

Evidence for the Divorce, Dissolution & Separation Public Bill Committee

Written evidence submitted by the Law Society of England and Wales

Summary

1. The Law Society of England and Wales is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law.
2. Solicitors play a vital role in helping separating couples divide their assets and reach the best arrangements for their children whether there is a fault or 'no fault' divorce. We welcome the opportunity to work with the Government to reform our divorce laws.
3. The Law Society welcomes the Government's introduction of a new Divorce, Dissolution and Separation Bill and we support the introduction of 'no fault' divorce as an important step in the right direction. We are also supportive of the introduction of joint petitions and the principle of a period of notice rather than a period of separation.
4. However, there are still important details that need to be addressed to ensure that the Bill is clear, fair and accessible to those who need to use it. The key areas for amendment are:
 - On sole petitions, the period of notice should begin from the date of service e.g. when the respondent has formal receipt of notice.
 - The period of reflection should be moved to the beginning of the divorce period rather than the end of the process (between the conditional order and final order) as set out currently in the Bill.
 - Irretrievable breakdown should be a ground for divorce however it should not be proven at the initial notice. Instead the form of words needed by the law to say that the marriage has broken down should be on the application for the conditional order (decree nisi) stage, if this is retained.
 - The two-stage decree is removed and replaced with a single decree after the applicant/respondent or both confirm intention to proceed with divorce application.
 - No final order (decree absolute) should be granted until a financial order has been made e.g. a Form A issued, unless by consent of the parties or the paying party can show there is no financial risk to the respondent/applicant.
 - Statutory provision should be included for signposting to marriage and relationship support services.
5. We also recommend that the current divorce application fee is reduced to both support the intent of this legislation and in recognition of the relative ease of online applications as a result of the proposed changes.

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6. England and Wales is a leading family law jurisdiction and with this Bill and the divorce law reform it brings, Government needs to create a no-fault divorce model which can lead other jurisdictions and a law to embrace 21st century family life and justice.

Joint petitions

7. We support the introduction of joint petitions.

Period of notice rather vs period of separation

8. We support the introduction of a period of notice rather than a period of separation. The period of separation model can be discriminatory against poorer applicants and can be subject to manipulation.
9. However we believe the period of notice model as set out in the current Bill is unfair on the recipient and allows no direct opportunity for reconciliation or mediation.

Commencement of notice period

10. The Bill proposes that the period of notice should run from 'the start of proceedings'.
11. However, on sole petitions we believe that the period of notice should begin from the date of service, when the respondent has formal receipt of notice.
12. If the notice period runs from the start of proceedings rather than the date of service, the respondent may receive the notice long after the start of proceedings, whether due to court delays, interference from the petitioner in delaying receipt by the respondent, the simple length of time of delivery if abroad, or other administrative reasons.
13. This then puts a differing and discriminatory timescale on the respondent having less, perhaps much less, than 26 weeks while the Bill presumes the 26-week timescale for response is appropriate.

Litigation free 'cooling off' period

14. The Bill allows for reflection or 'cooling off' in the proposed six-week period between the conditional order (decree nisi) and final order (decree absolute)
15. We believe this is too late and at the wrong end in the process. A respondent, perhaps unaware of unhappiness in a marriage, could find that the time for the divorce is running fast (already less than 26 weeks) but could first focus on the simultaneously commenced finance litigation, which would give no time for reflection and consideration. This affords no opportunity to consider reconciliation or other marital discussions arising from the service of the divorce papers.

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16. We suggest a three-month reflection period at the beginning of the process without any ancillary finance litigation (unless in provable urgency e.g. interim financial support). Children or domestic violence applications should be available during this reflection period.
17. This period of reflection could then reasonably be used to engage in legal and financial advice or to start mediation or reconciliation counselling as appropriate. This would not prevent parties jointly engaging in voluntary disclosure and out-of-court alternative dispute resolution.
18. There is no need to retain the so-called “*certificate of reconciliation*” which has no meaningful benefit in practice

Irretrievable breakdown

19. We support irretrievable breakdown as the ground for divorce. However, the Bill sets out that this will be proven from the initial giving of notice. We believe this is too early in the process to be a meaningful proof.
20. Anecdotal evidence suggests that particularly with online divorce, many litigants in person will commence proceedings, perhaps impulsively, but not then continue. However if irretrievable breakdown is proven from the initial giving of notice, the law will have held that there was already irretrievable breakdown even if they decide not to proceed.
21. We suggest a form of words is needed by the law to say that the marriage has broken down and should be on the application for the conditional order (decree nisi) stage, if this is retained.

Two stage divorce decrees

22. The present six week period is a historic reference that is now obsolete; there is no technical need for this in modern law.
23. We suggest that after the applicant/respondent or both confirm intention to proceed with a divorce application, the court makes a single decree. If the Government decides to update the language in the Bill, we propose ‘final divorce order’ as a plain English option instead of ‘decree’.

No final divorce until resolution of the finances

24. There can be severe, sometimes irretrievable, financial prejudice to an applicant if final divorce is granted before a financial settlement is reached.
25. Good practice by most specialists to agree delaying final divorce until final financial settlement is reached. In the absence of agreement, case law is at best uncertain and

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therefore encourages litigation and at worst can be significantly prejudicial to a financially vulnerable applicant.

26. We suggest that if no financial order has been made yet Form A issued, there should be no final order (decree absolute) granted unless by consent of the parties or the paying party can show there is no financial risk to the respondent/applicant.

Divorce application fees

27. We believe that the current court fee of £550 for divorce applications is too high and discriminates against those who are less financially able.
28. The new process will require less administrative and possibly judicial scrutiny and fewer court hearings as most applications will be made online.
29. We believe that court fees should be reduced to both support the intent of this legislation and in recognition of the relative ease of online applications as a result of the proposed changes.

Language and descriptions

30. We suggest that the wording and language used in the Bill be made more accessible, including the description of the process for obtaining a divorce.

Wider support options

31. Previous legislation recognised that with new divorce legislation there was also a need for corresponding marriage support and included statutory provision for this. The current Bill may benefit from including some similar signposting to marriage and relationship support services and a broader awareness of divorce law in the context of family support arrangements.

For further information please contact:

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