hardship or is a problem, we propose to keep the status quo. That does not mean to say that the law can never be changed, but we do not believe that it would be the right step at this stage.²⁰

On the question about legal aid, Paul Maynard set out what was already available:

[The shadow Justice Minister] will be more than aware that legal aid is already available for mediation for couples who have finances or child arrangements that are in dispute. This provides a non-litigious route, resolving issues and helping families to move forward constructively. We are also investing some £5 million to support innovation across the sector that will help people to access legal support as close to their community as possible.

The Minister then addressed the issue of litigants in person:

...we are doubling our investment in our litigant in person strategy, but the wider reforms that I have just mentioned with regard to online processes for divorce should make it simpler and more straightforward for people to initiate proceedings online, so they would have less need for active legal help at that stage of the process. The reform programme, the litigant in person strategy and the legal support action plan are all about opening up newer avenues to access legal support that are not just about someone getting that legal help as they come through the courtroom door.²¹

2.2 Clause 6: Minor and consequential amendments

Bambos Charalambous (Labour) noted the powers that the Lord Chancellor would have in relation to clause 6 but said, “given that they are so limited in scope, we do not propose to object to them”. However, he put his concerns on record:

... we do not wish it go unnoticed that we have concerns about Ministers having—I will not call them Henry VIII powers in relation to divorce proceedings—draconian powers in pushing forward legislation that would remain as primary legislation. I will leave it

¹⁹ Ibid

²⁰ Ibid

²¹ [PBC Deb 2 July 2019 c37](#)

at that. We do not oppose this clause, but I wish to put on record that we have wider concerns about Ministers' powers.²²

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