

DIVORCE, DISSOLUTION AND SEPARATION ACT 2020

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Divorce, Dissolution and Separation Act 2020 which received Royal Assent on 25 June 2020 (c. 11).

- These Explanatory Notes have been prepared by the Ministry of Justice to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The Act will revise the legal process in England and Wales for married couples to obtain a divorce or judicial separation and for civil partners to dissolve their civil partnership (a process termed dissolution) or obtain a separation. It will therefore amend certain provisions set out in the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004, which are the main statutes governing these proceedings.

Policy background

- 2 Divorce and dissolution are a fundamental change of legal status that may have implications for people's rights and responsibilities, for matters such as property and inheritance, and for the families involved. Since the Matrimonial Causes Act 1857, divorce has always been a court process.
- 3 Prior to the Act, the law on divorce dated back, in large part, to the Divorce Reform Act 1969, which replaced the previous grounds of divorce (adultery, desertion, cruelty and being "incurably of unsound mind") with the sole ground that the marriage has broken down irretrievably.
- 4 The current legal process of divorce (prior to the implementation of the Act) can only be initiated by one party to the marriage (the "petitioner"). The other party (the "respondent") must then acknowledge that they have received (been "served with") the petition and state whether they disagree with the divorce and intend to contest ("defend") it. Only around 2% of respondents indicate an intention to contest, and only a handful of such cases progress to a final court hearing in front of a judge.
- 5 Currently (prior to the implementation of the Act), the law requires a person seeking a divorce to satisfy the court that the legal test of irretrievable breakdown is met by citing in the divorce petition one or more of five "facts", as the statute calls them. Three facts are based on conduct (adultery, behaviour – commonly referred to as "unreasonable behaviour" – and desertion). Two facts are based on a period of separation prior to filing the petition for divorce (two years if both parties consent to the divorce, or five years otherwise).
- 6 The court can hold that the marriage has broken down irretrievably only if it is satisfied of one of the five facts. If one of the five facts is made out, the court must grant the decree of divorce.
- 7 Granting a divorce is a two-stage process in which the court will first grant a conditional decree (the "decree nisi"). This signifies that the court is satisfied that the marriage can be brought to a legal end because it has broken down irretrievably. To finalise the divorce and legally end the marriage, the petitioner must wait for at least six weeks from the granting of the decree nisi and can then apply to the court for the decree of divorce to be made final (the "decree absolute").
- 8 Decrees of judicial separation are granted on a similar basis to divorce in some respects. A fact must be proved, but judicial separation does not bring a legal end to the marriage and therefore there is no ground of irretrievable breakdown and instead the decree is granted in a single stage.
- 9 With the introduction of civil partnerships through the Civil Partnership Act 2004, the legal processes for dissolution and separation largely mirrored those for marriage. There are some differences, such as adultery not being an available fact, and the terminology of some aspects of these processes. (In respect of a civil partnership, the equivalent of a decree, for example, is an order, and the statute refers to applicants rather than petitioners.)

- 10 The Ministry of Justice publishes statistics on matrimonial proceedings, including case progression, at <https://www.gov.uk/government/collections/family-court-statistics-quarterly>.
- 11 The Government set out its proposals for reform in September 2018 and held a twelve-week public consultation. The Government responded to the consultation in April last year. The Government's consultation paper, response and associated documents are available at <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce>. These set out the Government's assessment of the evidence leading to its conclusion that the existing requirement to make allegations about conduct can introduce or worsen ongoing conflict and be harmful to any children.
- 12 The Government's policy intention behind the reformed law is that the decision to divorce should be a considered one, and that separating couples should not be put through legal requirements which do not serve their or the state's interests and which can lead to ongoing conflict and poorer outcomes for children.
- 13 In summary, the measures in the Act:
 - **Replace the requirement to provide evidence of conduct or separation facts with a new requirement to provide a statement of irretrievable breakdown.**
 - **Remove the possibility of contesting the decision to divorce**, as the statement of irretrievable breakdown is to be taken as conclusive evidence that the marriage has broken down irretrievably. (Divorce proceedings will still be able to be challenged for other reasons including jurisdiction, validity of the marriage, fraud and procedural compliance.)
 - **Introduce a minimum overall timeframe of six months (26 weeks) into the divorce process**, made up of a new period of twenty weeks between the start of proceedings and when the application can be progressed to conditional order (there is currently no minimum period between these stages), and the current minimum timeframe of six weeks between the grant of a conditional order (decree nisi) and when the order can be made final (decree absolute).
 - **Enable the Lord Chancellor by order to adjust the time periods** between the start of proceedings and confirmation to the court that the conditional order of divorce (decree nisi) may be made, and between the conditional order and final order (decree absolute) stages, subject to the proviso that the total period may not exceed 26 weeks (six months).
 - **Introduce a new option of a joint application** for cases where the decision to divorce is a mutual one, in addition to retaining the current ability of one party to initiate the legal process of divorce.
 - **Update terminology**, for example replacing terms such as "decree nisi", "decree absolute" and "petitioner" with "conditional order", "final order" and "applicant".
- 14 The relevant changes above are also reflected in the changes being made to applications for separation orders; removing the 'fact' requirement in separation proceedings and replacing this with a statement that the applicant seeks (or both applicants seek) to be judicially separated.

