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BRIEFING PAPER

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"No-fault divorce"

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England and Wales

Parts 1 to 4 of this briefing paper deal with the position in England and Wales.

The only ground for divorce is that the marriage has irretrievably broken down. The court cannot hold that the marriage has broken down irretrievably unless the petitioner satisfies the court of one or more of five facts, three of which are fault based (adultery, behaviour, desertion). Two of the facts relate to periods of separation – two years if both parties consent, and five years without consent.

Part 2 of the Family Law Act 1996 would have introduced "no-fault divorce" and required the parties to a divorce to attend "information meetings" with a view to encouraging reconciliation where possible. In 2001, following a series of information meeting pilot schemes, the then Government concluded that the provisions were "unworkable". The relevant provisions in Part 2 have now been repealed.

Among others, some senior members of the Judiciary; the Family Mediation Taskforce; and Resolution have called for the introduction of no-fault divorce.

In 2015, Richard Bacon introduced a ten minute rule Bill which aimed to allow no-fault divorce. The Bill did not proceed any further.

Advocates of this form of divorce speak of reducing the conflict which can be caused by allegations of fault. In some cases, the assertion of fault is considered to be a "charade".

Arguments against the introduction of no-fault divorce include that the institution of marriage should be supported; the risk of the divorce rate increasing if it is perceived to be easier to get a divorce; and the negative impact of family breakdown.

With some exceptions (such as if there is evidence of domestic violence), there is now a general requirement for couples to attend a Mediation Information Assessment Meeting (MIAM) before issuing certain applications to court in a divorce case. The purpose of the MIAM is for the couple to find out about and consider mediation, or other forms of non-court based dispute resolution.

Scotland

Part 5 of this briefing paper deals with the position in Scotland.

The basis for divorce under the Divorce (Scotland) Act 1976 was originally very similar to that in England and Wales. The irretrievable breakdown of marriage had to be evidenced by one of five facts, including two years separation with consent and five years separation without consent. However, the Family Law (Scotland) Act 2006 reduced the separation periods from two years to one where there is consent, and from five to two years where the respondent does not consent. The 'desertion' fact was also removed.

A simplified (do it yourself) divorce procedure may be used with the no-fault facts (there are also other qualifying criteria).

1. The current basis for divorce in England and Wales

1.1 Matrimonial Causes Act 1973

Section 1 of the Matrimonial Causes Act 1973 (MCA) provides that the only ground for divorce in England and Wales is that the marriage has irretrievably broken down. The court cannot hold that the marriage has broken down irretrievably unless the petitioner satisfies the court of one or more of the five facts set out in MCA section 1(2). Some of the facts are fault based (adultery, behaviour, desertion), but two relate only to periods of separation and are:

- that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted (two years separation with consent);[1] and
- that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (five years separation - no consent needed).[2]

Further information is provided at:

- Gov.UK, Get a divorce 2. Grounds for divorce;[3]
- Advicenow, The petition: ground and facts – this includes more detailed information about each fact and the effect of periods of time when the couple live together.[4]

1.2 Fault based petitions

The ONS publishes statistics on divorces. The latest figures for divorces by "facts proven" are for 2012 and show that 62% of divorces were based on a fault-based petition:

Divorces by fact proven, 2012 (%)

	Fault based				Separation based			
Fact proven	Adultery	Behaviour	Desertion	**Total**	2 years	5 years	**Total**	Others[1]
%	13.6%	47.9%	0.6%	**62.0%**	25.6%	12.1%	**37.7%**	0.2%

1. Other cases are cases which have a combination of facts proven.
Note: This table excludes divorces which were granted to both parties jointly, divorces granted on petitions filed prior to 1 January 1971 and annulments.
Source: ONS, Divorces in England and Wales, 2012

Research carried out by YouGov for Resolution,[5] (formerly known as the Solicitors Family Law Association), published in June 2015, found that:

1 Section 1(2)(d)
2 Section 1(2)(e)
3 Accessed 29 September 2016
4 Accessed 29 September 2016
5 Resolution describes itself as "an organisation of 6,500 family lawyers and other professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for improvements to the family justice system." Resolution, About us [accessed 29 September 2016]

