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DIVORCE

Divorce procedure

The procedure for obtaining a divorce is relatively straightforward, particularly if the parties agree that the marriage is over. The difficulties often lie in resolving other issues such as where the parties are to live, money matters and issues over the children.

You will probably want to concentrate on these other issues and the process of obtaining a divorce may not be clear. This section sets out to give you an overview of the divorce process and to highlight any important points.

Who can start divorce proceedings?

Anyone who has been married for over one year, provided one or other of the couple is a resident of this country or has lived here for the preceding year. However, there are some exceptions to this general rule. It does not matter where the couple were married. You should also be aware that the proceedings can be stopped at any time before the pronouncement of the decree absolute.

How can I start divorce proceedings?

The only basis for a divorce is that the marriage has irretrievably broken down. This has to be proved in one of five ways, known as the five facts.

What are the five facts?

- (a) Your spouse has committed adultery and you find it intolerable to stay living together;
- (b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together. (This is commonly referred to as ‘unreasonable behaviour’);
- (c) Your spouse has deserted you for a period of 2 years or more;
- (d) You and your spouse have been living apart continuously for 2 years or more and your spouse consents to a divorce;
- (e) You and your spouse have been living separately for 5 years or more. Your spouse does not have to consent to this divorce.

Fact (a) – ‘adultery’ and fact (b) – ‘unreasonable behaviour’ – are the two facts that are most often relied upon by divorcing couples and so I shall set out some further information about these.

‘Adultery’ is an act of sexual intercourse with a person of the opposite sex. However, for an act of adultery to be relied upon a party to a marriage is not be entitled to rely on adultery committed by the other if, after it became known to him that the other had committed that adultery, the parties have lived with each other for a period exceeding, or periods together exceeding, six months. It is no longer necessary to name the person with whom the adultery took place or indeed involve them in the court proceedings.

‘Unreasonable behaviour’ is where the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with him/her. The test is subjective and the Court will consider what is unreasonable to the Petitioner. For behaviour to be ‘unreasonable’ in this context it need not consist of extensive violence, drug or alcohol abuse or other extreme behaviour. A combination of less obviously unreasonable behaviour can be sufficient.

If the marriage has irretrievably broken down and one of the five facts applies – what happens then?

This depends on your particular circumstances. It is often sensible to try to obtain your spouse’s consent to the divorce and to try to reach agreement over the grounds for the divorce. For example, if you agree that a petition can be based on ‘unreasonable behaviour’ you might agree the particular examples of behaviour to be quoted. This can prevent bitterness and resentment at a later time.

What does the petition actually look like?

Every petition follows the same basic format. It contains basic information about the relationship and gives details of the fact relied upon. It will also ask for the marriage to be dissolved and will ask for financial matters to be dealt with.

What about the children?

Orders relating to any child will not normally be made within the divorce proceedings itself.

When parents separate and ultimately divorce, they continue to share Parental responsibility for their children. Parental responsibility encompasses all the rights and duties which a parent has regarding a child, including the right to decide where the child should go to school, what form of religious upbringing the child should have, and what medical treatment the child should receive.

Are financial issues dealt with before the divorce is finalised?

It is not necessary for financial arrangements to be completed by the time the divorce is final. Often they will be in the early stages, particularly if the circumstances are complicated. However efforts should be made to resolve interim matters such as maintenance. Sometimes it may be advantageous to wait to finalise the divorce until finances are resolved. You should always seek specific legal advice.

Are the proceedings public?

Court proceedings are usually private. However the press may publish the fact that a divorce has been pronounced.

What if we reconcile?

The Court has power to adjourn proceedings to see whether reconciliation can be achieved. Alternatively, as stated above, the proceedings can be ended at any time before the final decree.

What happens in the proceedings?

Firstly the divorce papers are sent to the Court and the Court will then send copies to the other party by post. The Acknowledgement of Service form indicating whether or not the divorce will be defended, should be sent back to the Court within seven days of receiving the papers.

The Court will send a copy of the Acknowledgement of Service to the Petitioner's solicitor. An application may then be made for the Decree Nisi to be pronounced. This is the point when the District Judge will consider whether or not the contents of the Petition have been proved and a divorce can be pronounced. The Court will also consider any claim made that a party should pay the costs of the divorce itself.

If so a date will be fixed for pronouncement of Decree Nisi. This is unlikely to be less than two months from the application.

If the Respondent fails to return the Acknowledgement of Service then alternative methods of service may have to be considered or, in certain circumstances, applications may have to be made to the Court allowing the petition to

proceed in the absence of the Acknowledgement of Service.