- 15 Minor changes are also being made in relation to proceedings for nullity of marriage, principally to provide the Lord Chancellor with a power to amend the minimum time period before a conditional nullity of marriage order can be made final. This will align the position with that currently found in the 2004 Act for nullity of civil partnerships.

Legal background

- 16 The principal statute governing divorce, judicial separation and nullity of marriage in England and Wales is the Matrimonial Causes Act 1973. This is a consolidating Act that in large part consolidated provisions enacted by the Divorce Reform Act 1969 (which introduced irretrievable breakdown of the marriage as the sole ground for divorce) and by the Nullity of Marriage Act 1971 (which provided that a decree of nullity in the case of a voidable marriage would no longer have retrospective effect).
- 17 The Matrimonial Causes Act 1973 has, since enactment, been amended by a number of other statutes, for example to deal with a marriage formed by the conversion of a civil partnership and to remove the provision that voided the marriage of a same-sex couple.
- 18 Certain other statutes make ancillary provision in matrimonial proceedings. Part II of the Family Law Act 1986, for instance, makes provision for the recognition of divorces, annulments and legal separations ordered outside England and Wales.
- 19 The Civil Partnership Act 2004 largely mirrors this provision for civil partnership dissolution, separation and nullity. There are some differences, including adultery not being an available fact in the dissolution of a civil partnership. The Civil Partnership Act 2004 was not a consolidating Act, and so there are also some presentational differences. The civil partnership equivalents of a decree nisi and decree absolute are a conditional order and a final order, petitions are applications and petitioners are applicants. The Divorce, Dissolution and Separation Act mirrors, in turn, this later terminology in respect of proceedings following a marriage. The approach to drafting that was possible with the Civil Partnership Act 2004 means that this Act requires less consequential amendment than the Matrimonial Causes Act 1973.
- 20 Because divorce (or civil partnership dissolution) effects a change of legal status, there are also references to divorce in some statutes outside family law.
- 21 The practice and procedure in matrimonial proceedings – such as when applications can be made and how the court deals with them – are set by rules of court. These can be found principally at Part 7 of the Family Procedure Rules 2010 and the associated Practice Directions, supplemented by other Parts of the Rules dealing with matters applying more widely to family proceedings, such as case management and service of documents.

Territorial extent and application

- 22 Section 7 sets out the territorial extent of the Act i.e. the jurisdictions of which the law forms a part. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 23 Subject to subsections (2) and (3), the provisions of the Act extend and apply to England and Wales only. Subsection (2) provides that section 6 relating to minor and consequential amendments, section 7 itself, section 8 on commencement and transitional provision and section 9 containing the short title, all form part of the law of the United Kingdom. Subsection (3) provides that an amendment or repeal made by the Schedule has the same extent as the

provision amended or repealed. The amendments and repeals made by the Schedule extend and apply to England and Wales, save for Part 3 of the Schedule of minor and consequential amendments which contains amendments to a small number of provisions that also extend and apply to Northern Ireland and/or Scotland, in one instance apply to Wales only, in one instance extend and apply to Scotland only, and in one instance extend and apply to Northern Ireland only. These amendments amend references to divorce, judicial separation and/or nullity decrees from, or such proceedings in, the courts of England and Wales. More information is provided in Annex A.

- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of the Act

Divorce and judicial separation

Section 1: Divorce: removal of requirement to establish facts etc

- 25 This section substitutes a new section 1 of the Matrimonial Causes Act 1973.
- 26 New subsection (1) provides that an application for a divorce order may be made to the court by either or both parties to a marriage. New subsection (2) specifies that an application for divorce must be accompanied by a statement that the marriage has broken down irretrievably (“statement of irretrievable breakdown”), and that this statement may be made by the applicant or applicants (in a joint application).
- 27 New subsection (3) makes clear that a court in receipt of an application under subsection (1) must take the statement of irretrievable breakdown as conclusive evidence that the marriage has broken down irretrievably, and make a divorce order accordingly.
- 28 New subsection (4) provides that a divorce order is at first a conditional order and may not be made final before 6 weeks have elapsed from the making of the conditional order. New subsection (5) provides that the court cannot make a conditional order until the applicant, or both joint applicants, has or have confirmed to the court that they want the application to continue, and the applicant(s) cannot give that confirmation until 20 weeks have elapsed since the start of the proceedings. Rules of court govern how and when proceedings are started. The current provision in rule 5.3 of the Family Procedure Rules 2010 provides that proceedings are started when a court officer issues an application at the request of the applicant (an application is issued on the date entered in the application form by the court officer).
- 29 New subsection (6) provides that the Lord Chancellor may, by statutory instrument, shorten or lengthen the minimum periods set out in subsection (4)(b) or (5). Any such statutory instrument containing an order under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament (new subsection (9)). New subsection (7) stipulates that the Lord Chancellor may not vary the minimum periods set out in subsections (4)(b) and (5) so as to provide for a total minimum period exceeding 26 weeks.
- 30 New subsection (8) provides that the court may, in a particular case, shorten the time periods set out in subsections (4)(b) and (5). This replaces the existing power of the court currently set out in section 1(5) of the Matrimonial Causes Act 1973 to reduce the six-week period to decree absolute in exceptional cases (such as in the case of terminal illness or imminent birth of a child to one of the parties).

- 31 New subsection (10) provides that Family Procedure Rules may make provision as to the procedure for a joint application to become a sole application.

Section 2: Judicial separation: removal of factual grounds

- 32 This section amends section 17 of the Matrimonial Causes Act 1973.
- 33 Subsection (2) substitutes subsection (1) of section 17 and provides that an application for a judicial separation order may be made by either or both of the parties to a marriage. New subsection (1A) specifies that an application for judicial separation must be accompanied by a statement that it is the intention of one or both parties to the marriage to be judicially separated from one another. New subsection (1B) provides that the court dealing with the application must make a judicial separation order.
- 34 Subsection (3) omits the current subsection (2) of section 17, reflective of the removal of the facts in the substituted section.
- 35 Subsection (4) updates the language in section 17 for clarity and for consistency with divorce, dissolution and separation in a civil partnership.

Civil Partnership: dissolution and separation

Section 3: Dissolution: removal of requirement to establish facts

- 36 This section amends section 44 of the Civil Partnership Act 2004.
- 37 Subsection (2) provides for an application to the court for dissolution to be made by either one or both civil partners. Subsection (3) introduces new subsection (1A) of section 44, which provides that an application for dissolution must be accompanied by a statement that the civil partnership has broken down irretrievably, made by either one or both of the applicants.
- 38 Subsection (4) omits subsections (2) and (3) of section 44 (which relate to the facts alleged and are accordingly no longer applicable).
- 39 Subsection (5) replaces subsection (4) of section 44 to provide that the court must take the statement of irretrievable breakdown, made by one or both of the parties to a civil partnership, as conclusive evidence that the civil partnership has broken down irretrievably, and make a dissolution order accordingly.
- 40 Subsection (6) omits subsection (5) of section 44 (which contains the facts that no longer apply).
- 41 Subsection (7) inserts provision that Family Procedure Rules may make provision as to the procedure for a joint application for dissolution to become a sole application.

Section 4: Dissolution orders: time limits

- 42 This section amends sections 37 and 38 of the Civil Partnership Act 2004 and inserts a new section 37A.
- 43 Subsection (2) omits subsection (2) of section 37 (the current provision stating that a dissolution, nullity or presumption of death order is at first a conditional order and may not be made final before the end of the prescribed period set out in section 38).
- 44 Subsection (3) inserts new section 37A, which reflects the amendments to the Matrimonial Causes Act made by section 1 and provides that every dissolution order is at first a conditional order and may not be made final before the end of 6 weeks from the making of the conditional order. It also provides for the minimum time periods between stages and provides a power for the Lord Chancellor to amend these minimum time periods in a way that reflects the timeframes and Lord Chancellor power set out for divorce in section 1 of this Act.

