

## Divorce/Dissolution Proceedings

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

The mechanics of obtaining a divorce/dissolution is governed by section 1 of the Divorce, Dissolution and Separation Act 2020. Divorce/dissolution proceedings are usually quite straightforward, particularly if the couple agree that the relationship is over. The difficulties tend to lie rather in resolving the related practical issues stemming from divorce/dissolution such as how to separate, where to live, arrangements for the children and any money matters.

### 1. Who can start divorce/dissolution 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 or entered into their civil partnership.

An application for divorce or dissolution can be made by one party individually or by both parties jointly.

### 2. On what grounds can a divorce/dissolution application be started?

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The only ground for divorce is that the marriage has irretrievably broken down.

### 3. What does the application actually look like?

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Every application follows the same format. It contains basic information about names and addresses of the parties and a statement that the marriage/civil partnership has irretrievably broken down. The application will include a section which will include a request for the divorce/dissolution to be granted. It may also include a claim for financial orders.

Divorce/dissolution applications are usually issued online but there are limited circumstances in which a paper format must be used.

### 4. 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 under the Children Act 1989. Following a divorce/dissolution both parents continue to share parental responsibility for their children.

## 5. How much does the divorce/dissolution cost?

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This depends on the finances of each party to the divorce/dissolution. Legal Aid is available in limited circumstances to assist with solicitor's costs, where there has been domestic violence, and specific evidence can be provided. Those who are ineligible for Legal Aid will have to pay their own solicitor's costs. We offer a fixed fee in relation to the divorce.

In addition to solicitor's costs, there are fees which are payable to the court. Those on a low income may be eligible for fee remission in respect of some or all of the court fee(s).

Within the proceedings, a claim for costs can be made against the other party at the stage when the conditional order is applied for. A separate application is required and there is likely to be an additional court fee payable. A costs order will only be made, however, in very limited circumstances.

## 6. Are financial issues dealt with before the divorce/dissolution is finalised?

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It is not necessary for financial discussions to be completed by the time the divorce/dissolution is finalised and frequently negotiations will still be in the early stages if the financial matters are complicated.

Normally, however, will be advised not to finalise the divorce/dissolution until the financial issues are resolved. In such circumstances, it should at least be possible to resolve immediate problems and make temporary maintenance arrangements.

## 7. What if I do not want my spouse or civil partner to know where I live?

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It is possible to request that your address is kept confidential from the other party within divorce or dissolution proceedings. If your whereabouts being known to your spouse/civil partner concerns you, then this is something about which we can advise you.

## 8. Will I have to attend court?

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There should be no need for you to attend Court. If, however, there is a dispute in relation to costs or the pronouncement of the Final Order, then a Court hearing could be necessary.

## 9. Can my ex defend the divorce/dissolution?

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The Divorce, Dissolution and Separation Act 2020 has removed the ability to defend or contest a divorce. It will now only be possible to dispute the divorce if:-

- there is a disagreement in respect of jurisdiction (for example, where neither party lives in or has any other connection with England and Wales);
- there is an issue over the validity of the marriage or civil partnership (for example, if the parties have not entered into a legally valid marriage); or
- the respondent states that the marriage has already been legally ended (for example, if the marriage has already been brought to an end in proceedings outside of England and Wales).

## 10. What is the procedure?

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### 10.1 After one year of marriage

Either party may issue a sole application or both may issue a joint divorce or dissolution application, providing they can prove the relationship has irretrievably broken down. The application is lodged with the court together with the marriage or civil partnership certificate.

At the time of issue, a fee is payable to the court. Full or partial fee exemption may be available in some cases.

### 10.2 Once the Application is issued

#### Sole Application

The court or applicant's solicitors will serve the application, along with the notice of proceedings and Acknowledgement of Service on the other spouse/civil partner or their solicitor by email (if possible) and by post. If a postal address cannot be provided, an application to the Court to serve the application by email alone may be necessary and there would be a separate fee for this. Where service is to be affected by the applicant or their solicitor, it must be served within 28 days of issue.

#### Joint Application

The Court will serve both parties with the issued application and the notice of proceedings.

### 10.3 From the date the documents are received

#### Sole Application

Within 14 days, the Respondent (or the Respondent's solicitor) should complete the Acknowledgement of Service and submit that to the Court. In most cases, this will be completed electronically. The form asks the Respondent whether they intend to dispute the Petition.

