

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIVORCE, DISSOLUTION AND SEPARATION BILL

First Sitting

Tuesday 2 July 2019

(Morning)

CONTENTS

Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 6 July 2019

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The Committee consisted of the following Members:

Chairs: DAME CHERYL GILLAN, †STEVE McCABE

† Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con)	† Onn, Melanie (<i>Great Grimsby</i>) (Lab)
† Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab)	† Prentis, Victoria (<i>Banbury</i>) (Con)
† Courts, Robert (<i>Witney</i>) (Con)	† Qureshi, Yasmin (<i>Bolton South East</i>) (Lab)
† Duffield, Rosie (<i>Canterbury</i>) (Lab)	† Slaughter, Andy (<i>Hammersmith</i>) (Lab)
Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab)	† Tracey, Craig (<i>North Warwickshire</i>) (Con)
Green, Kate (<i>Stretford and Urmston</i>) (Lab)	† Trevelyan, Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con)
† Heaton-Jones, Peter (<i>North Devon</i>) (Con)	† Warman, Matt (<i>Boston and Skegness</i>) (Con)
† Hughes, Eddie (<i>Walsall North</i>) (Con)	
† McMorrin, Anna (<i>Cardiff North</i>) (Lab)	Jo Dodd, Mike Everett, <i>Committee Clerks</i>
† Maynard, Paul (<i>Parliamentary Under-Secretary of State for Justice</i>)	† attended the Committee

Witnesses

Aidan Jones OBE, Chief Executive, Relate

Nigel Shepherd, Former Chair of Resolution and Member of the National Committee, Resolution

David Hodson OBE, Law Society Family Law Committee member and partner at International Family Law Group LLP, The Law Society

Professor Liz Trinder, Professor of Socio-legal Studies, University of Exeter

Mandip Ghai, Senior Legal Officer, Rights of Women

Public Bill Committee

Tuesday 2 July 2019

[STEVE McCABE *in the Chair*]

Divorce, Dissolution and Separation Bill

9.25 am

The Chair: I just want to rattle through a few preliminaries. Please switch electronic devices to silent. Mr Speaker does not allow tea or coffee during sittings. We will consider a programme motion, a motion to consider the written evidence and a motion to allow us to deliberate in private. I hope we can deal speedily with those.

Ordered,

That—

- (1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 2 July) meet at 2.00 pm on Tuesday 2 July;
- (2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 2 July	Until no later than 10.15 am	Relate; Resolution; The Law Society
Tuesday 2 July	Until no later than 10.45 am	Professor Liz Trinder, Professor of Socio-legal Studies, University of Exeter; Rights of Women

- (3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 6; Schedule; Clauses 7 to 9; new Clauses; new Schedules; remaining proceedings on the Bill;
- (4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 7.00 pm on Tuesday 2 July.—(*Paul Maynard.*)

The Chair: The deadline for amendments has passed.
Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Paul Maynard.*)

The Chair: Copies of written evidence we receive will be made available in the Committee Room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(*Paul Maynard.*)

9.26 am

The Committee deliberated in private.

Examination of Witnesses

Aidan Jones, Nigel Shepherd and David Hodson gave evidence.

9.28 am

The Chair: We will now hear evidence from representatives from Relate, Resolution and the Law Society. I remind hon. Members that all questions have to be limited to matters within the scope of the Bill and that we have to stick to the agreed timings. Members should declare any relevant interests at the outset.

If our panel are ready, I ask them to introduce themselves, in order, for the record.

Nigel Shepherd: Hello. I am Nigel Shepherd, former chair and current board member of Resolution and a long-time campaigner for no-fault divorce.

David Hodson: I am David Hodson and I am here on behalf of the Law Society family law committee. I am an assistant mediator and arbitrator in a practice in central London, dealing with international cases.

Aidan Jones: Hello, good morning. I am Aidan Jones, chief executive of Relate.

The Chair: Thank you. I invite Committee members to ask questions, in order. We have a strict deadline and must finish by 10.15 am.

Q1 Anne-Marie Trevelyan (Berwick-upon-Tweed) (Con): Thank you very much for coming in to help us progress this Bill. What are your views of the Bill? Are there any improvements we should be making, or is it a pretty good attempt to solve this particularly difficult dilemma?

Nigel Shepherd: If I may start, I think this is an excellent Bill. The important thing is the big picture. Resolution members—6,500 family justice professionals—are dealing with divorce disputes up and down the country on a daily basis. Our ethos is to try to do so in a constructive, non-confrontational way, yet in the words of our current chair, Margaret Heathcote, who is quoted in the Ministry of Justice's press release announcing the Bill, under the current law we are doing that job with one hand tied behind our back. Each year, about 100,000 couples are getting divorced in England and Wales, and the most recent statistics show that about 57% of those are pushed into this blame game, alleging one of the two primary fault grounds of adultery or behaviour.

The Committee will be aware that the Family Law Act 1996 would have introduced no-fault divorce, but it was never implemented. We estimate that, since then, about 1.7 million people have assigned blame in the divorce process. Many of those would have done so not necessarily because they wanted to or because it was the real reason for the divorce but because under the current system, if they cannot afford to wait at least two years for a consensual divorce, that is the only option open to them. Crucially, a large number of those would have been parents. Quite frankly, we have waited too long for this reform, having had it once and not got it over the line. In the meantime, we are dealing with that conflict on a daily basis. It is damaging to families, and particularly damaging to children. It is the time that the law caught up with the public attitude, which is that it is time for change and to end this blame game.

Q2 Eddie Hughes (Walsall North) (Con): You said that the reasons they state do not represent a fair reflection of the actual reasons. On what is that based? I thought I had read a report that said that 91% of petitioners said that it was very close or fairly close.

Nigel Shepherd: A national opinion survey, “Finding Fault?” You will hear evidence in the next session from Professor Liz Trinder, who conducted empirical research called “Finding Fault?” and the opinion survey for that found that only 29% of respondents to a fault divorce said that the fact used matched very closely the reason for the separation, and that 43% of those identified by their spouse as being at fault disagreed with the reasons cited in the divorce petition.

We call it a blame game, because at the moment if someone comes to see me as a practising family lawyer and says, “We both agree that the marriage has broken down. It is very sad, but we want to do this in the right way for our children and move forward. Can we get a divorce?” I say, “Not unless you want to wait two years.” They are aghast. They say, “That’s crazy. What do we do?” and I say, “Well, one of you is going to have to blame the other. Has there been adultery?” They say, “No,” so I say, “In that case, it is a behaviour petition.” They ask, “What do I have to say?” And that does not really matter. It has to be true—as a lawyer, I cannot put them through something that is untrue—but you can practically go on to the internet and cut and paste things such as, “I don’t like the way they control the remote control.”

Q3 The Chair: I am conscious of time. I wonder whether either of our other two witnesses has anything to add on the first question.

David Hodson: May I respond briefly to that last point? I would go even further than Nigel. Lawyers specifically go out of their way to make sure that the real heart of the reason why the relationship may have broken down is not in the allegations of unreasonable behaviour, to remove any cause for greater animosity and concern. As practising lawyers we go out of our way to pull back from the distress that these allegations would cause. So although, as Nigel says, it will always be true, we do not put down the real problems at the heart of the relationship, to avoid that.

If I can come to the Law Society’s position, we have throughout supported no-fault divorce and we have been keenly supportive of Resolution in all the steps it has taken. Nigel and I were actively involved in 1996 when that legislation went through. We are keen to support no-fault divorce and actively support the principle of this legislation. We actively support a period of notice as the way of dealing with it, rather than a period of separation, which can have artificial and discriminatory elements.

We have a number of concerns, however, about the structure of the Bill, including the way it is set out, and there are a number of flaws in the Bill. We want the legislation to go through and we want no-fault divorce, but we believe that the Bill should be amended in certain respects before it completes its passage through Parliament.

Aidan Jones: At Relate we believe that the outdated fault-based divorce system leads to animosity and causes conflict between parents, which we believe harms children.

We think that it is better to have a system that supports co-parenting in future. We recently did a survey in which 64% of divorcees who responded said that placing blame for the divorce made the process worse for them. There are some quite stark quotes about how difficult that process was. For example: “things had been civil up until that point, very straightforward. Then, after divorce papers, it turned into a war and no one wants to accept blame or responsibility.” We strongly support the changes to the law, as set out.

Q4 Melanie Onn (Great Grimsby) (Lab): Good morning, it is good to have you with us today. I wondered if you could expand on the changes that were proposed in the Family Law Act 1996, and explain why they have not come forward. What do you think has changed between 1996 and now that means that this legislation should be brought forward? I do not know who wants to answer first.

Nigel Shepherd: I am happy to do so. I think the 1996 Act was extremely complicated. This Bill has the beauty of simplicity, and for the right reason: it concentrates on the principal problem of the fault-based system. The 1996 Act introduced various things such as information meetings and different periods for different situations where there were children or a dispute about the divorce. I think it got wrapped up with those complications, so it was never implemented. It has taken a long time to get where we are today.

I also think that public attitudes have changed considerably. I think people are looking for autonomy and to say, “We are adults, and if one of us believes that the marriage is over, we should have a dignified, constructive way of ending it that focuses on the future, not the past.”

David Hodson: It went into Parliament a fairly good piece of legislation; the perception of many lawyers is that it came out vastly more complicated. It went in with a nine-month period of notice—the structure was the same—but it came out, as Nigel said, with a two or three-stage process. Eighteen months was almost the minimum; if there were children, that went up to 21 months. There was even a provision that it could be further.

The general perception was that it made it far more difficult; although there were media headlines about an easier divorce, everyone knew that it would make it far more difficult as it made it longer. To a certain extent, a longer divorce does not help the public, so there was not too much unhappiness that that particular model as it came out of Parliament did not go through. Why it never went through is a political matter, which perhaps is another matter. The length of the period was the primary problem with the legislation as it came out of Parliament—it was far too long.

Q5 Melanie Onn: Nigel, earlier in your evidence you mentioned that people cannot afford to wait two years. Can you explain that a little more? Afford it in what sense—financially or emotionally?

Nigel Shepherd: The position at the moment is that under the legislation for financial remedy, relief, maintenance or transfer of property, the court can make an order only when we have reached what is now the decree nisi stage, which will be the conditional order stage under

the proposals. If you need to move on financially, you need to access the orders; even by agreement, the court cannot do that until there is a conditional order.

