

Press release: Justice Secretary confirms plans to reduce conflict in divorce

- government acts to reduce family conflict in the divorce process
- new process to remove need for couples to have been separated or to allege 'fault' in order to obtain divorce
- spouses would no longer be able to contest the divorce application

The government is taking action to end the 'blame game' for separating couples, with new proposals to help families instead focus on key practical decisions and look to the future.

At present, divorcing couples are forced to blame each other for the marriage breakdown on the grounds of 'unreasonable behaviour', adultery or desertion, or prove they have been separated for a minimum of 2 years – even if the separation is mutual. If the divorce is contested, and a spouse cannot prove 'fault', then couples currently have to wait 5 years before a divorce is granted.

Ministers want to reduce the antagonism of citing fault and the anxiety it creates, at an already trying time for couples and their children.

Therefore, a new notification process will allow people to notify the court of the intent to divorce, whilst removing the opportunity for the other spouse to contest it.

Justice Secretary David Gauke said:

Marriage will always be one of our most important institutions, but when a relationship ends it cannot be right for the law to create or increase conflict between divorcing couples.

That is why we will remove the archaic requirements to allege fault or show evidence of separation, making the process less acrimonious and helping families look to the future.

The proposals are set out in a government consultation launched today (15 September 2018), and will apply to marriages and civil partnerships.

Proposals detailed in the consultation include:

- retaining the sole ground for divorce: the irretrievable breakdown of a marriage
- removing the need to show evidence of the other spouse's conduct, or a period of living apart
- introducing a new notification process where one, or possibly both

- parties, can notify the court of the intention to divorce
- removing the opportunity for the other spouse to contest the divorce application

The consultation also seeks views on the minimum timeframe for the process between the interim decree of divorce (decree nisi) and final decree of divorce (decree absolute). This will allow couples time to reflect on the decision to divorce and to reach agreement on arrangements for the future where divorce is inevitable.

Today's announcement delivers on the Justice Secretary's commitment to reform these aspects of divorce law, and bring the UK in line with other countries who already have similar procedures.

Notes to editors

- Current divorce law requires people seeking divorce to give evidence of one or more of five facts; three are based on 'fault' and two are based instead on a period of separation. The five facts are: adultery, behaviour, desertion, 2 years' separation (if the other spouse consents to the divorce) and 5 years' separation (otherwise). (These are summary versions of the facts).
- The behaviour fact, which was an issue in the case of *Owens v Owens*, is sometimes called "unreasonable behaviour" but is actually "that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent".
- At present, where both parties agree, the court can dissolve the marriage after the couple have lived apart for a minimum 2 years. Where one spouse disagrees, the other spouse will either have to wait to be separated for 5 years before a divorce is granted or may instead obtain a divorce if they demonstrate to the satisfaction of the court that their spouse has committed adultery or that they have behaved in such a way that the party cannot reasonably be expected to live with them. Desertion is rarely relied upon. The legal definitions of the facts can be found in [section 1\(2\) of the Matrimonial Causes Act 1973](#).
- Only about 2% of respondents contest the petitioner's decision to seek a divorce. Of these 2% of respondents, only a handful go on to contest ("defend") the divorce at a court hearing. This means that, under the current law, a spouse who wishes to divorce can already be certain of doing so in practice, regardless of the other spouse's wishes, provided that the petition establishes irretrievable breakdown.
- For victims of domestic abuse, these proposals will mean that the legal process cannot be used for coercive control.
- Government recognises that there may be exceptional circumstances in which it may be desirable to retain the ability for a spouse to defend the divorce, for example if one party lacks mental capacity to make an informed decision to seek a divorce.
- Data shows that out of every 5 divorce petitions over the last 5 years, roughly 3 rely on conduct facts and 2 on separation facts. In 2017, the behaviour fact accounted for nearly half of all petitions (46.8%, or 47.3% when combined with the adultery fact).
- Last year almost 110,000 people petitioned for divorce in England and

Wales.

- At present, 6 weeks and a day must elapse before a decree nisi can be made absolute. In practice divorces take much longer to go through 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.
- 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. The court cannot make divorce financial orders until there is a divorce petition. The court cannot therefore make financial orders – such as pension sharing or orders for sale of property – if a spouse has walked out of the marriage but not sought a divorce. In practice, with regard to financial orders, no spouse would be ‘worse off’ under a “no-fault” divorce than one established on basis of one of the current 3 ‘facts’ or separation periods.
- The consultation will run for 12 weeks, closing on 10 December 2018.