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Family Law

Divorce Procedure v1

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Divorce Procedure

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 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.

Your attention will probably be concentrated 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, to highlight key points and to set out the sort of timetable to expect.

1. Who can start divorce proceedings?

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 proceeding year. It does not matter where the couple were married. The person who starts the divorce proceedings is known as “the Petitioner” and his/her spouse is called “the Respondent”.

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

There is only one ground for divorce and that is the marriage has broken down irretrievably. To satisfy the Court that there has been an “irretrievable breakdown” the Petitioner must prove one of 5 facts.

3. What are these "facts"?

- (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 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?

This will depend upon your particular circumstances. It is often sensible to try to obtain your spouse's consent to the petition and to try to reach agreement over the contents of the petition. Adultery and unreasonable behaviour are the 2 most common facts relied upon. For behaviour to be unreasonable it should be more than drifting apart but does not have to be extreme such as violence. The test is subjective and the Court will consider what is unreasonable to the Petitioner. Generally half a dozen incidents of behaviour traits will suffice which must be continuing or within the last 6 months prior to separation. Adultery is an act of sexual intercourse with a person of the opposite sex. For an act of adultery to be relied upon it must have taken place no more than 6 months before the separation or at any time after the separation. It is no longer necessary to name the person with whom the adultery took place or indeed involve them in the Court Proceedings.

5. What does the petition 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 will include a section (known as a "*prayer*") which will include a request for the divorce to be granted. It may also include a request for an order relating to children, a claim regarding costs of the divorce, and an order for financial provision.



6. What about the children?

A form is sent to the Court with the divorce petition which outlines the arrangements relating to the children. The law encourages couples to try and agree those arrangements. The form (known as a "*Statement of Arrangements*") is completed by the person filing the petition. It is good practice to serve the Statement of Arrangements on the Respondent for the Respondent to approve and sign before it is filed by the Petitioner along with the Petition.

7. How much does the divorce cost?

This depends on the finances of each party to the divorce. Those who are unemployed or on a low income are likely to be eligible for advice under the Legal Help Scheme. This means the State may pay the majority, if not all, of the solicitor's costs. Those who are ineligible for Legal Help should ask his/her own solicitor for an estimate of the likely costs. Solicitors are obliged to provide an estimate of their costs at the beginning of the case. The Petitioner may be able to recover their costs in whole or part from the Respondent.

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

It is possible but not necessary for financial issues to be resolved by the time the divorce is final. Frequently financial negotiations will still be in the early stages especially if finances are complex. In this case it should be possible to resolve immediate problems by making temporary financial maintenance arrangements.

9. Are the proceedings public?

Court proceedings in family law are usually private. This means 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 After one year of marriage

Either spouse may start the divorce. The Petition and Statement of Arrangements about the children are completed and then sent to the Court together with the marriage certificate which must be the original or a certified copy (not a photocopy).

10.2 Within a few days of sending the petition to the Court.

The court sends a copy of the petition and Statement of Arrangements to the Respondent. If the 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 8 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, whether any claim for costs is disputed and whether orders affecting the children are sought.

(b) Within 29 days of receipt (longer if the documents have been sent to an address abroad)

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.

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

10.5 If the Respondent is not defending the petition, the Petitioner can apply for the Decree Nisi to be pronounced.

The Petitioner's solicitor prepares an Affidavit for the Petitioner to swear confirming that the contents of the petition are true. It will also state whether circumstances (including those relating to the children) have changed since the filing of the petition. The Petitioner will swear the Affidavit before a solicitor or Court Official and 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 the acknowledgements of service are 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. This may involve arranging for someone to deliver the petition to the Respondent personally or, exceptionally, obtaining a Court order that proof is not required.

10.7 On receipt by the Court of the application for a date for pronouncement of the Decree Nisi and Affidavit

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 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. The couple do not have to attend Court.



10.8 What normally happens with regard to the children?

If agreement has been reached, the District Judge is unlikely to interfere.

If agreement has not been reached, the District Judge may ask the Petitioner and the Respondent (accompanied by their solicitors) to attend an informal appointment to explore a solution to the difficulties. The District Judge may also ask for a CAFCASS Officer to become involved. If a solution cannot be reached, this will delay the application for the final decree of the divorce. This is extremely unlikely and only occurs in exceptional circumstances.

10.9 If the arrangements in relation to the children are settled between their parents.

(a) 6 weeks and 1 day after the date of the 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. This 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.



Court Fees correct as at 1/9/10 (Where applicable, as you may be entitled to a full or partial fee remission if represented under the Legal Help Scheme)

Divorce Petition **£340.00**

Answer or Cross Petition **£230.00**

Decree Absolute **£ 45.00**

Commissioners fees for swearing Affidavits **£5 plus £2 for each exhibit**

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