



Ministry  
of Justice

# **Reducing family conflict**

Reform of the legal requirements for divorce

September 2018



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## About this consultation

- To:** This consultation is aimed at Parliamentarians, the family judiciary, family law practitioners, academics, support organisations and members of the public with an interest in family conflict, children's wellbeing or the legal requirements for marriage and civil partnership dissolution in England and Wales.
- Duration:** From 15 September to 10 December 2018
- Enquiries (including requests for the paper in an alternative format) to:** Reducing Family Conflict, Zone 3.23  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: [Reducing-Family-Conflict@justice.gov.uk](mailto:Reducing-Family-Conflict@justice.gov.uk)
- How to respond:** Please send your response by 10 December 2018 to:  
Reducing Family Conflict, Zone 3.23  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  
Email: [Reducing-Family-Conflict@justice.gov.uk](mailto:Reducing-Family-Conflict@justice.gov.uk)
- Additional ways to feed in your views:** A series of stakeholder meetings will also be planned. For further information, please use the contact details above.
- Response paper:** A response to this consultation exercise is due to be published by 8 March 2019 at: <https://consult.justice.gov.uk/>

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## Foreword



Divorce is never going to be an easy change for families. But the recent case of *Owens v Owens* has generated broader questions about what the law requires of people going through divorce and what it achieves in practice. When a marriage or civil partnership has broken down and is beyond repair, the purpose of the law must be to deal with that situation in the most humane and effective way possible.

When I became Justice Secretary this year, I was able to take a deeper look at the issue of divorce, and particularly at the legal process that can incentivise one party to make allegations about the other's conduct. What is clear is that this requirement serves no public interest. It needlessly rakes up the past to justify the legal ending of a relationship that is no longer a beneficial and functioning one. At worst, these allegations can pit one parent against the other. I am deeply concerned that this can be especially damaging for children.

It is right that the legal process for divorce should give couples an important opportunity to consider the implications of divorcing. But the emphasis on allegations about conduct, which some people see as blaming the other party, adds uncertainty and pain to the legal process and can increase ongoing conflict in the family.

Not only does this confrontational requirement go against the grain of wider family law, it also undermines the constructive approach that practitioners take every day to help families resolve their disputes. When a relationship has completely broken down, the focus must be on the future.

In proposing to replace the requirement to evidence conduct or separation with a dignified process of giving notice of irretrievable breakdown of the marriage or civil partnership, the Government is building on a strong and long-established case for reform. It has been more than twenty years since my distinguished predecessor as Lord Chancellor, Lord Mackay of Clashfern, led the way for Parliament to accept the principle that people should be able to divorce without any requirement to justify the decision, except to themselves. In view of all these considerations, the Government believes that it is right to reform the law to remove this requirement.

When a marriage has irretrievably broken down, the law should not frustrate achieving better outcomes, especially for children. That is why we are consulting on the detail of our reform proposal, so that a revised legal process can help people find greater stability to consider the implications of the decision to divorce and help them to reach agreement about arrangements for the future.

The proposal focuses on a narrow area of the law that makes a substantial impact on the lives of families. Last year, nearly 110,000 couples divorced, all of them constrained by a requirement in place for nearly half a century. The damaging effects of this requirement are not always apparent to people who have not themselves been affected by divorce.

This consultation marks the Government's commitment to strengthen support for children and families through a difficult time.

A handwritten signature in black ink, appearing to read 'David Gauke', written in a cursive style.

Rt Hon. David Gauke MP

Lord Chancellor and Secretary of State for Justice



## Executive summary

The breakdown of a marriage is a difficult time for families. The decision to divorce is often a very painful one. Where children are involved the effects, in particular where there is ongoing conflict, can be profound.

### The case for reform

The current law in England and Wales – which has remained unchanged for fifty years – sets requirements which can themselves introduce or aggravate conflict, and which encourage a focus on the past, rather than on making arrangements for the future. The Government believes there is now broad consensus that the current divorce process does not serve the needs of a modern society. Difficulties with the current law have also been highlighted recently before the Supreme Court. In particular, the current divorce process is complicit in exposing children to the damaging impact of ongoing adult conflict during, and too often after, the process. While the wider family justice system is focused on helping people to resolve family issues in a non-confrontational way, the legal divorce process can make this more difficult because of the way it incentivises the attribution of what is perceived as blame. Parents in particular, who need to continue to work together in their children's best interests, may struggle to overcome feelings of hostility and bitterness caused by the use of "fault" to satisfy a legal process.

Under the current requirements, couples must either live apart for a substantial period of time before a divorce can be obtained, or else one spouse must make allegations about the other spouse's conduct. This is sometimes perceived as showing that the other spouse is "at fault". Three out of five people who seek divorce make allegations about the other spouse's conduct. Both routes can cause further stress and upset for the divorcing couple, to the detriment of outcomes for them and any children. There have been wide calls to reform the law to address these concerns, often framed as removing the concept of "fault".

Marriage is a solemn commitment, and the process of divorce should reflect the seriousness of the decision to end a marriage. The Government believes that the law should not exacerbate conflict and stress at what is already a difficult time. The Government accepts the principle that it is not in the interests of children, families and society to require people to justify their decision to divorce to the court.

### The proposals

The Government therefore proposes to reform the legal requirements of the divorce process so that it is consistent with the approach taken in other areas of family law, and to shift the focus from blame and recrimination to support adults better to focus on making arrangements for their own futures and for their children's. The reformed law should have two objectives: to make sure that the decision to divorce continues to be a considered one, and that spouses have an opportunity to change course; and to make sure that divorcing couples are not put through legal requirements which do not serve their or society's interests and which can lead to conflict and accordingly poor outcomes for children.

To deliver these two objectives, this consultation proposes adjusting what the law requires to bring a legal end to a marriage that has broken down irretrievably. This adjustment includes removing the ability to allege “fault”. We propose to move away from an approach that requires justification to the court of the reason for the irretrievable breakdown of the marriage to a process that requires notification to the court of irretrievable breakdown. We also propose to remove the ability of a spouse, as a general rule, to contest the divorce (this is formally called *defending* in the legal process but, for clarity, we will refer to it as *contesting* in this consultation paper). The Government reasons that if one spouse has concluded that the marriage is over, then the legal process should respect that decision and should not place impediments in the way of a spouse who wants to bring the marriage to a legal end. Importantly, this change would also prevent the legal process from being used to exercise coercive control by one spouse over the other spouse who may be a victim of domestic abuse.

Starting with these key principles, this consultation seeks views on the detail of how best to change the law in a way that will help to reduce family conflict and strengthen family responsibility. The consultation also seeks view on the length of the divorce process and period for couples to reflect on the decision to divorce and to make arrangements for the future where divorce is inevitable. We seek views, too, on whether provision should be made for a couple to petition jointly for divorce, reflecting the reality that for many couples this may be a shared and considered decision.

The Government appreciates that many people will have personal questions to ask about the ending of their marriage. They may wish to reflect on what went wrong and consider where the responsibilities lay. The Government’s proposals do not take that away but simply remove a legal requirement. We believe that making sense of the cause of marital breakdown is not a legal question for the court but a personal matter only for the people involved to reflect on.

Our focus is not to make divorce easier or quicker but rather to make the legal process of a considered decision to divorce as painless as possible and bring the divorce process more into line with the wider approach in family law and with the reality of marital breakdown.

## **Wider reform**

The Government acknowledges that there is interest in other aspects of the law around divorce, such as how the court can make financial orders. We are continuing to examine these other aspects and believe that any future change should be founded on a revised legal process in which the potential for conflict has been minimised.

The requirement to give evidence of conduct or separation (or both) also applies to judicial separation during a marriage and to the equivalent processes of dissolution and separation orders for civil partnerships. For convenience, references to divorce and marriage in this consultation paper will include references to dissolution and civil partnerships as appropriate.

This consultation focuses on the legal requirements for ending a marriage or civil partnership. It does not cover other aspects of matrimonial law such as financial provision or nullity (which concerns the legal validity of a marriage or civil partnership).

## Introduction

This paper sets out for consultation the Government's proposals to reduce family conflict by replacing the current requirement to evidence a spouse's conduct or the couple's separation with a process requiring notice that the marriage has broken down irretrievably. This requirement applies to petitions for divorce and judicial separation (during a marriage) and to applications for dissolution and separation orders (during a civil partnership). In cases of (judicial) separation, this will be to give notice not of irretrievable breakdown but of the wish to be legally separated while continuing in the marriage.

This consultation is aimed at Parliamentarians, the family judiciary, family law practitioners, academics, support organisations and members of the public with an interest in family conflict, children's wellbeing or the legal requirements for marriage and civil partnership dissolution in England and Wales.

A Welsh language consultation paper will be available at <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce> in due course. Please use the enquiries address for further details.

An Impact Assessment indicates that divorcing couples, HMCTS, the judiciary and the legal profession are likely to be particularly affected. The proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector. An Impact Assessment is being published alongside this consultation paper at <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce>.

