

NO FAULT DIVORCE TO BE ENSHRINED IN LAW

Dr Neil Sullivan



Legislation, now awaiting Royal Assent, for “no fault” divorce has recently been backed by the Commons with a significant majority.

The Bill, which when passed will be known as the Divorce, Dissolution and Separation Act 2020¹ removes the need to find fault in the marriage and allows a statement of “irretrievable breakdown” to suffice. The latter requires currently establishment of one or more of five “facts” – three relate to conduct (adultery, unreasonable behaviour or desertion and two relate to the period of separation; two years if both spouses consent, five years if not) in order to start divorce proceedings.

This legislation follows a long campaign by Resolution and other groups, to reform outdated laws (inter alia the Matrimonial Causes Act 1953 and the Civil Partnership Act 2004), which although hotly debated and eruditely analysed² will help to reduce conflict between separating couples.

The current process incentivises one of the spouses to make allegations about the other to avoid waiting for the mandatory two-year period of separation. This can result in unnecessary conflict, discord and acrimony, which may involve the children of the marriage and damage their chances in life³. The new legislation removes the needs to provide supporting evidence of one or more of the above conduct or separation facts with a statement of irretrievable breakdown. This legislation also removes the ability to contest the divorce.

There are many genuine circumstances and reasons for an irretrievable breakdown to occur between two people and this may on occasion relate to the biological identity

of a child with respect to paternity. On occasion of course, fabricated accusations of adultery may weaponise the biological identity of the children, and under current law, this might be used as a tactic to accelerate the divorce process. For example, there may be the accusation that the man is not the father of the child or that he has been unfaithful and fathered a child outside of the marriage.

Both of course relate to the matter of trust, which can easily be assumed or earned, but when lost, is impossible to regain – once the spectre of paternity has been raised, it is impossible to reverse and constantly raises its head at a time when the best interests of the child should be foremost. The debate in the Lords⁴ was fascinating.

Fortunately, the availability of DNA testing for paternity (or other biological relationship such as siblingship) is one of the few areas in divorce proceedings where unequivocal evidence can be obtained to support the case. If the parentage of a child is at issue, then a DNA test becomes a vital piece of information to help alleviate either genuine or vexatious claims and minimise any harm to children from the break-up, whether this is under either the current or the new legislation. Indeed, a DNA test can only be to the benefit of children, who have a fundamental right to be sure of the identity of their biological father, irrespective of circumstances.

Any DNA test should be conducted by a Ministry of Justice accredited provider (such as ourselves) and if you have such

a case, please contact us, we are highly experienced and would be happy to help!

Dr Neil Sullivan
General Manager
www.dadcheckgold.com

To discuss DNA testing to establish paternity or other biological relationship, please call **0191 543 6334** or **e-mail: sales@dadcheckgold.com**.

Complement Genomics Ltd, the provider of the dadcheckgold service, is accredited by the Ministry of Justice as a body that may carry out parentage tests as directed by the civil courts of England and Wales under section 20 of the Family Law Reform Act 1969.

¹ <https://publications.parliament.uk/pa/bills/cbill/58-01/0125/20125.pdf>

² <https://services.parliament.uk/Bills/2019-21/divorcedissolutionandseparation/documents.html> and the Impact statement from the Ministry of Justice <https://publications.parliament.uk/pa/bills/cbill/58-01/0125/Impact%20Assessment%20-%20Divorce%20Bill.pdf> paragraphs 67-69 inclusive.

³ <https://acamh.onlinelibrary.wiley.com/doi/epdf/10.1111/jcpp.12893>

⁴ <https://www.theyworkforyou.com/lords/?id=2020-03-17a.1390.2>