

Divorce, Dissolution and Separation Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD MCCOLL OF DULWICH

- 1** Page 1, line 7, leave out from “court” to end of line 15 and insert “to initiate the process for an order (a “divorce order”) which will dissolve the marriage on the ground that the marriage has broken down irretrievably.
- (2) The divorce process under subsection (1) consists of three stages and must be accompanied by –
- (a) for the first stage, a statement by the applicant or applicants, if a joint application, on the filing of the application for a divorce order that they think that the marriage may have broken down irretrievably,
 - (b) for the second stage, a statement by the applicant or applicants on applying for a conditional order asserting that the marriage has broken down irretrievably, and
 - (c) for the third stage, an application for the final divorce.
- (3) The court dealing with an application under subsection (2)(c) must –
- (a) take the statement given under subsection (2)(b) to be conclusive evidence that the marriage has broken down irretrievably, and
 - (b) make a final divorce order.”

BARONESS HOWE OF IDLICOTE
BARONESS MEYER

- 2** Page 1, line 12, at end insert “first consider whether a divorce order is in the interests of any child of the family and, if the court is satisfied that it is, then”

Member’s explanatory statement

This amendment would require the courts to take the wellbeing of any children in the family into account before granting a divorce order to end a marriage.

LORD HARRIES OF PENTREGARTH
LORD MACKAY OF CLASHFERN
BARONESS CHAKRABARTI

3 Page 1, line 12, at end insert –

“() send, to the applicant and to the other party to the marriage, information about –
(i) relationship support services, and
(ii) mediation services,”

Member’s explanatory statement

This amendment seeks to ensure that divorcing couples have access to information about relationship support and mediation so that they can think again about the best way forward before being issued a final divorce order.

LORD MACKAY OF CLASHFERN
LORD FARMER
BARONESS MEYER

4 Page 2, line 8, leave out “20” and insert “46”

Member’s explanatory statement

This would extend the minimum legal period for a divorce from six months to one year (with the additional six weeks between the conditional and final orders).

LORD FARMER
LORD MACKAY OF CLASHFERN
BARONESS WYLD
LORD CURRY OF KIRKHARLE

5 Page 2, line 9, at end insert –

“() For the purposes of subsection (5), “the start of the proceedings” means –
(a) in the case of an application that is to proceed as an application by both parties to the marriage, the date on which both parties apply for a divorce order, or
(b) in the case of an application that is to proceed as an application by one party to the marriage only, the date when the notice of an application for a divorce order has been served to the other party to the marriage.”

Member’s explanatory statement

This amendment seeks to address that, if the 20-week period begins as soon as the application is made, the respondent may have less than 20 weeks by the time they have been served notice.

BARONESS CHAKRABARTI

6 Page 2, leave out lines 10 to 12

Member’s explanatory statement

Omits new section 1(6) of the Matrimonial Causes Act 1973, as recommended by the Delegated Powers and Regulatory Reform Committee.

LORD FARMER

7★ Page 2, line 19, at end insert –

- “() In the case of an application that is to proceed as an application by one party to the marriage only, there shall be no commencement of financial provision proceedings until the end of the period of 20 weeks from the start of the proceedings for the divorce order unless –
- (a) the other party to the marriage agrees to the commencement of financial provision proceedings, or
 - (b) there is an application under section 22 for the court to make an order for maintenance pending suit.”

Member’s explanatory statement

This amendment would ensure that there are no discussions about financial settlement for 20 weeks unless both parties agree or there is an application to the court for interim maintenance and financial injunctions.

LORD MARKS OF HENLEY-ON-THAMES
BARONESS BURT OF SOLIHULL

8 Page 2, line 19, at end insert –

- “(8A) For the purposes of an application for a divorce order by one party to a marriage only, the Lord Chancellor may by order by statutory instrument make provision for a minimum period, not exceeding six weeks beginning with the start of proceedings, within which the applicant must have –
- (a) served notice upon the other party to the marriage of the application for a divorce order,
 - (b) made an application to the court for an order that such service be dispensed with, or
 - (c) made an application to the court for an order that the other party to the marriage be deemed to have been served with notice of the application for a divorce order.”

Member’s explanatory statement

This amendment would make it compulsory for an individual applicant for a divorce order to serve notice of the application upon the other party within a maximum of six weeks or to apply for an order dispensing with service or deeming service to have been effected.

9 Page 2, line 20, after “(6)” insert “or (8A)”

Member’s explanatory statement

See explanatory statement for Amendment 8 in the name of Lord Marks of Henley-on-Thames.

