

CONSULTATION ON NO-FAULT DIVORCE

A GUIDE FOR MARRIAGE SUPPORTERS



ABOUT THIS GUIDE

This is a guide to help supporters of the Coalition for Marriage to participate in the Government's [consultation](#) entitled "Reducing family conflict: Reform of the legal requirement for divorce".

The Government intends to make divorce easier to obtain by allowing it for no reason. The spouse being divorced would have no say. This is often called 'no fault' divorce as it does away with the need to allege fault such as adultery.

These plans threaten the very nature of marriage by turning it into an arrangement terminated at the whim of either spouse.

HOW CAN I PARTICIPATE?

The online consultation portal is available at this address:

www.bit.ly/divorcerespond18

It is not necessary to answer every question. We have only given comments on questions 2, 5, 8 and 10, which we believe are of the greatest importance to marriage supporters. Please use your discretion in deciding which questions to answer and how you wish to approach them.

All responses must be submitted before **midnight** on **Monday 10th December 2018**.

Explaining the proposals

Stages of the divorce process

- Petition – the spouse seeking the divorce (called the petitioner) files for divorce from the other party (the respondent) saying that the marriage has broken down irretrievably on the basis of one (or more) of five facts.
- Decree nisi – provisional decision by a judge that the marriage has broken down. Court orders about property, money and children can only be made after this point.
- Decree absolute – the marriage is legally over.

How the proposals would make divorce easier

| CURRENT LAW | CONSULTATION PROPOSALS |
|--|--|
| Show one of five facts: <ul style="list-style-type: none"> • Adultery • Unreasonable behaviour • Desertion • Separation for two years where both spouses agree • Separation for five years where one spouse disagrees | Divorce on demand No right to contest |

How the proposals would massively speed up over 40,000 divorces

Around 60,000 divorces a year are based on fault (adultery, unreasonable behaviour or desertion) with around 40,000 based on separation (two years with consent or five years without). Divorces on the basis of separation are to be scrapped as well as divorces based on fault. This shows that the plans are really about making divorce quicker.

| | CURRENT LAW | CONSULTATION PROPOSALS |
|---|------------------------|-------------------------|
| Separation where both spouses agree (27,000 in 2017, 27% of all divorces) | Two years' separation | No period of separation |
| Separation where one spouse disagrees (15,600 in 2017, 15% of all divorces) | Five years' separation | No period of separation |

The consultation questions

QUESTION TWO

In principle, do you agree with the proposal to replace the five facts with a notification process?

Yes / No / Undecided

If you want, you can give reasons for your answer.

Comments:

No.

You may wish to include some of the following points, in your own words, as reasons for your answer:

- The planned process denigrates marriage and downplays the seriousness of divorce. Mobile phone contracts will be more binding than marriage.
- Divorce is damaging regardless of the mechanism. These reckless changes will encourage more divorce, and society will suffer the consequences.
- Making divorce even easier is not in the interests of children. Studies have found that children normally do better in married homes even where there is conflict between the spouses compared with children in divorced households. A major British study found that children who had separated parents had poorer outcomes than those whose parents argued but remained together.¹
- Conflict often increases after divorce where children are involved. The children become the focus of the disputes. A study found: "the experience of most children whose parents divorce is of increased conflict over an extended period, with the child involved to an extent that may not have been the case while the marriage lasted".²
- The plans would redefine marriages that already exist. People who are married did not sign up to an arrangement that allowed their spouse to break their vows without justification.
- In 2016, 42% of divorces were on separation grounds. This means the couple have had to wait for at least two years to divorce. The plans will drastically speed up tens of thousands of divorces.
- As a matter of justice, a person who has remained faithful to their marriage vows only for their spouse to break them should have a means of reflecting this in the divorce.
- No-fault divorce sends the message that behaviour like adultery doesn't matter. It would be a home-wrecker's charter.
- Marriage is supposed to be for life. Under these plans it becomes 'until you feel like a change'.
- It is claimed that people use the 'fault' facts because they are quicker than two year or five year separation. But the Government could change the time periods without abolishing the five facts completely.
- The security of marriage can be crucial to the mental health and stability of those with a disability, or who suffer sudden financial problems. Allowing a spouse to walk away from a marriage at such a critical time could cause significant mental harm to these people.
- Around 10,000 divorce petitions are dropped every year.³ Many of these couples will be reconciled. This is a result of the current system. We should be doing all we can to save marriages.
- Making divorce quicker and easier will increase divorce. A survey earlier this year found that 72% of people thought 'no-fault' divorce may make people "more blasé" about getting a divorce.⁴
- Previous amendments to divorce law have increased divorce. Two changes in the 1970s saw the number of divorces in England and Wales rocket from 58,239 in 1970 to 148,301 by 1980.⁵

QUESTION FIVE

What minimum period do you think would be most appropriate to reduce family conflict, and how should it be measured?

