

3. DIVORCE - (RESOLUTION GUIDANCE ON DIVORCE PROCEDURE)

The mechanics of obtaining a divorce nowadays are usually quite straightforward – particularly if the couple agrees 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 any money matters. This means that the process of actually obtaining the divorce may seem blurred. The purpose of this leaflet is to outline and highlight the key points of the proceedings, and the approximate timescales.

1. Who can start divorce proceedings?

Anyone who has been married for over a year provided one 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 married.

2. On what grounds can a divorce be started?

The only ground for divorce is that the marriage has irretrievably broken down, but there is a complication. A divorce will only be granted if one of the 5 facts laid down by law, proving irretrievable breakdown, is established.

3. What are the five 'facts'?

- (a) Your spouse has committed adultery and you find it intolerable to continue living together. It is not usual to name anyone within the Petition *unless there are exceptional circumstances*.
- (b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together.
- (c) Your spouse has deserted you for a continuous period of 2 years or more.
- (d) You and your spouse have been living separately for 2 years or more and your spouse agrees to the divorce.
- (e) You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

4. If the marriage has 'irretrievably' broken down, and one of the 5 facts applies, what happens next?

You will now look to complete the divorce papers. If possible, it can be sensible to obtain your spouse's agreement over the contents of the Petition. For example, if your spouse accepts that the petition should be based on unreasonable behaviour, only a brief outline of the particular behaviour may need to be given. Toning down the particulars will not usually prejudice your future position. It is recommended by Resolution and the Law Society that the Petition is provided to the spouse before being sent to court.

5. What does the petition actually look like?

Every petition follows the same form. It contains basic information about the husband and wife and the children, and contains a statement that the marriage has irretrievably broken down. It will also state the 'fact' on which it is intended to rely and a statement setting out the particulars which are relied upon.

6. What about the children?

A form is sent to the Court (known as a 'Statement of Arrangements for Children') with the divorce petition which outlines the arrangements relating to the children. Couples are encouraged to try and agree those arrangements. It should preferably be sent to the other spouse before it is filed with the court, but if agreement is not reached, this will not usually prevent the divorce from proceeding.

7. How much does the divorce cost?

This depends on the finances of each party. Those unemployed or on a low income are likely to be eligible for advice; Legal Help from the Legal Services Commission (Legal Aid). This means the state will pay the solicitor's costs. Those who are ineligible will be provided with an estimate of their costs at the beginning of the case. The Family Department offers **the first consultation free for private paying clients**.

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

It is not necessary for financial discussion to be completed by the time the divorce is final. Frequently it will still be in the early stages if finances are complicated. However, it should at least be possible to resolve immediate problems and make temporary maintenance payments.

9. Are the proceedings public?

Court proceedings in family law are usually private. This means that the public and press are not allowed access to the Court papers. However, the press are able to publish the fact that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the 'facts' of the divorce but they are not able to publish details of the adultery or unreasonable behaviour.

10. Timetable

10.1 Filing the Petition

Either spouse may start the divorce. He or she is referred to as the 'Petitioner'. The other party is the Respondent. The petition and statement of arrangements about the children are completed and then sent to the court together with the original marriage certificate. A court fee, currently £300.00 is payable, although the Petitioner can apply directly to the Court for a 'fee remission' to apply to be exempt from paying that fee or to pay a reduced fee. Proof of income (and in some cases proof of expenditure and bank statements also have to be sent to the Court to support).

10.2 Issuing the Petition.

The Court sends a copy of the petition and statement of arrangements to the other spouse referred to as the 'Respondent'. A copy of the petition is also sent to anyone named in an adultery petition and that person may be referred to as a 'Co-Respondent'. If the Respondent (or Co-Respondent) has instructed solicitors, the petition may be sent to them. A notice is sent by the Court confirming this and giving the case a unique 'case no', which has to be used in all correspondence.