Copies of the consultation paper are being sent to:

President of the Supreme Court	Justices' Clerks' Society
Lord Chief Justice	Law Society
President of the Family Division	Marriage Foundation
	Nuffield Foundation
Association of District Judges	Refuge
Cafcass	Relate
Cafcass Cymru	Resolution
Coalition for Marriage	Stonewall
Families Need Fathers	Welsh Government
Family Law Bar Association	Welsh Women's Aid
Family Mediation Council	Women's Aid

This list is not meant to be exhaustive or exclusive. Responses are welcomed from anyone with an interest in the subject covered by this paper or views on it.

## The current law

Divorce is a major change in the lives of individuals and families that will have far-reaching emotional and practical consequences for them and for children in particular. It is also a fundamental change of legal status that will alter people's rights and responsibilities. The law recognises the seriousness of these changes through a statutory safeguard that allows divorce only when a marriage has broken down and cannot be repaired.

The Government believes that it is important to keep this safeguard. At the centre of what the Government is proposing to reform is the current requirement for people seeking divorce to give evidence of what the law calls a "fact". We believe that this requirement serves no purpose. Moreover, it can have the harmful effect of introducing or aggravating family conflict, which can be especially damaging for children. This effect can be felt by members of a family not only during the process of divorcing but also after the marriage has been brought to a legal end.

Although the current law has been in place for nearly half a century, people often do not appreciate the detail of these requirements until they have to meet them at what is often one of the most stressful times of their lives. This chapter therefore considers the legal requirements for divorce, focusing on the requirements that the Government proposes to change.<sup>1</sup> The following chapter considers the effects of these requirements on family life.

### Outline of the basic legal requirements in the current law

The law governing how people may divorce in England and Wales is set out in Part 1 of the Matrimonial Causes Act 1973.<sup>2</sup> "Matrimonial causes" is the conventional term for various matters that usually concern the ending of a marriage or questions about its legal status. Most of the statute laws on divorce have borne the name since the Matrimonial Causes Act 1857 made divorce available at the court. (Before that Act, these were generally matters for the ecclesiastical courts or for Parliament.)

There have been changes to the legal process for divorce since the mid-nineteenth century. The most recent followed the Divorce Reform Act 1969. Its provisions came into effect in 1971 and were re-enacted in the Matrimonial Causes Act 1973. The basic legal requirements introduced by this reform are still in place today, including the requirement for people seeking divorce to give evidence of one or more of five facts. The Act defines these five facts, which we refer to as adultery, behaviour, desertion, two years' separation (if both spouses agree to the divorce) and five years' separation (otherwise). A fact relied on by someone seeking divorce must be proved to the satisfaction of the court before it can grant a decree of divorce.

The court can grant a decree only if the marriage has broken down and cannot be repaired, which the law calls the "ground" of having "broken down irretrievably".<sup>3</sup>

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<sup>1</sup> A comprehensive overview of divorce law is beyond the scope of this consultation paper. For an authoritative analysis of the law and its development over the legislative history, we suggest *Cretney and Probert's Family Law*, ed. Rebecca Probert and Maebh Harding (London: Sweet & Maxwell, 2018).

<sup>2</sup> Published at <http://www.legislation.gov.uk/ukpga/1973/18/part/I>.

<sup>3</sup> Matrimonial Causes Act 1973, section 1(1).

In divorce, granting a decree of divorce is a two-stage process. The first decree, the decree nisi, is a provisional decree. The marriage is brought to a legal end only when the court grants the decree absolute, which is the second and final decree of divorce. The court may make the decree absolute six weeks and a day after granting the decree nisi. The detail of this process is covered later in this chapter.

### Judicial separation

The Matrimonial Causes Act 1973 also sets out what is required of people seeking judicial separation. Judicial separation is different from divorce. It is a form of separation that, for example, enables financial orders to be made without actually ending the marriage. Cases are few: 152 decrees were granted last year.<sup>4</sup> Judicial separation is sometimes a preferable way to deal with family breakdown for people who have a religious objection to divorce.

As in divorce, people seeking judicial separation must give evidence of one or more of the five facts. Removing this requirement in divorce will also remove this requirement in judicial separation. Because judicial separation does not end the marriage, there are some differences from divorce. In cases of judicial separation, the court does not have to consider whether the marriage has broken down irretrievably. A decree of judicial separation is a single decree, without nisi and absolute stages. It is a legal recognition that the marriage is continuing but that the parties are absolved of certain obligations. Parties to a judicial separation may apply for most orders for financial provision in the same way as divorcing couples. If people who have judicially separated wish to end the marriage, they must apply for a divorce.

### Civil partnerships

When the Civil Partnership Act 2004 introduced civil partnerships, the law was based on the requirements for divorce and judicial separation.<sup>5</sup> There are, however, some differences in terminology. For civil partners, the equivalent of divorce is called *dissolution* and the equivalent of judicial separation is called *separation*, though it involves a judge in the same way as in divorce. The equivalent of a decree is called an *order*.

The equivalent of a decree of divorce is therefore a dissolution order, and the equivalent of a decree of judicial separation is a separation order. For the dissolution of a civil partnership, a dissolution order is called a *conditional* order at the first stage (instead of nisi) and a *final* order at the second and final stage (instead of absolute). A further difference in dissolution is that there are four facts, rather than five, on which the applicant may rely to establish irretrievable breakdown of the civil partnership.

Although the other spouse is called a *respondent* for both divorce and dissolution (along with the related processes of judicial separation and separation) the person seeking the decree or order is called a *petitioner* in relation to marriage and an *applicant* in relation to civil partnership. The current law does not allow a couple to petition or apply jointly.

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<sup>4</sup> Family Court Statistics Quarterly (January–March 2018), table 12. Published at <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2018>.

<sup>5</sup> This mirroring provision is set out in Chapter 2 of Part 2 of the Civil Partnership Act 2004. It is available at <http://www.legislation.gov.uk/ukpga/2004/33/part/2/chapter/2>.

For convenience, references about divorce and marriage in this consultation paper will include references about dissolution and civil partnerships as appropriate. (This means, for example, that a reference to spouses petitioning for a decree of divorce includes civil partners applying for a dissolution order.)

## **Detail of the current legal requirements**

### **The sole ground for divorce**

There is only one ground for divorce, defined in statute as being “that the marriage has broken down irretrievably”.<sup>6</sup> This has been the law since the Divorce Reform Act 1969. (The phrase “grounds for divorce” speaks to the period before this reform when four grounds were available. A divorce would be granted on proof of one of the grounds, subject to certain conditions.)

The introduction of a single ground of irretrievable breakdown followed thorough consultation and consideration by the Law Commission.<sup>7</sup> Many other jurisdictions also use a sole ground for divorce.

Under the current law in England and Wales, the court cannot issue a decree of divorce unless the marriage has broken down irretrievably. The court cannot hold that the marriage has broken down irretrievably unless the petitioner satisfies it of one or more of five available facts. These facts are not automatically sufficient to bring a legal end to the marriage but must be proved. The law prohibits the granting of a decree of divorce if the court is not satisfied on all the evidence that the marriage has broken down irretrievably.<sup>8</sup>

### **The five facts**

There are five facts available to petitioners. They must choose at least one fact and give evidence of it in their petition to the court. Because the facts are often abbreviated in everyday usage, which sometimes gives rise to misunderstanding, it will be helpful to show how they are defined in the statute. The court cannot hold that the ground of irretrievable breakdown has been met “unless the petitioner satisfies the court of one or more of the following facts”:

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act

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<sup>6</sup> Matrimonial Causes Act 1973, section 1(1).

<sup>7</sup> Law Commission, *The Field of Choice*, Command Paper Cmnd. 123 (London: HMSO, 1966). The Law Commission report resulted from a reference by the Lord Chancellor, Lord Gardiner, in response to a report by the Archbishop of Canterbury’s group on divorce. This was *Putting Asunder: A Divorce Law for Contemporary Society* (London: SPCK, 1966).

<sup>8</sup> Matrimonial Causes Act 1973, section 1(4).

referred to as “two years’ separation”) and the respondent consents to a decree being granted;

- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as “five years’ separation”).<sup>9</sup>

The first two facts and, on some views, the third fact are based on the conduct of the respondent, often described as “fault”. The fourth and fifth facts, based on separation, do not necessitate making allegations about the respondent’s conduct. A separation fact may, of course, be combined with a conduct fact.

The law also makes supplemental provisions about the facts.<sup>10</sup> These supplemental provisions affect the admissibility of evidence of the facts in certain circumstances. Petitioners cannot rely on the adultery fact, for example, if they lived with the respondent for more than six months after they knew of the adultery. The further conditions that the supplemental provisions place on the facts can make it complex for some people to navigate the law and understand what they are required to evidence to obtain a divorce.

The table below shows the fact proven in divorces granted to a sole party:<sup>11</sup> Out of every five petitions, roughly three rely on the conduct facts and two on the separation facts. In 2016, the behaviour fact – defined above in paragraph (b) – accounted for nearly half of all petitions (45.3%, or 45.9% when combined with the adultery fact).

