

# **Divorce, Dissolution and Separation Bill [HL]**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice, have been ordered to be published as HL Bill 2–EN

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Keen of Elie has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Divorce, Dissolution and Separation Bill [HL] are compatible with the Convention rights.



# Divorce, Dissolution and Separation Bill [HL]

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**B I L L**

TO

Make in relation to marriage and civil partnership in England and Wales provision about divorce, dissolution and separation; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Divorce and judicial separation*

**1 Divorce: removal of requirement to establish facts etc**

For section 1 of the Matrimonial Causes Act 1973 (divorce on breakdown of marriage) substitute—

- “1 Divorce on breakdown of marriage** 5
- (1) Subject to section 3, either or both parties to a marriage may apply to the court for an order (a “divorce order”) which dissolves the marriage on the ground that the marriage has broken down irretrievably.
- (2) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably. 10
- (3) The court dealing with an application under subsection (1) must—
- (a) take the statement to be conclusive evidence that the marriage has broken down irretrievably, and
- (b) make a divorce order. 15
- (4) A divorce order—
- (a) is, in the first instance, a conditional order, and
- (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
- (5) The court may not make a conditional order unless— 20

- (a) in the case of an application that is to proceed as an application by one party to the marriage only, that party has confirmed to the court that they wish the application to continue, or
- (b) in the case of an application that is to proceed as an application by both parties to the marriage, those parties have confirmed to the court that they wish the application to continue; 5
- and a party may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings.
- (6) The Lord Chancellor may by order made by statutory instrument amend this section so as to shorten or lengthen the period for the purposes of subsection (4)(b) or (5). 10
- (7) But the Lord Chancellor may not under subsection (6) provide for a period which would result in the total number of days in the periods for the purposes of subsections (4)(b) and (5) (taken together) exceeding 26 weeks. 15
- (8) In a particular case the court dealing with the case may by order shorten the period that would otherwise be applicable for the purposes of subsection (4)(b) or (5).
- (9) A statutory instrument containing an order under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament. 20
- (10) Without prejudice to the generality of section 75 of the Courts Act 2003, Family Procedure Rules may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only).” 25
- 2 Judicial separation: removal of factual grounds** 30
- (1) Section 17 of the Matrimonial Causes Act 1973 (judicial separation) is amended as follows.
- (2) For subsection (1) substitute –
- “(1) Either or both parties to a marriage may apply to the court for an order (a “judicial separation order”) which provides for the separation of the parties to the marriage. 35
- (1A) An application under subsection (1) must be accompanied by –
- (a) if the application is by one party to the marriage only, a statement by that person that they seek to be judicially separated from the other party to the marriage, or 40
- (b) if the application is by both parties to the marriage, a statement by them that they seek to be judicially separated from one another.
- (1B) The court dealing with an application under subsection (1) must make a judicial separation order.” 45
- (3) Omit subsection (2).

- (4) In subsection (3)–
  - (a) for “judicial separation”, in both places, substitute “a judicial separation order”;
  - (b) for “divorce” substitute “a divorce order”.

*Civil partnership: dissolution and separation*

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**3 Dissolution: removal of requirement to establish facts**

- (1) Section 44 of the Civil Partnership Act 2004 (dissolution of civil partnership which has broken down irretrievably) is amended as follows.
- (2) In subsection (1), for “either civil partner” substitute “either or both civil partners”. 10
- (3) After subsection (1) insert –
  - “(1A) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the civil partnership has broken down irretrievably.”
- (4) Omit subsections (2) and (3). 15
- (5) For subsection (4) substitute –
  - “(4) The court dealing with an application under subsection (1) must –
    - (a) take the statement to be conclusive evidence that the civil partnership has broken down irretrievably, and
    - (b) make a dissolution order.” 20
- (6) Omit subsection (5).
- (7) At the end insert –
  - “(6) Without prejudice to the generality of section 75 of the Courts Act 2003, Family Procedure Rules may make provision as to the procedure for an application under subsection (1) by both civil partners to become an application by one civil partner only (including provision for a statement made under subsection (1A) in connection with the application to be treated as made by one civil partner only).” 25

**4 Dissolution orders: time limits**

- (1) The Civil Partnership Act 2004 is amended as follows. 30
- (2) In section 37 (powers to make orders and effect of orders), omit subsection (2).
- (3) After section 37 insert –
  - “37A Dissolution on ground of breakdown: conditional and final orders**
  - (1) Every dissolution order –
    - (a) is, in the first instance, a conditional order, and 35
    - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order (the “first prescribed period”).
  - (2) The court may not make a conditional order unless –