- 45 Subsection (4) amends section 38 (which deals with nullity and presumption of death orders) to insert a new subsection (A1) which provides for each such order to be conditional in the first instance and not to be made final before the end of the prescribed period.

Section 5: Separation: removal of factual grounds

- 46 This section amends section 56 of the Civil Partnership Act 2004.
- 47 Subsection (2) amends subsection (1) of section 56 to provide that a separation order may be applied for by either or both of the parties to a civil partnership.
- 48 Subsection (3) inserts new subsection (1A), which sets out that any application for a civil partnership separation order must be accompanied by a statement stating that it is the intention of one or both civil partners to be separated from one another.
- 49 Subsection (4) omits subsection (2) of section 56 (the current provision requiring the court to inquire into facts alleged).
- 50 Subsection (5) restates current subsection (3) of section 56 (to provide that the court must make a separation order (if the requirements are met)).
- 51 Subsection (6) omits subsection (4) of section 56 (which cross-refers to provision elsewhere in the 2004 Act which relates to the facts alleged, and which is repealed by provision in the Schedule to the Act).

General

Section 6: Minor and consequential amendments

- 52 Subsection (1) of this section introduces the Schedule, which contains minor and consequential amendments resulting from the main provisions of this Act.
- 53 Subsections (2) to (7) allow the Lord Chancellor by regulations made by statutory instrument to make provision consequential on the provisions of this Act, including transitional or saving provision. Regulations may amend, repeal or revoke provisions made by or under primary legislation.

Section 7: Extent

- 54 Section 7 sets out the extent of the Act (see commentary at paragraphs 16 to 18 above and Annex A for further information).

Section 8: Commencement and transitional provisions

- 55 Provision in sections 6(2) to (7) (power to make consequential provision), 7 (extent) and 9 (short title), together with Sections 1 and 3 in so far as they confer power to make provision by Family Procedure Rules, came into force on the day the Bill received Royal Assent. All other provisions will come into force on such day as the Lord Chancellor may by regulations appoint.
- 56 Subsections (4) to (7) make transitional provision to disapply various provisions where proceedings have started before the commencement date, so that these proceedings can continue under the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 before their amendment through this Act.

Section 9: Short title

- 57 Section 9 sets out the short title of the Act.

Schedule: Minor and consequential amendments

- 58 The provisions in this Schedule have the same extent and application as the provisions that they amend. The provisions amended by Parts 1 and 2 extend to England and Wales only. The provisions amended by Part 3 extend and apply to England and Wales, in a small number of cases also extend and apply to Northern Ireland and Scotland, in one instance apply to Wales only, in one instance extend and apply to Scotland only and in one instance extend and apply to Northern Ireland only.
- 59 Part 1 of this Schedule makes amendments to the Matrimonial Causes Act 1973 that are minor and consequential on sections 1 and 2 of this Act, for consistency of approach and terminology within the Act and with present and amended provisions of the Civil Partnership Act 2004.
- 60 Part 2 of this Schedule amends the Civil Partnership Act 2004 in a number of minor ways that are consequential on sections 3, 4 and 5 of this Act, and for consistency of terminology and approach within the Act.
- 61 Part 3 makes amendments to other Acts that are minor and consequential on sections 1 to 5 of the Act, typically where these other Acts contain references to decrees of divorce, judicial separation or nullity that need to be amended to reflect the new terminology of orders.

Part 1: Amendments to the Matrimonial Causes Act 1973

- 62 Paragraphs 2, 4, 5, 10(b), 16(a), 17 and 31 omit and/or amend sections of the Matrimonial Causes Act 1973 which are no longer necessary or appropriate because they relate to evidence of facts of irretrievable breakdown which will no longer exist by virtue of section 1.
- 63 Paragraphs 3, 6 to 9, 10 (but for subparagraph (1)), 11, 13, 16(b), 18(a), 19 to 21 and 23 to 30 amend provisions of the Act for consistency with sections 1 and 2 (which substitute new section 1 and amend section 17 respectively), such as changes of references in the current Act from petitions to applications, and from granting of decrees nisi and absolute to making of conditional and final orders, as well as to reflect the fact that applications for divorce orders can now be made jointly.
- 64 Paragraph 12 inserts a new section 12B that will ensure consistency of approach to nullity orders as currently found in the Act and with terminology introduced by sections 1 and 2 in relation to divorce orders and judicial separation orders. This provision retains the two-stage process that currently applies to nullity orders by virtue of sections 11, 15 and 1(5) of the Act, retains the current six-week time frame between what is now a decree nisi and decree absolute for nullity (which will now by virtue of this provision become conditional and final nullity orders), and replaces the current power of the High Court to amend the time frame with a power in the Lord Chancellor similar to that provided for in respect of nullity orders for civil partnerships in section 38(2) of the Civil Partnership Act 2004. A new provision is necessary because the current provision that creates these effects – section 15 of the Act – did so by cross-applying section 1(5) of the Act, but, given the formulation of new section 1, this simple cross-application was no longer practicable. Paragraph 14 substitutes a new section 15 in further consequence of these amendments and in consequence of the changes in section 1.
- 65 Paragraphs 18(b), 20(5), 21(4), 22(3), 23(4), 24(4), 25(5), 27(6), 29(8) and 32 contain amendments that ensure that references to decrees, which will now be changed to orders, can still be read as including decrees if these were granted before the coming into force of the relevant provisions of this Act.