A two-year wait is a lifetime. Once people have reached the sad conclusion that their marriage is over, they are told that they can get on with some things but will have to come back in two years' time and relive that, so when faced with the option of, "All you need to do is put down some mild allegations of behaviour, and we can get on with it," that it the choice they make. That is why those percentages of fault-based grounds are so high. Even where people agree that it is a game they are playing to get through, it still increases conflict; you can still derail those negotiations and have an impact on the family.

Q6 Melanie Onn: I have one final question. David, you mentioned flaws in the legislation, and you have also talked about the need for some amendments. Is there a danger, as we go through this process, that we end up in the same situation as in 1996, where there are multiple amendments and we make what is currently quite a simple piece of legislation far more complex than it needs to be?

David Hodson: From the legal profession, we desperately hope not. We want a simple process. Despite what may be thought, family lawyers try to settle all our cases. We try to deal with the crucial elements—issues regarding children and finance—but divorce is not a matter on which lawyers would want to spend any amount of time. We want it to go through smoothly.

Will it change the parliamentary process? We hope not. I agree with Nigel: we think the spirit of the age has changed since 1996. Our perception is of a far greater willingness to accept no-fault divorce from those categories that might not previously have been supportive. The changes that certainly the Law Society would like are not substantial; they do not change the structure or concept of a period over notice. They just try to protect the interest, particularly of the so-called respondents—the sole petitioner where the person may not have fully been expecting a petition to come through.

Q7 Victoria Prentis (Banbury) (Con): Could you focus on children for a moment? What proportion of divorces involve children? How will the Bill promote their welfare?

Nigel Shepherd: I do not have the figures to hand, but I can certainly come back to you on that. Self-evidently, a very considerable number involve children under the age of 16. I am sure that is the case. Professor Liz Trinder may have the specific figures to hand. Clearly, children are at the heart of this process. As David said, as Resolution members and family lawyers doing the job properly we are trying all the time to help people focus on what really matters. The children are absolutely the first consideration in that. We know from the research that conflict is damaging to children. It is not necessarily divorce itself; it is the way you divorce. This Bill will help at the beginning to have a more constructive approach to that and help people focus on what matters.

David Hodson: It is curious. The reasons for a divorce do not reflect on children issues and they will not be dealt with in financial issues, and we do not deal with them. But it is the psychodynamic of the couple that every so often a client will say to one, three or four

months under way, "I still resent the fact that I am the respondent. You do know that this is equally to blame," and we say, "Yes, we do, but it won't have any bearing on children or financing". However many times we say it to our clients, there is a residual feeling in their mind: "How am I the respondent? I shouldn't be. I may be partly to blame, but I'm not wholly to blame". It is the black-and-white element that we have one petitioner and one respondent.

One of the things the legislation has to bring through is that we have to review how we call people in this process. It is the softer elements around the legislation that are as important as the harder elements. For example, let us not get rid of the idea of an applicant and a respondent; let us have "in the marriage of", and let us name the parties. Even if one person applies for a divorce and the other one responds to it, let us call it a divorce between two people, without having a litigious element in the heading. I think Relate and others would also certainly want to support those softer elements, which are crucial to this process as Parliament and society look at amending this law.

Aidan Jones: From my perspective, the best I can do is quote one of our senior practice consultants, who says:

"The proposed legislation sends out a much healthier message for children. I have known plenty of couples over the years who have agreed together to separate, but one had to cite unreasonable behaviour and the other had to go along with it. This can cause issues. Blame is toxic and never helpful. A great deal of the work we do in the counselling room is around helping people to understand this and to take responsibility for their own actions. It is possible to have a healthy divorce. This legislation will make that easier to achieve".

Q8 Anna McMorrin (Cardiff North) (Lab): The new procedure will introduce a minimum clause between application and the conditional order. Can I begin by asking Aidan how the minimum pause between application and condition order will improve the wellbeing of couples and children in practice?

Aidan Jones: Between application and decree nisi?

Anna McMorrin: Yes.

Aidan Jones: It gives the potential for those couples to consider their position and seek help and support through counselling, for example, that we can provide. It allows them to consider carefully before proceeding. We support that period of consideration. The 20-week period up to decree nisi is important. We think that is the right place to put it. Our view is that, when it gets to decree nisi, the big decision is almost made in a lot of cases. The potential for people to have a longer period of consideration is very important.

David Hodson: This is one of the primary concerns the Law Society has about this structure. We are very anxious. The respondent to a sole petition may be unaware of how seriously the other spouse feels about the marriage—they may not be expecting a divorce. Then, not only does she/he receive a divorce petition, as we still call it, but they also receive an application for financial claims. From day one, we have not only the divorce time period but the financial claims running.

The Law Society's strong recommendation is that we carve out, within the 26 weeks, a three-month period where there are no financial proceedings. Then the

respondent spouse is not facing the claims to make full disclosure—once that happens, the thinking moves on to “Oh, we have now got to resolve matters post-divorce.” We are very keen for there to be a period of reflection and consideration, which is what we had in the 1996 legislation in another form, to give an opportunity to pause, reflect, talk, maybe to have counselling, maybe in some cases to have reconciliation and maybe for one party to get up to speed with the other party. It is the constant experience of divorce lawyers that one party may have come to terms with the ending of a marriage before the other, so we are dealing with a very different emotional timetable.

This three months will not be of any prejudice. If urgent applications have to be made for interim provision, that is fine. It will not affect children or domestic violence, which are always separate proceedings. It just is a litigation-free zone for three months. We are not in any way saying there should be an extra three-month period—it is part of the 26-week period. After that, it is fine if couples want to say “Hey, let’s just get on with it by consent”, but for those who say they would like a pause, this legislation needs to find somewhere to say: “We want to give an opportunity for consideration, maybe of reconciliation, maybe a pause in the proceedings.” At the moment it does not. As Aidan said, and as the Government consultation paper said, it would be between the conditional order and the final order. That is the wrong end of the process. Have it at the beginning—a three-month period.

Q9 Anna McMorrin: From your perspective, would that allow enough time for everything to be reconciled within that timeframe?

David Hodson: Is it possible to deal with financial matters in litigation in six months? No. In the central family court, where I sit part-time, you would normally expect nine months from what we call a form A, when the application is started off, until the financial dispute resolution hearing where most cases settle—the final hearing. That usually takes nine months, so it could not be done in the six-month time period anyway. We have other concerns about pensions and policies. It could not be done in three months or six months, so that argues for a nine-month period. We are not arguing for it. We are agnostic about six months.

Q10 Anna McMorrin: Nigel and Aidan, do you agree?

Nigel Shepherd: I think the Bill has it right at the moment, and I think it is very important to recognise that that kind of amendment runs the risk of leading us down the road of complicating things. We have a unique opportunity at the moment to get this over the line on the key principle of no-fault divorce. I think the purpose of the Bill is that simplicity. We can deal with issues of financial application separately if we need to. We can certainly discuss that. What I would not want to do is risk losing this opportunity for the sake of amendments that make it more complicated than it is. That would be our key point.

Aidan Jones: I agree with that. The core and most significant issue is the fault-based system. I think we should seek to resolve that, and anything that puts that at risk, for me, is something we should consider very seriously, so I would support that we keep it simple and deal with the major and most significant issue. For me,

the most important part of that is the impact on children and their life chances, and the Bill will go a long way to resolve that, or to make that a better situation.

Q11 Eddie Hughes: Does this Bill make divorce easier?

David Hodson: No, in a word. I think it makes it kinder.

Q12 Eddie Hughes: Sorry, Aidan used the word “easier” during his evidence, so I thought that was kind of implied. Nigel, if you could explain.

Nigel Shepherd: Yes. I do not think it makes it easier in the sense that I think a couple who have been married deciding to get divorced—or one of them being unhappy—is very rarely easy, for us as practitioners. What the process currently does is it makes it harder than it needs to be. It increases conflict.

Q13 Eddie Hughes: So, relatively—I am sorry about the semantics, but I think they are important—if the current process makes it harder, surely, by implication, this makes it easier? You cannot argue both of those points. You clever legal people are always at this.

Nigel Shepherd: It is a matter of terminology. This no-fault process makes it kinder and more constructive. I do not think you will ever get rid of the—

Q14 Eddie Hughes: Does it make it less hard? That would be helpful.

Nigel Shepherd: It makes it less conflicted, and if by hard you mean conflicted and unconstructive, yes, this Bill makes it less of those.

Q15 Eddie Hughes: I started with the word “easier”—you were trying to avoid the opposite of it.

The Chair: Maybe we just have to hear about it as evidence.

Eddie Hughes: Sorry. Thank you, Chair.

Aidan Jones: As the non-legal person, I think I used the word “healthier”.

Eddie Hughes: You definitely used the word “easier”—and the transcript, I am sure, will tell us that.

Aidan Jones: The quotation from our senior practitioner used the word healthier—it is possible to have a healthier divorce. I think that is a better way to describe it.

Q16 Eddie Hughes: Sorry; you were referring to one element of it, saying, “This is easier.”

David Hodson: It makes it a far more respectful process. Our existing law is harder, because we make our clients go through the process of inventing allegations of unreasonable behaviour or making allegations of adultery when that may not have been anything to do with why the marriage broke up.

Q17 Eddie Hughes: Or, occasionally, identifying them if they actually do exist.

David Hodson: We do not now have to. If I may say this, with respect, we changed the law a few years ago so that you no longer name a co-respondent. That is just part of what we try to do to reduce the tension. Why do we have to name third parties who may or may not have anything to do with the reason a marriage broke up?

Q18 Eddie Hughes: Do we have any idea in percentage terms of how many people start proceedings but do not conclude them?

David Hodson: Can I deal with that? That is a real concern for the Law Society. There is some doubt about the statistics. It is a particular concern with online divorce. My firm deals with the online divorce process, and there is a real worry that the number of divorces that do not proceed has increased with the online divorce process. There were 13 on Christmas day. We have asked the Ministry of Justice for figures under the new process, which came into effect in April last year, where the public could issue their own divorces. Solicitors came on board in August.