	2012	2013	2014	2015	2016
Adultery	15,995	15,170	14,050	12,148	11,973
Behaviour	56,458	55,211	52,538	46,832	48,315
Behaviour combined with adultery	282	66	549	569	624
Desertion	719	762	794	717	637
Two years’ separation	30,210	29,054	28,711	26,197	29,135
Five years’ separation	14,278	14,251	14,307	14,244	16,029
Total	117,942	114,514	110,949	100,707	106,713

## Adultery

The five available facts are not listed hierarchically in the statute, meaning that proof of one fact carries no more weight than proof of another. The first fact listed, though, does happen to concern a matter that has a long history in divorce law:

<sup>9</sup> Matrimonial Causes Act 1973, section 1(2).

<sup>10</sup> Matrimonial Causes Act 1973, section 2.

<sup>11</sup> Adapted from table 5 of the 2016 dataset published by the Office for National Statistics at <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/datasets/divorcesinenglandandwales>. Data for 2015 and 2016 includes the marriages of same sex couples.

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

Adultery and divorce share a history that predates the availability of civil divorce in England and Wales. Until the Matrimonial Causes Act 1937, adultery was the only ground available. The connection of adultery to divorce in our law has, however, been substantially altered over the years. Between the Matrimonial Causes Acts of 1857 and 1923, a husband could petition for divorce on the basis of adultery, but a wife had to prove not only adultery but also an aggravating offence committed by her husband. The Matrimonial Causes Act 1923 removed that gender inequality and allowed both men and women to divorce on the basis of adultery alone.

Adultery survives in the current law, not as a ground but as a fact. This fact is qualified: the act of adultery is not enough, and the petitioner must also find it intolerable to live with the respondent. Petitioners are no longer required to name the co-respondent (the person with whom the respondent is alleged to have committed adultery). Naming of co-respondents is discouraged, except in restricted circumstances, by the family court's practice direction on the procedure for applications in matrimonial and civil partnership proceedings.<sup>12</sup>

Adultery can take place only between a man and a woman.<sup>13</sup> The precise nature of adultery has a longstanding and narrow definition in case law. Sexual acts between men and women that do not meet this definition are not admissible under the adultery fact. This is sometimes thought to be to the disadvantage of petitioners whose spouses have been unfaithful with someone of the same sex. In practice, any sexual act that falls outside the legal definition – regardless of the sex of each party – can be, and is, cited under the behaviour fact.

Because of the longstanding case law definition, adultery is not available to people seeking the dissolution of a civil partnership. Parliament debated the matter most recently during passage of the Marriage (Same Sex Couples) Act 2013.

## **Behaviour**

The behaviour fact is often abbreviated to “unreasonable behaviour”. This is understandable, given the compound phrasing of the legal definition, but it is misleading. We therefore refer to this fact as the “behaviour” fact throughout this consultation paper. The behaviour itself does not have to be unreasonable, but the behaviour must cause it to be unreasonable to expect the petitioner to live with the respondent:

- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

Like adultery, behaviour is not enough by itself: there has to be an effect on the petitioner. The requirements are different, and the court must accordingly apply a different test. The court has long held that the standards and values of the day set what is “unreasonable” in the behaviour fact (rather than the petitioner's own view). Even so, the court will have regard to the particular marriage and to the particular petitioner and respondent – not to

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<sup>12</sup> Practice Direction 7A, paragraph 2.1. Published at [http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_07a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_07a).

<sup>13</sup> Matrimonial Causes Act 1973, section 1(6).



an abstract concept of a spouse – taking into account all the marital circumstances and looking to the cumulative effect of all the respondent’s conduct.

There is a long history of case law to interpret the behaviour fact and what constitutes behaviour. This is treated in the judgments of the Court of Appeal and the Supreme Court in the case of *Owens v Owens*.<sup>14</sup>

### **Desertion**

The use of the desertion fact has been in long decline and in 2016 accounted for 0.6% of divorce petitions.<sup>15</sup> Desertion differs from separation in that the respondent must have deliberately left without the petitioner’s consent:

- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

### **Separation**

The fourth and fifth facts are each based on a continuous period of separation:

- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition (hereafter in this Act referred to as “two years’ separation”) and the respondent consents to a decree being granted;
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereafter in this Act referred to as “five years’ separation”).

These two separation facts are relatively straightforward. If the respondent does not agree to the divorce, five years’ separation is required. If the respondent does agree to the divorce, two years’ separation will be sufficient.

The separation facts do not involve allegations about conduct. They create, in effect, a route for what is sometimes called “no-fault divorce”. But they require couples to have lived apart for extended periods before a petition can be made. This is more difficult if couples cannot afford to live separately or are unwilling to do so. It is possible for petitioners to rely on the separation facts if they have been living separate lives under the same roof as the respondent, but the conditions are a matter of case law and must be proved to the satisfaction of the court.

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<sup>14</sup> The Supreme Court judgment ([2018] UKSC 41 and a helpful summary are available at <https://www.supremecourt.uk/cases/uksc-2017-0077.html>. The Court of Appeal judgment ([2017] EWCA Civ 182) is available at <https://www.judiciary.uk/judgments/tini-owens-v-hugh-john-owens/>.

<sup>15</sup> See table 5 of the 2016 dataset published by the Office for National Statistics at <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/datasets/divorcesinenglandandwales>.

### When petitions can be made

A divorce petition cannot always be made as soon as the marriage has broken down. This is most obvious where petitions rely on one of the separation facts. As noted above, the supplemental provisions place further conditions on whether each fact will be admissible.

In practice, this means that using the adultery or behaviour facts, if they can be applied, will almost always give people a route to a divorce at an earlier opportunity, avoiding the need to wait two years before petitioning if the other spouse consents to the divorce or five years if not.

Regardless of the fact used, there is a bar on all divorce petitions in the first year of the marriage.<sup>16</sup> There was no bar at all until the Matrimonial Causes Act 1937 extended the grounds for divorce beyond adultery and introduced a three-year bar. Many jurisdictions with similar laws on obtaining a divorce, including Scotland, have never had a bar at all.

The Matrimonial and Family Proceedings Act 1984 reduced this bar to one year, following a Law Commission recommendation.<sup>17</sup> The bar does not prevent evidence of conduct or separation that occurred in the first year of the marriage from being relied on in the petition.<sup>18</sup>

Once the couple have been married for at least a year, a petition based on adultery or behaviour may be made without the need for a prior period of separation. Where the separation facts are used, the requisite period must elapse before the petition is made.

There is no equivalent bar on petitions for judicial separation, which people may submit at any time during the marriage. A petition that relied on one of the separation facts would not be admissible if submitted before the period required.

Petitioners and applicants (in the case of civil partners) use the same court Form, whether they are petitioning for divorce or judicial separation or applying for dissolution or a separation order.<sup>19</sup> The Government launched a new online divorce application service in May this year.<sup>20</sup>

The other spouse – the respondent – may choose to answer the application to indicate the wish to contest the application. This is formally known in the legal process as *defending*, but this consultation paper refers to it, for clarity, as *contesting*. Respondents who wish to contest the application must complete a different court Form to answer the petition.<sup>21</sup> This could be because they do not agree that the marriage or civil partnership has broken

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<sup>16</sup> The bar is actually a year and a day. Section (3)(1) of the Matrimonial Causes Act 1973 reads “No petition for divorce shall be presented to the court before the expiration of the period of one year from the date of the marriage.” This means that the earliest that a petition can be presented is the day after the first wedding anniversary.

<sup>17</sup> Law Commission, *Time Restrictions on Presentation of Divorce and Nullity Petitions*, Law Com. No.116, Command Paper 513 (London: HMSO, 1982), p.12.

<sup>18</sup> Matrimonial Causes Act 1973, section 3(2).

<sup>19</sup> The petition is made on Form D8, available at <https://www.gov.uk/government/publications/form-d8-application-for-a-divorce-dissolution-or-to-apply-for-a-judicial-separation-order>.

<sup>20</sup> The online service is at <https://www.gov.uk/apply-for-divorce>.

<sup>21</sup> The answer is made on Form D8B, available at <https://www.gov.uk/government/publications/form-d8b-answer-to-a-divorcedissolutionjudicial-separation-or-nullity-petitionapplication>.

down irretrievably, or because they wish to contest allegations made against them by their spouse or civil partner. As detailed in the following chapter, very few respondents – only about 2% – choose to answer the petition.

### **How the court decides**

When the court receives a divorce petition, it carries out a number of administrative checks, including to make sure of the details of the marriage and that the court has jurisdiction to dissolve the marriage. The statute law also places a duty on the court:

to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.<sup>22</sup>

In practice, the court has limited means to carry out extensive inquiries beyond considering whether the petition proves a particular fact to the court's satisfaction, unless there is a need to do so. In 1973, what is known as the "special procedure" was introduced for uncontested divorces on the fact of two years' separation, if the couple did not have children. This meant that the petitioner and respondent no longer had to attend a court hearing if they both agreed to the divorce. The special procedure was extended to all uncontested divorces in 1977. An earlier socio-legal study had revealed a number of shortcomings that resulted from the adversarial procedure.<sup>23</sup> In this special procedure, if the court is satisfied that a decree nisi should be granted, a judge will grant the decree. In practice, petitions are now dealt with by legal advisers under the supervision of a district judge, who grants the decree. With the volume of divorces and few respondents contesting them, the court in almost all cases must adjudicate the petition at face value.