- (a) in the case of an application that is to proceed as an application by one civil partner only, that person has confirmed to the court that they wish the application to continue, or
- (b) in the case of an application that is to proceed as an application by both civil partners, those persons have confirmed to the court that they wish the application to continue; 5
- and a person may not give confirmation for the purposes of this subsection before the end of the period of 20 weeks from the start of proceedings (the “second prescribed period”).
- (3) The Lord Chancellor may by order amend this section so as to substitute— 10
- (a) a different definition of the first prescribed period, or
- (b) a different definition of the second prescribed period.
- (4) But the Lord Chancellor may not under subsection (3) provide for a period which would result in the total number of days in the first and second prescribed periods (taken together) exceeding 26 weeks. 15
- (5) In a particular case the court dealing with the case may by order shorten the first prescribed period or the second prescribed period.
- (6) The power to make an order under subsection (3) is exercisable by statutory instrument. 20
- (7) An instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (4) In section 38 (the period before conditional orders may be made final)—
- (a) for the heading substitute “Annulment and presumption of death: conditional and final orders”; 25
- (b) before subsection (1) insert—
- “(A1) Every nullity or presumption of death order—
- (a) is, in the first instance, a conditional order, and
- (b) may not be made final before the end of the prescribed period for the purposes of this paragraph.”; 30
- (c) in subsection (1), in the words before paragraph (a), for “section 37(2)(b)” substitute “subsection (A1)(b)”;
- (d) in subsection (2), for “section 37(2)(b) substitute “subsection (A1)(b)”.
- 5 Separation: removal of factual grounds**
- (1) Section 56 of the Civil Partnership Act 2004 (separation orders) is amended as follows. 35
- (2) In subsection (1), for the words from “either civil partner” to the end substitute “either or both civil partners.”
- (3) After subsection (1) insert—
- “(1A) An application under subsection (1) must be accompanied by— 40
- (a) if the application is by one civil partner only, a statement by that person that they seek to be separated from the other civil partner, or



- (b) if the application is by both civil partners, a statement by them that they seek to be separated from one another.”
- (4) Omit subsection (2).
- (5) For subsection (3) substitute –
  - “(3) The court dealing with an application under subsection (1) must make a separation order.”
- (6) Omit subsection (4).

*General*

**6 Minor and consequential amendments**

- (1) The Schedule to this Act contains minor and consequential amendments. 10
- (2) The Lord Chancellor may by regulations made by statutory instrument make provision that is consequential on any provision made by this Act.
- (3) Regulations under this section –
  - (a) may include transitional or saving provision;
  - (b) may amend, repeal or revoke any provision of or made under primary legislation. 15
- (4) The provision referred to in subsection (3)(b) does not include a provision of legislation passed or made after the end of the session of Parliament in which this Act is passed.
- (5) A statutory instrument containing regulations under this section that amend, repeal or revoke primary legislation may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 20
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 25
- (7) In this section “primary legislation” means –
  - (a) an Act;
  - (b) a Measure or Act of the National Assembly for Wales;
  - (c) an Act of the Scottish Parliament;
  - (d) Northern Ireland legislation. 30

**7 Extent**

- (1) This Act extends to England and Wales only, subject to subsections (2) and (3).
- (2) Sections 6 to 9 also extend to Scotland and Northern Ireland.
- (3) An amendment or repeal made by the Schedule has the same extent as the provision amended or repealed. 35

**8 Commencement and transitional provision**

- (1) The provisions of this Act come into force on the commencement date, subject to subsections (2) and (3).
- (2) Sections 6(2) to (7), 7 and 9 and this section come into force on the day on which this Act is passed. 5
- (3) The following sections come into force on the day on which this Act is passed so far as they confer power to make provision by Family Procedure Rules –
- (a) section 1;
- (b) section 3.
- (4) Section 1 and paragraphs 2 to 11, 17, 19, 20(3), 26, 28, 30, 31 and 33(a) of the Schedule do not apply in relation to proceedings for divorce that started before the commencement date. 10
- (5) Section 2 and paragraphs 16, 19, 20(3), 26, 28, 30, 31, 33(a) and 51(3) of the Schedule do not apply in relation to proceedings for judicial separation that started before the commencement date. 15
- (6) Paragraphs 12 to 14, 19, 20(3), 26, 28, 30, 33(b), 51(6) and 56 of the Schedule do not apply in relation to proceedings for nullity of marriage that started before the commencement date.
- (7) Sections 3 to 5 and Part 2 of the Schedule do not apply to proceedings for a dissolution, nullity, presumption of death or separation order that started before the commencement date. 20
- (8) In this section “the commencement date” means such day as the Lord Chancellor may by regulations appoint.
- (9) Different days may be appointed for different purposes.
- (10) Regulations under this section are to be made by statutory instrument. 25

**9 Short title**

This Act may be cited as the Divorce, Dissolution and Separation Act 2020.