How many members of the public issued their own divorce through the online process? We have asked the Ministry of Justice, which has given us some figures. My firm has done a freedom of information request and we hope to get a reply in about two weeks. I think it will show that there is a higher number in the online process than there was in the “hard” process, when we actually put it in the post, as it were, and actually had to file it.

That brings us on to a concern about the effect. We have to allow a process. If people are going to say that, it is another reason for the three-month cooling-off period. As I say, we have asked the Ministry of Justice, and if the Ministry of Justice can give those figures to all of us around this combined table earlier, it would be very helpful. The suspicion must be that the figure for litigants-in-person through online who do not proceed is higher.

Q19 Eddie Hughes: One final question from me: is there something we could do that would be more significant in removing the pressure or burden on children, other than removing the fault element?

Nigel Shepherd: I do not think so. This Bill does what it says on the tin in that respect. It is really important to get this and to focus on that big picture.

Q20 Eddie Hughes: That is the most significant thing in removing the impact on children?

Nigel Shepherd: It is one element that we can achieve through this Bill. Of course, there are things that we need to continue to work on.

Q21 Eddie Hughes: Hang on a second. The last time we tried to change this was in 1996, and it did not change. This feels like a fairly unique opportunity in terms of timescale, so is there something else we could be doing that would be more significant?

Nigel Shepherd: I think we need to continue to work on how we improve our systems, but I do not think this Bill is the vehicle for dealing with the fault aspect, which we know is damaging to children, and we can achieve that.

Aidan Jones: There are things we can do—not in a legal sense, but in a sense of, “How do we support people in healthy relationships?”—but I would not include them within the Bill. I would want Government Departments and the Government to look more widely at how we can support people through their relationships and in bringing up children. That is really important and you make a good point.

David Hodson: Children have been removed from the divorce process. They are not even named in the divorce petition. A few years ago, the requirement to set out

their names and dates of birth was completely removed. One can get a divorce petition through now and have no idea whether they have one child, no children, many children, who they are living with and so on. That was a previous Ministry of Justice decision. The statutory instrument simply removed all reference to any children in any divorce papers. A few years ago, the judge had to express themselves satisfied with the arrangements for the children. That has also gone, so in the legal sense, the children have been completely removed, but they are still the children of a couple who are having to go through a no-fault divorce, and we do not want the children or their parents to have to go through that.

The Chair: I think we had better move on.

Q22 Bambos Charalambous (Enfield, Southgate) (Lab): I have a technical question about the Bill. Clause 6 gives the Lord Chancellor wide-ranging powers to amend primary legislation. Are you comfortable about those powers? The clause is titled “Minor and consequential amendments” but that is a bit of a misnomer.

David Hodson: I think there is an agreeable difference between the Law Society and Resolution here. We would like to see any material changes to the expectation of the structure set out in primary rather than secondary legislation. We are keen for the public, at the end of this process, as the measure goes through Parliament, in either a few weeks—some would think that is too rushed—or in a few months, when there is an opportunity for public debate, to understand what the divorce process is all about. The 1996 measure did at least allow the public to have a discussion about what it was like. We are not having that discussion at the moment, partly because this is going through fairly quickly and partly because it has not got into the public arena, so we would be very keen to say this: if the Ministry of Justice has any concerns about bringing any of these aspects forward, it should put them in the primary legislation.

There is another reason. At the moment, clause 1 does not read well. I mean no undue criticism of the drafter, but nobody could pick it up and read it. I tried to do that on Thursday at lunchtime and I really struggled. It is not a progressive process, it does not use straightforward language, and you cannot see it. Nigel and I have had a happy disagreement, but when is the irretrievable breakdown of the marriage? In terms of what we need to have within this structure, I agree with Nigel that we do not want to clog it up, but there are some crucial elements that we think should be brought into this legislation, as opposed to having—dare I say?—Henry VIII-type powers. Henry VIII is probably not the right person to bring up in the context of divorce, and Henry VIII-type powers probably should not be in, of all things, this divorce legislation.

Q23 Anne-Marie Trevelyan: To pick up on something that you said, Mr Hodson, the reality is that the language of applicant and respondent is important because it gives control to the person—I am thinking particularly of women who are trying to leave an abusive relationship. If it is changed, how do they maintain control of the next stage of the process, which clearly this Bill does not cover, in terms of the finances and protecting their children and ensuring that they are in control of the timetable and, indeed, the outcomes on that side of things?

David Hodson: It is totally unaffected by that particular provision. Domestic violence and children proceedings are under another piece of statute. They would often be dealt with by a different judge on another occasion. None of the financial elements would actually overflow into those two, so there is absolutely no prejudice whatever.

In terms of the timetable for the three months, a person might want to bring an application for interim financial provision. One reason why we have so many fault-based divorces in this country is that, in some instances, people need financial help and they can get it under our law only against what we used to call ancillary relief. Some countries have free-standing provision—I think Sir James Munby is coming, and it would be interesting to ask him. I think he supports free-standing financial provision—so you do not need a divorce. Many people apply for a divorce as a route to applying for financial provision. They would not be prejudiced in any way by having this litigation-free zone. They could apply straight away, which must be right.

Q24 Anne-Marie Trevelyan: But in terms of that direction and that messaging, if you are no longer the applicant, although you are the one applying, that changes the whole sense of who is fighting for this, because the financial arrangement side is still often a fight.

David Hodson: It does not—forgive me. You would often have a petitioner for a divorce who may actually be the respondent to the financial claims. It gets awfully confusing, but you would often have the petitioner, who actually seeks the divorce under our present law, and it may be the respondent—maybe the wife—who then makes the application in form A, because she needs the financial provision, and she would be called the applicant in the financial claims. Because they are financial proceedings, they are separate to the divorce and they have a separate court hearing. She is the applicant and she would actually be the one who would control the entire timetable. She would be the one who made the opening speeches if they were at a hearing. She is the one who would actually be the applicant. The divorce is literally divorced from the financial process apart from two or three dates, and completely divorced from domestic violence and children proceedings—and rightly so.

Q25 Andy Slaughter (Hammersmith) (Lab): To be clear, the Law Society would like us not to take out clause 6. I have yet to see what the views of the others are. Is that because you are against Henry VIII clauses generally, or do you think one is particularly inappropriate in this Bill? This is being put forward as an uncontentious Bill, but that is rather undermined by the desire to get it through simply and quickly without amendment. There is an attempt to have your cake and eat it by leaving in the ability to amend it completely in future.

David Hodson: Clause 6 must stay in; there has to be the power for Government—for the Ministry of Justice—to bring in statutory instruments. We are saying that if the Ministry of Justice has in mind any changes, and if there are certain elements within the structure of the process of divorce that are in question, let us debate and understand them now, have a discussion, and bring them in there. That is certainly not to suggest that there should be a much longer process and much longer clause 1. If some of these items—not a lot; just a few of

them—that we have put in the Law Society briefing paper are going to be considered, they should be brought forward and discussed now.

Nigel Shepherd: Resolution is relaxed about the current structure of the Bill. We feel that we can proceed with this as this is, and we can deal with some of these details in secondary legislation. Again—I am banging the same drum—our primary focus is on removing fault from this process, and that is what we want to get over the line.

Q26 Andy Slaughter: You want to get that through quickly before we mangle it. Then you are happy to trust Government to do whatever they like in the future in this area of law. Is that your view?

Nigel Shepherd: We cannot ignore the current political uncertainty and the priorities elsewhere. We are delighted that time has been found for this, and we do not want to lose it.

Q27 Andy Slaughter: It is just slightly suspicious. The same thing happened with the Marriage (Same Sex Couples) Act 2013. There was a desperate rush to get it through without bolting anything on. Then we had to have a series of short Acts, some of them private Member's Bills, dealing with issues of relationships. There were lots of other things we could have dealt with in the Act, such as cohabitation and humanist marriage, and we dealt with equal civil partnerships in other ways. You just want to get this through and done.

Nigel Shepherd: Yes, exactly. Are there other things that we would like to do? Yes. We would like to get legal aid back, at least for early advice, to help couples and steer them towards mediation and in the right direction. Yes, we would like to reform the law for cohabitants, to give protection to the vulnerable. It is just that this is not the Bill to do that. When I say that we are relaxed at Resolution about the secondary legislation point, it is not that we think that the primary legislation is flawed, but are just ignoring that to get it through. We think it is fine, but there are details that clearly can be dealt with in secondary legislation, and we are comfortable with that.

David Hodson: Would it be helpful if I explained one of the primary concerns of the Law Society? It relates to the respondent—forgive me for using that language; the person receiving a sole petition. When does the 26-week period run? At the moment, under this legislation, it runs when the petitioner—again, forgive me for using the old-fashioned language—sends the petition to the court. When it is served, it is served through a period of notice, and there are service provisions. The legislation intends for the 26 weeks to run from that date, but the respondent may get it weeks—sometimes many weeks—later, because there are delays at the court; I do not make any further points on that, but it may take weeks, sometimes longer, for it to be issued. If somebody is abroad, the period of service may be longer. There may be a need to find the person.

In our opinion, we have fairly arbitrary, unfair, discriminatory provisions for the respondent spouse, who, we must remember, may not know this is coming. There may not have been a letter before action. They may be surprised to know how seriously the other spouse was thinking of ending the marriage—“Oh, I

didn't realise it was such a bad state that they would issue a divorce petition." Perhaps they are not living together and the person has to be found.

It is wrong and, we believe, quite unfair for some spouses to have 24 or 20 weeks, and others to have 15 weeks, if it takes longer to serve. One of the fundamental elements of what the Law Society wants is to make it clear that the 26 weeks—if that is what Parliament deems is the right and appropriate period—run not only for the petitioner who issues the petition, but for all respondents, from the date they receive it.

The Ministry of Justice consultation period ums and ahs—my words, not theirs—as to whether the period should run from the date of the start of proceedings or the date of service, and in the end has eventually come down on the date of the start of proceedings, but they admit there is good reason for it to be from the date of service. It has to be from the date of service; otherwise, it is grossly unfair, and we are creating a law where some respondents have 24 or 23 weeks. That cannot possibly be right. If Parliament decrees that we should have a divorce after 26 weeks' notice, that should not be the notice given by one spouse; it should be the notice received by the other. When we talk about whether to have clause 6, that is one of the fundamental elements that we say should be debated and discussed in this forum, and more publicly, to see how we feel about respondents having far less than 26 weeks.

