



Government Bill will introduce divorce on demand

The Government is progressing a Bill to make divorce quicker and easier in England and Wales.

The Divorce, Dissolution and Separation Bill will further liberalise our law, which already sees around 100,000 divorces a year.

The new system will allow someone to simply walk away from a marriage without having to give a reason and without their spouse being able to contest.

There will be a legal minimum of just six months

between the application for divorce and it being finalised.

A big majority of the responses to the consultation, 80 per cent, opposed the introduction of no-fault divorce. This is a change that is being pushed for by lobbyists and lawyers, but is not being demanded by the public.

Divorce causes great damage to spouses, children and society. We already have it at epidemic levels. The Bill will make this worse and undermine the stability of marriages.

A DRASTIC WEAKENING OF THE CURRENT LAW

Under existing divorce law, one of five 'facts' must be proven to show that a marriage has broken down irretrievably. Three are fault-based: adultery, unreasonable behaviour and desertion. The remainder are based on separation: for two years where both spouses agree, or for five years where one spouse disagrees.

The Bill would scrap all this and replace it with unilateral divorce on demand. This is sometimes called 'no-fault' divorce. It will be enough for one person to simply want to leave

the marriage. The Bill requires a court to take an applicant's statement that the marriage has broken down as conclusive evidence that it has.

Under the changes, a faithful spouse whose behaviour has been exemplary could nevertheless be divorced, against their will, in just six months. The existing law requires a five-year delay in these circumstances before the divorce process can even be started.

The proposals will encourage divorce by making the process quicker and easier. The



definition of marriage as being for life will be further undermined. Allowing a spouse to leave a marriage for

no reason, without any chance for the other person to object, will create enormous insecurity.

AN ACCELERATING CONVEYOR BELT TO DIVORCE

The proportion of divorces taking place using the non-fault separation facts has been increasing for decades. In 2018 it was over 42 per cent – more than 38,800 divorces. All of these would be hugely sped up under the proposed system.

Approximately 24,250 were under the two-year separation rule, where both the parties consent. The two years must pass before the application to divorce is made. This period – which gives

time for potential reconciliation – will be completely abolished under the Bill.

The remainder, more than 14,550, were under the five-year separation rule. Again, the five-year wait will be completely abolished. In these cases, a divorce would be possible in less than a tenth of the time it would take at the moment.

Even the six-month requirement may not survive for long. The Bill gives the Government the



power to change the time period by ministerial order – but only allows it to be made shorter. This one-way valve gives the impression that the real agenda is to make divorce as quick as possible.

Online divorce pilot schemes commissioned by the Government

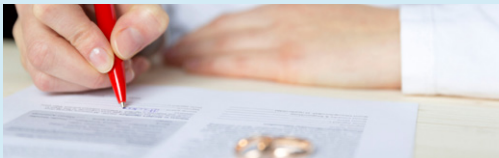
have already been drastically shortening the divorce process. Co-op Legal Services claimed it was able to get divorces through in an average of twelve weeks – the general average is over a year.¹ Being able to get a divorce in twelve weeks makes a mockery of marriage.

IT IS ALREADY TOO EASY TO GET A DIVORCE

The most cited fault ground is unreasonable behaviour, accounting in 2018 for more than 46 per cent of all divorces. 'Unreasonable behaviour' is a summary phrase. To use this ground, a divorce petitioner must prove their spouse has behaved in such a way that they cannot

reasonably be expected to live with them.

Conduct held to meet this threshold has included a dispute over poor map-reading skills and a husband who did excessive DIY.² As one law firm noted: "Almost all spouses can in practice rely upon unreasonable behaviour as a ground for divorce."³



OWENS V OWENS

The 2016-18 case of Owens v Owens is used to call for divorce reform, as it allegedly shows someone being 'trapped in a loveless marriage'. Mrs Owens cited 27 examples of Mr Owens' behaviour, such as being moody and argumentative or disparaging her in front of others. But the original judge found what he heard flimsy, and refused to grant the petition.⁴ This result was more about how the case was conducted – which was criticised in the eventual Supreme Court judgment – than the law. Lord Wilson even confirmed that the law "nowadays sets at a low level the bar for the grant of a decree".⁵

LEARNING FROM PREVIOUS LIBERALISATIONS OF THE LAW

Liberalising divorce law promotes divorce. The history of divorce law reform in England and Wales clearly shows this.

The Divorce Law Reform 1969 came into force in 1971. The number of divorces doubled in just two years, from 58,239 in 1970 to 119,025 in 1972.