The divorce is not final until the Decree Nisi has been made absolute. The Petitioner can apply to the Court for the Decree Nisi to be made Absolute six weeks after pronouncement of Decree Nisi. The effect of the Decree Absolute is to finally end the marriage and leave the parties free to re-marry if they choose.

If the Petitioner fails to apply within four-and-a-half months from the date of Decree Nisi, the Respondent can apply for the Decree Nisi to be made Absolute. However, if you do have to make this application you will not be granted the Decree Absolute automatically. A short hearing will be fixed before a District Judge who will consider whether it is reasonable for the divorce to be finalised.

Therefore, the whole process can take as little as four to six months to conclude, but can take six months or more in certain circumstances.



Defended divorces

Defended proceedings rarely achieve any positive result but instead will usually increase the time, acrimony and cost of the proceedings.

Legal aid

It is extremely rare for Legal Aid to be granted for defending divorces.

Notice of intention to defend

If the respondent intends to defend, he will normally return the Acknowledgement of Service stating that he intends to defend the petition. He must give this notice within seven days from service of the petition.

If he does not file this notice, he can still file an answer. If he does give notice, he is under no obligation to file an answer if he changes his mind.

Filing an answer

The answer is the defence to the petition and must be filed within 21 days after the date for filing the Acknowledgement of Service, indicating the intention to defend, ie 28 days in total.

If this time limit is unlikely to be met, permission must be sought to file it out of time, even if directions for trial have not been given

If the Respondent fails to file an answer within the specified time period, and no application to file out of time has been made, or granted, then the

Petitioner can ask the Court to proceed and grant the Decree Nisi on the basis that the Respondent has failed to file an answer.

When the case becomes defended, the judge can transfer the case to the High Court. He will do this only if he considers that, owing to its complexity, difficulty or gravity, it is more appropriate to deal with it in the High Court.

Subsequent procedure

Further statements of case can be filed. Directions for trial will be given (Case Management) and eventually, usually after a long delay, there will be a hearing in open court.

Disputing allegations raised in the petition

If the Respondent accepts that the marriage has irretrievably broken down but disputes certain particulars then he/she may wish to file an answer. However, if the purpose of doing so is to answer allegations which might be raised again in children or financial proceedings, it is usually sufficient to write to the Petitioner's solicitors, at the time of filing the acknowledgement of service stating "the Respondent accepts that the marriage has irretrievably broken down but does not accept certain allegations in the Petition. He/she reserves the right to reply to those allegations if raised in any subsequent proceedings relating to children or financial proceedings".

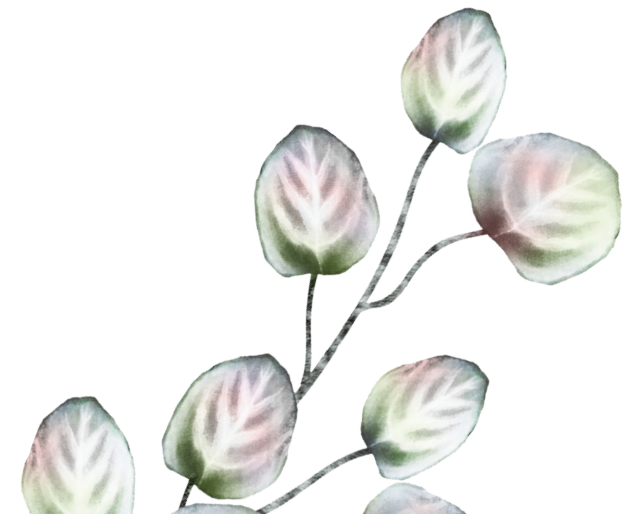
Regularising your separation

If you would prefer to regularise your separation without actually divorcing there are two options available:

1. Judicial Separation or;
2. Separation Agreement.

Judicial Separation

This involves a Court procedure that is virtually identical to that which applies to a divorce. The essential difference is that the Court pronounces a Decree of Judicial Separation rather than a divorce and therefore you and your spouse remain married. The effect of a Decree of Judicial Separation is to confirm that you are legally separated. Again, you should note that the proceedings can be stopped at any time up to the pronouncement of the decree of judicial separation.



Separation Agreement

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving any Court procedures at all. The way this can be achieved is for them to sign a written legal document that incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which maintenance and/or property are to be dealt with. Whilst there are no restrictions on what can or cannot be included in such an agreement, it is important to bear in mind that should either person make a subsequent financial application to the Court, the Court is not bound by the financial arrangements contained in the Separation Agreement.



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