The Chair: I am conscious of the time, and I want to bring the Minister in shortly. Does anyone else have a simple, straightforward question they have not had a chance to put yet? I guess it is over to you, Minister.

Q28 The Parliamentary Under-Secretary of State for Justice (Paul Maynard): For the benefit of the wider Committee, could you set out what, when people submit their evidence of fault, the court does with that piece of information? How is it handled by the court? What weight do they place on it?

Nigel Shepherd: The short answer is that the average time that court officials—this is now mostly done by legal advisers in regional divorce centres—have to scrutinise the evidence is four minutes per case, broadly. Although current legislation says that the court has a duty to investigate the situation as far as is reasonably practicable, the reality is that our process does not allow that to happen at all. If a petition goes in on behaviour, and it is not defended, the legal advisers looking at it are simply checking to make sure that the jurisdictional grounds are correct, and that there is the necessary legal connection between the behaviour and the breakdown—in other words, that the boxes are correctly ticked.

There is no investigation and, what is worse, if the respondent to that petition writes five pages on why it is all untrue, if it is not formally defended with an answer and a fee paid of £200, it is ignored. That is the worst of all worlds, because respondents, particularly those without the benefit of legal advice, think that they are saying that they disagree with something about the petition, but that nobody is listening. That makes it even worse. There is no realistic scrutiny at all in the system. It is impractical to have that scrutiny, because who knows really what goes on behind the closed doors of a marriage? That is why this change is fundamentally so important;

it means that there is no pretence anymore. It is intellectually dishonest at the moment; that is what Sir James Munby said in the Court of Appeal in the case of Owens. We would be getting rid of that dishonesty and acrimony at the start of the process.

David Hodson: I can add to that as a part-time judge at the central London family court. Until two or three years ago, when we had divorce centres, part-time judges had to do four or five of these special procedures every time we sat. It took a matter of moments. We would give careful consideration to the document that had been drawn up by the legal adviser as to whether there were any procedural errors. We would look at the unreasonable behaviour allegations, but I find it difficult to remember in recent years—we have softened as the years have gone by—anything having been sent back. Sometimes it is so minuscule, but if it is undefended, it will go through.

The 1996 legislation had a knock-on effect. If Parliament decided in 1996 that no-fault divorce was appropriate, though Parliament subsequently did not bring it into force, should judges be turning around and saying no? Owens was a distinctive case. It was a defended case, whereas if it is undefended, as Nigel said, it will go through. That makes it a crying pity that people have got to go through that process in the first place.

Q29 Yasmin Qureshi (Bolton South East) (Lab): Good morning. You gave evidence a little while ago about the fact that in order to respond to a fault being mentioned in a divorce, a person has to memorise reams and reams of letters and make a very detailed, comprehensive response to the allegation, but unless they pay the money, they are not even going to be considered. One of the problems with a fault having to be alleged is that often, the respondent or the applicant will then have to spend quite a lot of money to get the process through, so it is almost a double whammy: they have to pay money to blame each other and get a divorce.

David Hodson: One of the Law Society's concerns is the court fee. I appreciate that this is not in primary legislation, but may we express our concern? At the moment, it is £550.

Yasmin Qureshi: That is a lot.

David Hodson: For that, you get a few minutes—I will not say moments—of judicial time, and there is perhaps some scrutiny of the procedure. We hope to go to a no-fault divorce process, mostly online, with almost no or no judicial involvement, because there will not have to be any.

The £550 is very unfair on the poor—for those on welfare benefits, there is an allowance, but it is very unfair on those above that. The great worry has to be that we have a lot of limping marriages in our society between people who just cannot afford that. There are no financial claims—there is no money to make any financial claims—but they just cannot afford to bring the divorce forward.

The Law Society—Resolution would probably agree—would like to make a plea: can the Ministry of Justice review the fees? Again, that is for a secondary instrument. We have some of the highest in the world, probably second or third highest, and they are much too high. Particularly with the new process that will be going

through, there is not that cost to society or to the Ministry of Justice of running it, so can we make the plea to reduce the fee of £550, so we do not have marriages out there that came to an end a long time ago?

The Chair: Minister, this will have to be your last question.

Q30 Paul Maynard: Do not worry, Chair; it is. To follow up on my previous question, what assessment have you made of the introduction of a joint application for a divorce? How might that change the dynamics of the process?

Nigel Shepherd: We are all in favour. It is absolutely right, and people ask for it all the time. People come in and say, “We both agree. Can we make this a joint decision? It is really important because we want to say to our children that this was a joint decision that we made as adults, rather than having *Kramer v. Kramer*—an applicant and petitioner against, with one person being blamed and the other not.” We are absolutely in support; it is a crucial part of the Bill.

Aidan Jones: We absolutely support that as well. We believe that is the right message. When the sadness of a divorce is approaching, it is the right message for the children to see that two adults can still co-parent and get on with each other. In the interests of the children, it is the best way forward.

David Hodson: We tried it under the present process in a number of cases where we had agreed particulars of unreasonable behaviour and cross-petitions. In other words, it went through on the petition of both the petitioner and respondent. Then we got the decree absolute, and we still had the original petitioner described as the petitioner, though it had gone through on the petition of the respondent as well, because there was a joint petition with jointly admitted unreasonable behaviour on both sides. That was so unfair. It is the unfairness of that decree absolute. If only we could have, “This is the marriage of x and y, and they have jointly asked for this.”

I think—we can discuss this—there will be a number of instances where there is a sole petitioner and a joint application for the decree absolute. Again, that embraces what we want to see—that by the end of the period before the application for the decree absolute, they have both come to terms with it. They may not have been okay with it at the beginning, but if at the end, they have come to terms with it, how much better that would be for the children, the future parenting and all those other issues. That is why we are desperately keen to see not only a change to our laws, but a change in the terminology—the way the forms are set out—because that signals so much more for the couple.

The Chair: I thank the panel for the evidence. We will move on to the next panel.

Examination of Witnesses

Professor Liz Trinder and Mandip Ghai gave evidence.

10.15 am

The Chair: Good morning. May I ask the panel to introduce themselves for the record, please?

Professor Trinder: I am Professor Liz Trinder from the University of Exeter.

Mandip Ghai: I am Mandip Ghai, from the charity Rights of Women.

Q31 Anne-Marie Trevelyan: Does this Bill improve things for those who have been living in an environment of domestic abuse?

Professor Trinder: Hugely, I would say. At the moment, probably about 20,000 petitioners are alleging domestic abuse in behaviour petitions. That is a very substantial number. I led the first major study of divorce law, funded by the Nuffield Foundation. One of the things we did was to talk to people who have been going through the process. Certainly, where there has been a background of domestic abuse, people had a strong sense of not wanting to inflame the situation or put themselves more at risk by alleging particulars of behaviour. About 20,000 petitions annually involve allegations of domestic abuse and not to have to put those allegations forward would put those petitioners, particularly women, in a much safer position.

Mandip Ghai: We would agree with that. As part of my role at Rights of Women, I regularly advise survivors on our telephone advice lines. They have a real concern about issuing a divorce petition at all, and about the perpetrator’s reaction, but they have particular concerns if they are having to cite domestic abuse on the petition. The Bill will also, we hope, prevent perpetrators using the threat that they will defend petitions to try and control her or have the upper hand in negotiations about finances and children.

We also find, often, that if the perpetrator issues a divorce petition first, she has to agree to a divorce based on her unreasonable behaviour, when in fact the reason why the marriage broke down was his abuse towards her. We support the Bill.

Q32 Anne-Marie Trevelyan: Do you think we will see an increase in applications in this cohort of families, if the process is easier?

Professor Trinder: I dispute the concept that it would be easier. I echo Nigel Shepherd’s point that it would be kinder. There is absolutely no reason why there would be a significant increase. In effect, the Bill just changes the way irretrievable breakdown is evidenced, by removing the need to present allegations that may or may not be true. What we may see—it happened in Scotland and other jurisdictions—is that there will be a temporary increase or spike in the number of divorces that are being brought forward. The law would not cause an increase in relationship breakdown; what it would do is enable people who are waiting for two years, sometimes five years, who are in a queue already because their marriage has broken down, to move on with their lives, sort out permanent agreements for their children and resolve money issues without having that long wait.

Mandip Ghai: For survivors who are thinking about leaving an abusive relationship, the point of separation is often the most dangerous time for them. There are lots of things they are thinking about, not just his reaction to the divorce. The Bill would just be one thing that would hopefully help her leave the abusive situation.

Q33 Rosie Duffield (Canterbury) (Lab): To expand that, parties will still have to wait a year before applying. In your opinions, is there a danger that that will exacerbate any existing abuse?

Professor Trinder: That is a difficult issue, about which we have thought a lot. In general, the Bill very helpfully places responsibility for determining whether a marriage has broken down on the parties. In almost all instances, it is entirely up to the parties to determine whether the relationship has broken down and make that declaration. My only reservation with the one-year marriage bar is that it possibly has a symbolic importance to Members here. If the threat of removing the bar were to jeopardise the progress of the Bill, then I would not support it. Part of the reason for my making that statement is that there is not much evidence for needing to remove the bar.

In our study, we looked at a nationally representative sample of 300 undefended cases. Only four of those were brought within year two—months 12 to 24. Only one was brought in the 13th month, as soon as it was legally possible to bring those proceedings. Numerically, the size of the population is small. In those four cases we also looked at what the case was about: why the marriage had come to such a precipitate end, whether it was domestic abuse, and whether it was women trying to flee an abusive relationship. None of those cases involved domestic abuse. That is not to say that there would not be domestic abuse survivors wanting to leave a marriage soon, but the numbers are very small and divorce in itself is not a protective measure.

There is the potential for nullity in the case of a forced marriage. Non-molestation occupation orders would be a solution. In any case, women would be in a better position in that, although they would have to wait 18 months, they would not have to disclose particulars of behaviour.