If the divorce is one of the very few that are contested, the respondent files an answer to the petition. There could ultimately be a contested hearing at which the court hears evidence from both parties. Most contested divorces, however, are settled before a final hearing and contested hearings, as we note in the following chapter, are very rare.

The court has the power to refer matters to the Queen's Proctor (in practice, to the office of the Treasury Solicitor, the Head of the Government Legal Service) if, for example, a petition is suspected to be fraudulent.<sup>24</sup>

### **When a decree can be made final**

Though the Matrimonial Causes Act 1973, which consolidated earlier statute, continued the provision that six months must elapse between the grant of decree nisi and decree absolute,<sup>25</sup> it also continued a power to shorten this period. This power was exercised in 1972 to set the minimum period as six weeks and a day. This is now the period that

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<sup>22</sup> Matrimonial Causes Act 1973, section 1(3).

<sup>23</sup> Hearings were only minutes long, for example, yet parties were often intimidated at court and felt questioning was intrusive. See Elizabeth Elston, Jane Fuller and Mervyn Murch, 'Judicial Hearings of Uncontested Divorce Petitions', *Modern Law Review* vol.38 no.6 (November 1975): 609-40.

<sup>24</sup> Matrimonial Causes Act 1973, section 8.

<sup>25</sup> Matrimonial Causes Act 1973, section 1(5).

applies.<sup>26</sup> In practice, however, the progression between decrees takes longer for a number of reasons including dealing with the other party and with legal representatives and the desirability of agreeing financial arrangements before the final divorce.

There is also provision for the court to fix a shorter period in any particular case. This power is used relatively rarely but it is used, usually in cases where someone wants to finalise a decree absolute before death, or where a person is, for example, due to give birth and wishes to remarry before the child is born.

A petitioner may apply after the minimum period for the decree nisi to be made absolute. The application is made by giving notice to the court that he or she wishes the decree nisi to be made absolute. If the petitioner does not make the application, the respondent must wait a further three months before being allowed to do so.<sup>27</sup>

When the court receives an application for a decree absolute, the court will make the decree nisi absolute if it is satisfied of a number of matters, for example that no appeal against the making of the decree nisi is pending.

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<sup>26</sup> For civil partnership dissolution, section 38 of the Civil Partnership Act 2004 provides that a conditional dissolution order may not be made final for a six-week period. This section also makes provision to amend this period, but not beyond six months.

<sup>27</sup> Matrimonial Causes Act 1973, section 9(2).

## How the current law aggravates family conflict

There has been strong criticism of the current law over the decades. The most recent substantial evidence base of the effects of the current legal requirements is presented in *Finding Fault?*, the report published last year by the Nuffield Foundation on research led by Liz Trinder, Professor of Socio-legal Studies at the University of Exeter Law School. The report concludes:

The study shows that we already have something tantamount to immediate unilateral divorce 'on demand', but masked by an often painful, and sometimes destructive, legal ritual with no obvious benefits for the parties or the state.<sup>28</sup>

When Lord Mackay of Clashfern was Lord Chancellor, the Government consulted on proposals for divorce reform that became part of the Family Law Act 1996. Its subsequent White Paper, *Looking to the Future*, set out concerns that the present Government shares and indicated widespread support for reform:

It was clear from the responses to the consultation that there is considerable discontent with the current system. Many consultees considered that the divorce law encourages hostility and bitterness by creating an incentive for petitioners to make allegations of fault, regardless of whether these are relevant to the reasons for the breakdown of the marriage.<sup>29</sup>

Lord Mackay was Lord Chancellor also during the passage of the Children Act 1989, the ground-breaking statute that put children's welfare at the centre of court decision-making. The provisions in the Family Law Act 1996 to remove the ability to make allegations about conduct or to cite separation were never commenced and were later repealed.<sup>30</sup> The provisions had included a requirement for couples to attend an information meeting as the key first step prior to initiating a divorce. These information meetings were piloted when the Act was passed. The Government in 2001 announced the intention to repeal the provisions following the conclusion of academic evaluation at the time:

The research has concluded that none of the six models of information meeting tested over a two-year period is good enough for the implementation of Part II on a nationwide basis. It has shown that, for most people, the meetings came too late to save marriages and tended to incline those who were uncertain about their marriages towards divorce. Whilst people valued the provision of information, the meetings were too inflexible, providing general information about both marriage saving and the divorce process.<sup>31</sup>

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<sup>28</sup> Liz Trinder, Debbie Braybrook, Caroline Bryson, Lester Coleman, Catherine Houlston and Mark Sefton, *Finding Fault?: Divorce Law and Practice in England and Wales* (London: Nuffield Foundation, 2017), p.10. The report, along with a summary, is available at <http://findingfault.org.uk/research-findings-final-report/>.

<sup>29</sup> Lord Chancellor's Department, *Looking to the Future: Mediation and the Ground for Divorce*, Command Paper Cm 2799 (London: HMSO, 1995), p.6.

<sup>30</sup> The provisions were repealed by section 18 of the Children and Families Act 2014.

<sup>31</sup> HL Deb 16 January 2001 vol 620 c126WA.

The Government's announcement also noted that one of the aims of the Family Law Act 1996 was "reducing distress and conflict". The information meeting, however, was integral to the provisions and could not be disentangled from them. This chapter outlines the issues that therefore remain with the current law and their potential impact on children and familial relationships. We would be interested to draw further evidence from the consultation.

### **The law and the question of "fault"**

Under the current law, the question for the court is always whether, on the evidence, the marriage has broken down irretrievably. Who, if anyone, is actually "at fault" for the breakdown of the marriage is not relevant to the matter for the court to decide, which is whether to grant a decree of divorce. The law does not distinguish between "guilty" and "innocent" parties to the marriage. It cannot vindicate either party. In practice, there may be many reasons for the failure of a marriage. Although the law itself is neutral, the legal requirements of the divorce process can often give rise to a confrontational position, whether or not the other spouse agrees with the decision to divorce.

We are aware that some family solicitors have commented in the press and online that when people ask them about divorcing without first having to live separately, the first conversation with the client is always about conduct and "fault". This experience is borne out in *Finding Fault?*, which surveyed family law practitioners as part of an academic research programme.<sup>32</sup> The need to make allegations can lay the ground for confrontation with the other spouse right from the start of proceedings. It becomes ingrained as the practical need arises to evidence details of the other spouse's conduct. In 1995, the Government acknowledged this issue in *Looking to the Future*, its White Paper response to consultation on divorce reform:

The need to cite evidence in support of an alleged fact has the effect of forcing couples to take up hostile positions from the very beginning, which may quickly become entrenched. Allegations alienate and humiliate the respondent to such an extent that the marriage is seemingly irretrievable. While children are inevitably affected when their parents separate, research shows that it is conflict between the parents which has been linked to greater social and behavioural problems among children rather than the separation and divorce itself.<sup>33</sup>

The conduct of those in a marriage will rarely have any material effect on other proceedings to resolve finances, though this appears not to be widely understood.<sup>34</sup> The determination of irretrievable marital breakdown and the division of a couple's assets are entirely separate questions for the court. In financial proceedings, the court will take conduct into account only if it would be inequitable to disregard it.<sup>35</sup> (This may be, for example, where one party has dissipated or concealed assets.)

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<sup>32</sup> *Finding Fault?*, p.106.

<sup>33</sup> *Looking to the Future*, p.8.

<sup>34</sup> See, for example, *Finding Fault?*, pp.110 and 145.

<sup>35</sup> Matrimonial Causes Act 1973, section 25(2)(g).

In proposing the reform that became the current law, the Law Commission concluded in 1966 that one of the objectives of a good divorce law should be:

When, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation.<sup>36</sup>

The Law Commission had made recommendations in *The Field of Choice* that were enacted in the Divorce Reform Act 1969, which remains the basis of the current law. In revisiting the current law in 1988 in its discussion paper *Facing the Future*, the Law Commission concluded that the continued high use of conduct-based facts meant “the high hopes of the Commission have not been realised” and “the present law falls well short of the objectives it set out to fulfil”.<sup>37</sup> It concluded that the conduct facts vitiated the divorce law objective that it had earlier identified:

Attaining the aims of maximum fairness and minimum bitterness has been rendered impossible by the retention of the fault element. The necessity of making allegations in the petition “draws the battle-lines” at the outset. The ensuing hostility makes the divorce more painful, not only for the parties but also for the children, and destroys any chance of reconciliation and may be detrimental to post-divorce relationships. Underlying all these defects is the fact that whether or not the marriage can be dissolved depends principally upon what the parties have done in the past. In petitions relying on fault-based facts, the petitioner is encouraged to “dwell on the past” and to recriminate.<sup>38</sup>

The concept of “fault” is a vestige of the concept of the “matrimonial offence” predating the nineteenth-century law. This concept, which held adultery as the only offence that justified the ending of a marriage, framed divorce as a legal remedy for a wrong done. The modern understanding of divorce is not in step with that.

