



## **Divorce, Dissolution and Separation Bill [HL] HL Bill 2 of 2019–20**

On 5 February 2020, the second reading of the [Divorce, Dissolution and Separation Bill \[HL\]](#) is scheduled to take place in the House of Lords.

### **Summary**

The Divorce, Dissolution and Separation Bill [HL] would change the legal requirements for married couples to obtain a divorce or judicial separation and for civil partners to dissolve their civil partnership or obtain a separation. The Government has said that the purpose of the bill is to “remove issues that create conflict” in the divorce process. It stated the legislation would ensure the decision to divorce is a “considered one”. It has argued that it will “reduce family conflict” and “minimise” the impact of divorce on children.

In summary, the provisions in the bill would:

- Introduce a new option of a joint application to the court to initiate proceedings where the decision to divorce is mutual.
- Replace the requirement to provide evidence of fault or separation with a notification process: a statement from the applicant(s) of irretrievable breakdown.
- Remove the possibility to contest the decision to divorce, as the statement would be taken as conclusive evidence of irretrievable breakdown.
- Introduce a minimum overall timeframe of 26 weeks into the divorce process: a new period of 20 weeks between the start of proceedings and confirmation the application can progress to a conditional order (there is currently no minimum period); and retain the current minimum timeframe of six weeks between the conditional order (decree nisi) and the final order (decree absolute).
- Enable the Lord Chancellor to adjust the time periods by order, as long as the total period does not exceed 26 weeks.
- Update terminology. For instance, ‘decree nisi’ and ‘decree absolute’ would be replaced with the terms ‘conditional order’ and ‘final order’ respectively. The term ‘petitioner’ would be replaced with ‘applicant’.
- The law relating to judicial separation, and to dissolution of civil partnership and separation of civil partners, would be changed in a similar way.
- The main provisions of the bill extend and apply to England and Wales only.

Sarah Tudor | 22 January 2020

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## Current Legal Process for Divorce in England and Wales

Since the Matrimonial Causes Act 1857, divorce has always been a court process. Section 1 of the Matrimonial Causes Act 1973 provides that the only ground for divorce in England and Wales is that the marriage has irretrievably broken down.

The legal process can only be initiated by one party to the marriage, the petitioner. The other party, the respondent, must acknowledge they have received the petition and state whether they wish to contest it. According to government figures, only 2% of respondents indicate that they will contest it.

The court cannot hold that the marriage has broken down irretrievably unless the petitioner can satisfy the court of one or more of five 'facts':

- Three facts are based on conduct or "fault": adultery; behaviour; desertion.
- Two relate to periods of separation: two years if both parties consent and five years without consent.

Figures from the Office for National Statistics for 2018 show that 57% of divorces in England and Wales were based on a fault-based petition.

Granting a divorce is a two-stage process. First, the court grants a decree nisi, which is conditional. At this stage the marriage has not legally ended. There is currently no minimum period between the start of proceedings and the grant of a decree nisi. Second, the court grants a decree absolute, which formally ends the marriage. To finalise the divorce the petitioner must wait for at least six weeks before applying for the divorce to be made final. The Government has stated that between 2011 and 2018, around two-thirds of cases reached conditional decree within its proposed minimum of 20 weeks. This included approximately one in ten cases within eight weeks, and four in ten cases between nine and sixteen weeks. In 2018, the courts received 118,141 petitions for divorce.

Judicial separation is a formal separation sanctioned by the court. Decrees of judicial separation are granted on a similar basis to divorce. A 'fact' must be proved, but judicial separation does not bring a legal end to the marriage. Therefore, there is no ground of irretrievable breakdown and the decree is granted in a single stage.

The legal processes for dissolution of a civil partnership or separation are similar to those for marriage. However, there are some differences in the processes, such as adultery not being an available fact and in the terminology for some aspects of the proceedings.