Mandip Ghai: We would obviously want survivors to be able to end an abusive marriage as soon as possible. We would agree with the one-year bar if concerns about it were going to derail the Bill: looking specifically at the impact on survivors, there is not enough evidence. I would also want some evidence on the impact it would have on migrant women and migrant survivors. I do not have enough information on that at the moment. There is also the issue of the potential impact on immigration status if someone's stay is dependent on their relationship with the abuser. We do have concerns about the one-year bar, but we would agree on that if it was going to derail the Bill.

Q34 Eddie Hughes: Is there some evidence that changes of the type proposed by this legislation would lead to an increase in the number of divorces? I am reading a couple of cases here. Leora Friedberg found in her research that unilateral divorce laws were responsible for about 17% of the increase in divorce rates in the US during the 1970s and 1980s. Research across Europe by Libertad González and Tarja K. Viitanen found that “reforms that “made divorce easier” were followed by significant increases in divorce rates”

and, moreover, that the effect of the move towards no-fault divorce laws seemed “permanent”. Is there research suggesting that we could see not just a spike in divorce but a continuation of increased divorce levels?

Professor Trinder: No.

Eddie Hughes: So those two things that I quoted are unfounded or not relevant?

Professor Trinder: There is a large number of academic studies, as you would imagine.

Eddie Hughes: There are two here.

Professor Trinder: There is a large number of academic studies looking at the relationship between divorce rates and divorce law in a range of jurisdictions. You can always find one or two studies that will be outliers, particularly from the United States where there are aligned researchers. The strong message from the consensus of academic opinion is that there is no relationship between the substantive divorce law and divorce rates. The paper by Libertad González that you reference clearly said that procedural changes can have an impact on divorce rates, not the substantive law. If you look at our law, we have fault. Of all divorces, 60% or so are proceeding on fault. They will all get through. Fault is not a bar to achieving a divorce at all.

Q35 Eddie Hughes: What do the public think about whether we should maintain fault? Has any research suggested that the public are happy with the idea of there being fault?

Professor Trinder: It depends on how you ask the great British public, and how it is put.

Q36 Eddie Hughes: Here it states that the Government's own consultation found that a mere 17% of respondents agreed with proposals to replace the five facts with a notification process, and 80% were against it. Is that incorrect?

Professor Trinder: No, I think those are the accurate figures from the Ministry of Justice. The MOJ launched a consultation and the vast bulk of responses were supportive of the proposals. A small evangelical Christian organisation then e-mailed all its members, and there was a flood of responses.

Q37 Eddie Hughes: Are responses from evangelical Christians not valid?

Professor Trinder: No, they are valid.

Q38 Eddie Hughes: Why did you mention it then?

Professor Trinder: They are valid as the views of evangelical Christians, but they are not a valid representation of the British public. In opinion surveys by YouGov, a majority of the population are supportive of the specific reforms and the removal of fault entirely. In the main, evangelical Christians are not supportive of the reforms, but the public in general are, and that is much more persuasive to me.

Mandip Ghai: The problem with relying just on statistics is that that does not include various sections of society, such as survivors of domestic abuse, who probably did not respond to that consultation. They probably did not know about it, or may not have felt confident enough to respond to the consultation.

Q39 Eddie Hughes: Why would you make that assumption? Why would they not know about the consultation and why would they not respond? On what basis do you make that case?

Mandip Ghai: When we spoke to people on our advice line, they did not know about it. I am basing it on my experience of speaking to survivors on our telephone advice lines. The reality for those women who

we hear on our advice lines and who are going through the divorce process is that they find having to state the behaviour particularly difficult. From our experience, removing the fault-based system would help them to get through the divorce process in a safer way.

Q40 Melanie Onn: Is there evidence that demonstrates clearly that no-fault divorces are any less damaging to children than divorces in general? Regardless of whether fault and blame are apportioned, it is still a traumatic event for families, and it involves changed circumstances. We do not have this provision here, but could you point us towards something from north of the border or overseas that suggests that it would definitely ease the anguish of families in that situation?

Professor Trinder: Just now I mentioned that 60% of divorces in England and Wales were based on fault. North of the border in Scotland it is 6% to 7%. Are we, south of the border, so much more badly behaved in marriages than the Scots? *[Laughter.]* Again, it's a game. The system is gamed, and the law currently incentivises conflict, because the only way to get a divorce within a reasonable time is to make allegations of fault. It is more likely that 50% of divorces are about behaviour because you do not need an admission, as you do with adultery. In the surveys that we ran as part of our study, that was much more likely to cause difficulties in sorting out child arrangements and to mean contested financial proceedings. The point is that divorces are going to be incredibly stressful and, in many cases, conflictual. The problem is that the law adds needlessly to that conflict. The fault process is a routine and a legal charade that adds nothing. Through allegations and seeing behaviour in black and white, it can derail couples who are managing their divorce reasonably well. It can derail things in a way that adds nothing to the process, and is just a needless problem that does not need to be there.

Q41 The Chair: Do you have anything to add?

Mandip Ghai: I agree with that. Lots of research shows that it is harmful for children to live in a family in which there is domestic abuse, so anything that helps survivors of domestic abuse to separate and leave that situation would prevent any further harm to children, caused by witnessing domestic abuse.

Q42 Robert Courts (Witney) (Con): Professor Trinder, I just want to pick up a point that you mentioned about international research and evidence from countries with similar legal jurisdictions as to whether no-fault divorce leads to an increase in divorce. You mentioned the United States, but what is there in New Zealand, Canada and Australia, in particular? Can you help us with that?

Professor Trinder: Most of the research exploring the relationship between divorce rates and divorce law has been from North America and Europe. I cannot think of anything from Australia and New Zealand, but their approach has been—

Q43 Robert Courts: So is there an absence of research from countries with similar legal jurisdictions? The United States is similar, but it is not that close. The closest are the ones that I have mentioned.

Professor Trinder: In the United States, each state has completely different laws. Australia and New Zealand are different in that they have had separation divorce. In Australia, the only ground is a one-year separation,

which has been in place since 1967. We did a comparative study as part of the research and really struggled to find Australian and New Zealand respondents, academics or experts, because there is just no research on the grounds for divorce. It is just not an issue because the reform took place so long ago and that is just how things are.

Q44 Robert Courts: How do their divorce rates compare with ours?

Professor Trinder: They are very similar. It is also worth noting that the divorce rate between England, Wales and Scotland is almost identical, yet we have 60% fault, while Scotland has 6% to 7%. Fault is not influencing the divorce rate at all. That makes sense because divorces are granted in England and Wales and, with the exception of Mrs Owens, fault is not a barrier at all.

Q45 Melanie Onn: Mrs Owens' case brought this to prominence in recent years. How many other such cases have there been that I may have missed?

Professor Trinder: It is extremely unusual. About 2% of divorces in England and Wales intend to defend. Most of those cannot actually continue with that, and only about a dozen out of 100,000 cases go to a fully contested trial each year. Owens is the only case that we are aware of in the last two decades in which the decree has been refused. We also looked at defended cases and had a sample of 74, and none of those were upheld. It is worth noting that in those defended cases, most of them were not defences of the marriage. It was not somebody saying, "No, I don't believe that my marriage has broken down." Mostly, they were triggered by the law itself. People were objecting to the allegations of behaviour made against them, including what appear to be perpetrators who defended allegations of quite serious domestic abuse. Because the court tries to settle cases, rather than go to a fully contested hearing, what happened typically was that the particulars were stripped out, so the line went through references to very serious assaults and they were removed from the particulars.

Q46 Victoria Prentis: You heard the evidence from the previous panel about a barrier to divorce being the cost of the fee. Is that something you have any evidence for or opinion on?

Mandip Ghai: Yes, I would agree with that. Obviously, fee exemptions are available, but lots of people will not fall within the criteria to be exempt from the fee and will not be able to pay the £550. For survivors particularly, the option of sharing the fee with the respondent is not there, and even if she is able to get a costs order from the court to say that the respondent has to pay the court fee, usually he does not pay—

Q47 Victoria Prentis: So is the exemption system not working?

Mandip Ghai: Not yet. For a lot of people, it is not working.

Professor Trinder: I would add that we had interviewees in our sample who had been saving up for their divorce over several years. A couple of years ago, the fee went up from I think £410 to £550, literally overnight, and this man was in tears describing how he then had to

start saving again. His divorce was almost in his grasp, after he had saved for several years, and then again taken away. The fees are very high—internationally, they are very high—and they are unaffordable for many people.

The Chair: I think we shall move to the Minister.

Q48 Paul Maynard: Thank you both for your evidence so far. For the benefit of the wider Committee, will you set out some specific examples, where there is coercion and control in a relationship, of how the current process facilitates that coercion and control?

Mandip Ghai: Some of it has been mentioned already. Professor Liz Trinder has already mentioned how defending divorce petitions can be used as a tactic. One other thing that we find—I disagree with the previous panel, one of whom suggested that the time period of 20 weeks should start from service—is that sometimes perpetrators will avoid service, deliberately not responding to the petition even though they have received it, or avoiding being served with it, as a way to try to control the applicant and stop her from proceeding with the divorce. They might suggest that they will consent to the petition proceeding, or accept service, if she agrees not to make any financial claims or agrees various things related to children.

Professor Trinder: I agree absolutely with that. Defence is a very stark example; you get respondents defending—causing huge distress to and huge financial costs for the petitioner—not because they believe that the marriage is repairable or saveable but because they simply want to control the other party. Looking at the case files, there are very clear examples of that, so the removal of that ability to continue to control the petitioner in that way is a really welcome future from the Bill.

Mandip Ghai: The other way, which I mentioned earlier, is that sometimes the perpetrator will issue the divorce petition first to prevent her starting divorce proceedings based on his behaviour.

The Chair: If there are no further questions, I thank the witnesses for their evidence. Thank you. That brings us to the end of our oral session today. The Committee will meet again this afternoon to begin our line-by-line scrutiny of the Bill. Note that we will be in Committee Room 9 at 2 o'clock.

Ordered, That further consideration be now adjourned.—(Matt Warman.)

10.40 am

Adjourned till this day at Two o'clock.

