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CALL TO REFORM DIVORCE LAW WITH COMPULSORY COOLING OFF PERIOD

A compulsory three-month “cooling off” period in which estranged couples must find out about the implications of a divorce is recommended in a major new report on family law reform to be published tomorrow (Monday).

The compulsory delay before divorce proceedings could begin would be used to encourage both parties to reflect on their marriage and to gather information about the scope for reconciliation and key issues such as the financial impact of a split.

The recommendations are the heart of a report proposing a far-reaching overhaul of the law aimed at putting marriage at the heart of family life.

“This three-month period is endeavouring to save saveable marriages,” it declares.

The report, *Every Family Matters*, comes from the Centre for Social Justice, the think-tank set up by the former Conservative leader Iain Duncan Smith, which has had a major bearing on David Cameron’s social policy-making.

Another key conclusion from the report is a rejection of moves to give couples living together the same legal rights as those who are married.

The authors, a high-powered team of lawyers led by David Hodson of London-based The International Family Law Group, also call on the Government to give “strong encouragement” to marriage preparation classes, although they fall short of insisting that such advice be compulsory.

Mr Duncan Smith said: “Instead of giving cohabitants similar legal rights as married couples, which would only undermine marriage, we have to do more to warn people that they can only secure the legal protection of marriage by getting married.

“The cooling off period and the requirement for estranged couples to receive information about the implications of divorce will help to save some worthwhile marriages. This is based on the highly successful Australian system which is accepted by most as a genuine aid to family stability.”

On pre-divorce counselling, the report says: “Before any proceedings in family law can be commenced, with certain exceptions (such as domestic violence), the applicant must have obtained, received, attended at or in other ways have had the opportunity to consider certain information.

“This would include reconciliation opportunities and resources, alternative dispute resolution (settlements reached out of court), impact on children, costs and court procedures...A certificate of attendance would be required before proceedings could be issued.

“We propose a three-month period of reflection and consideration before the divorce petition goes ahead.

“This is a direct encouragement to the obtaining of this information during the three-month period to reflect on the relationship, the impact of any divorce...and any prospects of reconciliation.”

The report warns that lax divorce laws and related procedures are “causally implicated in high rates of family breakdown.”

The report makes the case for the retention of a fault provision during divorce proceedings “While in very many marriage breakdowns there is fault on both sides, there are some where fault lies wholly or very substantially with one spouse alone and it would be wrong in these cases for there not to be any fault basis.”

It rejects the arguments from the Law Commission for the elimination of fault from divorce proceedings.

The report rejects calls to give cohabitants similar legal rights as married couples because such a step would have an adverse effect on the distinctive status of marriage. Instead, a greater public education effort should be made to dispel the widespread but mistaken belief that the law recognises cohabitants as “common law spouses”.

The incredibly high level of cohabiting families who split up is worrying. Approximately half of all cohabiting couples with children will split by the time the child is five, the equivalent figure for married couples is 1 in 12.

Polling carried out by YouGov for the report showed that most people (57 per cent) believed the law should promote marriage in preference to other kinds of family structure, such as cohabitation, with 27 per cent disagreeing. Fifty eight per cent of people thought that giving cohabitants similar legal rights as the married would undermine marriage and make people less likely to wed.

The report backs a tax break to promote marriage and finds that this is supported by 85 per cent of people, according to the poll.

The authors reject the notion that marriage is a “lifestyle choice”.

They say it has been recognised by anthropologists as being a universal institution that has existed for thousands of years throughout human history.

Only since the 1970s has marriage come under threat with the rise of cohabitation: one per cent of women marrying in the 1950s cohabited with their husbands-to-be, compared with 80 per cent today.

But despite the rise of cohabitation, marriage remains popular. Some 75 per cent of couples living together say they want to get married.

The report says that marriage brings many benefits to couples, children, individuals, the wider family and the nation as a whole.

It states: “Marriage has causal effects that help to stabilise the couple relationship and reduce the chance of breakdown.

“When a couple get married they make public commitments to each other and they enter into a set of socially-defined relationships with kin and society at large.

“They take on new social roles which are conventionally regarded as permanent. The resulting ties and expectations alter the behaviour and perceptions of the couple and help to strengthen and stabilise their relationship.”

And the authors call on the Government to do much more to promote marriage and to help couples in difficulty.

“A government that wants to prevent family breakdown and benefit society cannot ignore these statistical differences and research evidence any longer, but must do all it can to deal with this issue.

“It is clear that marriage is good for society and yet research indicates that while aspirations are high for marriage, and married couples prize their relationships, there is a sense that sections of society do not place a high enough value on or truly recognise the benefits of marriage.

“Marriage is of paramount importance to individuals, children, communities and our nation.

“It has been neglected by Parliament over many years. An inappropriate anxiety not to exclude or to appear to cast judgement on other lifestyle relationships has resulted in marriage being devalued.

“It has suffered in terms of central government and local government funding, fiscal opportunities, welfare benefit opportunities, legal reforms and other appropriate encouragements and incentives.”

“Marriage benefits the nation. Those who are married are statistically more likely to be law-abiding and in other ways to engage in activities which are supportive of a nation rather than contrary to the best interests of a cohesive, constructive, positive and forward-looking country.

“The breakdown of marriage and other, less stable relationships generate real financial costs to society – not only the direct costs of supporting lone parents, but also indirect impacts on employment, education, health, crime, police and prisons and so on.”

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NOTES TO EDITORS

The Centre for Social Justice is an independent think tank, established by Rt Hon Iain Duncan Smith MP in 2004, to seek effective solutions to the poverty that blights parts of Britain.

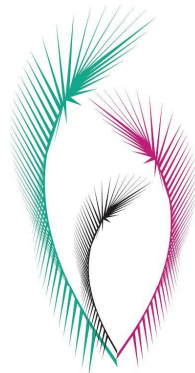
In July 2007 the group published *Breakthrough Britain. Ending the Costs of Social Breakdown*. The paper presented over 190 policy proposals aimed at ending the growing social divide in Britain.

Subsequent reports have put forward proposals for reform of the police, prisons, social housing, the asylum system and family law. Other reports have dealt with street gangs and early intervention to help families with young children.

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