## SCHEDULE

Section 6

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### AMENDMENTS TO THE MATRIMONIAL CAUSES ACT 1973

- |   |   |          |
|---|---|----------|
| 1 | The Matrimonial Causes Act 1973 is amended as follows.  | 5        |
| 2 | Omit section 2 (supplemental provisions as to facts raising presumption of breakdown).  |          |
| 3 | In section 3 (bar on petitions for divorce within one year of marriage) –<br>(a) in the heading, for “petitions for divorce” substitute “applying for a divorce order”;<br>(b) in subsection (1), for “No petition for divorce shall be presented to the court” substitute “An application for a divorce order may not be made”;<br>(c) omit subsection (2).  | 10       |
| 4 | Omit section 4 (divorce not precluded by previous judicial separation).   | 15       |
| 5 | Omit section 5 (refusal of decree in five year separation cases on grounds of grave hardship to respondent).  |          |
| 6 | In section 6 (attempts at reconciliation of parties to marriage) –<br>(a) in subsection (1), for the words from “a petitioner” to “him” substitute “an applicant for a divorce order to certify whether the representative has discussed with the applicant the possibility of reconciliation and given the applicant”;<br>(b) in subsection (2), for “divorce” substitute “a divorce order”.   | 20       |
| 7 | In section 7 (consideration by the court of certain agreements or arrangements) –<br>(a) for “either before or after the presentation of a petition for divorce,” substitute “when proceedings for a divorce order are contemplated or have begun,”;<br>(b) for the words from “proceedings” to “have begun,” substitute “proceedings,”.  | 25<br>30 |
| 8 | In section 8 (intervention of Queen’s Proctor) –<br>(a) in subsection (1), in the words before paragraph (a), for “a petition for divorce” substitute “an application for a divorce order”;<br>(b) in subsection (1)(b), for “decree nisi is made absolute” substitute “divorce order is made final”;<br>(c) in subsection (2), for “decree nisi in any proceedings for divorce,” substitute “conditional order in any proceedings for a divorce order,”. | 35       |
| 9 | In section 9 (proceedings after decree nisi: general powers of court) –   |          |

- 
- (a) in the heading, for “after decree nisi” substitute “before divorce order has been made final”;
- (b) in subsection (1), in the words before paragraph (a) –
- (i) for “decree of divorce has been granted but not made absolute” substitute “divorce order has been made but not made final”; 5
- (ii) for “decree should not be made absolute” substitute “order should not be made final”;
- (c) in subsection (1)(a), for “section 1(5)” substitute “section 1(4)” and for “decree absolute” substitute “order final”; 10
- (d) in subsection (1)(b), for “decree” substitute “order”;
- (e) in subsection (2) –
- (i) for the words from the beginning to the second “granted,” substitute “Where a divorce order has been made on an application by one party to a marriage and that party has not applied for the order to be made final,”; 15
- (ii) for “the party against whom it was granted” substitute “the other party to the marriage”.
- 10 In section 10 (proceedings after decree nisi: special protection for respondent in separation cases) – 20
- (a) for the heading substitute “Proceedings before divorce order made final: special protection for respondent”;
- (b) omit subsection (1);
- (c) for subsections (2) and (3) substitute –
- “(2) The following provisions of this section apply where – 25
- (a) on an application for a divorce order a conditional order has been made and –
- (i) the conditional order is in favour of one party to a marriage, or
- (ii) the conditional order is in favour of both parties to a marriage but one of the parties has since withdrawn from the application, and 30
- (b) the respondent has applied to the court for consideration under subsection (3) of their financial position after the divorce. 35
- (3) Subject to subsection (4), the court hearing an application by the respondent under subsection (2) must not make the divorce order final unless it is satisfied –
- (a) that the applicant should not be required to make any financial provision for the respondent, or 40
- (b) that the financial provision made by the applicant for the respondent is reasonable and fair or the best that can be made in the circumstances.
- (3A) In making a determination under subsection (3) the court must consider all the circumstances including – 45
- (a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage, and