#### Joint Application

Within 14 days, both Applicants should acknowledge receipt of the notice of proceedings.

### **10.4 Apply for the Conditional Order**

#### Sole Application

Once a period of 20 weeks has elapsed from the date of issue of the divorce or dissolution application, the Applicant's solicitor prepares an application for a Conditional Order confirming that the contents of the divorce or dissolution application are true. It will also state whether any circumstances have changed since the filing of the application. This application will then be lodged with the court.

If the original application was a joint application, the Applicant can indicate their wish to transfer the matter to a sole application within the application for Conditional Order. A copy of the application must be sent to Applicant 2 (now referred to as the Respondent).

If so advised, at this stage an application for a Costs Order can also be made.

#### Joint Application

Once a period of 20 weeks has elapsed from the date of issue of the divorce or dissolution application, Applicant 1's solicitor prepares an application for a Conditional Order confirming that the contents of the divorce or dissolution application are true. It will also state whether any circumstances have changed since the filing of the application. This application will be approved and signed by both Applicant 1 and Applicant 2 and will then be submitted to the Court.

### **10.5 What happens if the Acknowledgement of Service is not returned to the court?**

#### Sole Application

Proof that the Respondent has been served with the divorce or dissolution application will need to be obtained before the Applicant can take the next step in the proceedings. If service via post has been unsuccessful, it may be necessary to arrange for someone to deliver the issued application, notice of proceedings and Acknowledgement of Service to the Respondent personally or, exceptionally, it may be necessary to obtain a Court Order that proof does not need to be given that the other party have received the application. This is called "dispensing with service".

#### Joint Application

It is possible to proceed with the application for a Conditional Order on a sole application basis, if the other

Applicant ceases to engage in the proceedings (see above).

#### **10.6 On receipt by the court of the application for Conditional Order**

The Court will consider the application and, if satisfied that the Applicant (or Applicants in the case of a joint application) is entitled to a Conditional Order, will list the application before a District Judge for the making of the Conditional Order on the next available date.

Both parties (or their solicitors) will be sent the Certificate of Entitlement to a Conditional Order which confirms the time and date when the Conditional Order will be pronounced. Neither party is required to attend at court on the date given unless advised to do so.

At this time, if an application has been made, the court will indicate whether they are likely to be making a Costs Order.

Shortly after the time and date provided, the parties will receive the Conditional Order.

#### **10.7 When can I obtain my final divorce or dissolution document?**

##### **Sole Application**

6 weeks and one day after the Conditional Order is granted, the Applicant may give notice for that Order to be made final. This notice is usually given online. Once notice is given, the application will be processed, and the Final Order may be available as quickly as the same day.

If the Applicant does not give notice, the Respondent can give their own notice for the Conditional Order to be made final, however, they cannot do so until 3 months have passed since the first date upon which the Applicant could have given notice. Notice must also be provided to the Applicant.

##### **Joint Application**

6 weeks and one day after the Conditional Order is granted, both Applicants may give notice jointly for the Conditional Order to be made final. Applicant 1 will draft the notice application online and Applicant 2 will confirm their agreement. Once submitted, the application will be processed, and the Final Order may be available as quickly as the same day.

In the event that only one Applicant gives notice of their application for the Conditional Order to be made final, they must first give 14 days' notice to the other party of their intention to do so and send the certificate of that service to the Court. The application will then become a sole application and the Applicant can give notice as above.

In some cases, both on a joint application or a sole application, it may be sensible to delay applying for the Final Order until a Financial Order has been obtained.

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

Divorce and dissolution proceedings can theoretically be concluded within 7 – 10 months. However, proceedings often take longer to conclude because of the delay in finalising financial issues.

The grant of the Final Order prior to financial issues being resolved through a Financial Court Order may adversely affect your financial position, for example lost pension benefits, occupation of property (if owned in the other spouse/civil partner's sole name) and inheritance from the other spouse/civil partner. You need to fully consider the consequences before applying for a Final Order.

## **11 Online Divorce**

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If you are dealing with the divorce/dissolution yourself either as an Applicant or Respondent, then it is extremely important that you keep your solicitor informed of each stage of the divorce/dissolution process and provide them with the necessary documentation at each stage from the court so that you can be advised appropriately

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