

## Divorce, Dissolution and Separation Bill

### Written evidence

#### About the Bill

The Divorce, Dissolution and Separation Bill is currently in Committee Stage in the House of Commons. The Bill will allow couples to divorce without having to assign blame.

As the leading family law body in England and Wales, representing 6,500 family justice professionals, Resolution fully supports this Bill, which will help thousands of divorcing couples to minimise conflict, in turn reducing the negative impact of an acrimonious divorce on any children they may have.

These proposals have the support of the public, parliamentarians and family law professionals, as well as the judiciary.

Resolution shared a similar briefing with all MPs ahead of Second Reading, and we were pleased by the strong levels of cross-party support the Bill received during that debate.

**Resolution would like to see all committee members speak in support of these important and necessary reforms. In the interests of the Bill becoming law as soon as possible, we do not propose any amendments.**

#### Why is this reform needed?

- For a couple seeking a divorce under the current law (the Matrimonial Causes Act 1973), they cannot proceed simply on the basis that they decide together that their marriage is over and mutually agree to divorce, even though this is a common request. They have to establish one of 5 “facts” in support.
- The current mutual consent divorce requires couples to have been separated for a minimum of two years. Most couples do not wish or cannot afford to put their lives on hold for this length of time. If they want to get their divorce so that they can plan for the future they have no option other than to allege adultery or ‘behaviour’ on the divorce petition. They become involved in a ‘blame game’ - this can often serve as a prompt for couples to revisit painful moments in the marriage which ultimately led to its breakdown.
- Furthermore, at present, it is possible for one of the couple to defend the divorce on one of the “blame” grounds, and keep the other spouse locked in the marriage against their wishes for 5 years from separation.

#### What is the problem with the current law?

- In the experience of Resolution’s members, the current divorce law doesn’t encourage co-operation. Rather, it introduces and/or escalates conflict from the outset of the divorce process, making it harder for people to make agreements about children and/or finance issues.
- All too often the first discussion is about who is to issue a divorce petition, on which fact, and the detail of the behaviour alleged. This can lead to polarised opinions and extensive

correspondence, which sets a negative tone for the more important discussions to follow around children and money.

- It can derail discussions even for those who otherwise have chosen to try to reduce conflict, including those choosing out of court processes such as mediation, collaborative practice or constructive negotiation. Our mediator members frequently see a mediation process derailing, or coming close to doing so, because of the discussions that have to take place about who blames who on the petition.

### How will this Bill help my constituents?

- Each year over 100,000 couples get divorced in England and Wales. In the years that have passed since the last significant piece of family legislation, the never-implemented 1996 Family Law Act, over 1.7 million people have assigned blame in the divorce process; many of those will have done so only because they had no choice (given the process available), and a large number of them will have been parents.
- The leading academic study “[Finding Fault](#)” found that **43%** of those identified by their spouse as being at fault for the marriage breakdown **disagreed with the reasons cited in the divorce petition**. This is unfair and unnecessary, and risks introducing or escalating conflict between divorcing couples.

### Why is Resolution supporting the bill?

- Resolution’s 6,500 members are family lawyers, mediators and other family justice professionals, committed, through our [Code of Practice](#), to a non-adversarial approach to family law and the resolution of family disputes.
- However, our members’ work to reduce conflict in divorce is often restricted by the current law, which requires many of their clients to apportion blame, even if none exists.
- In a recent survey of Resolution members, 9 out of 10 agreed that the current law makes it harder for them to reduce conflict and confrontation between divorcing couples. In addition:
  - 67% said that the current law makes it harder for separating parents to reach an amicable agreement over arrangements for children.
  - 80% believe that the introduction of no-fault divorce would make it more likely that separating couples would reach an agreement out of court.
- On a daily basis, our members see the negative impact the current law has on separating families. That is why we have been campaigning for over 30 years for a change in the law, and

### Would this Bill have helped Mrs Owens?

Yes, undoubtedly. Mrs Owens was initially refused a divorce, which had been contested by her husband (contested divorces are rare but possible under the current law). The judge found that, even though the marriage had broken down, Mrs Owens had failed to legally prove, that her husband had behaved in such a way that she could not reasonably be expected to live with him.

Resolution supported Mrs Owens’s case as it progressed to the Supreme Court, making interventions on the grounds of a wider public interest. The Supreme Court dismissed her appeal, as it was bound by the current law, and thus Mrs Owens was legally bound to remain in a marriage she no longer wanted to be a part of. **In the 21<sup>st</sup> Century, this has to be wrong, and would not have happened if the proposed Bill was the law at the time she was seeking a divorce.**

Judges in both courts said that it was for Parliament, and not judges, to change the law. In the Court of Appeal, Sir James Munby, then President of the Family Division, spoke of an aspect of the law and procedures being based on “hypocrisy and lack of intellectual honesty”.

why we are pleased to see the government introduce a bill, supported by all main parties, that will bring an end to the blame game.