- 52% of divorce petitions were fault-based alleging either unreasonable behaviour or adultery;
- 27% of divorcing couples who asserted blame in their divorce petition admitted the allegation of fault wasn't true, but was the easiest option.[6]

[6] Resolution News Release, MPs need to get behind no-fault divorce if they're serious about reducing family conflict, 3 December 2015 [accessed 29 September 2016]

2. Family Law Act 1996 Part 2

Summary

Part 2 of the Family Law Act 1996 would have introduced "no-fault divorce" and required the parties to a divorce to attend "information meetings" with a view to encouraging reconciliation where possible.

In 2001, following a series of information meeting pilot schemes, the then Government concluded that the provisions were "unworkable".

The relevant provisions in Part 2 have now been repealed.

2.1 Provision for "no-fault divorce"

The Family Law Act 1996 Part 2 (FLA) included provisions to allow a form of "no-fault divorce". The provisions "were aimed at reducing the bitterness of divorce and the damaging impact on all involved in divorce".[7]

As well as requiring married couples to attend information meetings, with a view to encouraging reconciliation where possible, a system of divorce as a process over time was to replace the current arrangements.

Issues to be covered at the meetings would have included the availability of marriage counselling, mediation, the use of solicitors, the welfare of children and the division of financial assets.

The divorce provisions in the Bill which preceded the FLA proved controversial at the time. Concerns were raised about, among other things, the need to uphold the institution of marriage. Many amendments were made to the original proposals and the new scheme was delayed pending piloting of certain aspects. A textbook on family law sets out further information:

> The Family Law Bill was introduced in November 1995. The Bill did not have an easy passage through Parliament, in part because of the lack of enthusiasm of many (and opposition on the part of some) of the Government's own supporters.[8] In order to save the Bill from defeat, the Government had to accept many amendments.[9] The result was that what had been an essentially simple and elegant legislative scheme became exceedingly

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7 Bill 131-EN 2012-13 paragraph 140

8 Footnote to text: "112 Conservative Members voted against the Government in the crucial free vote in the House of Commons on the retention of fault-based divorce: *Official Report* (HC) April 24, 1996 Vol.276 col.543"

9 Footnote to text: "137 amendments were made to the Bill in the course of its passage through the House of Commons; and many amendments had already been made in the House of Lords. Some of the amendments reflected concern about the need to uphold the institution of marriage, in practice by making it more difficult to obtain a divorce. Others were intended to ensure that the possibility of reconciliation be fully explored by increased use of counselling and marriage support services. Yet others reflected concern that the interests of children should be given greater protection."

> complex.[10] Questions also arose regarding the best means of delivering certain key features of the new legislative scheme. As a result, although the Bill passed on to the statute book as the Family Law Act 1996, implementation of the new scheme was delayed in order for certain aspects to be piloted.[11]

2.2 Pilot schemes

A series of information meeting pilot schemes was launched in June 1997. Six models of information meeting were piloted and the programme was completed in 1999. In June 1999, Lord Irvine of Lairg, who was then Lord Chancellor, confirmed that preliminary results of the pilot schemes were disappointing in view of the then Government's objectives of saving saveable marriages and encouraging the mediated settlement of disputes. He said that the Government would await the final evaluation report before deciding what to do next.[12]

The Final Evaluation Report was presented to the Lord Chancellor by the Newcastle Centre for Family Studies in September 2000.[13] In the light of the problems which had been identified, in January 2001, Lord Irvine of Lairg announced that the Government would invite Parliament to repeal the relevant sections of Part 2 once a suitable legislative opportunity occurred.[14] He confirmed that section 22, in Part 2, relating to the funding of marriage support services, which was already in force, would remain.

2.3 Repeal of Family Law Act 1996 Part 2

Most of the provisions in Part 2 were never brought into force and have now been repealed by section 18 of the Children and Families Act 2014.