After Clause 1

BARONESS HOWE OF IDLICOTE

10 Insert the following new Clause –

“Recording lack of consent

After section 1 of the Matrimonial Causes Act 1973 (divorce on breakdown of marriage) insert –

After Clause 1 - continued**“1A Supplemental provision in cases where one party does not consent**

- (1) In the case of an application by only one party to the marriage for a divorce order, it must be recorded on the divorce order if the other party to the marriage did not consent to the divorce.
- (2) For the purposes of subsection (1) the other party shall only be taken to not have consented to the divorce if they have made this known to the court prior to the divorce order being made final.”

Member’s explanatory statement

This would allow a party to a marriage who did not consent to divorce to have it on record.

Clause 2

LORD MARKS OF HENLEY-ON-THAMES
BARONESS BURT OF SOLIHULL

11 Page 2, line 43, at end insert –

- “(1AA) For the purposes of an application for a judicial separation order by one party to a marriage only, the Lord Chancellor may by order made by statutory instrument make provision for a minimum period, not exceeding six weeks beginning with the start of proceedings, within which the applicant must have –
- (a) served notice upon the other party to the marriage of the application for a judicial separation order,
 - (b) made an application to the court for an order that such service be dispensed with, or
 - (c) made an application to the court for an order that the other party to the marriage be deemed to have been served with notice of the application for a divorce order.”

Member’s explanatory statement

This amendment would make it compulsory for an individual applicant for a judicial separation order to serve notice of the application upon the other party within a maximum of six weeks or to apply for an order dispensing with service or deeming service to have been effected.

12 Page 2, line 45, at end insert “provided that, if the application is by one party to the marriage only, the court is satisfied that –

- (a) the other party to the marriage has been served with the notice of the application for a judicial separation order,
- (b) the court has ordered that such service be dispensed with, or
- (c) the court has ordered that the other party to the marriage is deemed to have been served with notice of the application for a judicial separation order.”

Member’s explanatory statement

See explanatory statement for Amendment 11 in the name of Lord Marks of Henley-on-Thames.

13 Page 2, line 45, at end insert –

“() A statutory instrument containing an order under subsection (1AA) is subject to annulment in pursuance of a resolution of either House of Parliament.”

Member’s explanatory statement

See explanatory statement for Amendment 11.

Clause 3

BARONESS HOWE OF IDLICOTE

14 Page 3, line 17, at end insert “consider whether a dissolution order is in the interests of any child of the family and, if the court is satisfied that it is, then”

Member’s explanatory statement

This amendment would require the courts to take the wellbeing of any children in the family into account before granting a divorce order to end a civil partnership.

Clause 4

LORD FARMER

LORD MACKAY OF CLASHFERN

BARONESS WYLD

15 Page 4, line 9, at end insert –

“() For the purposes of subsection (2), “the start of the proceedings” means –

- (a) in the case of an application that is to proceed as an application by both civil partners, the date on which those persons apply for an order under section 44(1), or
- (b) in the case of an application that is to proceed as an application by one civil partner only, the date when the notice of an application for a dissolution order has been served to the other civil partner.”

Member’s explanatory statement

This amendment seeks to address that, if the 20-week period begins as soon as the application is made, the respondent may have less than 20 weeks by the time they have been served notice.

BARONESS CHAKRABARTI

16 Page 4, leave out lines 10 to 13

Member’s explanatory statement

Omits new section 37A(3) of the Civil Partnership Act 2004, as recommended by the Delegated Powers and Regulatory Reform Committee.

LORD MARKS OF HENLEY-ON-THAMES
BARONESS BURT OF SOLIHULL

17 Page 4, line 18, at end insert—

- “(5A) For the purposes of an application for a dissolution order by one civil partner only, the Lord Chancellor may by order made by statutory instrument make provision for a minimum period, not exceeding six weeks beginning with the start of proceedings, within which the applicant must have—
- (a) served notice upon the other civil partner of the application for a dissolution order,
 - (b) made an application to the court for an order that such service be dispensed with, or
 - (c) made an application to the court for an order that the other civil partner be deemed to have been served with notice of the application for a dissolution order.”

Member’s explanatory statement

This amendment would make it compulsory for an individual civil partner applying for a dissolution order to serve notice of the application upon the other civil partner within a maximum of six weeks or to apply for an order dispensing with service or deeming service to have been effected.

LORD FARMER

17A★ Page 4, line 18, at end insert—

- “(5A) In the case of an application that is to proceed as an application by one civil partner only, there shall be no commencement of financial provision proceedings until the end of the period of 20 weeks from the start of the proceedings for the dissolution order unless—
- (a) the other civil partner agrees to the commencement of financial provision proceedings, or
 - (b) there is an application under Schedule 5 paragraph 2(1) for maintenance pending suit.”