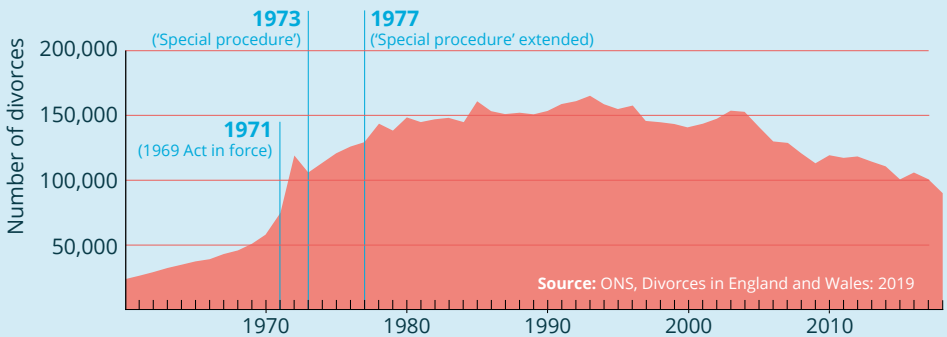
Administrative changes intended for exceptional cases then made a bad situation worse. In 1973 a 'special procedure' was introduced to allow divorces through the post

when there had been two years' separation and there were no children. This was further extended to all uncontested divorces in 1977.

By 1980 there were 148,301 divorces – a 150 per cent increase in a decade. The divorces per thousand married population went from 4.7 to 12 over the same period.

The number of divorces per year is now falling, but this is because fewer people are getting married – you can only divorce if you are married in the first place.

Number of divorces in England and Wales 1960-2018



A LESSON FROM HISTORY: SOVIET ATTACK ON MARRIAGE

Early communist Russia "severed the concept of marriage from that of family" and introduced no-fault divorce in its 1918 Family Code.⁶ The 1926 Family Code allowed divorce in just three days.⁷

Between 1926 and 1927 an already high divorce rate rose by nearly 70 per cent in the European part of the USSR.⁸

It was written at the time,



"we have in Russia if not a condition certainly a spirit of free love".⁹

The ensuing destruction of family life began to destroy Russian society itself. Pro-Soviet author Maurice Hindus wrote that the "social bonds of family life" were "in process of dissolution".¹⁰

Immense problems were posed by divorce, alimony, family instability and homeless waifs wandering the streets ('besprizornost').¹¹

Russia's leaders eventually had to do something. The deputy chairman of the Supreme Court said in 1936: "It is necessary to put an end to the anarchist view of marriage and childbirth as an exclusively private affair".¹²

By 1944 Stalin's Family Edict had returned divorce proceedings to the courts and cohabitation was no longer treated as equivalent to marriage.¹³ In 1959 'solemn ceremonies' were created to establish marriages.¹⁴

Answering some common myths

MYTH: "REQUIRING FAULT CAUSES ACRIMONY"

The Government says the no-fault Bill is necessary because being required to cite fault leads to acrimony between the divorcing parties.

But it is a mistake to blame the process

of divorce for acrimony. Acrimony will have brought many of the couples to the point of divorce. It is often the disputes over assets and children after a divorce that leads to the most acrimony. The legal procedures for these disputes are not amended by the Bill.

The Bill is also changing more than the fault grounds. Some 42 per cent of divorces took place on the separation facts in 2018, where no fault has to be cited. Yet the Bill scraps the non-fault separation facts too.



MYTH: "A DIVORCE IS BETTER FOR THE CHILDREN"



Research shows that young people who experience family breakdown are more than twice as likely to become homeless and twice as likely to be in trouble with the police.¹⁵ Such children are also more likely to develop emotional and behavioural problems.¹⁶

People often believe that divorcing is better for children so they do not see the conflict between their parents. But The Exeter Family Study found that divorce increases rather than reduces children's exposure to conflict.¹⁷ After divorce, children are often at the heart of disputes in a way they never were before.

“ *the experience of most children whose parents divorce is of increased conflict over an extended period, with the child involved to an extent that may not have been the case while the marriage lasted* ”

The Exeter Family Study ¹⁸

The study compared the effects of family disruption on children in re-ordered families with those of conflict on children living in intact families. It found that the poorest outcomes for children were associated with the re-ordering of the family rather than the presence of serious conflict.¹⁹ In other words, divorce is worse for children than serious conflict in an intact family.

MYTH: "NO EFFECT ON DIVORCE RATE"

The Government in its impact assessment said it is assuming no increase in divorce. It has no basis for this assumption, and every reason to conclude the opposite.

If you make something quicker and easier, you will increase the number of people who do it. This is natural and obvious. And it's borne out by the countries that have instituted no-fault divorce.