In Grand Committee debate on the clause which became section 18, Lord McNally, who was then Justice Minister, said that he had "the utmost respect for the position of supporting the principle of 'no-fault divorce'". However, he said that, in 2001, the then Government had concluded that the provisions were "unworkable":

> I fully understand that the provisions of Part 2 were intended to save saveable marriages and reduce distress and conflict when it was inevitable that a marriage would need to be brought to an end. While Part 2 retained as the ground for divorce the irretrievable breakdown of the marriage, it would, if implemented, have removed the need to establish irretrievable breakdown through one or more facts. I understand why proponents of no-fault divorce believe that the approach in Part 2 would have helped to reduce conflict and acrimony.

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10 Footnote to text: "The Labour Party's spokesman on the Bill in the House of Commons, Mr Paul Boateng, is said to have described it as a "dog's breakfast": Law Society Gazette, May 30, 1996, p10."

11 J Masson, R Bailey-Harris and R Probert, *Cretney, Principles of Family Law,* 8th edition, 2008, p308

12 HL Deb 17 June 1999 c39WA

13 Information Meetings & Associated Provisions within the Family Law Act 1996: Final Evaluation of Research Studies Undertaken by Newcastle Centre for Family Studies, University of Newcastle upon Tyne, September 2000

14 HL Deb 16 January 2001 cc126-7WA

> However, there are two separate issues here. The first concerns the principle of no-fault divorce in Part 2, and the second concerns the information meeting and other provisions of Part 2 which were an integral part of that policy. The Government in 2001 concluded that the provisions were unworkable, would not achieve the objectives of saving saveable marriages and reducing distress and conflict, and should be repealed. It is that second issue that led us to include Clause 18 in the Bill.

Lord McNally said that the then Government's decision in 2001 was based on the results of the pilot schemes:

> The decision to repeal Part 2 was made in principle long ago on the basis of extensive academic research by the University of Newcastle. The research looked at six models of information meeting that a party to a marriage would have been required to attend as the key first step in initiating a divorce. Part 2 is built around that initial mandatory information meeting. The research concluded that none of the six models of information meeting tested was good enough for implementation nationally. For most people, the meetings came too late to save marriages and tended to cause parties who were uncertain about their marriages to be more inclined towards divorce. While people valued the provision of information, the meetings were too inflexible, providing general information about both marriage-saving and the divorce process. People wanted information tailored to their individual circumstances and needs. In addition, in the majority of cases, only the person petitioning for divorce attended the meeting. Marriage counselling and conciliatory divorce all depend on the willing involvement of both parties.

Lord McNally indicated that there had been no opposition to the proposed repeal of the relevant sections of Part 2 in any of the written responses to the preceding draft bill, published for pre-legislative scrutiny in September 2012. He said that there was no prospect of those provisions in Part 2 being implemented and that its repeal was a long-standing commitment to Parliament.[15]

The previous Government stated that it remained committed to the principles behind the *Family Law Act 1996*, "of saving saveable marriages and, where marriages break down, bringing them to an end with the minimum distress to the parties and children affected, and encouraging people to use family mediation to resolve disputes".[16] The Explanatory Notes published with the draft legislation stated that "a range of non-statutory initiatives pre-court and at court have been introduced to promote and encourage consideration and use of mediation and these are aimed at all separating parents, whether or not the parents are married".[17]

The Coalition Government had already indicated that it did not intend to change the grounds for divorce or the facts required to prove that the marriage had broken down irretrievably, but would provide for uncontested divorces to be dealt with administratively.[18]

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15 HL Deb 23 October 2013 cc365-6GC
16 Draft legislation on Family Justice Explanatory Notes, p46
17 *Ibid*
18 HC Deb 6 September 2012 c390W

3. Should no-fault divorce be introduced?

Summary

Among others, some senior members of the Judiciary; the Family Mediation Taskforce; and Resolution have called for the introduction of no-fault divorce.

In 2015, Richard Bacon introduced a ten minute rule Bill which aimed to allow no-fault divorce. The Bill did not proceed any further.

Advocates of this form of divorce speak of reducing the conflict which can be caused by allegations of fault. In some cases, the assertion of fault is considered to be a "charade".