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIVORCE, DISSOLUTION AND SEPARATION BILL

Second Sitting

Tuesday 2 July 2019

(Afternoon)

CONTENTS

CLAUSES 1 TO 6 agreed to.
SCHEDULE 1 agreed to.
CLAUSES 7 TO 9 agreed to.
Bill to be reported, without amendment.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 6 July 2019

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The Committee consisted of the following Members:

Chairs: DAME CHERYL GILLAN, †STEVE McCABE

- | | |
|---|---|
| † Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con) | † Onn, Melanie (<i>Great Grimsby</i>) (Lab) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Prentis, Victoria (<i>Banbury</i>) (Con) |
| † Courts, Robert (<i>Witney</i>) (Con) | † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) |
| † Duffield, Rosie (<i>Canterbury</i>) (Lab) | † Slaughter, Andy (<i>Hammersmith</i>) (Lab) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | † Tracey, Craig (<i>North Warwickshire</i>) (Con) |
| † Green, Kate (<i>Stretford and Urmston</i>) (Lab) | † Trevelyan, Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | † Warman, Matt (<i>Boston and Skegness</i>) (Con) |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | |
| McMorrin, Anna (<i>Cardiff North</i>) (Lab) | Jo Dodd, Mike Everett, <i>Committee Clerks</i> |
| † Maynard, Paul (<i>Parliamentary Under-Secretary of State for Justice</i>) | † attended the Committee |

Public Bill Committee

Tuesday 2 July 2019

(Afternoon)

[STEVE McCABE *in the Chair*]

Divorce, Dissolution and Separation Bill

2 pm

The Chair: Welcome, everyone. May I remind you of Mr Speaker's advice that you should switch off or silence electronic devices and that you should not have tea or coffee in the Committee Room?

We now begin line-by-line consideration of the Bill. No amendments have been tabled, but I expect to allow stand part debates on most clauses, which should allow hon. Members plenty of opportunity to scrutinise the Bill. We have to proceed in the order set out in the programme resolution that was agreed this morning.

Clause 1

DIVORCE: REMOVAL OF REQUIREMENT TO ESTABLISH
FACTS ETC

Question proposed, That the clause stand part of the Bill.

The Chair: Minister, do you wish to make any opening remarks?

The Parliamentary Under-Secretary of State for Justice (Paul Maynard): I will see what hon. Members have to say and then round up.

The Chair: That is entirely up to you. I call Eddie Hughes.

Eddie Hughes (Walsall North) (Con): May I begin, semi-light-heartedly, by declaring my interest as a Catholic, which informs my position? At the national parliamentary prayer breakfast in Westminster Hall this morning, there was a discussion about the overlap between politics and religion. There are some areas in which I find the two to be inextricably linked, and this may be one of them.

When I entered into marriage as a Catholic, I felt wholeheartedly that it was for life and that there was simply no way out of it; my wife decided otherwise, and we ended up getting divorced. For my part, because I felt that I had stuck to the sanctity of marriage from a Catholic point of view, I was kind of relieved by the idea that it was possible to apportion blame and use the idea of adultery as a basis for the breakdown of the marriage. However, I appreciate that in some cases that may not be preferable. My problem with the Bill is that I feel it will make divorce easier. When a contract is easy to get out of, people enter into it more lightly.

Melanie Onn (Great Grimsby) (Lab): I hear the hon. Gentleman's perspective, but I wonder who he thinks it serves in the long run to apportion such blame.

Eddie Hughes: I completely understand the hon. Lady's point. That is why I am trying to set the context: my very personal view is that the system worked in my particular case, but I completely accept that it will be different for others, as we heard in our evidence session this morning.

My point is simply that we have all visited websites that have asked us to tick a box to agree to terms and conditions. It is highly doubtful whether any of us has ever read all the terms and conditions before ticking the box, because we know that we are entering into a contract that will be really easy to get out of. We have all done it—we have all pressed the button to enter into a contract really quickly, because we know that it is easy to get out of. I am scared about any move in that direction with regard to marriage, because my personal belief is that it is more important than that, as a contract and a spiritual union.

Anyway, I have some points and questions for the Minister about clause 1. The written and oral evidence submitted to the Committee by Mr Hodson raises several key points that really engage with the clause and that arguably highlight the need for amendments that I hope the Government will consider.

The 20-week reflection period is clearly of huge importance. The Bill is about removing fault from divorce, not about minimising the opportunity within the divorce process for couples to gain access to mediation and have a rethink. This may come as a surprise to some right hon. and hon. Members, but in some instances the first occasion on which a spouse finds out that their marriage is in difficulty is the commencement of divorce proceedings. That is the first opportunity they have, with that knowledge, to try to put things right. At a time when the annual cost of family breakdown to the Exchequer stands at £51 billion, according to the Relationships Foundation's annual assessment, it is imperative that policy makers and legislators seize every opportunity provided by the 20-week reflection period to maximise the opportunities for mediation and reconciliation. Without any expression of commitment to the importance of marriage, the Bill will sound very hollow.

One key measure by which the success or failure of the removal of fault in the legislation will be judged will be the extent to which it creates a better environment within which couples can rethink and save their marriage. To this end, the 20-week reflection period defined in clause 1 is clearly of the utmost importance. At the moment, on the basis of the evidence submitted by Mr Hodson, it seems vulnerable on several points.

First, in a case in which one member of a couple initiates divorce proceedings, if the 20-week clock starts ticking from the moment that they initiate, as clause 1 currently proposes, the other spouse will on some occasions inevitably end up with less than a 20-week reflection period. That is clearly neither fair nor transparent. Will the Government amend the Bill so that it is clear that the 20-week clock will only start to tick from the moment it is clear that both members of the couple know about it?

Secondly, in order for the 20-week reflection period to work well, it is plainly important that a good part of the 20-week period, if not all of it, is made a litigation-free zone, so that the focus can be on mediation. That must extend to ancillary financial litigation. Will the Government amend the Bill so that at least most of the 20-week period, if not all of it, is made a litigation-free zone, including ancillary financial litigation?

Thirdly, will the Government consider changing the point in the process at which the partner seeking the divorce should lodge their statement of irretrievable breakdown? Having it at the start, as the Bill proposes, makes it extremely difficult for the other partner to respond constructively if the intention is for a period of reflection.

Finally, mindful of the importance of the 20-week period referred to in clause 1 for reconciliation and mediation, what new provisions will the Government make to ensure that all couples are offered effective reconciliation and mediation specifically during this period, in an effort to increase the numbers of divorce proceedings that are not concluded, thereby increasing the number of marriages saved?

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. I put on the record the fact that the Opposition do not object to this legislation, which is one reason why no amendments or new clauses have been tabled. We welcome this piece of legislation, which has for many years been required and called for, and it is great that the Government have brought it to the House. This morning, Members heard from experts in this area who deal with these types of cases day in, day out, and it was quite clearly their unanimous opinion that this legislation is important, welcome and needed.

No one goes into a marriage expecting it to fail, but it is an unfortunate reality of life that couples may choose to go their separate ways. It is even more unfortunate that, when they pursue a divorce, they do so under archaic law. Among the five permissible grounds for divorce are adultery, desertion and unreasonable behaviour, which involve the allocation of blame to one party. That is unfair and could damage a couple's children as well.

For decades, campaigners have been asking for this change to the law. This situation was crystallised recently in the case of *Owens v. Owens*, which ended up in the Supreme Court. Sir James Munby, then president of the family division of the High Court, said in 2017 that

“the law which the judges have to apply and the procedures which they have to follow are based on hypocrisy and lack of intellectual honesty. The simple fact is that we have, and have for many years had, divorce by consent, not merely in accordance with section 1(2)(d) of the 1969 Act but, for those unwilling or unable to wait for two years, by means of a consensual, collusive, manipulation of section 1(2)(b).”

We heard about that this morning. It is interesting that in Scotland, where the requirement for fault has been abolished, only 6% to 7% of divorce applications are based on fault, yet in England 60% are based on allocation of fault. That raises the interesting question, as Professor Trinder said this morning, of whether we are worse behaved than the Scots. It is not that. In Scotland, people do not have to go through the intellectual dishonesty, as Sir James Munby said, of creating issues of fault.

The Minister will set out the law as it stands, but I point out that if a couple want to divorce in less than two years, they need to start pointing the finger of blame, with one citing the other's adultery, unreasonable behaviour or desertion. That in itself causes unnecessary strife. However, in most cases, neither party contests a divorce, so they can go their separate ways.

The need to apportion blame, and ratchet up the acrimony, is one of the main reasons why the Opposition want to see an end to fault-based divorce law, not least because of its impact on children. The ground of unreasonable behaviour, for example, requires allegations from one spouse against the other that are hardly ever challenged and can be exaggerated, which will inevitably exacerbate the relationship between the parties and make arrangements regarding children even more difficult. It is therefore unsurprising that most of the legal community supports the changes. About 1.7 million people have assigned blame in a divorce process. Many need not do so, so again legislation is very important.

The Law Commission has called for the current fault-based system to be scrapped. In fact, it recommended that in 1996. It has made several criticisms of the current law, of which many hon. Members are aware, but perhaps they are worth repeating because some believe, and indeed the hon. Member for Walsall North alluded to the fact, that somehow such reform will lead to more people filing for divorce. In a number of cultural and religious communities divorce is actually very easy but the divorce rate is tiny. I do not accept the suggestion of a correlation and that the divorce rate will spike because of a change in the law. It is about societal issues or particular challenges in people's lives and communities. I do not think a correlation can be seen between changing the law and an increase in the rate of divorce from looking at other countries, cultures and societies where there is a more open or easier divorce system.

One of the problems with our current system is that the law is confusing and misleading. It says that the only ground for divorce is that a marriage has “irretrievably broken down,” but that can be proved only in one of five ways, three of which involve fault. Therefore, the fact used as the peg on which to hang a divorce petition may not in any way bear relation to what caused the breakdown in marriage. The law also pretends that the court is conducting an inquiry into whether and why the marriage has broken down when in fact it does no such thing. Even if a petition is defended, it requires only that the fact is proven.

The current system is discriminatory, favouring those who can afford to live apart for two years before seeking divorce, with the remedies that go with that. Many poorer parties, including many who are victims of domestic violence or abuse, cannot afford to separate unless and until they get orders, which are obtainable only on divorce. Matrimonial home orders under part IV of the Family Law Act 1996 were originally intended to provide a sensible interim housing solution, but the provisions of our current law exclude parties from being able to access it.