## Recent Attempts to Legislate

Following a Ministry of Justice consultation on reforming the legal requirements for divorce, an [iteration of the Divorce, Dissolution and Separation Bill](#) was introduced in the House of Commons on 13 June 2019. Second reading of the bill took place on 25 June 2019. It was considered by a public bill committee in two sittings on 2 July 2019. No amendments were tabled, and all clauses were ordered to stand part of the bill. The bill was reported without amendment. It had cross-party support. However, the bill failed to complete its passage through Parliament [before the session ended on 8 October 2019](#).

The [bill was reintroduced in the House of Lords on 15 October 2019](#). However, it did not receive its second reading before [Parliament was dissolved on 6 November 2019](#).

In July 2018, Baroness Butler-Sloss (Crossbench) introduced the [Divorce \(etc\) Law Review Bill \[HL\]](#). It would have required the Lord Chancellor to review the law relating to divorce, judicial separation, dissolution of civil partnerships and separation of civil partners. The review would have included consideration of whether the law should be changed so that irretrievable breakdown would be proven solely by a system of application and notification. The bill did not receive a second reading.

## Key Documents

- Cabinet Office, [Queen's Speech 2019: Background Briefing Notes](#), 19 December 2019, pp 77–8; and Ministry of Justice, [Divorce, Dissolution and Separation Bill: Factsheet](#), updated 8 January 2020

*Government briefings that set out the purpose of the Divorce, Dissolution and Separation Bill and its main provisions.*

- House of Commons Library, [Divorce, Dissolution and Separation Bill 2017–19](#), 10 July 2019; and [Divorce, Dissolution and Separation Bill 2017–19: Committee Stage Report](#), 10 July 2019

*Briefings providing an overview of the bill as introduced in the 2017–19 session; background information on the current legal position in England and Wales, and in Scotland; a summary of the arguments advocating reform and opposing it; and covering the bill's committee stage.*

- Ministry of Justice, [Reducing Family Conflict: Reform of the Legal Requirements for Divorce](#), September 2018, pp 5–6; and [Government Response to the Consultation on Reform of the Legal Requirements for Divorce](#), April 2019, CP 58, pp 5–7

*Consultation paper asking for views on replacing the requirement to establish fault or separation to show irretrievable breakdown of marriage, with a process of notification; and the Government's response to the consultation.*

- Office for National Statistics, [Divorces in England and Wales: 2018](#), 29 November 2019; and [Civil Partnerships in England and Wales: 2018](#), 11 October 2019

*Statistics on divorce numbers and rates in England and Wales and on formations and dissolutions of civil partnerships.*

- Nuffield Foundation, [Finding Fault? Divorce Law and Practice in England and Wales](#), October 2017, pp 9–10

*Nuffield Foundation funded research project recommending removing fault from divorce law and replacing it with a notification system.*

## Parliamentary Debate, Statements and Questions

- [Second Reading of the 'Divorce, Dissolution and Separation Bill 2017–19'](#), HC Hansard, 25 June 2019, cols 575–603
- [Public Bill Committee, Divorce, Dissolution and Separation Bill, 2 July 2019, session 2017–19, 2nd sitting, cols 25–42](#)
- [Debate on the Ten Minute Rule Bill 'No Fault Divorce'](#), HC Hansard, 13 October 2015, cols 189–95

## Press Articles and Comment

- ['Modern Marriage'](#), *Times* (£), 17 November 2017
- Jonathan Ames, ['No-fault Divorce Bill Revived to Make Splitting Less Painful'](#), *Times* (£), 20 December 2019
- Baroness Deech, ['No Fault Divorce'](#), Lords of the Blog, 22 September 2017
- Law Society, ['No Fault' Reform Brings Divorce Law into the 21st Century](#), 9 April 2019
- Coalition for Marriage, ['Five Reasons Why 'No Fault Divorce' Would be a Disaster for Marriage'](#), 22 November 2017

## Further Information

- Ministry of Justice, [Report of the Family Mediation Task Force](#), June 2014
- [Explanatory Notes to the Divorce \(etc\) Law Review Bill \[HL\] 2017–19](#)
- Resolution, [Manifesto for Family Law](#), February 2015