### Who else supports no-fault divorce?

#### *The public*

- A [YouGov poll in April](#) this year showed 73% of the public supported divorce law reform.
- A separate YouGov poll commissioned by Resolution showed that 71% of the population agrees that no-fault divorce is urgently needed to protect the long-term interests of children.

#### *Senior judges*

- No-fault divorce is supported throughout the family judiciary. Senior judges who have spoken in favour of reform include two former Presidents of the Family Division (the late Sir Nicholas Wall, and Sir James Munby); and Supreme Court judge, Lord Wilson of Culworth.
- Baroness Hale, the President of the Supreme Court of England and Wales, said at Resolution's 2018 conference, "There is no evidence at all that having to give a reason for [marriage] breakdown makes people think twice."

#### *Policymakers*

- No-fault divorce is supported across political divides. In announcing this Bill, the Lord Chancellor said: "*Marriage will always be a vitally important institution in society, but when a relationship breaks down it cannot be right that the law adds fuel to the fire by incentivising couples to blame each other.*"
- Labour's Shadow Justice Secretary Richard Burgon MP has said "*...our divorce laws need to change urgently. Labour is committed to introducing no-fault divorce proceedings. The Conservatives should stop denying people this basic right and immediately agree to do the same, so that our divorce laws are fit for the 21st century.*"
- The Liberal Democrats Justice Spokesperson in the Lords, Lord Marks, said recently: "*[We] welcome these changes to divorce laws, for which we have been pressing the Government for some time. No-one should have to prove fault to get a divorce and no-one should be trapped in a marriage against their will after it has broken down.*"

### Aren't other reforms needed in family law?

- Yes, there are many other changes Resolution and others wish to see, including greater provision for early legal advice, basic legal protections for cohabitants who often mistakenly believe they have 'common-law' spousal status, and more out-of-court processes falling within legal aid provision.
- However, the Divorce, Dissolution and Separation Bill is not the vehicle to deliver these or other changes.
- **The Bill represents a landmark moment for our divorce laws. Given the current political uncertainties, it must pass through Parliament without delay.** Every day it does not will see thousands of divorcing couples at risk of having to play the blame game.

## Won't this make divorce easier or quicker?

- There's no getting away from the fact that divorce is rarely easy. It's an emotional time, and often involves difficult discussions about what happens to the house or arrangements for children. But for many people, it often marks the end of an intensely unhappy period in their lives and gives them the freedom to move forward.
- There is a robust body of research on the detrimental impact of conflict on the parties, wider family relationships and particularly (and most importantly) children. This law is needed in order to make divorce *kinder*, rather than *easier*.
- Another common misconception is that this law would make divorce quicker, whereas many couples experience a much shorter wait under current law than under what is proposed. The measures contained in this Bill include a minimum twenty weeks from the start of proceedings to when the application can be progressed to conditional order (presently known as the Decree Nisi). There is currently no minimum timeframe for this.
- Together with the retention of the minimum six-week period between the granting of a conditional order and the order being made final, this means couples will need to wait at least 6 months before their divorce is confirmed, whereas the quickest divorced at present can take only 4-5 months. This will naturally provide an opportunity for people to decide if divorce is still the right way forward for them.

## Will this lead to an increase in divorce rates?

There is nothing to suggest that a divorce process as proposed by the Bill would encourage divorce or result in any long-term increase in the divorce rate. The experience of other jurisdictions is that any increase after similar new legislation is short-term and temporary, reflecting those who have waited for the new legislation to come in.

That is exactly what happened in Scotland after the implementation of reforms in 2006 – within two years the divorce rate reverted to the pre-reform level and then continued on a downward trend, and with a reduction in the number of divorces based on fault.

### Conclusion

It is hard to find anyone who disagrees with the principle of reducing conflict in divorce. Academic studies, such as [Finding Fault](#), have endorsed the need for change. Having campaigned on this issue for many years, Resolution has secured support for reform from charities, politicians, judges, and the public.

Divorcing couples have been forced to play the blame game for far too long – this Bill will bring it to an end. We urge members of the Committee to support it and help it progress through Parliament as quickly as possible.

### Contact us

Resolution members across the country are writing to their local MPs to ask them to support the Bill. Representatives from Resolution's No-Fault Divorce Team would be delighted to meet with committee members as the Bill progresses to discuss it further, or answer any questions.

To get in touch, email [divorcebill@resolution.org.uk](mailto:divorcebill@resolution.org.uk) or call us on 020 3841 0300.