The Fastest Divorce Law in the World?

England is about to pass into law what will be, for recipients of a divorce petition, probably the fastest divorce anywhere in the world. The respondent may have just over six weeks' notice from receipt, service, to the date of the final divorce decree. It will leave the recipient with almost no time to come to terms with the divorce or take protective financial steps. This inherent unfairness and haste could set the tone for what follows for the couple; an impact on co-parenting, terms of separation and accommodation and financial support. It is an irony that this reform seeks rightly to remove the unpleasantness of allocating blame yet brings in another unpleasantness in its place, by enabling the petitioner for a divorce to decide the timeframe when their spouse will be told. It is very fast and very unfair.

Even under the traditional Islamic Talaq system, there is three months' notice from beginning to end. Other countries with no-fault divorce, through a period of notice, require much longer.

The draft legislation, Divorce, Dissolution and Separation Bill having its 2nd reading in the House of Lords on 5 February 2020, has been misdescribed and misrepresented. Many supporters of no-fault divorce are unaware of this unfairness. Originally presented in the consultation by the Ministry of Justice as divorce with "a period of reflection and consideration", this does not exist in the Bill. There will often be no such opportunity.

The no-fault divorce will be based on a period of time between start and the final decree. After consultation this was fixed at 26 weeks, six months. Few dispute this period.

The fundamental problem is that there is no obligation for the respondent, the recipient of the divorce, to be served at the beginning when the time starts to run. The new law expects a period of 20 weeks between the commencement of the proceedings and the first decree of divorce and then 6 weeks until the final decree of divorce, hence the 26-week period. Plenty of time. Opportunity to reflect, consider and talk. Perhaps even marital counselling and reconciliation? Certainly, negotiation and mediation. Unfortunately not. The respondent may not know about any divorce taking place at all until it's all too late. She or he may only know when they are served along with the application for the first decree of divorce with only six weeks or so then to go. There is no duty to serve at the start of the 20 weeks. It can be any time before the first decree.

I have been an active supporter of no-fault divorce. I was the primary author of the leading textbook on the Family Law Act 1996. My keenness is undiminished. Having practised in family law as a solicitor, mediator and part-time family court judge over several decades, I see many problems created by the need to show fault.

But we must recognise in any no-fault system the particular impact on the respondent. She or he may not know of the unhappiness of the other spouse. She or he may not know of the

affair prompting the spouse to seek a divorce. She or he may have a genuine belief in the possibility of the marriage continuing with the benefit of marital counselling. She or he may want to delay the divorce for the sake of the children including a key stage in their education. She or he may lose out badly in the financial consequences if the final decree precedes the final financial order. These aspects are all stacked against a respondent in a no-fault system. Yet they cannot delay or stop the no-fault divorce. That is why there must be protections and safeguards.

In any no-fault divorce system, there should be at least an equal playing field and probably some partiality to the position of the respondent. Instead this Bill goes in the opposite direction and puts all the cards into the hands of the petitioner.

It is the petitioner who decides when to commence the proceedings. It is the petitioner who files the papers at the court, very probably online. Perhaps even hastily after a marital bust up because of the ease of online filing, and there is some evidence that this is already occurring.

At that point of filing at court, the 20 week starts to run. It is then the petitioner who decides when to serve the respondent, specifically whether at the outset or towards the end of the 20-week period. There is no obligation to serve divorce papers within any period of issuing them. So, unless served immediately, the respondent is in marital blissful ignorance. And so, the petitioner remains in the marital home, perhaps around the marital dining table or on the marital sofa, with his or her divorce petition in their back pocket and the other spouse thoroughly unaware of what is looming. As the end of the 20 weeks approaches, he or she knows they have to notify the respondent of their intention to seek the first decree, which means telling them that four or five months earlier he or she had issued a divorce petition against the other. Everyone can anticipate the trauma, distress and anger this will cause. The previous four months will be regarded by a respondent as a deceitful lie. It will affect co-parenting as there will be immediate distrust. There will be minimal chance of marital counselling and reconciliation. It will badly affect opportunities to negotiate terms of any separation. It will set back the chance of resolving financial implications. It encourages the worst sort of marital behaviour.

The disadvantage is found in other ways. When there is a pension, one spouse can lose out badly if the final divorce decree occurs before the financial settlement. If there is minimal notice, a financial settlement is impossible in time. A proposal that the final divorce decree is delayed if there would be any financial prejudice to pension claims has been turned down by the Ministry of Justice.

For international families there is more disadvantage. There might be a dispute about which country is appropriate for the proceedings, a so-called forum dispute. This English law would give opportunity for tactics in concealing the existence of a divorce for several months.

The answer is simple. The 20-week period only runs from the date of notification, service, on the respondent. Easy, definable, fair, certain and reasonable. It accords with basic

human rights. This has been proposed several times to the Ministry of Justice but each time they prefer to give preference to the petitioner. The Law Society has lobbied for these changes over the past nine months.

England needs no-fault divorce. We should have had it in 1996 and we are now 25 years on. But having waited, we need a model of divorce fit and appropriate for the 21st century with specifically fair provisions for the respondent to the divorce. Start the 20 weeks running when there is service on the respondent. Do not allow a final decree if a spouse would be prejudiced in respect of pension claims i.e. only after the final financial settlement. Give us a 21st-century divorce for a leading global, influential country of which we can be proud and fair to both spouses and for family life

The House of Lords is urged to make these changes.

David Hodson OBE MCIArb
dh@davidhodson.com [2]
The International Family Law Group LLP
www.iflg.uk.com [3]

Posted by David Hodson OBE MCIArb [9]