Arguments against the introduction of no-fault divorce include that the institution of marriage should be supported; the risk of the divorce rate increasing if it is perceived to be easier to get a divorce; and the negative impact of family breakdown.

3.1 Calls for introduction by senior members of the Judiciary

In recent years, some senior members of the Judiciary have called for the introduction of no-fault divorce including:

- On 24 March 2012, Sir Nicholas Wall, then President of the Family Division, gave a speech to the Annual Resolution Conference. He said that he could see no good arguments against no-fault divorce.[19]
- On 29 April 2014, Sir James Munby, President of the Family Division, gave a speech on family justice reforms. He questioned whether the time had come to remove all concepts of fault as a basis for divorce.[20]

  At a press conference on the same day, Sir James Munby elaborated on his comments and said that, in practical terms, he did not consider that introducing no-fault divorce would make a big difference in terms of undermining notions of responsibility in marriage:

  > The reality is we have and have had in this country for the best part of 30 years now divorce by consent. I think the fact is that under the law at present, although the only ground for divorce technically is irretrievable breakdown of the marriage, you can only establish that ground if you can establish adultery, unreasonable behaviour, and separation for two years with the consent of the Respondent or five years separation without the consent of the Respondent. Well, it's not very difficult, bearing in mind the current

19 Sir Nicholas Wall, President of the Family Division, Annual Resolution Conference, The Queens Hotel, Leeds, 24 March 2012 [accessed 29 September 2016]

20 Remarks by Sir James Munby President of the Family Division and Head of Family Justice in the President's Court, The Family Justice Reforms, 29 April 2014 [accessed 29 September 2016]

> concept of unreasonable behaviour, to come up with some petition containing what in a more robust era would have been called anaemic allegations of misconduct. The reality is that many divorces go through by consent in the sense that the parties have actually agreed the grounds of alleged unreasonable behaviour before the petition is issued. If they don't want to do that and there's been two years separation, then it goes through by consent so the reality is we have divorce by consent. Defended divorces, contested divorced are almost invisible. They hardly ever happen nowadays so in that sense, … all one's doing is actually bringing a bit of intellectual honesty to the situation and getting rid of an unnecessary process which simply makes life more complicated because the district judge under the present system has to go through the ritual of considering whether the anaemic allegations contained in the petition drafted by agreement do or do not amount to unreasonable behaviour. Most of the time the district judge says, "Yes." Occasionally the district judge says, "No," throws the petition back and the petitioner then goes to the other party and they agree to put in slightly more robust allegations. Of course that is not a sensible process.[21]

- In December 2014, in an interview with the Evening Standard, Baroness Hale of Richmond, deputy president of the Supreme Court, called for the introduction of a new system of "no-fault" divorce to reduce the cost and acrimony of marital splits. Lady Hale considered that couples should be able to end their marriages simply by declaring that the relationship had failed and waiting a year.[22]
- In April 2015, in another press interview, Baroness Hale repeated her call for divorce law to be reformed to remove the need for allegations of adultery and blame. She said that she wanted to see the acrimony taken out of most matrimonial disputes with divorces granted without a person being held at fault.[23]

3.2 Report of the Family Mediation Task Force

In June 2014, the Family Mediation Task Force, chaired by David Norgrove, published recommendations on what more could be done to increase the uptake of family mediation. The Task Force urged the Government to consider reforming the adversarial language used in material relating to separation and divorce:

> More generally we would urge the Government to ensure that, in all its written material relating to separation and divorce and especially that used by the court, it employs language that is easily understandable and that seeks to promote a collaborative rather than adversarial approach. In particular we would ask the government to consider whether the time is now right to reform

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21 Judicial Office Press Conference, 29th April 2014 [accessed 29 September 2016]
22 Martin Bentham, "Top judge calls for rules which force women to take off veils when giving evidence in court", *Evening Standard*, 12 December 2014 [accessed 27 September 2016]
23 Frances Gibb, "Judge calls for divorce overhaul to take blame out of break-ups", *Times*, 9 April 2015 (registration required).

