

Written evidence from the Law Society of England and Wales (DDS0118)

Introduction

1. The Law Society is the independent professional body for solicitors in England and Wales. We are run by and for our members. Our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law. On behalf of the profession, we influence the legislative and regulatory environment in the public interest. At home we promote the profession and the vital role legal services play in our economy. Around the world we promote England and Wales as a global legal centre, open new markets for our members and defend human rights.
2. We have long supported the campaign to remove blame from the divorce process in England and Wales and we remain committed to supporting steps to remove conflict from the divorce process and encourage parties to reach amicable agreements around their finances and the needs of any children of the marriage.
3. We welcome this opportunity to highlight to the Joint Committee the potential human rights issue raised by the current drafting of the Divorce, Dissolution and Separation Bill (the Bill). As we have highlighted in our briefings to parliamentarians, we would like to seek clarification of the notice period to be given to respondents in the case of sole petitions on the face of the Bill.

Divorce Bill and articles in the Human Rights Act

4. It is high time that divorce law in England and Wales is brought into the 21st century, but reform must guarantee a fair and equal process for all parties involved in the proceedings. As detailed further below, the Bill could raise issues under article 14 of the Human Rights Act 1998 due to its potential to have a particularly detrimental impact on women, who due to a range of societal issues are more likely to be less resilient to financial risks. While divorce affords some protections to women at the end of a marriage, they can only make best use of these legal safeguards if they can participate in the proceedings fully.
5. There is also potential for the Bill to raise issues under articles 6 and 8, depending on the individual circumstances in each case. For example, a judicial review challenge under article 8 could be brought due to the difference in treatment of those receiving the divorce petition at the end of the notice period and those who do not. The Bill also risks having a detrimental effect on children and may leave those affected by a divorce under this Bill in a vulnerable position if the respondent is unaware of the divorce proceedings being initiated until the last possible moment.
6. For these reasons, we strongly recommend the government to review the Bill and ensure respondents are provided with sufficient notice to seek independent legal and financial advice in order to understand their position and reach the best decisions for themselves and any children involved in the relationship.

Notice Period

7. Clause 1(5) of the Bill proposes that the notice period should commence from 'the start of proceedings.' We would support this in the case of joint petitions as both parties have

knowledge and have agreed to begin a formal divorce process. However, we believe that in the case of sole petitions the notice period should begin from the date of service on the respondent, when it can be demonstrated that the respondent has had, or can be considered to have formal receipt of notice.

8. We recommend that provision should also be made within the Bill for when notice should be served so as not to disadvantage either party. Given the increase in litigants in person and the introduction of a simplified online divorce process, we believe this will create a level playing field, giving both petitioners and respondents vital breathing room to resolve their affairs. Failure to set this out clearly within the Bill puts a differing and discriminatory timescale on a respondent, who may have much less than the 26 weeks period the government considers an appropriate notice period.
9. The Government has yet to clarify whether final decrees will be granted before financial relief is agreed. The Nuffield Foundation's 'Finding Fault'¹ report includes case examples of spouses already engaging in deliberately unhelpful conduct, for example, only engaging with the divorce process for payment. As the Bill is currently drafted, it is not difficult to imagine cases in which a financially stronger spouse withholds notice until the last possible moment in an effort to:
 - Restrict the respondent's opportunity to seek legal and financial support,
 - Coerce the respondent to agreeing to a less than favourable agreement with a financial incentive, or
 - Exert financial and emotional control over the respondent.
10. We acknowledge the issue raised by others that there may be some respondents who deliberately evade service as a form of perpetuating their control, though consider that the ability to manipulate the process could apply either way. We also recognise the narrative of applicant wives who are experiencing domestic abuse, and the likelihood of holding a strong desire to be divorced as quickly as possible. However, there is no direct link between the ease and speed of a divorce and a reduction in domestic abuse. Neither the divorce nor its progress and process ever provided any protection to victims of abuse. There may well be a psychological relief to the victim of abuse of being legally uncoupled. This may however be very limited, since a divorce can be made final whilst a couple are still living under the same roof and without any future plans having been made. The psychological benefit of speed in changing the marital status (only) therefore has to be balanced against the very real financial hardship that women may incur without the further measures being introduced.

Financial implications

11. Research shows that divorced and separated women are at heightened risk of experiencing domestic abuse and financial coercion, which must also be considered alongside data that women are still more likely than men to pause or stop their careers to raise children. As the Chartered Insurance Institute highlight, this means that divorced women are far less resilient to financial risk.² Data from the Office of National Statistics³ shows that the average age for divorce

¹ [Finding Fault? Divorce Law and Practice in England and Wales](#)

² The Chartered Insurance Institute illustrates https://www.cii.co.uk/media/7461333/risks_in_life_report.pdf

³ [Office for National Statistics, Divorces in England and Wales, https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/datasets/divorcesinenglandandwales](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce/datasets/divorcesinenglandandwales)

has increased, with an increasing number of marriages breaking down as couples reach their 50s. While the gender pay gap between men and women in their 20s has closed, the gap opens and widens in later years – in quite a significant part because of women taking time out of employment to have families. Research from Age UK also highlights that 40 percent of women aged 55-70 are heavily dependent on their partners' income for a decent retirement. The result is that many divorced women face increased and unexpected financial hardship, for example, the cost of legal proceedings, securing a home and saving for their futures.

12. While married women are generally entitled to a pension sharing order on divorce, women without appropriate legal advice are vulnerable to being left without protection. A pension sharing order comes into effect either on the granting of the final divorce order, or 28 days from the date of the pension sharing order, whichever is later. If the final order is granted and the pension sharing order has not taken effect i.e. 28 days have not elapsed, the pension sharing order will fail. So, if the pension member dies after a pension sharing order is made and within 28 days after the decree absolute is pronounced, the effect for the surviving party is that they cannot claim on the pension, as the sharing order has not taken effect so they cannot claim a widow(ers) benefit as the marriage has been ended by divorce. The spouse often affected is the wife and she therefore suffer unintended financial discrimination by the loss of the pension benefits.
13. We note that good practice by many specialists is to agree to delay the final divorce order until the final financial settlement, including pension sharing orders have taken effect. However, in the absence of agreement, case law is at best uncertain and therefore encourages litigation and at worst can be significantly prejudicial to a financial vulnerable applicant. There are pensions to share in approximately 80 percent of divorces⁴, and substantial differences in pension wealth held by men and women⁵, so this issue could impact many divorces and disproportionately affects women. We recommend a specific wording in the Bill with regards to pension sharing orders to insure against this potential widespread issue.
14. We recommend:
 - The Government review the Bill to ensure respondents are provided with sufficient notice to seek independent legal and financial advice in order to understand their position and reach the best decisions for themselves and any children involved in the relationship.

12/05/2020

⁴ Nuffield Foundation, Pensions on Divorce Interdisciplinary Working Group, <https://www.nuffieldfoundation.org/project/pensions-on-divorce-interdisciplinary-working-group>

⁵ Divorced women have a pension pot worth on average just a third of divorced men's, https://www.cii.co.uk/media/7461333/risks_in_life_report.pdf