



Guide to Getting Divorced

Obtaining a divorce is usually quite straightforward, particularly if both of you agree that the marriage is over. Any difficulties that arise tend to relate more to resolving the practical issues such as how to separate, where to live, arrangements for any children and financial matters.

Since you will be concentrating on these related issues the process of actually obtaining the divorce can seem complicated. The purpose of this guide is to outline the broad framework of the divorce process, to highlight key points and to set out a realistic timetable.

Who can start divorce proceedings?

Anyone who has been married for over a year, provided they satisfy one of the following criteria:

- ✓ Both of you are habitually resident in England or Wales.
- ✓ Both of you were last jointly habitually resident in England or Wales and one of you still resides here.
- ✓ The spouse not starting the proceedings is still habitually resident in England or Wales.
- ✓ The spouse starting the proceedings is habitually resident in England and Wales and has been for the past 12 months.
- ✓ The spouse starting the proceedings is domiciled in England or Wales and has been residing here for at least 6 months.
- ✓ Both of you are domiciled here.

It does not matter where you were married.



On what grounds can a divorce petition be started?

The only ground for divorce is that the marriage has irretrievably broken down. In order to prove this you will need to establish one of the following five facts laid down by law:

- ✓ Your spouse has committed adultery and you find it intolerable to continue living with him or her.
- ✓ Your spouse has behaved in such a way that you cannot reasonably be expected to live with him or her.
- ✓ Your spouse has deserted you for a continuous period of two years or more.
- ✓ You and your spouse have been living separately for two years or more and your spouse consents to the divorce.
- ✓ You and your spouse have been living separately for five years or more, whether or not your spouse consents to the divorce.

What happens next?

The document which starts the proceedings, which is called the petition, must be prepared. It is usually a good idea to try to agree the content of the petition with your spouse. This can speed up the process and make the proceedings less acrimonious.

Every petition follows the same form. It contains basic information about names, addresses, ages of any children and a statement that the marriage has irretrievably broken down. It also states the 'fact' which is being relied on with supporting information.

The petition also has a section (known as the 'prayer') which includes the request for the divorce to be granted and for orders for financial provision and any claim for costs in relation to the divorce. The request for financial orders is quite standard and does not necessarily mean that such orders will be pursued.



What about the children?

The law encourages couples to try and agree arrangements for any children in the event of a divorce. Where arrangements can be agreed, the court does not need to make any orders. A form (called a 'Statement of Arrangements') is sent to the court with the divorce petition outlining the arrangements proposed for the children. This is usually completed by the person filing the petition (called the 'Petitioner'), but ideally it should be sent to the other spouse to be agreed before it is filed. If agreement is not reached this does not prevent the divorce from proceeding.

Timetable

Once the petition and Statement of Arrangements for Children are completed they are sent to the court, together with the Marriage Certificate, to be 'issued' (processed by the court and allocated a case number). A court fee is payable.

Within a few days of sending the petition to the court the other spouse (referred to as the 'Respondent') will be sent a copy of it and any Statement of Arrangements.

Within seven days of receiving the petition, the Respondent should file at court a form called an 'Acknowledgement of Service'. This form asks the Respondent whether he or she intends to defend the petition, whether any claim for costs is disputed and whether the proposed arrangements for the children are agreed.

If the Respondent intends to defend the petition (and whether or not an Acknowledgement has been filed) he or she must within 28 days of its receipt (longer if the documents have to be sent to an address abroad) file a defence called an 'Answer'. This is a strict deadline. 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.

Shortly after receiving the Acknowledgement of Service from the Respondent, the court sends a copy of it to the Petitioner's solicitor.

If the Respondent does not return an Acknowledgement of Service to the court the Petitioner will have to obtain proof that the Respondent has received the petition before he or she 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 does not need to be given that the Respondent has received the petition. This is called 'dispensing with service'.

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. The affidavit also states whether any 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 a request for a date for the first decree of divorce ('Decree Nisi') to be pronounced.

When the Court receives the application for a date for pronouncement of the Decree Nisi and the Affidavit, a Judge looks through the papers and, if satisfied that the Petitioner has proved the content of the Petition, 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. The couple do not have to attend court.

If agreement has been reached with regard to the children the Judge is unlikely to interfere. If agreement has not been reached the Judge may ask the Petitioner and Respondent (accompanied by their solicitors) to attend an informal appointment to explore a solution to the difficulties.

Six weeks and one day after the date of Decree Nisi the Petitioner may apply for the final decree ('Decree Absolute') by sending the appropriate form and fee to the court. There can, however, be advantages in delaying this application until financial matters have been resolved. If an application is made, the decree will be granted and can be available as quickly as the same day. The Decree Absolute terminates the marriage.

If the Petitioner does not apply for the Decree Absolute the Respondent may apply for it three months after the Petition could first have applied.

Generally an undefended divorce takes between four and six months.



Are financial issues dealt with before the divorce is finalised?

It is not necessary for financial issues to have been resolved by the time the divorce is final. Frequently negotiations will still be in the early stages if finances are complicated. However, it is not uncommon for the final stage of the divorce, the Decree Absolute, to be delayed until the financial issues have been resolved. Urgent issues, such as temporary maintenance arrangements, can be addressed by the court once the proceedings have started, whether or not a decree has been obtained.

Are the proceedings public?

Court proceedings in Family Law are usually private. Accredited members of the press are allowed to attend some court hearings, but are restricted on what they can publish. They are able to publish the fact that a divorce has been pronounced and the basis for the divorce, but are not able to publish details of the alleged adultery or unreasonable behaviour.

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