Member’s explanatory statement

This amendment would ensure that there are no discussions about financial settlement in the 20 week period for the dissolving of a civil partnership unless both parties agree or there is an application to the court for interim maintenance and financial injunctions.

LORD MARKS OF HENLEY-ON-THAMES
BARONESS BURT OF SOLIHULL

18 Page 4, line 19, after “(3)” insert “or (5A)”

Member’s explanatory statement

See explanatory statement for Amendment 17 in the name of Lord Marks of Henley-of-Thames.

After Clause 5

LORD FARMER
LORD MACKAY OF CLASHFERN
BARONESS MEYER

19 Insert the following new Clause—

“Report on the impact on divorce applications and marriage support

- (1) The Secretary of State must publish an annual report on the impact of this Act on divorce proceedings and marriage, with the first report to be published no later than 18 months after the day on which this section comes into force.
- (2) The report under subsection (1) must include, but is not limited to—
 - (a) the number of divorce applications made under the provisions of this Act by the sex and income of the applicant and respondent;
 - (b) the number of married couples or civil partners who seek relationship counselling during the divorce process, broken down by the demographics of the parties and geographic location;
 - (c) the number of children in the relationships subject to the divorce applications; and
 - (d) a statement on the support services and marriage counselling available to married couples or civil partners as an alternative to divorce proceedings under this Act.
- (3) The report under subsection (1) must be laid before each House of Parliament.”

LORD MCCOLL OF DULWICH

19A★ Insert the following new Clause—

“Reports on contributory factors

- (1) The Lord Chancellor must provide by regulations for parties to a divorce or judicial separation order to be surveyed, voluntarily and anonymously, as to the contribution (if any) of prescribed factors to the situation, which factors may include the impact of their marriage or civil partnership on tax and benefits.
- (2) The Lord Chancellor must lay a report of the results of surveys under subsection (1) before both Houses of Parliament within 12 months of this Act being passed, and annually thereafter.”

Before Clause 6

BARONESS DEECH
LORD MACKAY OF CLASHFERN
LORD WALKER OF GESTINGTHORPE
BARONESS SHACKLETON OF BELGRAVIA

20 Insert the following new Clause—

“Review of operation of certain sections of the Matrimonial Causes Act 1973

- (1) The Secretary of State must conduct a review of the operation of sections 25, 25A and 34 to 36 of the Matrimonial Causes Act 1973 (the “Act”) to determine whether they—

Before Clause 6 - continued

- (a) properly reflect the patterns of family life of the present day,
 - (b) provide for a system which is reasonably predictable in its outcomes from case to case, and
 - (c) act to exacerbate the costs of legal representation which must be expended by parties litigating thereunder.
- (2) The review must in particular consider –
- (a) whether it would be appropriate for provisions akin to sections 9, 10 and 24 to 26 of the Family Law (Scotland) Act 1985 to be incorporated into the Act to assist the court in its determination of the matters to which the court is to have regard pursuant to section 25 thereof,
 - (b) whether the operation of sections 25 and 25A of the Act in relation to the quantum and term of periodical payments is appropriate in the context of changes in the labour market since their entry into force,
 - (c) whether agreements between parties (or prospective parties) to a marriage in relation to their financial arrangements should be presumptively binding on the court,
 - (d) whether the provisions of subsection 25(1) of the Act are of meaningful effect in the majority of cases, and
 - (e) any amendments to sections 25, 25A and 34 to 36 of the Act which may be necessary in consequence of the review.
- (3) The Secretary of State must begin the review before the end of the period of six months beginning with the day on which this Act is passed.
- (4) The Secretary of State must lay before both Houses of Parliament a report of the conclusions of the review and of any proposals which it makes within one year of the commencement of the review.”

The Schedule

LORD FARMER
LORD MACKAY OF CLASHFERN

21

Page 19, line 4, at beginning insert –

- “() Section 22 of the Family Law Act 1996 (funding for marriage support services) is amended as follows.
- () In subsection (1), leave out “may, with the approval of the Treasury,” and insert “must”.
 - () In subsection (1)(a), at the end insert “, both before and during a marriage”.
 - () After subsection (1)(a) insert –
 - “(aa) marriage counselling for any partners to a marriage where an application has been made to the court for a divorce order under section 1 of the Matrimonial Causes Act 1973.”
 - () After subsection (3) insert –
 - “(4) Any reference to marriage or marital breakdown in this section also applies to civil partnerships.””

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2 March 2020