Part 2: Amendments to the Civil Partnership 2004

- 66 Paragraphs 36, 38 to 40, 41(a) and (b) and 42 omit sections of the Act which are no longer necessary or appropriate because they relate to evidence of facts of irretrievable breakdown which will no longer exist by virtue of the amendments in section 3 to section 44 of the Act.
- 67 Paragraph 35 amends cross-references consequential on the amendments made in sections 3, 4 and 5 of the Act. Paragraphs 37 and 41(c) amend provisions of the Act for consistency with the amendments in sections 4, 5 and 6, such as changes to reflect the fact that applications for dissolution orders can now be made jointly.

Part 3: Amendments to other Acts

- 68 Paragraphs 43 to 60 make amendments to references in a number of Acts to decrees of divorce, judicial separation or nullity, and decrees nisi or absolute, which therefore require minor and consequential changes to reflect the changes in sections 1 and 2 of the Act to refer to divorce orders, judicial separation orders and nullity orders and in some cases to refer to conditional orders or final orders rather than decrees nisi or absolute. These provisions also contain amendments to ensure that references to decrees, which will now be changed to orders, can still be read as including decrees if these were granted before the coming into force of the relevant provisions of this Act.
- 69 Paragraphs 43 to 57 and 59 extend and apply to England and Wales, but for paragraph 59 which applies to Wales only. Paragraphs 47, 49, 51(4), 51(5) and 53 to 57 also extend to Scotland and Northern Ireland. Paragraph 58 extends and applies to Scotland only. Paragraph 60 extends and applies to Northern Ireland only. Whilst these amendments extend beyond England and Wales, they strictly amend references to divorce, judicial separation and/or nullity decrees from, or such proceedings in, the courts of England and Wales. In other words, even where the provision being amended extends and applies to Scotland or Northern Ireland or applies to Wales only, the amendments are strictly to the references to decrees from and/or proceedings in England and Wales.

Related documents

70 The following documents are relevant to the Act and can be read at the stated locations:

- Reform of the legal requirements for divorce consultation and Government response: <https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce/>

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	Yes	No	No
Section 2	Yes	Yes	No	No
Section 3	Yes	Yes	No	No
Section 4	Yes	Yes	No	No
Section 5	Yes	Yes	No	No
Section 6	Yes	Yes	No	No
Section 7	Yes	Yes	No	No
Section 8	Yes	Yes	No	No
Section 9	Yes	Yes	No	No
Schedule	Yes	Yes	No	No

Annex B – Hansard References

71 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	25 March 2020	No debate
Second Reading	8 June 2020	Vol. 677 Col. 95
Money Resolution	8 June 2020	Vol. 677 Col. 95
Programme Motion	8 June 2020	Vol. 677 Col. 95
Third Reading	17 June 2020	Vol. 677 Col. 846
Committee	17 June 2020	Vol. 677 Col. 846
<i>House of Lords</i>		
Introduction	7 January 2020	Vol. 801 Col. 38
Second Reading	5 February 2020	Vol. 801 Co. 1807
Committee	3 March 2020	Vol. 802
Report	17 March 2020	Vol. 802
Third Reading	24 March 2020	Vol. 802
Consideration of Commons Amendments	18 June 2020	Vol. 803
Royal Assent	25 June 2020	House of Lords Vol. 804 Col. 458 House of Commons Vol. 677 Col. 1566

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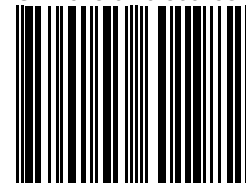
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ISBN 978-0-10-560198-2



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