- (b) the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.”;
- (d) in subsection (4) –
- (i) in the words before paragraph (a), for “decree absolute” substitute “divorce order final”; 5
  - (ii) in paragraph (a), for “decree should be made absolute” substitute “order should be made final”;
  - (iii) in paragraph (b), for “petitioner that he will make such financial provision” substitute “applicant that they will make such financial provision”. 10
- 11 In section 10A (proceedings after decree nisi: religious marriage) –
- (a) in the heading, for “after decree nisi” substitute “before divorce order has been made final”;
  - (b) in subsection (1) – 15
    - (i) for “decree of divorce has been granted” substitute “divorce order has been made”;
    - (ii) for “absolute” substitute “final”;
  - (c) in subsection (2) –
    - (i) for “decree of divorce” substitute “divorce order”; 20
    - (ii) for “absolute” substitute “final”;
  - (d) in subsection (5), for “decree of divorce” substitute “divorce order”.
- 12 After section 12A insert –
- “12B The period before nullity of marriage orders may be made final**
- (1) An order that annuls a marriage which is void or voidable (a “nullity of marriage order”) – 25
    - (a) is, in the first instance, a conditional order, and
    - (b) may not be made final before the end of the period of 6 weeks from the making of the conditional order.
  - (2) The Lord Chancellor may by order made by statutory instrument amend this section so as to shorten or lengthen the period for the purposes of subsection (1)(b). 30
  - (3) But the Lord Chancellor may not under subsection (2) lengthen the period so that it exceeds 6 months.
  - (4) In a particular case the court dealing with the case may by order shorten the period that would otherwise be applicable for the purposes of subsection (1)(b). 35
  - (5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.” 40
- 13 (1) Section 13 (bars to relief where marriage is voidable) is amended as follows.
- (2) In subsection (1) –
- (a) in the words before paragraph (a), for the words from “not” to “nullity” substitute “not make a nullity of marriage order”;
  - (b) in paragraph (a), for “petitioner” substitute “applicant”; 45
  - (c) in paragraph (b), for “grant the decree” substitute “make the order”.

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- (3) In subsection (2), for “grant a decree of nullity” substitute “make a nullity of marriage order”.
- (4) In subsection (2A), for “grant a decree of nullity” substitute “make a nullity of marriage order”.
- (5) In subsection (3) – 5
- (a) for “grant a decree of nullity” substitute “make a nullity of marriage order”, and
- (b) for “petitioner” substitute “applicant”.
- (6) In subsection (4) – 10
- (a) in the words before paragraph (a), for “grant of a decree of nullity” substitute “making of a nullity of marriage order”;
- (b) in paragraph (a), for “petitioner” substitute “applicant”.
- 14 For section 15 (application of sections 1(5), 8 and 9 to nullity proceedings) substitute –
- “15 Application of sections 8 and 9 to proceedings for a nullity of marriage order”** 15
- Section 8 (intervention of Queen’s Proctor) and section 9 (proceedings before divorce order has been made final: general powers of court) apply in relation to proceedings for a nullity of marriage order as if for any reference in those sections to a divorce order there were substituted a reference to a nullity of marriage order.” 20
- 15 (1) Section 16 (effect of decree of nullity in case of voidable marriage) is amended as follows.
- (2) In the heading, for “decree of nullity” substitute “annulment”. 25
- (3) The existing text becomes subsection (1).
- (4) In subsection (1) – 30
- (a) for the words from the beginning to “1971” substitute “A nullity of marriage order granted”;
- (b) for “decree has been made absolute,” substitute “order has been made final,”;
- (c) for “notwithstanding the decree,” substitute “notwithstanding the order,”.
- (5) After subsection (1) insert – 35
- “(2) Subsection (1) has effect in relation to a decree of nullity granted after 31 July 1971 as it has effect in relation to a nullity of marriage order, but with the substitution –
- (a) for “order has been made final,” of “decree has been made absolute,” and
- (b) for “notwithstanding the order,” of “notwithstanding the decree,”. 40
- 16 In section 18 (effects of judicial separation) –
- (a) omit subsection (1);
- (b) in subsection (2), after “decree of judicial separation” insert “or judicial separation order”. 45

- 17 Omit section 20 (relief for respondent in divorce proceedings) and the heading before it.
- 18 In section 21 (financial provision and property adjustment orders) –
- (a) in subsection (2), for “grant of a decree of divorce, nullity of marriage or judicial separation,” substitute “making of a divorce, nullity of marriage or judicial separation order,”; 5
  - (b) at the end insert –
    - “(3) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).” 10
- 19 In section 22 (maintenance pending suit), in subsection (1) –
- (a) for “a petition for divorce, nullity of marriage or judicial separation,” substitute “an application for a divorce, nullity of marriage or judicial separation order,”;
  - (b) for “presentation of the petition” substitute “making of the application”. 15
- 20 (1) Section 23 (financial provision orders in connection with divorce proceedings etc) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final),” 20
  - (3) In subsection (2)(a), for “granting a decree;” substitute “making a divorce order, nullity of marriage order or judicial separation order (as the case may be);” 25
  - (4) In subsection (5), for the words from “granting” to the end substitute “making a divorce or nullity of marriage order, neither the order under subsection (1)(a), (b) or (c) nor any settlement made in pursuance of it is to take effect unless the divorce or nullity of marriage order has been made final.” 30
  - (5) At the end insert –
    - “(7) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 21 (1) Section 24 (property adjustment orders in connection with divorce proceedings etc) is amended as follows. 35
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final),”
  - (3) In subsection (3), for the words from “granting” to the end substitute “making a divorce or nullity of marriage order, neither the order under this section nor any settlement made in pursuance of it is to take effect unless the divorce or nullity of marriage order has been made final.” 40