> the divorce laws to ensure that separating married couples are currently faced with the arcane and adversarial language at what is often the very start of their journey. The existing forms and literature relating to the divorce procedure do little to promote a collaborative approach and in fact run against the messaging which aims to promote a more conciliatory process. The pack sent out to respondents in response to a divorce petition has language that will inflame, including blame for some form of unreasonable behaviour, and the threat of having to pay the petitioner's costs. We urge the Government to consult with the Family Procedure Rule Committee to revise the unhelpful and archaic use of language in court forms and guidance (with particular reference to the divorce petition). It would also help if the pack included a covering letter to explain the context.[24]

The Task Force also joined calls for the Government to abolish fault based divorce, pointing to the damage which could be caused by the existing process:

> Some of the language stems from the requirements of fault based divorce. Mediators, including those on the Task Force, refer often to the damage done by the requirements of what most people recognise is a charade. Some separating couples can see this and accept that to make the necessary allegations is a price worth paying. But others are not in that rational state and the allegations drive the receiving party into even greater hostility and away from mediation. We join all those, including most recently the President of the Family Division, who have urged the government now to abolish fault based divorce.[25]

3.3 Ten Minute Rule Bill

Proposal to provide for no-fault divorce

In October 2015, Richard Bacon introduced the No Fault Divorce Bill 2015-16 under the Ten Minute Rule.[26] He proposed that couples should have the option to declare jointly that their marriage had broken down irretrievably, without either party being required to satisfy the Court of any other facts – although the existing five facts in MCA section 1(2) should also be retained as alternatives:

> The conclusion I draw is that the previous legislation—however well-intentioned—was trying to accomplish too much. I propose one simple amendment to the law: the option of divorce without blame. A petitioner who wished to do so, rather than offering the court one of the five facts currently required—adultery, unreasonable behaviour, desertion, et cetera—could instead satisfy the court that a marriage had broken down irretrievably with a sixth fact, namely that both parties to the marriage had separately signed a declaration that the marriage had broken down irretrievably.
>
> This declaration would by itself satisfy the court without the need to show any other facts. It would apply only when both parties had agreed and, consequently, signed such a declaration. It would not in any way alter—or, still less, abolish—the existing concept of blame. Those who wished to avail themselves of the other

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24 Ministry of Justice, Report of the Family Mediation Task Force, June 2014, paragraph 35
25 Ibid, paragraph 36
26 HC Deb 13 October 2015 cc189-94

> provisions of the law which require blame—which may sometimes, although decreasingly so, be a factor in financial settlements and arrangements for children— could do so. My simple change would mean that those who wished to avoid apportioning blame in a divorce could do so. The only other provision in my Bill would be a cooling-off period of one year before a decree of divorce could be made absolute, so that couples would have time to reflect on whether a divorce was really what they wanted.

Mr Bacon said that he did not intend to make it easier or quicker to get a divorce:

> Let me begin by saying that I do not wish to make divorce "easier", because I do not think divorce should be easy. Currently, one can get divorced in just five months, so what is called "quickie divorce" is already available. A couple wishing to take advantage of my proposal would take somewhat, but not inordinately, longer to get divorced—probably one year—but without any requirement to throw mud at each other, as is currently the case, and with more time for reflection on whether divorce was what they really wanted for themselves and their children.[27]

Richard Bacon considered the current position to be contradictory:

> Although the whole thrust of current policy is supposedly about taking disputes away from the courts and towards reconciliation, mediation and alternative dispute resolution, people seeking a divorce who wish to avoid apportioning blame often find themselves required by the law to follow a path they do not wish to take. In effect, they are required to throw mud at each other.

