

Divorce, Dissolution and Separation Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD MCCOLL OF DULWICH

1★

Page 1, leave out lines 6 to 15 and insert –

- “(1) Subject to subsections (1) and (2), either or both parties to a marriage may apply to the court to initiate the process for an order (a “divorce order”).
- (2) In the case of an application by both parties to the marriage under subsection (1) –
- (a) the application must be accompanied by a statement by the applicants that the marriage has broken down irretrievably, and
 - (b) the court must –
 - (i) take the statement given under subsection (2)(a) to be conclusive evidence that the marriage has broken down irretrievably, and
 - (ii) make a divorce order.
- (3) In the case of an application under subsection (1) that is to proceed as an application by one party to the marriage only –
- (a) an application must be accompanied by an initial statement by the applicant of their intention to seek a conditional order on the basis that the marriage may have broken down;
 - (b) a confirmation by the applicant under subsection (5)(a) that they wish the application to continue must be accompanied by a statement that the marriage has broken down irretrievably; and
 - (c) the court dealing with an application made by one party under this subsection and subsection (5)(a) must –
 - (i) take the statement given under subsection (3)(b) to be conclusive evidence that the marriage has broken down irretrievably, and
 - (ii) make a divorce order.”

Member's explanatory statement

This amendment sets out different steps in the divorce process, depending upon whether the application is a joint application by both parties to the marriage, or an application by only one party.

LORD FARMER

2★ Page 1, leave out lines 9 to 15 and insert –

- “(2) On an application for a divorce order the court must inquire, so far as it reasonably can, into –
- (a) the facts alleged by the applicant or applicants, and
 - (b) if the application is by one party to the marriage only, any facts alleged by the respondent.
- (3) The court hearing an application for a divorce order must not hold that the marriage has broken down irretrievably unless the applicant or applicants satisfy the court of one or more of the facts described in subsection (3A), in which case it must make a divorce order.
- (3A) The facts referred to in subsection (3) are –
- (a) if the application is by both parties to the marriage, that the applicants have lived apart for a continuous period of at least one year immediately preceding the making of the application;
 - (b) if the application is by one party to the marriage only –
 - (i) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent, including where the respondent has committed adultery;
 - (ii) that the applicant and the respondent have lived apart for a continuous period of at least two years immediately preceding the making of the application;
 - (iii) that the respondent has deserted the applicant for a continuous period of at least two years immediately preceding the making of the application.”

LORD CURRY OF KIRKHARLE

3★ Page 2, line 9, at end insert –

- “(5A) For the purposes of subsection (5), “the start of 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 the application is lodged at the court under subsection (1), 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 notice that the application for a divorce order has been lodged at the court has been served on the other party to the marriage.
- (5B) The court may abridge the 20 week period under subsection (5) if, on application, there is evidence that the respondent has engaged in deliberate evasion of service or other steps to delay materially the service of the application under subsection (1).
- (5C) The extent of the abridgement is at the discretion of the court and the court must take into account the date when the proceedings would have started had there been no such evasion or other material attempts to delay service by the respondent.”

Clause 1 - continued

LORD KEEN OF ELIE

- 4 Page 2, line 20, leave out from “subsection (6)” to “House” in line 21 and insert “may not be made unless a draft of the instrument has been laid before and approved by a resolution of each”

After Clause 1

BARONESS HOWE OF IDLICOTE
BARONESS BENJAMIN

- 5★ Insert the following new Clause –
“Information to be provided

The Lord Chancellor must ensure that individuals applying for a divorce order who have children under the age of 18 are provided with a concise statement of the main findings from the relevant social science disciplines about the impact of divorce on different aspects of a child’s wellbeing.”

Clause 2

LORD FARMER

- 6★ Page 2, line 46, leave out subsection (3)

Member’s explanatory statement

This removes the provision in the bill that omits subsection (2) of section 17 of the 1973 Act which imposes a duty on the court to inquire into the facts.

Clause 3

LORD FARMER

- 7★ Page 3, line 11, leave out subsection (3) and insert –

“(3) For subsection (3) substitute –

“(3) The court hearing an application for a dissolution order must not hold that the civil partnership has broken down irretrievably unless the applicant or applicants satisfy the court of one or more of the facts described in subsection (5)(a) or (b).”

- 8★ Page 3, line 21, leave out subsection (6) and insert –

“(6) For subsection (5) substitute –

“(5) The facts referred to in subsections (3) and (4) are –

(a) if the application is by one party to the civil partnership only,

(i) that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;

(ii) that the applicant and the respondent have lived apart for a continuous period of at least two years immediately preceding the making of the application (“two years’ separation”);

Clause 3 - continued

- (iii) that the respondent has deserted the applicant for a continuous period of at least two years immediately preceding the making of the application;
- (b) if the application is by both parties to the civil partnership, that the applicants have lived apart for a continuous period of at least one year immediately preceding the making of the application (“one year’s separation”).”

9★ Page 3, line 26, leave out from “(including” to end of line 28

Clause 4

LORD KEEN OF ELIE

10 Page 4, line 21, leave out from “order” to “House” in line 22 and insert “may not be made unless a draft of the instrument has been laid before and approved by a resolution of each”

Clause 5

LORD FARMER

11★ Page 4, line 37, leave out subsection (2) and insert –

“(2) For subsection (1) substitute –

“(1) An application for a separation order may be made to the court by either or both civil partners on the ground that any such fact as is mentioned in section 44(5)(a) or (b) exists.””

12★ Page 4, line 39, leave out subsections (3) to (5) and insert –

“(3) In subsection (3) for the words “44(5)(a), (b), (c) or (d)” substitute “44(5)(a) or (b).”

Before Clause 6

LORD HARRIES OF PENTREGARTH

13 Insert the following new Clause –

“Relationship support, mediation and domestic abuse services

It is the duty of a Minister of the Crown to ensure that those applying for a divorce order using the website of Her Majesty’s Courts & Tribunals Service have access to information about services related to relationship support, mediation, domestic abuse and related matters.”

14 Insert the following new Clause –

“Impact on marriage

Nothing in this Act changes the understanding of marriage as established by law.”

Before Clause 6 - continued

BARONESS HOWE OF IDLICOTE
BARONESS BENJAMIN

15 Insert the following new Clause—

“Report on the effect on children of divorce or dissolution in families with low conflict

- (1) The Secretary of State must publish a report on the impact of divorce or dissolution on children of a marriage or civil partnership ending when there is either no conflict or low conflict between the parties.
- (2) The Secretary of State must lay the report under subsection (1) before both Houses of Parliament.”

LORD FARMER

16 Insert the following new Clause—

“Report on impact of this Act

- (1) The Secretary of State must publish an annual report on the impact of this Act on divorce and dissolution proceedings, and marriage and civil partnership, 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 and dissolution applications made under the provisions of this Act by the sex and income of the applicant and respondent, and
 - (b) the number of children in the relationships subject to the divorce and dissolution applications.
- (3) The report under subsection (1) must be laid before each House of Parliament.”

LORD MCCOLL OF DULWICH

17★ Insert the following new Clause—

“Report on reconciliation under differing approaches to divorce law

The Lord Chancellor must produce a report drawing from multiple peer reviewed academic sources comparing the scope for reconciliation under a fault based divorce system with a no-fault based divorce system.”

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13 March 2020
