

## Divorce Proceedings

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The purpose of this leaflet is to outline a broad framework of the divorce process only and to highlight key points and to set out the sort of timetable to expect.

The mechanics of obtaining a divorce nowadays are usually quite straightforward – particularly if the couple agree that the marriage is over. The difficulties tend to lie rather 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.

### 1. Who can start divorce proceedings?

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Anyone who has been married for over a year provided 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.

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

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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 “facts”?

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- a.** Your spouse has committed adultery and you find it intolerable to continue living together.
- 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 agreed 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. What does the petition actually look like?

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Every petition follows the same format. It contains basic information about names and addresses of the parties 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 will include a section (known as a “prayer”) which will include

a request for the divorce to be granted. It may also include a claim regarding costs of the divorce; and an order for financial provision.

Divorce Petition's can now be issued in a paper format or online.

## 5. What about the children?

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The Court does not involve itself in any arrangements concerning the children unless specifically asked to do so by either party. This would be dealt with by a separate application to the Court.

## 6. How much does the divorce cost?

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This depends on the finances of each party to the divorce. Legal Aid is available in limited circumstances, where there has been domestic violence, and specific evidence is able to be provided. Those who are ineligible for public funding will have to pay their own solicitor's costs, although a claim for costs may be made within the divorce proceedings. We will be happy to provide an estimate at the beginning of the case.

There is a Court fee payable directly to the Court. Those on a low income may be eligible for fee remission in respect of the Court fee.

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

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It is not necessary for financial discussion to be completed by the time the divorce is final. Frequently they 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 arrangements.

## 8. What if I do not want my spouse to know where I live?

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It is possible when your divorce petition is lodged with the Court to request the Court to omit your address from the papers and e.g. insert your solicitors' address as an alternative. If your whereabouts being known to your spouse concerns you then this is something about which we can advise you.

## 9. Will I have to attend Court?

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If your divorce petition is undefended then there will be no need for you to attend at Court unless you wish to do so or unless there is a disagreement in relation to costs.

## 10. What is the procedure?

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### 10.1 After one year of marriage

Either spouse may start the divorce providing they can prove the marriage has irretrievably broken

down. He or she is referred to as the "Petitioner". The petition is lodged with the Court together with the marriage certificate. A fee is payable to the Court unless the Petitioner is eligible for an exemption due to a low income.

### **10.2 Once the Petition is issued**

The Court sends a copy of the petition to the other spouse, referred to as the "Respondent". A copy of the petition is also sent to anyone named in the adultery petition. 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.

### **10.3 From the date the documents are received the Respondent has strict time limits to observe**

#### **a. Within 7 days**

He or she should send to the Court a form called an "Acknowledgement of Service" which accompanies the petition. The form asks the Respondent whether it is intended to defend the petition or whether any claim for costs is disputed.

#### **b. Within 21 days of receipt (longer if the documents have to be sent to an address abroad)**

Whether or not an acknowledgement has been filed, the Respondent must, if he or she intends 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 Within a few days of receiving the acknowledgement of service from the Respondent (and Co-Respondent)**

The Court sends to the Petitioner's solicitors a copy of the form(s) of acknowledgement of service.

### **10.5 The Petitioner can apply for the Decree Nisi to be pronounced**

The Petitioner's solicitor prepares a Statement of Service confirming that the contents of the petition are true. It will also state whether any circumstances have changed since the filing of the petition. In addition, an application for Decree Nisi will be prepared. These documents will then be lodged with the Court.

### **10.6 If acknowledgement is not returned to the Court?**

Proof that the Respondent has received the petition will have to be obtained before the Petitioner can take the next step in the divorce. 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 Co-Respondent have received the petition. This is called "dispensing with service".

### **10.7 On receipt by the Court of the application for Decree Nisi and Statement in Support**

The District Judge looks through the papers and, if they seem in order, gives a certificate for the Decree Nisi to be pronounced. Both the Petitioner and the Respondent (through their solicitors) are then advised of the date fixed for Decree Nisi. Depending on the Court's diary, the date is likely to be a few weeks after the application is lodged. At this time, the Court will also indicate whether they are likely to be making any for costs against the Respondent. The parties do not have to attend at Court on the date

given unless there is a disagreement in respect of costs.

### **10.8 When can I obtain my final divorce document (Decree Absolute)**

**a. 6 weeks and 1 day after the date of Decree Nisi**

The Petitioner may apply for the final decree ("Decree Absolute") by sending the appropriate form to the Court. This step is not automatic. The Decree will be processed and may be available as quickly as the same day.

**b. 3 months after the Petitioner could first have applied for Decree Absolute**

The Respondent may apply for the Decree Absolute if the Petitioner has not already done so.

### **10.9 How long will the proceedings last?**

There is currently quite some delay with paper applications as a result of Court backlogs. The whole process can take between 9 – 12 months, although, in certain circumstances, the Petitioner may be advised to delay making an application for Decree Absolute until financial matters are resolved.

Divorce proceedings can be finalised more quickly by using the new Online Divorce Service.