- (4) At the end insert –
- “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 22 (1) Section 24A (orders for sale of property) is amended as follows.
- (2) In subsection (3), for the words from “grant” to the end substitute “making of a divorce or nullity of marriage order, the order under subsection (1) is not to take effect unless the divorce or nullity of marriage order has been made final.” 5
- (3) At the end insert –
- “(7) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).” 10
- 23 (1) Section 24B (pension sharing orders in connection with divorce proceedings etc) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “On making a divorce or nullity of marriage order or at any time after making such an order (whether before or after the order is made final),” 15
- (3) In subsection (2), for the words from “decree” to the end substitute “divorce or nullity of marriage order on or after which it is made has been made final.”
- (4) At the end insert – 20
- “(6) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 24 (1) Section 24E (pension compensation sharing orders in connection with divorce proceedings) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “absolute),” substitute “On making a divorce or nullity of marriage order or at any time after making such an order (whether before or after the order is made final),” 25
- (3) In subsection (2), for the words from “decree” to the end substitute “divorce or nullity of marriage order on or after which it is made has been made final.” 30
- (4) At the end insert –
- “(11) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 25 (1) Section 25A (exercise of court’s powers in favour of party to marriage on decree of divorce or nullity of marriage) is amended as follows. 35
- (2) In the heading, for “decree of divorce or nullity of marriage” substitute “divorce or nullity of marriage order”.
- (3) In subsection (1) –
- (a) for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”;
- (b) for “grant of the decree” substitute “making of the order”. 40



- (4) In subsection (3), for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”.
- (5) At the end insert –
- “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).” 5
- 26 In section 26 (commencement of proceedings for ancillary relief etc) –
- (a) in subsection (1) –
- (i) for the words from “a petition” to “presented,” substitute “an application for a divorce, nullity of marriage or judicial separation order has been made,”; 10
- (ii) for “presentation of the petition” substitute “presentation of the application”;
- (b) in subsection (2)(a), for “petition or answer” substitute “application or response”;
- (c) in subsection (2)(b) for “presentation of the petition or filing of the answer” substitute “presentation of the application or filing of the response”. 15
- 27 (1) Section 28 (duration of continuing financial provision orders in favour of party to marriage, and effect of remarriage or formation of civil partnership) is amended as follows. 20
- (2) In subsection (1) –
- (a) in the words before paragraph (a), for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”;
- (b) in paragraph (a), for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,” and after “favour the” insert “periodical payments”; 25
- (c) in paragraph (b) –
- (i) for “grant of such a decree,” substitute “making of a divorce or nullity of marriage order,”; 30
- (ii) after “favour the” insert “secured periodical payments”.
- (3) In subsection (1A) –
- (a) for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,”;
- (b) after “in the” insert “periodical payments or secured periodical payments”. 35
- (4) In subsection (2) –
- (a) for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,”;
- (b) for “order continues in force, the order” substitute “periodical payments or secured periodical payments order continues in force, that order”. 40
- (5) In subsection (3) –
- (a) for “grant of a decree” substitute “grant or making of a decree or order”;
- (b) for “grant of that decree,” substitute “grant or making of that decree or order,”. 45

- (6) At the end insert –
- “(4) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 28 In section 30 (direction for settlement of instrument for securing payments or effecting property adjustment), in paragraph (b), for “grant of the decree in question” substitute “making of the divorce, nullity of marriage or judicial separation order” 5
- 29 (1) Section 31 (variation, discharge etc of certain orders for financial relief) is amended as follows.
- (2) In subsection (2)(e), for “grant of a decree of judicial separation;” substitute “making of a judicial separation order;” 10
- (3) In subsection (2)(g), for “decree has been made absolute” substitute “divorce or nullity of marriage order has been made final”.
- (4) In subsection (4)(a), for “decree of judicial separation” substitute “judicial separation order” 15
- (5) In subsection (4A)(a)(ii), for “decree has not been made absolute” substitute “divorce or nullity of marriage order has not been made final”.
- (6) In subsection (4B), for “decree is made absolute” substitute “divorce or nullity of marriage order is made final”.
- (7) In subsection (7)(a), for “grant of a decree of divorce or nullity of marriage,” substitute “making of a divorce or nullity of marriage order,” 20
- (8) At the end insert –
- “(16) See also section 52A (interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders).”
- 30 In section 47 (matrimonial relief and declarations of validity in respect of polygamous marriages) – 25
- (a) in subsection (2)(a), for “decree” substitute “order”;
- (b) in paragraph (d) omit “decree or”.
- 31 (1) Section 49 (parties to proceedings under this Act) is amended as follows.
- (2) Omit subsections (1) to (3). 30
- (3) In subsection (4) –
- (a) omit “, in cases not falling within subsection (1) above,”;
- (b) omit “adultery or other”.
- (4) In subsection (5), for the words from the beginning to “suit or” substitute “In every case” 35
- 32 After section 52 insert –
- “52A Interpretation of certain references to divorce orders, nullity of marriage orders and judicial separation orders**
- (1) In sections 21(2), 23(1) and (5), 24(1) and (3), 24A(3), 24B(1) and (2), 24E(1) and (2), 25A(1) and (3), 28(1) to (2) and 31 – 40
- (a) a reference to a divorce order includes a decree of divorce,