He also favoured easier access to counselling, but did not think that the Bill needed to deal with this:

> I would also favour more discretion for the judge to inquire into the intentions of the couple and the extent to which they had sought counselling. I would not object to making some form of counselling mandatory. These are all desirable, but it is not necessary to deal with all of them at once or in one Bill. These matters could be dealt with separately, if at all.[28]

The Member considered that his Bill would provide a simple way of introducing divorce without blame:

> Any attempt to reform the law on divorce should be modest in its ambitions, simple to understand and simple to implement. My Bill would not deliver all that some of the more radical reformers wish to see, but it would provide a route for divorcing couples to reduce acrimony and tension during what is already a very traumatic process, if they wished to use it. It would be more likely to gain widespread consent…[29]

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27 HC Deb 13 October 2015 c189
28 HC Deb 13 October 2015 c191
29 HC Deb 13 October 2015 c191

Arguments against the introduction of no-fault divorce

Although he did not attempt to vote down the Bill on First Reading, Sir Edward Leigh (Conservative) expressed reservations about the introduction of no-fault divorce. He said "Of course I would like to make the moral case for marriage and for a lifelong commitment to children", but pointed to evidence from other countries which, he said, showed the wider consequences such legislation might have:

> The social researchers have done their job and the evidence is now available. If this were merely a matter of allowing a few cases of obvious irrevocable breakdown to be dealt with more quickly, cheaply and less destructively, very few people would oppose the idea. It would be a common-sense thing to do. But, while that is what my hon. Friend seeks, very honourably, to achieve, that is not the sole impact of no fault divorce. Unfortunately, all the available evidence points to the introduction of no fault divorce having a large, widespread and demonstrable effect on the societies in which it has been introduced. That is true across the spectrum of developed nations, from Canada and certain American states to Sweden and elsewhere.

Sir Edward spoke of the recent emphasis on strengthening marriage as an institution. He considered that bringing in no-fault divorce would make divorce easier, thus increasing the number of divorces. Sir Edward detailed what had happened in Canada following the introduction of no-fault divorce in 1968, where, he said, there had been "a sixfold increase in just two years, after a century of relatively stable divorce rates". He also spoke of other studies which noted an increase in the divorce rate when no-fault divorce was introduced:

> Scholars have noted similar results in US states correlating to when states introduced no fault divorce. The first significant study of no fault divorce was published in 1986, and all the further major published papers since then have concluded that the divorce rate increased at the same time as the introduction of no fault divorce. Do we want to increase the divorce rate? We know that the preponderance of evidence suggests that we will end up having more divorces and a higher divorce rate if no fault divorce is brought in.

Sir Edward then set out other potential impacts of family breakdown, drawing on evidence from a study in the US:

> A study in the US argued that 75% of low-income divorced women with children had not been poor when they were married, but Douglas Allen also points out in the Harvard Journal of Law & Public Policy that
>
> "the real negative impact of the no-fault divorce regime was on children, and increasing the divorce rate meant increasing numbers of disadvantaged children."

In the UK, Sir Edward continued, a 2009 review by the then Department for Children, Schools, and Families had found that a child not growing up in a two-parent family household was more likely to experience a number of problems which he detailed. He also spoke of other research on the effects of family breakdown.

Sir Edward considered that the potential adverse consequences of no-fault divorce should rule out its introduction:

> A Bill to bring about no fault divorce would have implications throughout the country and I suspect that that is why successive Labour and Conservative Governments have, in the end, balked at it. Other developed countries have introduced it, so we are capable of assessing its likely impact. I accept that there can be no doubt that it will lead to a simpler, less traumatic, less costly way of dissolving marriages that have suffered irretrievable breakdown, but the evidence shows that it comes with further consequences. Do we want to see more disadvantaged children? Do we want to see women poorer? Do we want to see women working longer hours? Do we want to see the wide variety of social problems that the Prime Minister so justly highlighted in Manchester last week deepen further in our society? The answer must surely be no.[30]

The Bill did not make any further progress.

3.4 Resolution campaign

Resolution's Manifesto for Family Law was launched in February 2015. Among other things, it calls for the removal of blame, associated with petitions based on adultery or unreasonable behaviour, from the divorce process:

> This often creates conflict and makes reaching a mutually acceptable agreement much more difficult.
>
> Removing blame from divorce will not make it more likely that people will separate. It will simply make it easier for people to manage their separation with as little conflict and stress as possible and reduce the likelihood that they will end up in court.
>
> In 2012, there were over 72,000 divorces where adultery or unreasonable behaviour were cited. People should not have to go through this blame charade to bring their relationship to a dignified conclusion and move on with their lives. A civilised society deserves a civilised divorce process.

