

## No Fault Divorce Bill

### House of Commons – Second Reading

4 December 2015

The Bill is a welcome and encouraging development. It proposes to add a sixth reason or ‘fact’ on which a divorce can be granted. It would help those couples who decide together that their marriage is not saveable and mutually agree to divorce. One of the couple would not have to state or fabricate fault, or the couple wait for a significant period, before being able to begin their divorce and conclude their financial arrangements.

The change proposed by the Bill is relatively modest. It would be a move towards no fault divorce but would not abolish the option of fault-based divorce. The option to blame and escalate conflict on divorce would still be there. And where only one of the couple wants a divorce, but really doesn’t want to blame the other on the papers, s/he would still have to do so to avoid a lengthy waiting period.

So whilst we are supportive of any move towards a non fault-based system, we would go further than this Bill does. Resolution believes that the option of fault should be completely removed from the divorce process – the current divorce process ignores the impact of conflict on family relationships and children. It simply doesn’t need to be part of the process and in reality serves no legal purpose.

Resolution proposes that a divorce should be finalised where one or both of the parties to a marriage give notice that their marriage has broken down irretrievably and one or both of them are still of that view after six months. In that six month period they would be supported by information to help them explore whether the marriage can be saved and/or on the different process options available to them, as well as parenting information.

There is nothing to suggest that the No Fault Divorce Bill, or indeed a divorce process which is not based on fault, would result in any long term increase in the divorce rate. The one year cooling off period proposed by the Bill would in fact be longer than the time that it currently usually takes to process an undefended divorce. The experience of other jurisdictions that have introduced non fault-based divorce is that any increase after the new legislation is a temporary “blip”, reflecting those who have waited for the new legislation to come in.

### The case for divorce reform

Our current divorce law (providing for a mixture of fault and separation based divorce) is set out in the Matrimonial Causes Act 1973. A couple cannot proceed simply on the basis that they both think the marriage is over, despite family lawyers reporting that that is a common situation.

Two out of the current five grounds for divorce are based on fault. In 2014 over 110,000 divorces were granted in England and Wales. In over 67,000 divorces (60%), adultery or unreasonable behaviour were cited as the grounds for divorce. This is not necessarily because either party

specifically wants to blame the other, but because the family want to achieve financial certainty and/or cannot afford to put their lives on hold. A 2015 survey of divorced and separated people by YouGov revealed that 27% of those interviewed who cited adultery or unreasonable behaviour as the grounds for divorce admitted that this was not the real reason for the divorce, but it was the easiest option.

The alternative separation grounds require couples to wait too long to bring their marriage to an end and conclude their financial arrangements, creating artificial and undignified living arrangements. Two years is a long time if you cannot afford to run two households. Even people trying to live together after separating in a normal and civilised way, for the sake of their children, may not be able to show the evidence of separation which is required in a divorce petition, although these receive only minimal scrutiny by the courts.

Resolution is particularly concerned to remove fault from the divorce process to give couples the best chance of minimising parental conflict which is so damaging to children. A no fault procedure wouldn't completely eradicate the negative emotions associated with any divorce, but at least it wouldn't actively encourage feelings of injustice and recrimination in the formal process, which run the risk of affecting parents' ability to put their children first and focus constructively on future co-parenting.

In our members' experience, current divorce law doesn't encourage co-operation. Rather, it introduces and/or escalates conflict from the outset of the divorce process, making it harder for people to make agreements about children and/or finance issues. Make the actual process of a divorce less blame-oriented and you are more likely to have a couple agree how they split their marital finances and to co-parent their children more effectively. All too often the first discussion is about who is to issue a petition, on which ground, and what is the detail of the behaviour alleged. This can lead to polarised opinions and extensive correspondence, which sets a negative tone for the more important discussions to follow around children and money.

And fault is rarely a relevant issue when it comes to deciding on financial and children issues, which have the most long-lasting impact on a separated family and the children involved. This means that apportioning blame is ultimately unnecessary in an already difficult situation – and can introduce conflict where it may not otherwise exist, and even where both the couple want a divorce.

We cannot agree with concerns raised at first reading of the Bill that changes in the divorce process, including adding a sixth reason where both of the couple agree (as proposed by the Bill), would make divorce easier and encourage more divorces.

There is consensus across international research studies that no fault divorce has had little clear impact on propensity to divorce, though you may find short term blips in response to policy changes. That is exactly what happened in Scotland after the implementation of reforms in 2006 – within two years the divorce rate reverted to the pre-reform level and then continued on a downward trend, and with a reduction in the number of divorces based on fault.

In our members' experience, the vast majority of people know little about the divorce process and their decision to divorce is therefore unaffected by process. Instead, they carefully consider whether to end their marriage and our members report that people have reflected long and hard before beginning divorce proceedings. People divorce for many different reasons, not because of the nature of the divorce process itself. It is not the divorce process which saves saveable marriages, it is the information and support available.

Resolution is an association of 6,500 family lawyers, mediators and other family justice professionals who believe in a constructive, non-confrontational approach to family law matters. Resolution also works for improvements to the family justice system.

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