

Divorce

The purpose of this leaflet is to outline a broad framework of the divorce process, to highlight key points and to set out the sort of timetable to expect. It is important to realise that issues in relation to financial matters and the children are dealt with separately; please ask for advice.

1. Who can start divorce proceedings?

Anyone who has been married for over a year provided one or other of the couple lives in this country; it does not matter where you were married. If you or your spouse is a foreign national or lives abroad, the rules about whether or not you can divorce in this country are quite complex; please ask for further advice.

2. On what grounds can a divorce petition be started?

The only ground for divorce is that the marriage has irretrievably broken down, but irretrievable breakdown must be established by relying on one of five “facts” laid down by law. These are that:

- a) Your spouse has committed **adultery** and you find it intolerable to continue living together; or
- b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together (“**unreasonable behaviour**”); or
- c) Your spouse has **deserted** you for a continuous period of 2 years or more; or
- d) You and your spouse have been **living separately for 2 years** or more, and your spouse **agrees** to the divorce; or
- e) You and your spouse have been **living separately for 5 years** or more, whether or not your spouse consents to the divorce.

3. What if your spouse wants a divorce but you do not?

If you think that there is a possibility of a reconciliation, you should consider going to a service such as RELATE (formerly Marriage Guidance). Please do not forget that your GP can also assist you if you are finding matters difficult to cope with emotionally. Even if divorce proceedings have already been started, they can be stopped at any time before Decree Absolute.

People sometimes wish to formalise their separation without divorcing, for example for religious reasons or to preserve widow’s benefits that may be lost following divorce. Judicial Separation proceedings are very similar to divorce proceedings but the difference is that at the end of the proceedings you are still legally married and therefore unable to remarry. If you think this may be appropriate, please discuss this with us.

4. What does the Petition actually look like?

Every Petition follows the same form. It contains basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down. It will also state the “fact” on which it is intended to rely.

The Petition does not have to include every detail of the breakdown of your relationship. For example, a petition based on unreasonable behaviour may need only a brief outline to be given. Not saying all that might be said will not generally prejudice you, and we generally aim to draft the petition in such a way that it will not exacerbate the situation. We often try to reach agreement regarding the contents of the Petition before it is issued to avoid the divorce proceedings becoming unnecessarily acrimonious. We follow the Code

of Practice of Resolution (formerly the Solicitors' Family Law Association) whenever possible.

5. How are issues about the children and financial matters dealt with?

It is important to understand that the divorce process does not automatically resolve issues regarding the children and financial matters.

When the divorce petition is sent to the Court, a form must also be sent regarding the children (the "Statement of Arrangements for the Children"). Ideally this should be agreed with your spouse before it is sent to the Court, but if agreement is not reached, this does not prevent the divorce from proceeding. Difficulties regarding the children may have to be dealt with separately; we will advise if this is necessary.

With regard to finances, the Petition will include a section (known as the "Prayer") which will include a request for the divorce to be granted. It may also include a request for Orders for financial provision, but this does not necessarily mean that issues relating to finances will have to be resolved by the Court. We can advise how financial matters can best be resolved in your case.

It is not necessary for financial discussions to be completed by the time the divorce is final, although in some cases we will advise that Decree Absolute is not obtained until matters are resolved. Decree Absolute does not prevent either party from making a financial claim in the future, although your right to make an application to the Court for a financial order will be lost if you remarry.

6. Will I have to go to Court?

Generally speaking, you will not have to attend Court to obtain a divorce. However, in some cases, you may have to attend Court to deal with issues regarding the children or financial matters.

7. 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. The press are able to publish the fact that a divorce has been pronounced but the information that they may disclose is very limited. In the vast majority of cases, it is highly unlikely that any information regarding the divorce will be published.

8. How much does the divorce cost?

We will discuss with you the likely costs of obtaining a divorce in your case, but it is important to remember that the costs of the divorce itself do not include the costs of dealing with issues regarding the children and financial matters, and these costs are likely to represent the bulk of the costs you will incur. If you have a very low income, you may be eligible for Public Funding (Legal Aid).

9. How long does it take?

The following page describes the procedure in a straightforward, undefended divorce. Difficulties can sometimes arise, particularly in the early stages, for example, if the Respondent does not acknowledge service of the divorce petition. We can advise how any difficulties can be dealt with in your case. Generally speaking, in an undefended case, we would expect to reach Decree Nisi in around four to six months.

Remember ...

- Divorce proceedings can be stopped; please do not hesitate to tell us if you wish to do so.
- Even if there are no grounds to issue divorce proceedings immediately or you decide to wait until you have been separated for two years, it is important that you take legal advice immediately regarding the finances and discuss with us the overall financial position. It is not generally advisable to deal with assets such as the house piecemeal and we will need to consider the whole picture. You should not sign any legal documents without first taking advice.

Divorce Procedure

1. Either spouse may start the divorce. He or she is referred to as “the Petitioner”. The **Petition** and a **Statement of Arrangements** about the children are completed and then sent to the Court with the marriage certificate and the Court fee.
2. The Court issues a Notice of Proceedings. A copy of this is served on the other spouse (referred to as “the Respondent”), normally by posting it to him or her, with a copy of the Petition and Statement of Arrangements and a form called the **Acknowledgement of Service**.
3. The Respondent is asked to complete the Acknowledgement of Service and return it to the Court within 7 days and should consult a solicitor promptly if he or she is served with divorce proceedings. The form asks the Respondent whether it is intended to defend the Petition, whether any claim for costs is disputed and whether arrangements for the children are agreed.
4. If the Respondent intends to defend the Petition, he or she must file a defence (called an “Answer”) within 28 days of receipt of the Petition. This is a strict time limit.
5. When the Respondent (or his solicitor) returns the Acknowledgement of Service to the Court, the Court sends a copy to the Petitioner’s solicitors. The Petitioner’s solicitor then prepares an **Affidavit** for the Petitioner to swear confirming that the contents of the Petition are true. The Petitioner swears the Affidavit before another solicitor or Court officer.
6. The Petitioner’s solicitor sends the Affidavit to the Court and asks the Court to fix a date for **Decree Nisi** to be granted. The District Judge then looks through the papers and decides if the Petitioner is entitled to a divorce. If arrangements for the children have been agreed, the District Judge is unlikely to interfere, but if agreement has not been reached he may ask the Petitioner and the Respondent (accompanied by their solicitors) to attend an informal appointment at Court to explore a solution to any difficulties.
7. The District Judge then certifies that the Petitioner is entitled to a divorce and the Court sets a date for pronouncement of Decree Nisi.
8. Once Decree Nisi has been granted, the Petitioner may apply for the final decree (“**Decree Absolute**”) after 6 weeks and one day have passed. This step is not automatic and an application must be sent to the Court with the Court fee. If the Petitioner does not apply for Decree Absolute, the Respondent can do so after a further three months have passed from the date when the Petitioner could first have applied.