### **The current law does not establish why the marriage broke down**

The fact chosen for a divorce petition is evidence to support the statement only *that* the marriage has broken down irretrievably, and not *why* it has. The *Finding Fault?* researchers showed:

Only 29% of respondents to a fault-based divorce reported that the Fact had very closely matched the reason and 29% said that it did not match the reason closely at all. Even amongst petitioners, only 65% claimed that the (fault) Fact chosen very closely matched the reason for the relationship breakdown.<sup>39</sup>

This finding aligns with the survey finding from research carried out by YouGov in 2015 for Resolution. It found that “27% of divorcing couples who asserted blame in their divorce petition admitted the allegation of fault wasn’t true, but was the easiest option”.<sup>40</sup>

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<sup>36</sup> *The Field of Choice*, p.10.

<sup>37</sup> Law Commission, *Facing the Future: A Discussion Paper on the Ground for Divorce*, Law Com. No.170, Command Paper HC 479 (London: HMSO, 1988), pp.20, 28.

<sup>38</sup> *Facing the Future*, p.28.

<sup>39</sup> *Finding Fault?*, p.39.

<sup>40</sup> Reported at [http://www.resolution.org.uk/news-list.asp?page\\_id=228&n\\_id=301](http://www.resolution.org.uk/news-list.asp?page_id=228&n_id=301) in ‘MPs need to get behind no-fault divorce if they’re serious about reducing family conflict’, 3 December 2015.

The Law Commission noted when proposing the sole ground of irretrievable breakdown in 1966, before the introduction of the current law:

Breakdown of a marriage usually precedes the matrimonial offence on which the divorce petition is based. Thus, an isolated act of adultery or isolated acts with different partners may be the grounds for divorce, but are likely to be the result of the breakdown of the marriage rather than its cause.<sup>41</sup>

It is also likely that if a couple have been living apart from each other for some time (and are relying on one of the separation facts in a divorce position), this will in almost all cases be symptomatic of their marital breakdown and not its cause.

### **The current law works against agreement and reconciliation**

A requirement to evidence conduct that might lead to blame can result in further conflict. In most cases, family law practitioners feel that family disputes are best settled when people can resolve their disagreements directly, and the academic research bears this out. A divorce process that requires either a potentially impractical period of separation or proof of conduct, which can lead to blame, is not optimal for getting agreement off on the right foot.

Some petitioners do want to reconsider their decision to divorce once they have made the petition. Where there is a possibility that a marriage may not have broken down irretrievably, allegations about the other spouse's conduct can make a fragile relationship deteriorate further and can make it more difficult, if there are children, to work together as parents into the future. For people who have a chance of reconciling and stepping back from divorce, allegations about conduct may therefore make this less likely.

The current law in practice can be seen as frustrating any attempt by couples at reconciliation. The supplemental provisions about the separation facts restrict the length of time that couples may try, in an attempt at reconciliation, to live together again after they first separated.<sup>42</sup> The purpose of this restriction is to regulate what will be admissible evidence of separation. We are aware of views that the restriction may put couples at a disadvantage if their attempts at reconciliation exceed the duration allowed but do not remedy their marital breakdown.

### **The current law appears procedurally unfair**

The court must look at the particulars of the fact used and must be satisfied that the fact is proved on the evidence. Petitioners may have no way of knowing how much evidence will be sufficient and so may feel the need to make additional or more forceful allegations to ensure the petition gets across the line, as it were. This process can increase acrimony between the petitioner and respondent. Even where respondents agree to the divorce, they may disagree vehemently with allegations within the supporting particulars. The process provides them with limited redress unless they wish to contest the divorce.

When respondents answer the divorce petition, only about 2% of them give notice that they intend to contest ("defend") the divorce. In the Court of Appeal judgment in the case

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<sup>41</sup> *The Field of Choice*, p.26.

<sup>42</sup> Matrimonial Causes Act, section 2(5).



of *Owens v Owens*, which was handed down in March last year, Sir James Munby, then President of the Family Division, observed:

In the year to January 2017, there were 113,996 petitions for divorce. The details are not published, but I understand that, over the same period, notice of intention to defend was given in some 2,600 acknowledgements of service (some 2.28% of all petitions) while actual answers filed were about 760 (some 0.67% of all petitions). There are no available statistics, but one can safely assume that the number of petitions which proceed to a final contested hearing is minute, probably little more than a handful. So, the attritional effect of the process itself reduces from an initial 2.28% of respondents who are minded to oppose the petition to an utterly trivial, let us say something of the order of magnitude of 0.015%, of respondents who actually carry their opposition through to a contested hearing.<sup>43</sup>

Liz Trinder's further research report, *No Contest*, was published in April this year. It investigated how respondents use the opportunity to contest the divorce. The report focuses on why so few of the 2% of cases where the respondent indicates on paper the intention to contest actually end up being contested at court:

Most defended cases that do reach the courts are settled, rather than decided by a judge. The outcomes therefore reflect the relative bargaining capacity of the parties, not an inquiry into the truth of allegations. The court's willingness to accept the results of some deals appeared intellectually dishonest, even if it did bring an end to a damaging dispute.

The pressure to settle reflects a realistic appraisal by family lawyers and judges that defence is costly, unhelpful and ultimately futile for the parties and burdensome for the courts. The defence process does increase acrimony, contrary to family justice policy. It can be misused by controlling spouses to make the divorce unnecessarily difficult.<sup>44</sup>

### **The current law is open to apparent manipulation**

The court must necessarily take the evidence in most divorce petitions at face value, since so few are contested. The evidence is therefore rarely the subject of cross-examination. *Finding Fault?* is the most recent extensive research showing how it is open to people seeking divorce to manipulate evidence. Dates of separation periods or when adultery became known can be misreported to meet the requirements of the facts. Behaviour can be exaggerated:

In practice, therefore, divorce petitions are best viewed as a narrative produced to secure a legal divorce. They are not – as a lay person might suppose they should be – an accurate reflection of why the marriage broke down and who was 'to blame': that is not what the law requires. These are not new problems. The manipulation of Facts is now more routine and prosaic than the staged or bogus 'hotel adulteries' with strangers of the 1930s, but it remains an issue.<sup>45</sup>

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<sup>43</sup> [2017] EWCA Civ 182, para.98. Available at <https://www.judiciary.uk/judgments/tini-owens-v-hugh-john-owens/>.

<sup>44</sup> Liz Trinder and Mark Sefton, *No Contest: Defended Divorce in England and Wales* (London: Nuffield Foundation, 2018), p.5.

<sup>45</sup> *Finding Fault?*, pp.12–13.

The Law Commission also drew attention to the defects of the current law in its discussion paper *Facing the Future*, saying of the separation facts:

Even if it is clear what is required, there is ample scope for the parties to present perjured evidence about the date of their separation if they do not want to wait for the requisite period. This would be undetectable unless corroborative evidence were required from witnesses. Furthermore, if the test of separation is too strict, it is difficult for the couple to reconsider the position or attempt a reconciliation during the period. If it is too weak, it is of little value as a test of whether the marriage has indeed broken down.<sup>46</sup>

### **The current law does not support children positively**

The modern approach to family law is to encourage cooperation in parenting and in dispute resolution. It is an approach exemplified every day by family law practitioners and in statutes such as the Children Act 1989. The emphasis on past conduct and “fault” in the divorce process does not support this forward-looking approach and can undermine other arrangements that need to be made.

Any allegations about conduct also remain within the divorce petition. If allegations of domestic abuse are made, the divorce petition does not itself trigger arrangements to keep victims and children safe. These arrangements may include involving the police or seeking a protective order from the court.<sup>47</sup> Of the sample of 135 behaviour petitions examined by the authors of *Finding Fault?*, 42.2% alleged “some form of abuse that would meet the cross-government definition of abuse”.<sup>48</sup>

*Finding Fault?* notes long-held concerns “about the disjunction between a blame-based divorce law and attempts to limit the impact of parental conflict on children” and observes that it creates difficulties for practitioners to focus on conduct and blame and then “change tack completely by trying to promote parental cooperation on child arrangements”.<sup>49</sup>

The Law Commission described the problem in 1988, when it revisited the current law (in the following excerpt, “custody” is what we now refer to, following the Children Act 1989, as arrangements specifying with whom a child is to live):

First, the divorce process itself *is* likely to exacerbate the trauma of the parental separation for the children. Perceived lack of fairness and the exacerbation of bitterness and hostility will make the divorce more difficult for the children as well as the parents. The more stressful the divorce process is for the parents the less time and ability they will have to provide emotional support for the children. If there is conflict between the parents, the children may be encouraged to take sides, which may be very distressing for them particularly if arrangements for their future are in issue. Contested custody proceedings increase uncertainty and increase the insecurity felt by many children following marital breakdown. Secondly, a likely effect of perceived unfairness and the conflict and hostility engendered by the system is to poison post-divorce relationships. Parents who have been further alienated from each

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<sup>46</sup> *Facing the Future*, p.35.

<sup>47</sup> For example, a non-molestation order or an order to occupy the matrimonial home under Part 4 of the Family Law Act 1996.

<sup>48</sup> *Finding Fault?*, p.75. The cross-Government definition of domestic abuse is published at <https://www.gov.uk/guidance/domestic-violence-and-abuse>.