- (b) a reference to a nullity of marriage order includes a decree of nullity of marriage;
  - (c) a reference to a judicial separation order includes a decree of judicial separation;
  - (d) a reference to making includes granting; 5
  - (e) a reference to an order being made final includes a decree being made absolute.”
- 33 In Schedule 1 (transitional provisions and savings) –
- (a) omit paragraph 8;
  - (b) in paragraph 11(3A), for “grant a decree of nullity” substitute “make a nullity of marriage order”; 10
  - (c) in paragraph 11(4), for “a decree of nullity has not been granted” substitute “no decree of nullity or nullity of marriage order has been made”.

PART 2

15

AMENDMENTS TO THE CIVIL PARTNERSHIP ACT 2004

- 34 The Civil Partnership Act 2004 is amended as follows.
- 35 In section 40 (proceedings before order has been made final), in subsection (4) –
- (a) in paragraph (a), for “section 37(2)” substitute “sections 37A(1) and 38(A1)”; 20
  - (b) in paragraph (b) omit “in separation cases”.
- 36 In section 41 (time bar on applications for dissolution orders), omit subsection (2).
- 37 In section 42 (attempts at reconciliation of civil partners), in subsection (2), in the words before paragraph (a), for “the applicant to certify whether he” substitute “an applicant to certify whether the representative”. 25
- 38 Omit section 45 (supplemental provisions as to facts raising presumption of breakdown).
- 39 Omit section 46 (dissolution order not precluded by previous separation order etc). 30
- 40 Omit section 47 (refusal of dissolution in 5 year separation cases on ground of grave hardship).
- 41 In section 48 (proceedings before order made final: protection for respondent in separation cases) – 35
- (a) in the heading omit “in separation cases”;
  - (b) omit subsection (1);
  - (c) for subsection (2) substitute –
    - “(2) Subsections (3) to (5) apply if –
    - (a) on an application for a dissolution order a conditional order has been made and –
    - (i) the conditional order is in favour of one civil partner only, or

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- (ii) the conditional order is in favour of both civil partners but one of them has since withdrawn from the application, and
- (b) the respondent has applied to the court for consideration under subsection (3) of their financial position after the dissolution of the civil partnership.” 5
- 42 Omit section 62 (relief for respondent in dissolution proceedings).

### PART 3

#### AMENDMENTS TO OTHER ACTS

- 43 In section 18A of the Wills Act 1837 (effect of dissolution or annulment of marriage on wills), in subsection (1), in the words before paragraph (a) omit “a decree of”. 10
- 44 (1) The Inheritance (Provision for Family and Dependants) Act 1975 is amended as follows.
- (2) In section 1 (application for financial provision from deceased’s estate), in subsection (2)(a) – 15
- (a) for “decree of judicial separation” substitute “judicial separation order”;
- (b) for “the decree” substitute “the order”.
- (3) In section 3 (matters to which court is to have regard in exercising powers under section 2), in subsection (2), in the words after paragraph (b) – 20
- (a) for “decree of judicial separation” substitute “judicial separation order”;
- (b) for “decree of divorce” substitute “divorce order”.
- (4) In section 14 (provision as to cases where no financial relief was granted in divorce proceedings etc) – 25
- (a) in subsection (1) –
- (i) in the words before paragraph (a), for the words from “decree of divorce” to “granted,” substitute “divorce order or nullity of marriage order has been made final or a judicial separation order has been made;” 30
- (ii) in the words after paragraph (b), for the words from “decree of divorce” to “granted,” substitute “divorce order or nullity of marriage order had not been made final or the judicial separation order had not been made;” 35
- (b) in subsection (2) –
- (i) for “decree of judicial separation” substitute “judicial separation order”;
- (ii) for “the decree” substitute “the order”.
- (5) In section 15 (restriction imposed in divorce proceedings etc) – 40
- (a) in subsection (1), for the words from “grant” to “separation” substitute “making of a divorce, nullity of marriage or judicial separation order”;
- (b) In subsection (2) –
- (i) for “decree of divorce or nullity of marriage” substitute “divorce or nullity of marriage order” 45