A 1998 study of the impact of no-fault divorce laws in the US concluded that they were responsible for 17 per cent of the rise in divorce rates between 1968 and 1988.²⁰ A separate study in the same year, also in the US, confirmed that "no-fault divorce laws are associated with higher divorce levels".²¹

In 2006 a study focusing on Europe said divorce law reform was responsible for about 20 percent of the increase in divorce rates in Europe between 1960 and 2002.²²



The law and public policy should provide support for marriage, not undermine it

THE PUBLIC PURPOSE OF MARRIAGE

Marriage is a public act, not a private arrangement, because marriage is not just about personal relationships. It is about the public good in creating a stable society – and a stable environment in which to raise children. Marriage also joins families and creates a new family.

Ninety per cent of parents who stay together until their children reach 15 are married.²³ Children born to

married parents are more likely to go to university, more likely to get married themselves, and less likely ever to receive government benefits.²⁴ They have higher self-esteem and better mental health.²⁵

Governments are interested in stability for adults and children. The best way to secure that is for a child to be brought up by their own married mother and

father. This is why the state is involved in marriage at all.

Marriage has always needed structural support through the law and public policy. This was so even when marriage rates were high and divorce was rare. A key buttress is that the law upholds lifelong commitment in marriage. This has been weakened over many years. But no-fault divorce kicks away this support altogether.

DID YOU KNOW?

*Those who are married are normally happier and tend to live longer, have fewer heart attacks, a lower risk of depression, and better survival rates for cancer and major operations.*²⁶



*The cost to the taxpayer of family breakdown has been estimated at around £50 billion a year.*²⁷



RISKS OF SEEING MARRIAGE AS JUST A RELATIONSHIP

Many people view marriage as only a private relationship, not a public institution. And that relationship can be terminated at any time by either party. This leads to marriage becoming brittle, performance-based, and immature. The relationship has no protecting structure.

This inevitably brings great insecurity for the parties. The only thing holding the marriage together is the desire of both people at any given moment to be part of the marriage. They will constantly wonder if their efforts are enough to maintain romantic feelings. But romantic love or physical attraction simply cannot bear the weight of a marriage. As one author has said: "Such unions are often the most tyrannical of bonds because they depend

entirely upon the partners keeping emotionally all the time up to scratch."²⁸

When the romance wanes, or when the performance of a spouse drops below the optimum and there are better opportunities elsewhere, why stick with the marriage? Why not trade up for a new model? There is no restraint on selfishness.

If marriage is merely a romantic relationship then each spouse knows that the other could up and leave without cause or warning. This is bound to affect what they put into the marriage. Why invest in the marriage if it could all be so easily ended? It naturally reduces commitment, undermining the marriage at its very foundations.



DIVORCE IS NOT GOD'S DESIGN

God spelled out the importance of marriage for mankind at the very beginning of human history when, after Eve was created for Adam,

the Bible records: "For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh" (Genesis 2:24).

Jesus was asked a specific question about 'no-fault' divorce by the Pharisees: "Is it lawful for a man to divorce his wife for any and every reason?" (Matthew 19:3). His answer was emphatic: "what God has joined together, let man not separate" (Matthew 19:6).

Christ said that the

provision in the Law of Moses permitting a man to write a certificate to divorce his wife was allowed only because of the hardness of men's hearts. He appealed directly to Genesis: "But it was not this way from the beginning" (Matthew 19:8).

The apostle Paul emphasised the sanctity and permanence of marriage vows when he compared the relationship between a husband and wife with the relationship between Christ and the Church (Ephesians

5:22-29). Such a doctrine brings home the seriousness of divorce in the eyes of the God who says "I hate divorce" (Malachi 2:16).

Jesus' teaching in Matthew's Gospel is cited as allowing adultery to be a basis for divorce (Matthew 5:32, 19:9). Some Christians also believe that in 1 Corinthians 7:15 Paul allows for desertion as a ground of divorce. Both of these are clearly grounds of 'fault'. 'No-fault' divorce is unknown in Christian theology.



NO-FAULT DIVORCE CREATES INJUSTICE

God "loves justice" (Psalm 99:4) and detests the guilty being acquitted (Proverbs 17:15). No-fault divorce creates two forms of injustice.

The first is that a person's spouse can simply walk away from the marriage without any justification for breaching the vows the couple made to one another. And this is being applied retrospectively to existing marriages. It is redefining people's marriages after the fact. It is no longer the definition of marriage they signed up for.

The second injustice arises

where there is serious misconduct, such as adultery. A wronged spouse will not be able to file for divorce citing this behaviour as the reason. Instead, the only basis available will be the sanitised no-fault basis. The guilty party is not identified as being at fault. This is likely to leave the innocent party feeling doubly

betrayed, both by their spouse and by the system that does not allow bad conduct to be named. It means the new system will create acrimony of its own.



References available at christian.org.uk/divorcebrief-ref



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