<sup>49</sup> *Finding Fault?*, p.106.

other by the divorce process will be less likely to be able to exercise their parental responsibilities jointly. [...] Where children have been encouraged to take sides, their relationship with both parents may be impaired as a result of the conflict of loyalties.<sup>50</sup>

In 1995, the Government's response to its consultation on its divorce reform proposals showed broad concern that the current factual requirements – whether based on conduct or on separation – deliver poor outcomes for children who are going through an already difficult time:

Research has shown that children suffer and are damaged as a result of **conflict** between their parents, whether the parents are living together or apart. Consultees considered that the current system encourages conflict, by providing an incentive to seek a quick divorce on the basis of allegations of fault. [...] Furthermore, many couples who seek a divorce on the basis of consensual separation are forced, for financial reasons, to 'separate' by living as two households under one roof. This gives rise to an artificial atmosphere that is confusing and harmful to children.<sup>51</sup>

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<sup>50</sup> *Facing the Future*, p.26. Italic text is in the original.

<sup>51</sup> *Looking to the Future*, p.11. Bold text is in the original.

## The approach to reform

The law on divorce deals with the legal ending of a marriage. It is not the same thing either as the marital breakdown itself or as the process of divorcing experienced by thousands of families each year. As has long been pointed out, “the real wound is inflicted not by the divorce but by the previous break-up of the marriage and separation of the parties”.<sup>52</sup>

With this in mind, it will be helpful to articulate the principles on which the Government is basing its approach to reforming certain legal requirements for divorce in order to minimise family conflict at a difficult time.

The Government recognises that marriages do break down despite the efforts of couples to resolve problems during the marriage. We have seen no evidence that the decision to divorce is taken lightly. At the point of petitioning or instructing a solicitor, most people’s minds appear to be made up. We do not think that the requirements of the law deter people from divorce, only that they make it an unnecessarily confrontational process. It appears that most people do not know what the law requires until they go through divorce themselves. There is no evidence that the decision to divorce is attributable to the requirements of the law.

The Government believes that its reform proposals will make divorce law consistent with the principles of the wider law relating to family difficulties and with the approach many family law practitioners take with their clients. It will also recognise people’s autonomy in making decisions about major life events and, by reducing family conflict, support divorcing couples in their responsibility to cooperate with each other on the practical decisions needed so that the family can move on in the most beneficial way possible in the circumstances.

The Government has also considered other ways to amend the law to reduce family conflict. This chapter also briefly outlines the reasons it is not proposing to take these forward.

## The key principles of reform

The Government’s policy objective is to reduce family conflict. Our two key reform principles are to make divorce law consistent with wider family law and to recognise that a legal process that does not introduce or aggravate conflict will better support adults to take responsibility for their own futures and, most importantly, for their children’s futures. We therefore believe that legislation should make sure of two matters: that the decision to divorce continues to be a considered one, giving spouses the opportunity to change course, and that they are not put through legal requirements that do not serve their or the state’s interests and can lead to ongoing conflict and poor outcomes for children.

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<sup>52</sup> Law Commission, *The Field of Choice*, p.22 (citing a point made in *Putting Asunder*).

## **A consistent and measured approach to family difficulties**

Although the legal dissolution of a marriage is a single event, there is a formal process to reach this event, beginning with the divorce petition; before that comes the realisation by one or both parties that their personal relationship with each other has reached the stage where they can no longer live together as a married couple.

The current process gives mixed signals. It allows for divorce without making allegations but requires a couple to have been living apart for a lengthy period. The current process allows for divorce on the basis of allegations about conduct and, it could be said, incentivises this by not requiring couples to have been separated for any prior period.

Family law places great importance on children's welfare. The Children Act 1989, for instance, sets out that "the child's welfare shall be the court's paramount consideration" when determining any relevant question about the child's upbringing.<sup>53</sup> The current law on obtaining a divorce, however, is not designed with children in mind. The need to make allegations about conduct in order to divorce without a prior separation period can introduce or increase conflict and polarise children's views of, and affection for, the respondent parents.

Allegations about conduct can make it hard to reach agreement about future arrangements for children and finances. The process of divorce should be a time for consideration and reflection, not recrimination.

## **Recognising autonomy and responsibility**

Marriage is a vital institution that is important to married couples themselves, to their families and to society as a whole. When a marriage has broken down irretrievably, it has become a marriage in name only. It does no service to the institution of marriage to impose requirements which frustrate the dissolution of this empty shell and which can aggravate family conflict beyond the completion of legal proceedings.

Marriage works by consent. Couples are not required to justify their free decision to marry: it is an autonomous decision. When a marriage has broken down irretrievably and one or both parties do not consent to remain in the marriage, the legal tie is involuntary.

The Government strongly supports marriage as a legal union that is freely entered into. We therefore believe that the law should respect people's autonomy in decision-making at the end of a marriage as much as at its beginning.

We recognise that sometimes one party to a marriage will be reluctant to divorce. We think that the very small number of contested divorces shows that most respondents acknowledge the marriage is over. The two-stage process of decree nisi and decree absolute gives people an opportunity to consider the implications of divorce and to reflect on the decision. Even if there is a possibility of the marriage's being saved after the petition is made, the requirement to detail the conduct of the other spouse may give any prospect of reconciliation the worst possible start.

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<sup>53</sup> Children Act 1989, section 1(1).

## Outline of the reform proposals

The Government therefore proposes to repeal the requirement for petitioners to give evidence of one or more facts and to replace it with a process of giving notice of irretrievable breakdown. In this process, the person seeking the divorce (or potentially the couple jointly) would give notice to the court of the intention to divorce, stating their belief that the marriage had broken down irretrievably. Irretrievable breakdown would therefore continue to be the sole ground for divorce. In the two-stage decree process that we propose to retain, the court would not be able to grant the first and interim decree (the decree nisi) if it was not satisfied that the marriage had broken down irretrievably.

The Government also proposes to abolish the ability to contest the divorce as a general rule. Contesting can be costly and emotionally draining. Very few respondents – only about 2% – choose to contest the divorce, and contesting a divorce almost never results in the refusal of the decree. The Government is also aware that it is possible for perpetrators of domestic abuse and coercive and controlling behaviour to misuse the legal process by contesting (or cross-petitioning with allegations about the petitioner’s conduct) in order to continue their abuse.<sup>54</sup>

In keeping the two stages of the decree of divorce (decree nisi and decree absolute), the Government proposes to mandate a minimum timeframe. After this minimum timeframe, the final decree of divorce could be granted on application by either party or, potentially, by both parties jointly. The court could continue, as now, to adjourn proceedings if there were a reasonable prospect of a reconciliation.<sup>55</sup>

## Consideration of other reform possibilities

The combination of ground, conduct facts and separation facts makes it possible to reform the existing law in a number of ways. We note a number of possible ways below, outlining the reasons we have discounted them as possibilities that would resolve the problems with the current law and reduce family conflict.

## Provisions enacted in the Family Law Act 1996

Parliament legislated to remove all the conduct and separation facts through the Family Law Act 1996. The resulting legislation, however, was more complex than the recommendations the Law Commission had made. Never commenced, the provisions were repealed in 2014.

The Government has looked again at the provisions in Part 2 of the Family Law Act 1996 and concluded that it would not be feasible to reintroduce them. Integral to that new divorce process was compulsory attendance by the parties at an information meeting prior to making a statement of marital breakdown. Academic evaluation of pilots to test various models of information meeting found that the information meeting came too late to save saveable marriages; moreover, people who were unsure of their marriage were more inclined to divorce after attending the meeting. The provisions of Part 2 were ambitious and more complex than the proposals set out in this consultation paper. The Government

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<sup>54</sup> The analysis of petitions relying on the behaviour fact in *No Contest*, pp.43–45, found that cases in which the respondent intended to contest the divorce or formally contested it “were more likely to include allegations of violence against the petitioner and to meet the cross-government definition of abuse, than main sample cases” (p.44).

<sup>55</sup> Matrimonial Causes Act 1973, section 6(2).

believes that the proposals it now sets out for reform of the current legal process can achieve one of the key aims of the 1996 legislation to reduce conflict, without the need for wholesale reform of the law and an entirely new process.

It is clear that what is needed now is a reform that replaces the fact requirement with a revised process that is not open to apparent manipulation and does not introduce or aggravate conflict. In this consultation we focus instead on the updated research, the evidence for reform and the extent of amendments needed to the current law to provide a revised process for legally ending a marriage.

### **Reduction in the separation periods while retaining the conduct facts**

The current mix of conduct and separation facts was introduced in the 1969 reform. The Government has considered reducing the periods required by the separation facts to incentivise their use over one of the conduct facts. We have concluded that this would not resolve the problem of family conflict, because it would still leave a timing differential between the conduct and separation facts. It would also be a step backward from the principled position that Parliament reached in 1996, which among other changes would have removed the “fault” or conduct facts from the divorce process.

Scotland had similar separation periods until the Family Law (Scotland) Act 2006 reduced them from two years to one and from five years to two. It also repealed the fact of two years’ desertion, which the reduction of the separation periods had made redundant. This followed earlier recommendations by the Scottish Law Commission.<sup>56</sup>

The process of divorcing and making related arrangements in Scotland is not the same as in England and Wales. These differences lie behind a marked dissimilarity in the reliance on conduct facts between the two jurisdictions. Before the Scottish reform, about one in five people sought divorce on the basis of fact based on conduct. In England and Wales, it is much higher: now three in five. We therefore think that a similar reform in England and Wales would not achieve the kind of impact for children and families that we want to see.