The current system is unjust. Adultery and unreasonable behaviour suggest that one party has to blame the other, but many of the technical bars under the old law were abolished. There is little or nothing to stop the more blameworthy one relying on the conduct of the less

[Yasmin Qureshi]

blameworthy one. It is difficult, expensive and may be counter-productive to defend or cross-petition to try to put matters right.

2.15 pm

In any event, which of us is qualified accurately to assess blame for any relationship breakdown? Under the current law, it is always a matter of blame. That provokes unnecessary hostility and bitterness because it is arbitrary and unjust, and the respondent cannot put his own side of the story across. That can therefore add more anger, pain and guilt, and cause even more problems for the parties concerned. Evidence has shown that it can make things worse for children as well. Often children suffer when parents separate, especially if the divorce is acrimonious.

In October 2017, a large-scale research study by Professor Trinder, who gave evidence this morning, was published, entitled “Finding Fault? Divorce Law and Practice in England and Wales”. The study very much dealt with these matters, and it was great to hear Professor Trinder this morning talking about the research, which confirms that the legislation is necessary and welcome.

The reforms will bring many benefits to separating couples. The legislation will have positive effects on children and will mean that they do not have to talk about one parent blaming the other. It will also mean that the process can be a lot cheaper, and people will not have to go through such emotional turmoil. We have heard the figures about the effect on children, and it has been agreed that the majority of the population of this country has come to the conclusion that taking fault out of divorce is a sensible way forward. I think it is universally accepted that parents fighting with each other and attributing blame has an effect on children.

For all those reasons, we welcome the legislation. To facilitate its passage, we have not tabled any amendments, but we ask the Government to consider two things. The first is the extension of legal aid. Although the reforms to modernise divorce are welcome, I would like the Minister and the Ministry of Justice to consider reintroducing legal aid for early advice. The Law Society, which represents about 140,000 solicitors in England and Wales, has said that legal difficulties around divorce are exacerbated by far-reaching cuts in the justice system, which means that problems often escalate when early legal advice is unavailable.

In cutting legal aid, the Government failed to recognise that solicitors who provide early advice are a significant source of referral to mediation, avoiding costly court hearings. Without early advice from a solicitor, many people do not know that the option of mediation exists, or even how to access it. Will the Minister reflect on the research that has shown that legal aid cuts have forced more people into a do-it-yourself justice system? I certainly hear a number of cases in my advice surgery of constituents who end up in court dealing with unfamiliar procedures as they attempt to resolve the future of their children, homes and finances. I am sure that I am not the only Member who has come across constituents with such issues.

Since the Government implemented the Legal Aid, Sentencing and Punishment of Offenders Act 2013, there has been an increase in the number of litigants in

person in the court system. The Law Society argued that not only have the changes failed to divert people away from the courts, but

“they have created additional pressure on the courts as they have to deal with higher than expected case volumes and delays caused by those acting without lawyers being unfamiliar with the processes.”

This leads to unnecessary costs to the taxpayer, because it obviously requires longer in court. If the litigant is represented, matters will be dealt with a lot more quickly. With unrepresented defendants, a matter that would take 10 minutes if somebody had legal representation may take two hours or so. The courts will be running for far longer. The situation causes a lot of clogs in the system at the moment. Will the Minister consider that point? I know that it is not part of the Bill, but this is an opportunity for Labour to flag a concern.

Secondly, many charities supporting victims of domestic abuse are obviously very supportive of the introduction of no fault. They hope that the reforms will make obtaining a divorce simpler for the most vulnerable, especially by preventing any post-separation abuse when a victim has cited the violence as the fact on their petition. Leaving an abusive partner is a dangerous time for victims and the current complexity and length of the divorce process can compound these risks.

An aspect of the Bill is that, where a marriage has broken down in a case of domestic abuse, in reality, there is a limited legal effect of the fault. Those who can afford a solicitor will be advised that they do not have to set out the domestic abuse within the application, as the fault-based fact used to apply for a divorce is not scrutinised thoroughly by the court and rarely has any impact on financial proceedings. It cannot be used as proof or evidence of domestic abuse in subsequent proceedings, such as child contact proceedings. Many people are not aware of that. Women without legal advice are therefore more likely to set out the real cause of their marriage breakdown and are placed at greater harm as a result.

This is an important issue. The Minister probably knows that Women’s Aid raised concerns during the consultation on the Bill because it does not remove the bar on petitioning for divorce in the first year of marriage. This rule can leave women who are suffering domestic abuse trapped during that year. Has the Minister listened to the concerns of charities acting for survivors of domestic abuse? Perhaps the Ministry of Justice can explore this at another time. I hope that he will consider the one-year rule and legal aid. The Opposition will not vote against the clauses or table any amendments.

Paul Maynard: It is a pleasure to serve under your chairmanship, Mr McCabe, and to see so many people in the room, discussing what will be a very important piece of legislation. It is rare that we deliver social change in this place. It often occurs at a glacial pace. However, there are locks on the great canal of British history. Every so often, the locks open, the water flows and the ship of state moves on. It never occurs by unanimity. There will always be some in the avant-garde driving the canal boat through the locks, navigating carefully and ensuring that all the locks open and shut in synchronicity. Others may be less at the forefront—more at the bow of the ship perhaps, questioning, querying, holding to account and analysing the detail. Both are important as we consider any item of social change, and

it is right that Parliament reflects all these views. As my hon. Friend the Member for Walsall North has demonstrated, it is very rare to achieve unanimity on any social issue, not just among colleagues in this House but across the country as a whole. I would never object to anyone raising concerns about this sort of legislation when it comes before the House.

We all come to Bill Committees with expectations and enthusiasm. When I served on the Committee that considered the Deregulation Bill in 2014, we spent at least 45 minutes discussing the idea of abolishing the age limit for purchasing chocolate liqueurs. There was a great, furious controversy about how many chocolate liqueurs one had to eat to become inebriated, and no consensus was achieved. I therefore hope that we might achieve a somewhat more broad—in fact, unanimous—consensus on this Bill, which frankly is far more important than the age at which one can purchase a chocolate liqueur.

This Bill is exceedingly important to millions of people up and down the country who are facing the prospect of divorce, have gone through it in their past and have strong views as a consequence, or who are currently in a marriage and considering what they intend to do. Its provisions, taken together, provide for reformed legal requirements in England and Wales by which a marriage or civil partnership may be legally ended through a court order for a divorce or dissolution, or by which an order for separation may be made allowing the parties to a marriage or civil partnership to remain in a legal relationship, but to live apart.

I will start by stating what I hope is agreed by everyone, and is a core Government belief: that marriage is vital to our functioning as a society. It is deeply sad for all those involved when a marriage or civil partnership is beyond repair. The decision to seek a divorce or dissolution of a civil partnership is an intensely personal one. The Government have heard calls to reform the legal process so that it does not make matters worse—calls that are supported by evidence, including that which we have heard this morning, about the harm done by the current legal process and how it is out of step with reality.

The Bill does not seek in any way to diminish the importance of the commitment made when two parties enter into a marriage or civil partnership with each other; that is a profound and deeply personal commitment between two people. I declare an interest: like my hon. Friend the Member for Walsall North, I am a Catholic, and I personally believe that marriage is a sacrament in the sight of God. Equally, I recognise that not everybody shares that point of view. We are looking purely at marriage as a civil institution; clearly, many people from many different faiths and none will have religious concerns, but today we are looking at the law on the dissolution of a marriage.

Relationships can, and ultimately do, fail. When a marriage or civil partnership breaks down and is beyond repair, the law must deal with reality, by creating the conditions for people to move forward with the minimum of acrimony and agree arrangements for the future in an orderly and constructive way. Above all, the legal process should not exacerbate conflict between parents, which is especially damaging for children. The process must better support and encourage parents to co-operate in bringing up their children.

The evidence is clear that the current legal requirements needlessly rake up the past to justify the legal ending of a relationship that is no longer a beneficial and functioning one. The requirement for one person to blame the other if it is not practical for them to separate for at least two years can introduce, or worsen, conflict at the outset of the process—conflict that may continue long after the legal process has concluded. Allegations about a spouse's conduct may bear no relation to the real cause of the breakdown and can be damaging to any prospect that couples will reconcile or agree practical arrangements for the future. In the extremely difficult circumstances of divorce, the law should allow couples to move on constructively when reconciliation is not possible.

I will now deal with clause 1, which relates to divorce as a whole. This clause is key to the Government's whole approach to this Bill and its principled approach to reducing conflict in divorce proceedings. Other clauses regarding the legal requirements for judicial separation, the dissolution of a civil partnership or the legal separation of civil partners reflect that same approach with the appropriate modifications. Clause 1 substitutes for section 1 of the Matrimonial Causes Act 1973 a whole new section 1. The current section 1 contains the grounds for divorce, the legal requirements that a party must satisfy to establish those grounds to the satisfaction of the court, and the powers of the court to grant the divorce if so satisfied.

The sole legal ground for divorce—that the marriage has broken down irretrievably—is retained. Under the existing section 1, a petitioner for divorce is required to show one of the five facts to evidence irretrievable breakdown. Three of the facts relate to the other party's conduct in terms of adultery, behaviour and desertion, and the remaining two relate to the continuous separation of the parties to the marriage before the petition for divorce is filed. In new section 1, the requirement to show a fact is removed and is substituted by a requirement that the divorce application be accompanied by a statement that the marriage has broken down irretrievably. The new statement is to be conclusive evidence of irretrievable breakdown, and where such a statement has been validly made the court must make the divorce order.

2.30 pm

I want to make it clear that the legal process for divorce cannot save a marriage when the relationship has already irretrievably broken down. Only 2% of divorces are currently contested, and research shows that most often the decision to contest is motivated by the desire of a respondent party to dispute conduct alleged by the petitioner. Since clause 1 removes the use of both separation and conduct-based facts, the ability of a respondent party to a divorce to dispute allegations about conduct falls away.

The ability of one party to a marriage to apply for a divorce order is retained, but clause 1 provides, for the first time, the option for a married couple to make an application jointly, reflecting cases where the decision to divorce is a mutual one from the outset. The Government want to ensure that when the decision to divorce is shared, the legal process reflects that mutual decision.