10.3 The Respondent then has strict time limits to observe.

(a) Within 8 days

He or she should send to the Court a form called an 'acknowledgement of service' which accompanied the petition. The form asks the Respondent whether they intend to defend the petition, whether any claim for costs is disputed and whether orders affecting the children are sought.

(b) Within 29 days of the receipt

Whether or not an acknowledgment of service has been filed, the Respondent must, if they intend to defend the petition, file a Defence (called an 'Answer'). The petition then becomes defended and the procedure outlined below does not apply. Defended divorce proceedings resulting in a fully contested hearing are very rare. However, a delay in finalising the divorce is inevitable.

10.4 The Respondent (and Co-Respondent) return the acknowledgement of service

The court sends to the Petitioner or their Solicitors a copy of the form(s) of acknowledgement of service.

10.5 If the Respondent is not defending, the Petitioner applies for Decree Nisi to be granted.

The Petitioner's Solicitor prepares a sworn statement (a Special Procedure Affidavit) for the Petitioner to swear confirming that the contents of their petition are true. It will also state whether any circumstances (including those relating to the children) have changed since the filing of the petition. The Petitioner will swear the document before a Commissioner (for a fee of £7.00) or a Court Official (free of charge). It will then be sent to the Court with the request for a date for the first decree of divorce ('Decree Nisi') to be pronounced.

10.6 If acknowledgements of service are not returned to the Court.

Proof that the Respondent and any named Co-Respondent have received the petition will have to be obtained before the Petitioner can take the next step. This may involve arranging for someone to deliver the petition to

the Respondent and any named Co-Respondent personally or, exceptionally, obtaining a Court order that proof does not need to be given that the Respondent and the Co-Respondent have received the petition. This is called 'dispensing with service'. These steps will inevitably slow down the proceedings.

10.7 The District Judge's Certificate

The District Judge looks through the papers and, if they are content with them, gives a certificate for the Decree Nisi to be pronounced. Both the Petitioner and the Respondent are then advised of the date fixed for Decree Nisi. Depending on the Court diary, the date could be anything from a few weeks, to a couple of months, after the application is lodged.

Neither the couple nor their lawyers normally have to attend Court for the pronouncement. The District Judge may also consider whether or not to award the costs of the undefended Divorce proceedings, against the Respondent/Co-Respondent. There may be need for one party then to attend.

10.8 What about the children?

If agreement has been reached, the District Judge is unlikely to interfere. He will then issue a certificate confirming this.

If agreement has not been reached, the District Judge may ask the Petitioner and the Respondent to file further evidence or to attend an appointment to explore a solution to the difficulties. The District Judge may also ask for a CAFCASS Officer (court appointed reporter) to become involved. If a solution cannot be reached, this could delay the application for a final decree of divorce.

10.9 Applying for the Decree Absolute

The Petitioner may apply (6 weeks and 1 day after Decree Nisi) for the final decree ('Decree Absolute') by sending the appropriate form to the Court. It is not automatic. Unless you are eligible for a free or reduced court fee you will have to pay a court fee of £40.00. This Decree will be processed and may be available as quickly as the same day although often it can be a few days depending on the workload of the Court.

In Divorce proceedings based on separation, a financially dependent or financially disadvantaged Respondent may apply to the Court to delay Decree Absolute, until appropriate and adequate financial provision has been made for him or her.

Proceedings can in fact be stopped at any time up until Decree Absolute.

The Respondent may apply for the Decree Absolute if the Petitioner has not already done so, three months, six weeks and one day after Decree Nisi. Such an application will only usually be granted where the financial and property aspects of the marriage have been completed.

The effect of a divorce?

You become unmarried and you, and your former spouse, are free to remarry if you so choose. However remarriage will usually end your right to make financial claim for yourself in the Divorce proceedings. If you have obtained a Decree Absolute of divorce but have not resolved the financial side of that divorce it is essential you obtain legal advice and apply to the court if necessary to determine the divorce settlement before any remarriage. A decree absolute will also treat your former spouse as never having existed under the terms of any Will.

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.

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