### **Separation periods as the sole facts**

The Government has considered repealing the conduct facts to leave the separation facts (with amended periods) as the only available facts. We have concluded that this would not resolve the problems we noted earlier in relation to the consent of the other spouse or to manipulation of the dates of separation.

### **A notification fact as an additional route**

The Government does not propose retaining the existing five facts and adding a notification fact as an alternative to them. A spouse could still make allegations against the other spouse as a means of exercising coercive control or of deliberately seeking to cause conflict. We therefore consider that such a proposal would not appreciably reduce family conflict. It would also introduce further confusion into a law that is already difficult to navigate.

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<sup>56</sup> Scottish Law Commission, *Report on Reform of the Ground for Divorce*, Scot Law Com No.116 (Edinburgh: HMSO, 1989). Available online at [https://www.scotlawcom.gov.uk/download\\_file/view/377/](https://www.scotlawcom.gov.uk/download_file/view/377/).

### **Non-court divorce**

The Government is aware that some jurisdictions have allowed decrees of divorce to be granted without the court's involvement. We believe that it is right that divorce should continue to be a matter for the court, with only the court being able to grant decrees of divorce. The independence guaranteed by the court is necessary where, for example, one party has a reason for the decree absolute to be deferred. The implications of a divorce that is not granted through court proceedings could also be uncertain for people moving between jurisdictions.

While it is true that entering into a marriage is not a court process, the legal status of a marriage remains a matter for the court if a question arises about its validity.



## The proposals

The policy objective of the Government's proposals is to remedy the difficulties created by the current statutory requirement to evidence conduct or separation. Our proposed reform therefore seeks to amend the law principally to the extent that it relates to that requirement. The basic structure that underpins the divorce process would remain.

The key technical objective for the Government is to remove the requirement to evidence facts based on conduct or separation. The question then arises: what should stand in its place? The Government believes that the solution is a notification procedure, well established in other jurisdictions, in which one or potentially both parties would make an application to the court stating their belief that the marriage had broken down irretrievably. This application would, in the first instance, be for the provisional decree of divorce.

### Retention of the sole ground for divorce

The Government has seen no evidence that it would be effective to remove or replace the sole ground that the marriage has broken down irretrievably. The Government therefore proposes that it should continue to be possible for people to divorce in England and Wales on the sole ground that the marriage has broken down irretrievably. This was the position taken by Government in *Looking to the Future*, the 1995 White Paper that preceded the Family Law Act 1996.

Formulation of the ground in England and Wales followed extensive consideration before the introduction of the Divorce Reform Act 1969 and has proved effective in many other comparable jurisdictions, regardless of whether they require conduct, separation, notification or a combination of these to substantiate the breakdown.

### Question 1

Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

### Replacement of the five facts with notice of irretrievable marital breakdown

In line with many other comparable jurisdictions in which it has worked well, we therefore propose a process of giving notice that the marriage has broken down irretrievably. A notification process was at the heart of the proposals in the Family Law Act 1996. This process, long established in other jurisdictions, is a way for people to apply for divorce by giving notice to the court that the marriage has broken down and cannot be saved.

This process would retain irretrievable breakdown as the sole ground for divorce but remove the current requirement for the petitioner to give evidence of conduct or separation. Instead, one or potentially both parties will petition the court with a notice of

the intention to divorce. The court will no longer need to check the particulars of the evidence but will continue to check other evidential aspects of the notice to the court (for example, to make certain that the court has the jurisdiction to act, that there is a valid marriage to dissolve, and to guard against fraudulent petitions).

The court will then be able to grant a provisional decree of divorce (the decree nisi) if these other requirements are satisfied and, following an application by either party after a statutory period of time has elapsed, may ask the court to make the divorce final by granting the decree absolute, as under the current law.

The underlying structure of the law will therefore remain. As a consequence of the removal of the five facts, certain provisions that are contingent on the five facts will be repealed because they will no longer apply. These include the supplemental provisions about the facts,<sup>57</sup> the provision for refusal of a decree in cases relying on five years' separation,<sup>58</sup> the provision for special protection for respondents in cases relying on two years' or five years' separation,<sup>59</sup> and the general provision for relief for respondents.<sup>60</sup>

The Government believes that it is necessary to replace the fact requirements with giving notice, in order to reduce family conflict. The Government is concerned that some recourse to the conduct-based facts (such as behaviour) is driven by the desire to avoid waiting through two years' or even five years' separation. The notification process would resolve this issue and allow spouses to seek a divorce without having to divulge private details of their personal lives to the court. It would also prevent the possibility, under the current requirements, of manipulating evidence of conduct or dates of separation.

The Government is also concerned that the current process may not give equal access to all groups. For example, it is possible to conceive that a victim of domestic abuse might well have evidence of the other spouse's conduct (which would meet the legal test for the behaviour fact) but might find it unsafe to make such allegations and therefore be compelled to remain in an abusive marriage until the requirements of the relevant separation fact could be met. The Government acknowledges that this may be a particularly detrimental situation for the many victims of domestic abuse who are unable to take steps to leave when the abusive behaviour begins. Replacing the requirement to evidence conduct or separation may therefore help victims move on from the perpetrator at an earlier opportunity.

## **Question 2**

In principle, do you agree with the proposal to replace the five facts with a notification process? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

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<sup>57</sup> Matrimonial Causes Act 1973, section 2.

<sup>58</sup> Matrimonial Causes Act 1973, section 5.

<sup>59</sup> Matrimonial Causes Act 1973, section 10.

<sup>60</sup> Matrimonial Causes Act 1973, section 20.

### Question 3

Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

### Minimum timeframe of the divorce process

The Government accepts the long-established principle that granting a decree of divorce should be a two-stage process, with both a provisional and a final decree. This two-stage process gives an important interval between decrees both for couples to consider the implications and for the court to investigate any matters or refer them to the Queen's Proctor, as well as allowing the underlying framework of the law to remain in place.

The Government believes that, as now, there should be a minimum timeframe for the divorce process. Time is needed to give the couple time to consider the implications of the decision to divorce and to agree practical arrangements for the future, both for them and for any children.

Although there are two decrees in divorce that mark the decisions of the court, the legal process starts with the divorce petition. This makes for three key stages in the process: the petition, the decree nisi and the decree absolute. Although it is the making of the petition that puts the marriage on notice, so to speak, it is only at the stage of the decree nisi that the marriage has, at least provisionally, been found by the court to have broken down irretrievably. Furthermore, it is only once the decree nisi has been granted that the court can make most financial orders.<sup>61</sup>

The question therefore arises whether to measure a minimum timeframe from giving notice to the granting of the final decree or from provisional decree to final decree. At present, the court may not make a decree absolute until six weeks and a day after the granting of the decree nisi. In practice, the period between decrees is longer and can vary for a number of reasons including dealing with the other party and with legal representatives and the desirability of agreeing financial arrangements before the final divorce.

The Government wants a minimum timeframe to allow due consideration of the decision to divorce. There is no set timeframe that would work for all couples. As under the current law, the final decree will not be automatic at a fixed date.<sup>62</sup> We are conscious that the timeframe of divorce and how it is measured will be the main area of interest for many

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<sup>61</sup> Section 22 of the Matrimonial Causes Act 1973 does, however, provide for the court to "make an order for maintenance pending suit". Such an order may, for example, be for one spouse to make monthly payments to the other while the divorce proceedings are continuing.

<sup>62</sup> Parties would also continue to need to seek leave of the court to grant a decree absolute if the decree nisi had been granted more than twelve months previously.

respondents to this consultation, and we wish to test wider views on what will be most effective to achieve the policy objective of reducing family conflict.

Although some people are currently able to end their marriage within six weeks and a day of the decree nisi, this will have been preceded by a period between petition and decree nisi that may have been longer. This period between petition and decree nisi depends not only on a number of variables (such as any negotiations between the petitioner's and respondent's solicitors) but also on process timings (including dealings with the respondent, who must acknowledge the proceedings).

The Government therefore wishes to test a proposal that a six-month minimum timeframe will give couples the stability to plan ahead as well as to consider the implications of the decision to divorce. If this minimum timeframe is measured between decrees of divorce, it may be longer than the current period between decrees for some couples. If this minimum timeframe is measured from petition to final decree, it may be shorter for some couples. We think this longer minimum timeframe may be helpful for couples to make practical arrangements about matters such as housing, schooling and childcare well in advance of the legal end to the marriage at the final decree.

The Government wishes to make sure that couples have sufficient time to reflect on the decision to divorce and to make arrangements for the future. The current legal process, however, does not give any clarity to a couple when it will be that their marriage comes to a legal end. We are therefore keen to hear from people with experience of divorce and from family law practitioners what minimum timeframe will work best to support families through a difficult time, and how this minimum timeframe should be measured.

Under the current law, the court has an existing power to fix, by special order, a shorter period in a particular case.<sup>63</sup> This can be used in exceptional cases (where, for example, the expediting of a final decree is needed because one party is in imminent danger of death).