6 weeks/ 3 months/ 6 months/ 9 months/ a different period

If you want, you can give reasons for your answer.

Comments:

We recommend selecting 'a different period' as the most appropriate and suggesting **at least a year** as a minimum period.

You may wish to include one or two of the following points, in your own words, as reasons for your answer:

- The whole scheme is based on a false premise that it is the method of divorce rather than the fact of divorce that causes conflict.
- It should be Government policy to save saveable marriages. More time – at least a year – is needed for reconciliation. There must be a minimum period between petition and decree nisi as well as between nisi and absolute.
- Couples who persevere through periods of unhappiness in their marriage are likely to be glad they did so later. Research found that seven in ten parents who were unhappy at the time of the birth of their first child stay together. Of these, around two thirds were happy ten years later.⁶
- A hurried divorce process would rob many couples of the opportunity to reconsider and save what would potentially be a happy marriage in years to come.
- In 2016, 42% of divorces were on separation grounds. This means the couple have had to wait for at least two years to divorce. The plans will drastically speed up the 40,000 divorces based on separation.
- Many people later regret their divorce. This will be more common if people do not have time to reconsider.

QUESTION EIGHT

Do you agree with the proposal to remove the ability to contest as a general rule?

Yes / No / Undecided

If you want, you can give reasons for your answer.

Comments:

No.

You may wish to include one or two of the following points, in your own words, as reasons for your answer:

- People who are married did not sign up to an arrangement that allowed their spouse to unilaterally end the marriage without cause or a significant period of separation. So the changes redefine marriages that already exist.
- If someone can get a divorce without justification or the agreement of their spouse, then married partners would have no security. A person could effectively resign from the marriage more easily than they could leave a mobile phone contract.
- The state should be encouraging personal responsibility by supporting those who want to stay true to their word and make their marriages work, not helping break them up.
- If one spouse wants to stay married there is at least the possibility of reconciliation. These plans would stop people being able to fight for their marriage. An important opportunity to work for reconciliation would be lost.
- The proposal undermines the wedding vows and sends the message that even the most solemn promises can be broken with impunity.
- This proposal will stop an innocent party from obtaining a divorce based on fault.
- The wife whose husband commits adultery should be able to get a divorce on the basis of her husband's adultery.

QUESTION TEN

Do you agree that the bar on petitioning for divorce in the first year of the marriage should remain in place?

Yes / No / Undecided

If you want, you can give reasons for your answer.

Comments:

Yes.

You may wish to include one or two of the following points, in your own words, as reasons for your answer:

- Allowing divorce within the first year of a marriage would make a mockery of the institution and the vows that are taken. Couples must be expected to give the marriage a chance.
- There is no evidence that the one-year wait causes family conflict or any other problems.
- Unhappy periods in a marriage are often temporary. Rushing into a divorce could throw away the opportunity for a fulfilling marriage.
- Couples who persevere through periods of unhappiness in their marriage are likely to be glad they did so later. Research found that seven in ten parents who were unhappy at the time of the birth of their first child stay together. Of these, around two thirds were happy ten years later.⁸
- Marriage is for life, and it is important that people intend this when they get married. One year is the bare minimum that the law should require.

¹ The Exeter Family Study, Monica Cockett and John Tripp, University of Exeter Press and Joseph Rowntree Foundation, 1994, page 55

² *Ibid*, page 58

³ Family Court Statistics Quarterly: January to March 2018, Ministry of Justice, June 2018, Table 13

⁴ 'Divorcing Couples Admit to 'Exaggerating' Foul Play', Slater Gordon Lawyers press release, 15 August 2018, see <https://www.slatergordon.co.uk/media-centre/press-releases/2018/08/divorcing-couples-admit-to-exaggerating-foul-play/> as at 21 November 2018

⁵ Divorces in England and Wales: 2017, Office for National Statistics, September 2018, Table 1

⁶ 'Couples on the Brink', Marriage Foundation, February 2017

⁷ Divorces in England and Wales: 2017, Office for National Statistics, September 2018, 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.

⁸ 'Couples on the Brink', Marriage Foundation, February 2017

KEEP UPDATED

To stay updated on the work of the Coalition for Marriage, please join the mailing list on our website:
www.c4m.org.uk