Resolution proposes a new divorce procedure, where one or both partners can give notice that the marriage has broken down irretrievably:

> The divorce can then proceed and, after a period of six months, if either or both partners still think they are making the right decision, the divorce is finalised.

Resolution considers that this approach would have advantages:

> Divorce without blame will increase the chances of success for non-court dispute resolution processes as it immediately puts both partners on a level footing. This will reduce the burden on the family court and help government to meet their aim for more people to resolve their problems outside of the courts.[31]

In a briefing sent to MPs ahead of a proposed second reading of Richard Bacon's No Fault Divorce Bill, (which did not go ahead),

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30 HC Deb 13 October 2015 cc192-4

31 Resolution, Allow people to divorce without blame [accessed 29 September 2016]

Resolution disagreed with the reservations expressed in the first reading debate:

> 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.[32]

[32] 4 December 2015

4. Other developments related to divorce

4.1 Mediation Information Assessment Meetings

There is now a general requirement for couples to attend a Mediation Information Assessment Meeting (MIAM) before issuing certain applications to court in a divorce case.[33]

In joint evidence to the House of Commons Justice Committee, which conducted pre-legislative scrutiny of the draft legislation which preceded the *Children and Families Act 2014*, the Ministry of Justice and Department for Education stated that it was necessary to repeal Part 2 of the FLA in order to implement the proposed statutory MIAM legislation "as the mandatory MIAM requirement is similar to the information meeting".[34]

The purpose of the MIAM is for the couple to find out about and consider mediation, or other forms of non-court based dispute resolution. There are some exceptions to this requirement including, for example, where there is evidence of domestic violence or of a risk of domestic violence; in these cases the applicant may proceed straight to court.[35]

In April 2016, the Family Justice Council published a guide, *Sorting out Finances on Divorce*. The following extract provides further information about the requirement to attend a mediation information and assessment meeting:

> **Do we have to use mediation?**
>
> No. You do not have to use mediation to make an agreement: you may be able to reach agreement between yourselves, perhaps having had advice and help from solicitors. However, if you wish to apply to the court for an order other than a consent order – so, if you want the court to decide how to divide your assets – then you will have to attend a mediation information and assessment meeting (MIAM). This meeting will allow you to find out more about how mediation works, including whether it is right for you, how long it is likely to take and how much it might cost. Having attended the information meeting, you are not obliged to use mediation if you do not wish to do so.
>
> In some situations you do not have to attend a mediation information and assessment meeting, for example, if you are a victim of domestic violence. For more information, see the Family Mediation Council's website: http://www.familymediationcouncil.org.uk/

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33 Children and Families Act 2014 section 10 and the Family Procedure (Amendment No. 3) Rules 2014, SI 2014/843. Practice Direction 3A sets out the applications to which the MIAM requirement applies and MIAM exemptions

34 House of Commons Justice Committee, Pre-legislative scrutiny of the Children and Families Bill, 14 December 2012, HC 739 2012-13, paragraph 191

35 Family Procedure Rules 2010 (as amended), Rule 3.8 sets out the circumstances in which the requirement to attend a MIAM does not apply

> **If I do use mediation, what are some of the advantages?**
>
> Many divorcing couples want to reach agreement but find direct communication with each other very difficult. A mediator offering a safe, neutral environment to look at what could be agreed is often very helpful and research indicates that mediation is effective in about two-thirds of cases. Fees will vary but legal aid is available for those who qualify. There are also other forms of dispute resolution in addition to mediation such as collaborative law and arbitration. All these forms of dispute resolution require both parties to make full and frank disclosure. Agreements reached in mediation (or in other forms of dispute resolution outside of the court) can subsequently be turned into a consent order by the court.[36]

Further information about MIAMs is available online, including:

- Family Mediation Council:
  - The assessment meeting (MIAM);
  - MIAMs Exemptions;
- National Family Mediation, Mediation Information and Assessment Meetings (MIAMs).