- (ii) for the words from “after” to the end substitute “after the divorce or nullity of marriage order is made final, but if it is made before that order is made final it shall not take effect unless that order is made final”;
  - (c) in subsection (3), for “grant of a decree of divorce or nullity of marriage” substitute “making of a divorce or nullity of marriage order”; 5
  - (d) in subsection (4) –
    - (i) for “grant of a decree of judicial separation” substitute “making of a judicial separation order”; 10
    - (ii) for “decree is” substitute “order is”.
- (6) In section 19 (effect, duration and form of orders), in subsection (2)(b) –
  - (a) for “decree of judicial separation” substitute “judicial separation order”;
  - (b) for “the decree” substitute “the order”. 15
- (7) In section 25 (interpretation) –
  - (a) in subsection (1), in the definition of “former spouse”, in paragraph (a), for the words from “decree” to “granted” substitute “divorce order or nullity of marriage order made, or a decree of divorce or of nullity of marriage granted,”; 20
  - (b) after subsection (5A) insert –
    - “(5B) In sections 1(2), 3(2), 14, 15 and 19(2) –
      - (a) a reference to a divorce order includes a decree of divorce,
      - (b) a reference to a nullity of marriage order includes a decree of nullity of marriage; 25
      - (c) a reference to a judicial separation order includes a decree of judicial separation;
      - (d) a reference to making includes granting;
      - (e) a reference to an order being made final includes a decree being made absolute.” 30
- 45 In the Legitimacy Act 1976, in section 10 (interpretation), in subsection (1), in the definition of “void marriage”, after “jurisdiction” insert “to make a nullity of marriage order or”.
- 46 In section 18 of the Senior Courts Act 1981 (restrictions on appeals to Court of Appeal), after paragraph (d) insert –
  - “(da) from a divorce order or nullity of marriage order that has been made final, by a party who, having had time and opportunity to appeal from the conditional order on which that final order was founded, has not appealed from the conditional order;” 40
- 47 In the Civil Jurisdiction and Judgments Act 1982, in section 18 (enforcement of UK judgments in other parts of UK), in subsection (6)(a), at the beginning insert “a judicial separation order or”.
- 48 (1) The Matrimonial and Family Proceedings Act 1984 is amended as follows. 45
  - (2) In section 17 (orders for financial provision and property adjustment), in subsection (1)(a), for the words from “decree of divorce” to “granted”

- substitute “divorce order, nullity of marriage order or judicial separation order in respect of the marriage had been made”.
- (3) In section 22 (powers of court in relation to certain tenancies of dwelling-houses), in subsection (2), for the words from “decree of divorce” to “granted” substitute “divorce order, nullity of marriage order or judicial separation order had been made”. 5
- 49 In the Finance Act 1985, in section 83 (transfers in connection with divorce, dissolution of civil partnership etc), in subsection (1) –
- (a) in paragraph (a), for the words from “a decree” to “separation,” substitute “an order or decree for their divorce, the annulment of the marriage or their judicial separation,”; 10
- (b) in paragraph (b), for “a decree,” substitute “an order or decree for divorce, annulment or judicial separation as is mentioned in paragraph (a),”.
- 50 In the Agricultural Holdings Act 1986, in Schedule 6 (eligibility to apply for new tenancy under Part 4 of the Act), in paragraph 1(3), for the words from “subject of” to the end substitute “subject of –
- (a) a judicial separation order or decree of judicial separation, or
- (b) a conditional divorce or nullity of marriage order or a decree nisi of divorce or of nullity of marriage.” 20
- 51 (1) The Family Law Act 1986 is amended as follows.
- (2) In section 2A (jurisdiction in or in connection with matrimonial proceedings or civil partnership proceedings), in subsection (2)(a), after “grant of a decree of judicial separation” insert “or the making of a judicial separation order”. 25
- (3) In section 6 (duration and variation of Part 1 Orders), in subsection (3B)(c), for “decree of judicial separation has not yet been granted” substitute “judicial separation order”.
- (4) In section 42 (general interpretation of Part 1), in subsection (2), for the words from “eighteen” to the end substitute “eighteen –
- (a) in the case of proceedings for a decree of divorce, nullity or judicial separation, whether or not a decree has been granted and whether or not (in the case of a decree of divorce or nullity of marriage) that decree has been made absolute;
- (b) in the case of proceedings for a divorce, nullity of marriage or judicial separation order, whether or not an order has been made and whether or not (in the case of a divorce or nullity of marriage order) that order has been made final.” 30
- (5) In section 54 (interpretation of Part 2), in the definition of “annulment”, after “any” insert “nullity of marriage order or”. 40
- (6) In section 58 (general provisions as to the making and effect of declarations), in subsection (6) for “grant a decree of nullity of marriage” substitute “make a nullity of marriage order”.
- 52 In the Children Act 1989, in section 6 (guardians: revocation and disclaimer), in subsection (3A)(a) omit “a decree of”. 45
- 53 In section 225B of the Taxation of Chargeable Gains Act 1992 (disposals in connection with divorce etc), in subsection (2)(b)(i) –

