

### Walker (1991)

## The Family Law Act 1996 and the Failure of Divorce Reform

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<sup>1</sup> Janet Walker *The Politics of Divorce Reform*- (Routledge, 1991).

<sup>2</sup> Family Law Act 1996.

<sup>3</sup> Matrimonial Causes Act 1973.

<sup>4</sup> Law Commission, *Family Law: The Ground for Divorce* (LAW COM. No.192, 1990), 7.

<sup>5</sup> Children and Families Bill HC Bill (2013) [131], para 140.

<sup>6</sup> *ibid*, s.1.

<sup>7</sup> (n 2), s.3(1).

The FLA 1996 aimed to modernise divorce law and reduce conflict between separating spouses. Its most significant proposal was the introduction of **no-fault divorce**, replacing the five “facts” required under the 1973 Act (adultery, unreasonable behaviour, desertion, two years’ separation with consent, or five years without) with a single ground: the irretrievable breakdown of the marriage. This represented a radical departure from the adversarial fault-based system, which often forced couples to allege misconduct in order to obtain a divorce quickly.

A second major reform was the introduction of mandatory information meetings and a reflection and consideration period.<sup>8</sup> Before filing for divorce, couples would have been required to attend meetings to receive information about mediation, counselling, and reconciliation services. Following this, they would enter a statutory waiting period of at least nine months, extended to fifteen months where children were involved, before a divorce could be finalised. The Law Commission proposals explained that this period was primarily designed to give parties to opportunity to consider the consequences of separation or divorce before it happens.<sup>9</sup>

These measures were designed to slow down the process, encourage reflection, and promote the possibility of reconciliation.

The Act also placed emphasis on mediation and alternative dispute resolution- for example, S. 14 (1) (a) and (b) empower courts to adjourn proceedings in order to allow parties to pursue mitigation or to resolve the dispute amicably.<sup>10</sup>

In addition to the changes made to divorce, the Act included broader reforms to the area of family law more generally. For example, in Part IV, the Act introduced Occupation Orders and Non-Molestation orders, both aimed at protecting parties against domestic violence.<sup>11</sup> In contrast to rules on divorce, these broader reforms remain in force today.

The Act also placed greater emphasis on **mediation and non-court dispute resolution**, with courts under a duty to consider whether mediation was more appropriate than litigation. Further provisions highlighted the importance of children’s welfare, ensuring that the needs of children were central to decisions about divorce and separation. Additionally, Part IV of the Act introduced new protective measures against domestic violence, including non-molestation and occupation orders. Unlike the divorce reforms, these provisions were implemented and remain significant in family law today.

<sup>8</sup> (n 2), s.7-8.  
<sup>9</sup> (n 4), 32.  
<sup>10</sup> (n 2) s.14.  
<sup>11</sup> (n 2), Part IV.

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## Reasons for the Failure of the Reform

Despite its ambitious aims, Part II of the Act, which contained the divorce reforms, was never brought into force. One key reason was the **failure of the pilot schemes for information meetings**. Research indicated that these meetings did not work as intended: rather than promoting reconciliation, many couples found them bureaucratic, stressful, and unhelpful. The uptake of mediation was also far lower than expected, undermining the central philosophy of the reforms. However, despite the ambition of the reforms, Part II of the Act was never fully implemented. Lord McNally, then Justice Minister, explained that the government had decided that the provisions were 'unworkable'.<sup>12</sup> He explained that the findings from pilot schemes designed to test the effectiveness of the information meetings demonstrated that the meetings came too late to save marriages and, often, had the effect of causing 'parties who were uncertain about their marriages to be more inclined towards divorce'.<sup>13</sup>

Further, Lord McNally noted difficulties with the length and complexity of the process. The reflection period imposed by the FLA was nine months long, which critics found to be unnecessarily long and even paternalistic, in that it forced couples to remain married against their wishes.

Finally, there was a lack of political consensus regarding the reforms to the divorce law. Some stakeholders, particularly more religious or traditional groups, criticised the reforms as making divorce too simple and thereby undermining the sanctity of marriage. In contrast, other groups believed the reforms, including the long reflection periods, were overly restrictive and paternalistic. This reinforces the argument made by Walker that divorce law is inherently contentious as it reflects deeply-held beliefs about the meaning of marriage and, therefore, any reforms to the law on divorce are very unlikely to please everyone.