The current process by which a marriage is ended in two legal stages is retained, but the terminology of the 1973 Act is updated to match the more modern approach in the Civil Partnership Act 2004. The first decree of

divorce, currently the decree nisi, will become a conditional order of divorce. The second decree, currently the decree absolute, will become the final order. The removal of Latinate terminology is, I believe, long overdue and will, I hope, be welcomed. As now, the applicant for the divorce must confirm to the court that it may make the conditional order. That will not follow automatically just because an application for divorce has been made. The conditional order does not legally end the marriage; it merely signifies that all the legal and procedural requirements have been met and that the court is satisfied that the marriage can be brought to a legal end. It provides a final opportunity for an applicant to reflect on the decision to divorce, as at conditional order stage the parties remain married.

Clause 1 retains a minimum period of six weeks between the conditional order and when an application may be made to the court for the final order of divorce, mirroring the current period between decree nisi and when the petitioner may apply for the decree absolute.

Kate Green (Stretford and Urmston) (Lab): I wonder what the Minister thinks the purpose of that six-week delay really is. What does he think will happen in these marriages during that six-week period?

Paul Maynard: Part of the objective, I believe, is to improve the financial arrangements. People may wish to delay a little longer until such a point. It is not a maximum period; it is a minimum, and the process might well take longer. It is about ensuring that we take a progressive, step-by-step approach to bringing the marriage to an end, and people may wish to tie up further loose ends, which may take longer than six weeks. There has always been a six-week gap to ensure, if nothing else, that all the paperwork is in order.

Crucially, however, new section 1(5) introduces into the legal process of divorce a minimum period of 20 weeks between the start of proceedings and when a party, or either or both parties to a joint application, may confirm to the court that the conditional order may be made. Those two periods together will now mean that in nearly all cases a divorce may not be obtained in a shorter period than 26 weeks, or six months. The 20-week period is a key element of the reformed legal process. For the first time, a minimum period has been imposed before the conditional order of divorce is made. The intention is to allow greater opportunity for the applicant to reflect on the decision and to decide arrangements for the future where divorce becomes inevitable.

The prospect of a couple reconciling once divorce proceedings have started is low, but our intention is that the legal process should still allow for that possibility. It is never too late for a couple to change their mind, which is one reason why we have decided to retain the two-stage process for divorce.

Separately, the new section 1(8) inserted by clause 1 retains the ability of the court in an individual case to shorten the period between decree nisi and decree absolute, which are now the conditional order and the final order, and also extends this discretion to the new minimum period between the start of proceedings and when confirmation can be given that the court may grant the final order or divorce.

I will come on to some of the points that have been made by my hon. Friend the Member for Walsall North and by the shadow Minister, the hon. Member for Bolton South East. My hon. Friend made some interesting and helpful points about how we can ensure, as I have just referred to, that this is as considered a process as possible, and how we can best utilise the 20-week period that I have just set out.

As my hon. Friend may have picked up during the evidence session earlier today, there is more going on to reform the divorce process than just what is in the Bill. There are a number of online initiatives to try to make the process smoother for those going through it, and one thing that we will look at is what changes we can make to that online process to signpost people towards mediation of some sort, counselling and so on, to make sure that they are aware of the broad range of options available to them, which they might not have thought of when they initiated the divorce process.

My hon. Friend also made a point regarding the Law Society's concerns as to when that 20-week period should start. We have explored this at some length during the consultation. Starting the time period from the acknowledgement of service, as some have suggested, could incentivise an unco-operative party to delay a divorce and could enable a perpetrator of domestic abuse to exercise further coercive control, which is why we have erred on the side of starting it earlier than that.

It is also worth flagging the caveat that we should bear in mind at every stage of this process. When we talk about mediation at this stage of a divorce process, it is often around finances or childcare. The mediation that my hon. Friend and I might think of as laymen is more a form of marriage counselling and relationship support. We should always be careful about that: when we initiate a divorce proceeding, mediation takes on a slightly different meaning from what it might perhaps have during a marriage. As I mentioned to the hon. Member for Stretford and Urmston, 20 weeks allows people more time to sort out their finances, in as constructive a way as possible.

The shadow Justice Minister mentioned the one-year bar on divorce and asked for the reason for that. I confess that I too have asked officials of the first rank what was in the Bill and why this might be. We consulted on it before the introduction of the Bill and there was certainly no broad consensus or hard and fast evidence either way. Many felt that it went against the grain of reforms that recognise marriage as an autonomous truth, as indeed did the Law Society and the Association of Her Majesty's District Judges. Faced with a lack of consensus and a lack of hard evidence at this stage that the bar causes hardship or is a problem, we propose to keep the status quo. That does not mean to say that the law can never be changed, but we do not believe that it would be the right step at this stage.

Understandably, the shadow Justice Minister raised the issue of legal aid and indeed legal support for those going through a divorce. She will be more than aware that legal aid is already available for mediation for couples who have finances or child arrangements that are in dispute. This provides a non-litigious route, resolving issues and helping families to move forward constructively. We are also investing some £5 million to support innovation across the sector that will help people to access legal support as close to their community as possible.

The shadow Justice Minister rightly made a point about litigants in person. As I have said to her in the past at the Dispatch Box, we are doubling our investment in our litigant in person strategy, but the wider reforms that I have just mentioned with regard to online processes for divorce should make it simpler and more straightforward for people to initiate proceedings online, so they would have less need for active legal help at that stage of the process. The reform programme, the litigant in person strategy and the legal support action plan are all about opening up newer avenues to access legal support that are not just about someone getting that legal help as they come through the courtroom door.

On that particular note, I beg to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

JUDICIAL SEPARATION: REMOVAL OF FACTUAL GROUNDS

Question proposed, That the clause stand part of the Bill.

The Chair: Does anybody wish to participate in debate on clause 2? I do not see anyone who does. Minister, do you wish to make any concluding remarks?

Paul Maynard: I am not sure people will have the patience for me to read out all my notes on every clause.

The Chair: There is no requirement.

Paul Maynard: I do feel I ought to. My notes are now all shorter than they were for clause 1. It might help Members if I make it clear for the sake of the record that clause 2 refers to the idea of judicial separation, by which a party to a marriage may obtain a judicial separation order. Judicial separation is rarely used nowadays, with fewer than 300 judicial separation petitions made annually in comparison with around 110,000 petitions for divorce. We recognise, however, that divorce is not an option for some couples because of deeply held religious or other beliefs. Judicial separation therefore continues to provide an important legal alternative for those couples, and that is why we have decided to retain it. Clause 2 broadly reflects the changes made in clause 1 and applies them to the issue of judicial separation. I commend the clause to the Committee.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

DISSOLUTION: REMOVAL OF REQUIREMENT TO ESTABLISH FACTS

Question proposed, That the clause stand part of the Bill.

The Chair: Minister, do you wish to make any opening remarks? Does anyone else wish to participate in debate on clause 3? I will take that as a no. Minister, do you wish to say anything in conclusion?

Paul Maynard: I was going to take clauses 3 and 4 together.

The Chair: You may refer to them both, but we have to take them separately.

Paul Maynard: The only point I will make to colleagues is that, just as we had judicial separation in clause 2, clause 3—and indeed, clause 4 for that matter—refers to civil partnerships and the Civil Partnership Act 2004. It once again takes all the elements I referred to in clause 1 and translates them on to the Civil Partnership Act 2004 so that that is also up to date from where we are currently.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clauses 4 and 5 ordered to stand part of the Bill.

Clause 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Question proposed, That the clause stand part of the Bill.

Bambos Charalambous (Enfield, Southgate) (Lab): We support the Bill very much. We had some concerns about the powers that the Lord Chancellor would have in relation to clause 6, but given that they are so limited in scope, we do not propose to object to them. However, we do not wish it go unnoticed that we have concerns about Ministers having—I will not call them Henry VIII powers in relation to divorce proceedings—draconian powers in pushing forward legislation that would remain as primary legislation. I will leave it at that. We do not oppose this clause, but I wish to put on record that we have wider concerns about Ministers' powers.

2.45 pm

Paul Maynard: I was going to say a few words on this clause, so I am grateful to have the chance to respond to the debate. The hon. Gentleman makes a perfectly fair point about the delegated powers. We got the idea from the Civil Partnership Act 2004, which was introduced by the hon. Gentleman's party. We are reflecting the changes in that Act in the Bill. The powers we are conferring on the Lord Chancellor were exercised by the High Court with the introduction of the Matrimonial Causes Act 1973. In 2004, when the legislation was updated, it was decided that the power was better vested in the Lord Chancellor for civil partnerships. We are now catching up across the broader spectrum of proceedings with that decision to move the power from the High Court to the Lord Chancellor. I can justify the devolved powers in question even to myself, and I can even call them Henry VIII powers.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clauses 7 to 9 ordered to stand part of the Bill.

Paul Maynard: On a point of order, Mr McCabe. It is customary to give a lengthy thank you to all those who have participated in the Bill. I fear I would end up

[Paul Maynard]

making a speech longer than any other speech if I tried to do so, but I thank all Members for their contributions, even if they have been silent contributions of good will emanating towards us. That is good enough for me.

More importantly, I thank all the officials who have worked hard on the Bill for many months. They may even be disappointed that we have taken only 47 minutes to progress it through Committee. I will put them at their ease, because if it is only 47 minutes, it means there is far less chance for me to muck it up at any stage. There will be a sigh of relief at the Ministry of Justice, I suspect, that I have been hidden from scrutiny by taking a bit less time. I thank all my officials and I thank you,

Mr McCabe, for chairing the Committee so adeptly. You have facilitated our rocket-powered canal boat moving down the great canal of British history through one more set of locks.

Yasmin Qureshi: Further to that point of order, Mr McCabe. I place on record my thanks to all Members who have attended today and those who spoke in the Chamber on Second Reading. I thank you, Mr McCabe, for your excellent chairing of this Bill Committee.

The Chair: It is certainly close to a record, Minister, but it must be down to the quality of the Committee.

Bill to be reported, without amendment.

2.49 pm

Committee rose.

**Written evidence to be reported
to the House**

DDSB01 Resolution

DDSB02 Dr Sharon Thompson, Cardiff University

DDSB03 The Law Society for England and Wales

DDSB04 Sue Kincaid

DDSB05 James Brien

DDSB06 Nicholas D. Hart (retired former solicitor)