- (a) for “an order or” substitute “a divorce or nullity of marriage order,”;
  - (b) after “marriage,” insert “an order or decree”;
  - (c) after “partnership, or” insert “an order or decree”.
- 54 (1) Schedule 7 to the Family Law Act 1996 (transfer of certain tenancies on divorce etc or on separation of cohabitants) is amended as follows. 5
- (2) In paragraph 2(2), for paragraph (a) substitute –
- “(a) on making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final), or”. 10
- (3) In paragraph 12(a) –
- (a) for “decree of divorce or nullity has been granted,” substitute “divorce or nullity of marriage order has been made,”;
  - (b) for “decree is made absolute” substitute “order is made final”.
- (4) In paragraph 13(1), for “grant of a decree” substitute “making of an order” and for “grant of that decree,” substitute “making of that order,”. 15
- (5) After paragraph 13 insert –
- “Inclusion of references to decrees in references to orders*
- 13A In paragraphs 2 to 13 –
- (a) a reference to a divorce order includes a decree of divorce; 20
  - (b) a reference to a nullity of marriage order includes a decree of nullity of marriage;
  - (c) a reference to a judicial separation order includes a decree of judicial separation;
  - (d) a reference to making includes granting; 25
  - (e) a reference to an order being made final includes a decree being made absolute.”
- 55 In the Finance Act 2003, in Schedule 3 (stamp duty land tax: transactions exempt from charge), in paragraph 3 –
- (a) in paragraph (a), for the words from “a decree” to “separation;” substitute “an order or decree for their divorce, the annulment of the marriage or their judicial separation;” 30
  - (b) in paragraph (b), for “a decree;” substitute “an order or decree for divorce, annulment or judicial separation as is mentioned in paragraph (a);” 35
- 56 In section 5 of the Gender Recognition Act 2004 (issue of full certificates where applicant has been married), in subsection (1) –
- (a) in paragraph (a), for “absolute a decree of nullity granted” substitute “final a nullity of marriage order made”;
  - (b) omit “or” at the end of that paragraph; 40
  - (c) after paragraph (a) insert –
    - “(aa) (in Northern Ireland) makes absolute a decree of nullity granted on that ground, or”.
- 57 (1) Section 55D of the Income Tax Act 2007 (procedure for elections under section 55C) is amended as follows. 45

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- (2) In subsection (8) –
- (a) for paragraph (a) and the “or” after it substitute –
- “(a) in England and Wales, a divorce order which has been made final, a nullity of marriage order which has been made final, a judicial separation order or a corresponding decree;” 5
- (b) in paragraph (b), at the end insert “or”;
- (c) after paragraph (b) insert –
- “(c) in Northern Ireland, a decree absolute of divorce, a decree of nullity of marriage or a decree of judicial separation.” 10
- (3) At the end insert –
- “(12) In subsection (8) “corresponding decree” means any of the following –
- a decree absolute of divorce; 15
- a decree absolute of nullity of marriage;
- a decree of judicial separation.”
- 58 In Schedule 1 to the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11) (exempt transactions), in paragraph 4 –
- (a) in paragraph (a), for “a decree of divorce, nullity of marriage or” substitute “an order or decree for the dissolution or annulment of the marriage or their”; 20
- (b) in paragraph (b), for “such a” substitute “such an order or”.
- 59 (1) In Schedule 3 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (anaw 1) (transactions exempt from charge), paragraph 3 is amended as follows. 25
- (2) In paragraph (a) –
- (a) in the English language text, for “a decree of divorce, nullity of marriage or” substitute “an order or decree for the dissolution or annulment of the marriage or their”; 30
- (b) in the Welsh language text, for “archddyfarniad ysgariad, dirymedd priodas” substitute “gorchymyn neu archddyfarniad ar gyfer diddymiad neu ddirymiad y briodas”.
- (3) In paragraph (b) –
- (a) in the English language text, for “such a” substitute “such an order or”; 35
- (b) in the Welsh language text, before “archddyfarniad o’r fath” insert “gorchymyn neu”.
- 60 In the Wills and Administration Proceedings (Northern Ireland) Order 1994 (S.I. 1994/1899 (N.I. 13)), in Article 13 (effect of dissolution or annulment of marriage), in paragraph (5)(a) – 40
- (a) after “divorce” insert “or divorce order;”;
- (b) for “granted” substitute “or nullity of marriage order, granted or made”.





# **Divorce, Dissolution and Separation Bill [HL]**

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## **B I L L**

To make in relation to marriage and civil partnership in England and Wales provision about divorce, dissolution and separation; and for connected purposes.

*Lord Keen of Elie*

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*Ordered to be Printed, 7th January 2020*

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