4.2 Divorce centres

HM Courts & Tribunals Service has decided to create 11 divorce centres within England and Wales, with the vast majority of uncontested decree nisi applications being considered by Legal Advisers (rather than District Judges) at those centres.

An HM Courts and Tribunals Service document, *Q & A: Changes to the divorce process in England and Wales,*[37] includes the following information about the reason for the change:

> Following the Family Justice Review the Single Family Court was created, which is a single jurisdiction without the previous geographical boundaries of county courts. Subsequently the Crime and Courts Act 2013 enabled legal advisers to consider decree nisi applications and directions for trial across the family court. In light of these changes HMCTS agreed plans with the Ministry of Justice and with the President of the Family Division for uncontested decree nisi applications to be considered by legal advisers at designated Divorce Centres locations in England and Wales. Legal advisers will deal with the majority of routine decree nisi applications, which will free up judicial time for other work, and reduce processing delays and inconsistency. The Divorce Centres will be centres of expertise that improve services, release efficiencies of scale and minimise the possibility of fraud.

The application process remains unchanged but all uncontested petitions will be prepared and made ready for initial decree nisi consideration by a legal adviser based at the centre, supervised by District Judges on site, who will handle any contested applications, annulments and judicial separation applications. Legal advisers will not handle any financial remedy cases.

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36 Family Justice Council, Sorting out Finances on Divorce, April 2016, pp18-19
37 2015

4.3 Plan to move divorce online in 2017

On 26 February 2016, in a speech to the Family Law Bar Association, Sir James Munby, President of the Family Division, indicated that, in the future, some court processes will be almost entirely digitised. He gave online divorce, planned for initial implementation in 2017, as an example:

> In future, proceedings will be issued on-line. The applicant – and remember, the applicant will increasingly be a lay person bereft of professional assistance – will not fill in an on-line application form but an on-line questionnaire capturing all the relevant information while at the same time being much more user-friendly. Some processes will be almost entirely digitised: early examples will be digital on-line probate and digital on-line divorce, both planned for at least initial implementation early in 2017. Some proceedings will be conducted almost entirely on-line, even down to and including the final hearing. The judge, who will not need to be in a courtroom, will interact electronically with the parties and, if they have them, their legal representatives. The heaviest cases will of course continue to require the traditional gathering of everyone together in a court room, though probably only for the final hearing and any really significant interim hearings. The other hearings in such cases will increasingly be conducted over what we quaintly continue to call video links – though I earnestly hope using equipment much better than the elderly and inadequate kit to which we are at present condemned.[38]

4.4 Research study

A new research project, funded by the Nuffield Foundation and led by Liz Trinder of Exeter University, is exploring how the current law on the ground for divorce and civil partnership dissolution operates in practice. The aim of the research is to inform debate about whether and how the law might be reformed. The project runs from October 2015 to September 2017.

Further information is provided on the Finding Fault website.

[38] Address of the President Sir James Munby at the annual dinner of the Family Law Bar Association in Middle Temple Hall on 26 February 2016 [accessed from the website of the Courts and Tribunals Judiciary on 29 September 2016]

5. Divorce in Scotland

The basis for divorce under the Divorce (Scotland) Act 1976 was originally very similar to that in England and Wales as provided by the Matrimonial Causes Act 1973. The irretrievable breakdown of marriage had to be evidenced by one of five facts, including two years separation with consent and five years separation without consent.

However, the Family Law (Scotland) Act 2006 reduced the separation periods from two years to one where there is consent, and from five to two years where the respondent does not consent. The 'desertion' fact was also removed.

An article by Liz Trinder, who is leading a research project on the current grounds for divorce in England and Wales, considers the effect of this change:

In anticipation of a temporary blip: Would a change in the divorce law increase the divorce rate?, *Family Law,* 2 December 2016.[39]

A simplified (do it yourself) divorce procedure may be used with the no-fault facts (there are also other qualifying criteria). Information is provided on the Scottish Courts and Tribunals website, Simplified/Do it Yourself Procedure.[40]

[39] Accessed 29 September 2016
[40] Accessed 29 September 2016

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