

**NO GOOD  
REASON:  
THE CASE  
AGAINST  
NO-REASON  
DIVORCE**



# NO GOOD REASON: THE CASE AGAINST NO-REASON DIVORCE



## WHAT IS NO-REASON DIVORCE?

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### ABOUT THIS GUIDE

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This is a note for policy makers in response to the campaign for radical reform of the divorce laws in England and Wales promoted by a consortium of high-net-worth divorce lawyers, The Times newspaper and the Marriage Foundation.

### WHAT IS BEING PROPOSED?

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While the proposals differ in form and wording, they are united in seeking a change to the law which would mean that a person would no longer need to provide a reason for ending their marriage.

The spouse being divorced would not be able to oppose the divorce application, and the marriage would be automatically terminated after a short administrative period of around six months<sup>1</sup>.

This is often referred to as 'no-fault' divorce. It should be more accurately called 'no-reason' divorce. At present the irremediable breakdown of a marriage must be proven on the grounds of adultery, abandonment, unreasonable behaviour or either two or five years of living separately, depending on whether there is agreement between the couple.

Removing the need to prove such a breakdown means that the law would allow spouses to walk away from the most significant commitment in their lives without providing a reason.

## WHAT WOULD BE THE IMPACT OF NO-REASON DIVORCE?

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**Each year at least 20,000 people remain married because of our reason-based divorce system**

Figures from the Ministry of Justice track divorce progression in England and Wales<sup>3</sup>.

In any given year from 2003, when this data series begins, around 10% of couples who begin divorce proceedings do not complete them<sup>4</sup>.

The average divorce cohort over this period has been 137,550 per year. This equates to an annual average of 13,480 couples who abandon divorce proceedings over the cooling off period built into the current system.

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It is not possible to say that all such couples are reconciled. However, a significant proportion of marriages do appear to be saved and the interests of these must be balanced against any change which would expedite divorce proceedings or remove cause for reflection by making divorce more administrative.

Making no-reason divorce available to either party without the agreement of their spouse would effectively allow a person to resign from a marriage. As it could not be contested, those currently choosing to abandon divorce proceedings would lose an important opportunity to work for reconciliation.

While we note the argument for the convenience of a 'no-fault' system, we believe that the interests of those married must remain paramount, and radical changes may cause these marriages now saved to be lost.



### **Vulnerable people need the security of knowing that their wedding vows matter**

Since writing to supporters about the present campaign to reform family law, we have been contacted by a number who are concerned at the impact such a reform would have on the vulnerable.

Specifically, this refers to two groups: those in abusive relationships, and those who suffer sudden hardship including disability.

Those who have been in abusive relationships are concerned that the introduction of no-reason divorce could mean that they lose a public platform to highlight unreasonable or domineering behaviour by a spouse. They are also concerned with the fragility of marriages which could be abandoned without cause, and fear that this may be used as a weapon of psychological control by an abusive partner.

Disabled supporters, as well as those who have suffered sudden financial reversals, have told us that the security of marriage was crucial to their mental health and stability at that time. Allowing a spouse to walk away from a marriage with the encouragement of the state at such a critical time would have meant significant mental harm for many such individuals.

The present system is not perfect, but the emphasis on needing a valid reason to dissolve a partnership which both parties have voluntarily entered for life provides a source of stability which many vulnerable people find extremely important in their hour of need.



### **Children do better in married households even where there is conflict**

One reason often presented for no-reason divorces is the welfare needs of children. In fact, studies have found that children fare better in married homes, even where there is conflict between adults, than they do in divorced households. Making divorce even easier is never in the interests of the children of such marriages.

A major British study found that children who had separated parents had worse self-esteem than those whose parents argued but remained together, and noted: "It follows that separation and divorce do not necessarily reduce damaging conflict and, indeed, that as a generality the reverse may be true."<sup>5</sup>



### **Ensuring state support for personal responsibility**

The person who has remained faithful to their marriage vows has a means of reflecting this through the reason-based system should the marriage end. For many spouses in a divorce, citing a reason for the break up of the marriage will be the only opportunity they have to reflect their fidelity to their wedding vows in a public forum and is therefore important to them.

Should a no-reason divorce system be instituted, it is entirely possible that a person may be divorced, have access to their children restricted, their assets divided and find themselves removed from their home by court order, all despite being fully faithful to their marriage vows.

The present system allows the faithful party the opportunity to defend themselves from such a scenario at least for up to five years. It is imperative to concerns of natural justice that such a facility remains.



### **Maintaining the status of marriage above that of a tenancy contract**

If no-reason divorce is made available to either party in a marriage without the agreement of their spouse then married partners would have less protection under law in their own homes than those under tenancy contracts.

This is not what married people want. They voluntarily enter into a commitment to one another which they intend to last a lifetime, and most marriages really do last until death.<sup>6</sup>

Far from improving the status of marriage, no-reason divorce makes it into a form of regulated cohabitation, depriving the spouses and children of stability.



### **No-reason divorce does not achieve what its proponents claim**

Contrary to what advocates say, there is no evidence that removing fault from divorce reduces conflict. Instead, the process of having to talk to and where possible agree with the person you married in order to secure a divorce at least creates a conversation between divorcing parties.

A review of the no-fault system in America by the Richmond School of Law found that commentators have concluded that the system “has failed”, producing both a higher divorce rate and fewer protections for women and children.<sup>7</sup>



### **Unhappy periods in a marriage are often temporary. Rushing into a divorce could throw away a marriage which would be happy**

Couples who persevere through periods of unhappiness in their marriage are likely to be glad they did so later.

The Marriage Foundation’s own research found that, of parents who were unhappy at the time of the birth of their first child, seven in ten stay together. Of these, more than two-thirds (68%) are happy ten years later, with more than a quarter (27%) extremely happy.<sup>8</sup>

A streamlined divorce process would rob many couples of the opportunity to reconsider and save what would potentially be a happy marriage in years to come.

At the most basic level, the campaign for no-reason divorce ignores common sense. You cannot strengthen an institution by stripping its participants of their legal protections and enabling them to abandon a commitment made for life without a reason or time for reflection. Marriage is simply too important to be treated so lightly.

## **KEEP UPDATED**

We would be pleased to offer any clarifications or support required by policy makers defending the existing marriage laws in respect of divorce. Please contact our office at: [admin@c4m.org.uk](mailto:admin@c4m.org.uk)

<sup>1</sup> [No fault divorce: End the blame game](#), Resolution Family Law, 2017

<sup>2</sup> Adultery is not grounds for divorce in a same-sex marriage.

<sup>3</sup> [Family Statistics Quarterly](#), Ministry of Justice, December 2017. See Table 13.7

<sup>4</sup> The average between 2003 and 2014 is 9.8% of couples. The proportion of couples still married is even higher if later years are counted; we have chosen not to do so as proceedings may still be ongoing.

<sup>5</sup> The Exeter Family Study, Monica Cockett and John Tripp, University of Exeter Press and Joseph Roundtree Foundation, 1994, page 58

<sup>6</sup> Divorces in England and Wales: 2016, October 2017, ONS, Table 6. No year's cohort of married couples in England and Wales has ever seen more divorces than enduring marriages. The divorce rate has never reached 50% and most years is substantially lower.

<sup>7</sup> Swisher, P N, Marriage and Some Troubling Issues With No-Fault Divorce, Richmond School of Law, 2005

<sup>8</sup> [Couples on the Brink](#), Marriage Foundation, February 2017