A further question arises as to whether the law should take into account the fact that a couple had been living apart prior to the petition. On one view, there may be no public interest in requiring a couple who have lived apart for six months or more before applying for divorce to wait a further six months for the final decree. Allowing a shorter period in this instance, however, would require parties to evidence the separation, which might give rise to problems similar to those we identified earlier. The Government believes that it is in the public interest to have a single minimum timeframe even where there has been a prior period of separation, but we would be interested to hear further views.

If it were possible for a couple to apply jointly to the court, the Government would not be proposing a shorter minimum timeframe for joint applications. We think this could give one party a bargaining position – for example, by agreeing to a joint petition only on condition of a more favourable financial settlement – and would therefore run counter to our policy

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<sup>63</sup> Matrimonial Causes Act 1973, section 1(5). In cases where an application is made to expedite the grant of a decree, the court sets out how proceedings are to be conducted at Rule 7.32 of the Family Procedure Rules and gives further guidance at paragraphs 8.1–8.4 of the associated Practice Direction 7A. (The Rule is published at [https://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_07](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_07) and the Practice Direction at [https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_07a](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_07a).)

objective of minimising the adversarial nature of the legal process and reducing family conflict.

#### Question 4

We have set out reasons why the Government thinks it helpful to retain the two-stage decree process (decree nisi and decree absolute). Do you agree?

- Yes
- No
- Undecided
- [Free text]

The Government wishes to test the proposal that there should be a minimum period of six months between the granting of a decree nisi and the granting of a decree absolute. We think this allows a sufficient period for most couples to consider the implications of divorce and reach agreement on practical arrangements, while not being so long a period of uncertainty that it would have a long-term effect on children.

#### Question 5

What *minimum* period do you think would be most appropriate to reduce family conflict, and how should it be measured? Please give your reasons in the text box.

- Six weeks (the current minimum period is six weeks and a day)
- Three months
- Six months
- Nine months
- A different period (please use the text box to specify)
- Undecided
- [Free text]

#### Question 6

Are there any circumstances in which the minimum timeframe should be reduced or even extended? If so, please explain in the text box.

- Yes
- No
- Undecided
- [Free text]

Nullity is a distinct area of matrimonial law that concerns the legal validity of a marriage or civil partnership. In certain very specific circumstances, the legal tie may be dissolved by a decree of nullity (for marriage) or a nullity order (for civil partnerships).<sup>64</sup> This is commonly

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<sup>64</sup> Matrimonial Causes Act 1973, section 12; Civil Partnership Act 2004, section 50.

known as annulment. It is different in purpose from divorce, which is intended as a remedy for irretrievable marital breakdown.

There are significant differences between the law on nullity and the law on divorce. The legal processes for nullity and divorce do, however, share the same minimum period between decrees or orders. We invite views on whether this minimum period in nullity cases should reflect a reformed minimum period in divorce and dissolution cases.

### Question 7

Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?

- Yes
- No
- Undecided
- [Free text]

### Removal of the opportunity to contest

The Government proposes to remove the opportunity to contest (“defend”) the divorce because it serves no practical purpose. This has been increasingly a feature of divorce law in comparable jurisdictions.

Despite perceptions, contested divorces are rare. In only 2% of cases does the other party initially contest the divorce, and in only a handful of these does the other party persist all the way to a court hearing. The case of *Owens v Owens* is exceptional, but it does illustrate the difficult position of one spouse who, it is reported, feels legally trapped in a marriage she regards as over.

The Government believes that as a general rule it serves no purpose – whether to the parties or to the state – to keep the opportunity to contest the divorce. Most divorce petitions in practice support a one-sided account that may not reflect the real reason for the breakdown of the marriage. Few respondents want to spend time and money on contesting the particulars in the petition, especially if they agree that the marriage is over. If one party has decided that the marriage is over then, arguably, the marriage is at an end. A marriage benefits the family and society only where each party is committed to the other. Any other marriage is a marriage in name only, the “empty legal shell” in the words of the Law Commission over fifty years ago.<sup>65</sup>

The Government is also concerned that the legal process allowing respondents to contest, or indicate their intention to contest, may offer abusive spouses the means to continue exerting coercion and control. The authors of the academic research study *No Contest* found that the ability to contest has further unintended consequences:

The potential misuse of defence was not just by alleged abusers. Defence could also be used by respondents as a bargaining chip to extract concessions in other negotiations about children or money.<sup>66</sup>

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<sup>65</sup> *The Field of Choice*, p.10.

<sup>66</sup> *No Contest*, p.75.

Although the Government believes that contesting a divorce will affect the outcome only in a few exceptional cases, we are conscious that some people and groups oppose unilateral divorce on principle. We also note that in the study of contested cases by the authors of *No Contest*, “Fewer than a fifth of respondents were denying that the marriage had broken down” and that nearly all others were disputing either the fact on which the petitioner was relying or the evidence which the petitioner had given in support of it.<sup>67</sup>

### Question 8

Do you agree with the proposal to remove the ability to contest as a general rule? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

### Question 9

Are there any exceptional circumstances in which a respondent should be able to contest the divorce? Please explain these exceptional circumstances in the text box.

- Yes
- No
- Undecided
- [Free text]

### Retention of the bar on divorce petitions in the first year

The current law bars petitioning for divorce in the first year of the marriage.<sup>68</sup> This bar was introduced by the Matrimonial Causes Act 1937 when the grounds for divorce were extended beyond adultery. Originally a three-year bar, it was reduced to one year in 1984, following a recommendation by the Law Commission.<sup>69</sup> Before 1937, there was no time restriction on presenting a divorce petition.

The Government has not seen evidence that the bar causes difficulties or that it is necessary to remove it. We are therefore not proposing to remove it as part of revising the process for obtaining a divorce, but we would be interested to hear further views.

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<sup>67</sup> *No Contest*, p.40.

<sup>68</sup> Matrimonial Causes Act 1973, section 3(1).

<sup>69</sup> *Time Restrictions on Presentation of Divorce and Nullity Petitions*, p.12.

### Question 10

Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place? You may wish to give reasons in the text box.

- Yes
- No
- Undecided
- [Free text]

### Retention of other requirements

The Government will retain the power of the Queen's Proctor (in practice, the Treasury Solicitor) under the direction of the Attorney General to "show cause" against making a decree nisi absolute.<sup>70</sup> This power to intervene, which has been used, for example, where it was alleged that an adulterous act was invented to secure a divorce, will remain as a safeguard against fraudulent applications.

The Government will also retain the power of the court to make rules requiring legal practitioners to certify whether they have discussed the possibility of reconciliation, along with the power of the court to stay proceedings if there is a prospect of reconciliation.<sup>71</sup> We think this power is an important safeguard before the marriage is finally brought to a legal end.

### Question 11

Do you have any comment on the proposal to retain these or any other requirements?

- [Free text]

### Impact assessments

Please see the separately published impact assessment and equalities impact assessment.

### Question 12

We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.

- [Free text]

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<sup>70</sup> Matrimonial Causes Act 1973, section 8.

<sup>71</sup> Matrimonial Causes Act 1973, section 6.



## Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

1. Do you agree with the proposal to retain irretrievable breakdown as the sole ground for divorce? You may wish to give reasons in the text box.
2. In principle, do you agree with the proposal to replace the five facts with a notification process? You may wish to give reasons in the text box.
3. Do you consider that provision should be made for notice to be given jointly by both parties to the marriage as well as for notice to be given by only one party? You may wish to give reasons in the text box.
4. We have set out reasons why the Government thinks it helpful to retain the two-stage decree process (decree nisi and decree absolute). Do you agree?
5. What *minimum* period do you think would be most appropriate to reduce family conflict, and how should it be measured? Please give your reasons in the text box.
6. Are there any circumstances in which the minimum timeframe should be reduced or even extended? If so, please explain in the text box.
7. Do you think that the minimum period on nullity cases should reflect the reformed minimum period in divorce and dissolution cases?
8. Do you agree with the proposal to remove the ability to contest as a general rule? You may wish to give reasons in the text box.
9. Are there any exceptional circumstances in which a respondent should be able to contest the divorce? Please explain these exceptional circumstances in the text box.
10. Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place? You may wish to give reasons in the text box.
11. Do you have any comment on the proposal to retain these or any other requirements?
12. We invite further data and information to help update our initial impact assessment and equalities impact assessment following the consultation.

Thank you for taking part in this consultation exercise.

## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

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## Contact details and how to respond

Please send your response by 10 December 2018 to:

**Reducing Family Conflict, Zone 3.23**

**Ministry of Justice**

**102 Petty France**

**London SW1H 9AJ**

**Email: [Reducing-Family-Conflict@justice.gov.uk](mailto:Reducing-Family-Conflict@justice.gov.uk)**

## Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

## Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from:

[Reducing-Family-Conflict@justice.gov.uk](mailto:Reducing-Family-Conflict@justice.gov.uk).

## Publication of response

A paper summarising the responses to this consultation will be published by 8 March 2019. The response paper will be available online at <https://consult.justice.gov.uk/>.

## Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## Impact Assessment

The impact assessment is being published alongside this consultation paper at <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce>

## **Consultation principles**

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>