As a result of all of these limitations, the reforms were never fully implemented. The Labour government concluded that the reforms were 'unworkable' in 2001. The relevant sections of the FLA 1996 were later repealed in 2014.

A second difficulty lay in the **length and complexity of the process**. By imposing reflection periods of nine to fifteen months, the Act risked making divorce longer and more burdensome. Critics argued that this was unnecessarily paternalistic, forcing couples to remain married against their wishes. Rather than reducing hostility, the extended delays often increased tension between parties.

The reforms also suffered from a lack of political and social consensus. Religious and traditional groups condemned the reforms as too liberal, believing they made divorce easier and undermined

<sup>12</sup> House of Commons Library, 'No-Fault Divorce' (2019) Briefing Paper No 01409, 14.

<sup>13</sup> Ibid, 14.

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the sanctity of marriage. Conversely, others argued that the reforms were too restrictive, imposing unnecessary barriers for couples whose relationships had clearly broken down. This tension reflected Walker's (1991) point that divorce law inevitably clashes with competing values and beliefs.

Finally, the reforms were a victim of **changing political priorities**. The Act was introduced under the Conservative government of John Major, but after Labour came to power in 1997, the enthusiasm for implementing the reforms diminished. By 2001, the government concluded that the measures were "unworkable," and the provisions were eventually repealed in 2014.

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## Evaluation and Legacy

The failure of the FLA 1996 can be explained by its **overly ambitious and contradictory aims**. On the one hand, it sought to reduce divorce rates by slowing the process and encouraging reconciliation; on the other, it attempted to reduce conflict by removing the need to prove fault. In practice, these two goals were difficult to reconcile, and the practical mechanisms (such as information meetings) proved ineffective. The Act therefore satisfied neither those who wanted to protect marriage nor those who sought a simpler, more humane process.

Although Walker argues that divorce laws will never please everyone, the reforms implemented by the FLA 1996 failed partly because they failed to please *anyone*. As explained above, the reforms were too liberal for those holding traditional views on marriage and not liberal enough for others. It could be argued, therefore, that despite the ambition of the FLA reforms, the Act should have been more ambitious and clearer on its overall aims rather than trying to please all parties.

In spite of this, the legacy of these reforms should not be dismissed. The emphasis on mediation and the attempts to reduce conflict between divorcing parties paved the way for the Divorce, Dissolution and Separation Act 2020.<sup>14</sup> The Act introduced no-fault divorce without the mandatory reflection periods and mediated required under the FLA 1996 and, therefore, achieved the aims of the original reforms without the drawbacks which resulted in the failure of those reforms.

Nonetheless, the legacy of the FLA 1996 should not be dismissed. Its emphasis on mediation, children's welfare, and protection from domestic violence influenced later developments in family law. Most importantly, the failure of the 1996 reforms paved the way for a more straightforward approach: the **Divorce, Dissolution and Separation Act 2020**, which introduced a true no-fault divorce system without the complications of mandatory reflection periods or compulsory mediation. In force since April 2022, this Act represents the realisation of many of the 1996 Act's aims, but in a far more workable form.

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<sup>14</sup> Divorce, Dissolution and Separation Act 2020.

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## Conclusion

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To conclude, the Family Law Act 1996 was an ambitious attempt at reforming divorce law by introducing no-fault divorce alongside promoting mediation, reflection and consideration. The fact that the reforms were never fully implemented, due to the failure of pilot schemes and lack of political and social consensus, supports Walker's view that divorce law is inherently controversial. However, the Act paved the way for recognition of the need for a simpler and less adversarial approach to the law on divorce, which has since been implemented in the 2020 Act.

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In conclusion, the Family Law Act 1996 represented a bold attempt to transform divorce law by introducing no-fault divorce, encouraging reflection, and promoting mediation. However, its implementation was fatally undermined by the failure of pilot schemes, the complexity and length of the process, and the lack of political and social consensus. The reforms were ultimately abandoned, confirming Walker's view that divorce law is inherently controversial. Yet, the Act's legacy remains important: it highlighted the need for a simpler, less adversarial system, a vision that was eventually realised through the 2020 reforms.

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