

DIVORCE PROCEDURE GUIDE

This information sheet outlines the main steps in an uncontested divorce. The mechanics of obtaining a divorce nowadays are usually straightforward – particularly if the couple agree that the marriage is over. The difficulties tend to lie in resolving the related practical issues stemming from divorce such as how to separate, where to live, arrangements for the children and money matters.

Your attention will probably focus on those related issues and the process of actually obtaining the divorce may seem blurred. The purpose of this leaflet is to outline a broad framework of the divorce process.

Can I start divorce proceedings?

Anyone who has been married for over a year can issue proceedings provided that one or other of the couple is either domiciled here or has been resident in England or Wales during the preceding year. It does not matter where the couple were married.

Upon what grounds can I start my Petition?

The only ground for divorce is that the marriage has irretrievably broken down. However, it is necessary for the person commencing the proceedings to show the Court that the marriage has irretrievably broken down by establishing one of the following five facts: -

1. That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent;
2. That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;
3. That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding presentation of the Petition;
4. That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding presentation of the Petition and the Respondent consents to a decree being granted;
5. That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding presentation of the Petition.

If the marriage has “irretrievably broken down” and one of the five facts applies, what happens next?

This will depend on your particular circumstances. It is often sensible to attempt to obtain your spouse’s consent to the Petition and to try and agree the contents of the Petition. For example, if your spouse accepts that a Petition should be issued on the basis of unreasonable behaviour, only a brief outline of the particular behaviour may need to be

given. We will apply the current family protocol which means that the particulars cited will be kept as short and as mild as possible.

You will need to provide us with your marriage certificate. This must be lodged at Court with your divorce petition. If you cannot locate your marriage certificate a certified copy may be obtained from the Registrar of Births, Deaths and Marriages for the district in which the marriage took place. There is a fee payable to the Registrar of £10.

What will the Petition look like?

Every Petition follows the same form. It contains basic information about names, addresses, ages of the children and a statement that the marriage has irretrievably broken down. It will also state the “fact” relied upon.

The Petition will contain a section called a “prayer” which will request that a divorce be granted. It may also include a claim for the costs of the divorce and an order for financial provision for yourself and the children.

What about the children?

The dates of birth of any children of the family will be include within the Petition, otherwise the children are considered separately by the court. Please see our Children Act Procedure Guide for more information.

How much does the divorce cost?

Our standard rate for an undefended divorce is £700 plus VAT plus the court fee of £550, an overall total of £1,390. Please note that should the divorce proceedings become defended or do not progress in a straightforward and timely fashion then we may need to review the level of costs set out above.

Are the financial issues dealt with before the divorce is finalised?

It is not necessary in every case for financial decisions to be completed before the divorce is made final. Frequently they can be at an early stage if the finances are complicated. In some cases we may advise a divorcing wife not to apply for the Decree Absolute (the final order dissolving the marriage) until financial matters are resolved, for example, where her husband has a pension.

Are the proceedings public?

Court proceedings in family law are usually in private. This means that the public and press are not allowed access to the Court paperwork. However, the press are allowed to publish that fact that a divorce has been pronounced, although locally this is rarely done. The information they can disclose is extremely limited.

Finances

A Decree Absolute will not sever your financial links. Finances should be addressed during your divorce.

You should obtain an order from the Court within divorce proceedings recording definitively the terms of any financial settlement achieved with your spouse. This can hopefully be done by consent (agreement). If you do not obtain such an order from the Court, it is possible that your former spouse could, many years later, bring a Court action against you for capital lump sums and spousal maintenance.

If financial matters remain unresolved after Decree Absolute, you should not remarry without seeking specific legal advice first. If you do remarry without addressing outstanding financial issues, you may find that you will be prohibited from issuing a financial application at Court.

TIMETABLE

1. After one year of marriage

Either spouse can issue a Petition. He or she is referred to as the "Petitioner". The petitioner files a Petition, a Statement of Arrangements about the children and the marriage certificate. The latter is generally not returnable. The Petitioner will also have to pay the issue fee, which is currently £410 and covers the application for Decree Absolute.

2. What happens next?

The Court will send a copy of the Petition and the Statement of Arrangements for the Children to the other spouse who will be referred to as the Respondent. If the Respondent has instructed a solicitor the paperwork can be sent to them.

3. From the date the documents are received the Respondent has strict time limits to observe

Within 8 days

The Respondent should complete and return the "Acknowledgement of Service" form, which will accompany the Petition. This form will ask the Respondent if he or she intends to defend the divorce, whether they have any objection to paying Court costs and whether they agree with the arrangements for the children.

Within 29 days of receipt

Whether or not the Acknowledgement of Service is filed, the Respondent must, if he/she intends to defend the Petition file a Defence (called an Answer). The Respondent can also Cross-Petition i.e. issue his or her own Petition. The Petition becomes defended and the procedure below does not apply. Defended proceedings are very rare.

Within a few days of lodging the Acknowledgement of Service

The Court will send a copy of the Acknowledgement of Service form to the Petitioner's solicitor and if the Petition is not defended the Court will invite the Petitioner to apply for Decree Nisi under special procedure.

4. The Petitioner applies for Decree Nisi

The Petitioner will have to sign a short Statement to confirm that the contents of the Petition are true. The Petitioner can also outline to the Court any changes that have taken place since filing the Petition. Once all the paperwork has been completed it will be sent to the Court and a Decree Nisi date will be requested.

5. What happens if the Respondent fails to lodge an Acknowledgement of Service?

In order to proceed it is necessary for the Petitioner to show that the Respondent has received the Petition i.e. has been served. Various steps can be taken to effect service. The Court bailiff or an enquiry agent can be instructed to effect personal service. In exceptional cases the Court will order that proof of service of the Petition upon the Respondent is not necessary. This is called "dispensing with service"

6. Upon receipt of the request for a Decree Nisi date the Court will consider the request for a divorce

The District Judge will look through the paperwork and if he/she is happy with the same will grant a certificate allowing the petition to be listed for a Decree Nisi date. He/she will issue a certificate of satisfaction with regard to the arrangements for the children and if necessary make any costs orders. Alternatively he can refer the question of costs to a Judge in open Court. The Court will notify the Petitioner and Respondent of the Decree Nisi date. There is, generally, no need to attend this appointment and the Court will send a copy of the Decree Nisi a couple of days thereafter. If there is a dispute about the payment of costs the Petitioner and the Respondent will be invited to attend Court so that the Judge can make a decision.

7. What happens about the children

If an agreement has been reached over the children, then the Court will not usually interfere.

If the parties are in disagreement then either one of them can apply to the Court separately for Children Act Orders to be made. If the District Judge is concerned about the arrangements for the children he can invite both parties to attend a short appointment at court. Usually a Children and Family Reporter will be on hand to help the parties agree a way forward.

8. Applying for Decree Absolute

Six weeks and one day after the Decree Nisi the Petitioner can apply for Decree Absolute.

If the Petitioner fails to apply for the Decree Absolute the Respondent can apply 3 months after the date that the Petitioner could first apply for the Decree Absolute.