



divorce procedure

Please note that the information in this leaflet is intended to provide a general outline of the law and procedure as at the date of this fact sheet printed below. We will be happy to provide you with further specific advice based on your individual needs.

commencement of proceedings

You must have been married for over a year to start divorce proceedings.

If you are the person completing the Divorce Petition, ie, divorcing your husband/wife, you are known as the Petitioner. If you are being divorced you are called the Respondent.

There are jurisdictional points to take into consideration and should you or your spouse have any financial or other links (such as birth, residence) to any other country other than England or Wales you should advise us immediately.

the ground for divorce

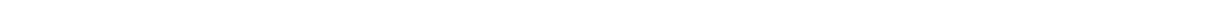
There is only one ground for divorce, ie, that the marriage has broken down irretrievably. You have to prove this by showing that one of the following five facts laid down by the law:-

1. adultery

To prove this fact, the Respondent must have committed adultery and the Petitioner must find it intolerable to live with the Respondent.

Adultery is usually proved by the Respondent admitting that adultery has occurred, often by signing what is known as a "confession statement". It may be impossible to prove adultery if the Respondent refuses to sign such a statement. In such cases, you can sometimes proceed on the grounds of unreasonable behaviour, referring to the improper relationship of your husband or wife with another man or woman.

The person with whom the Respondent has committed adultery can, but does not have to, be named and made a party to the proceedings, and is called the Co-Respondent. Naming a Co-Respondent can often antagonise matters unduly.



2. behaviour

The Petitioner must show that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him/her.

The Petitioner will need to state several examples of unreasonable behaviour unless there is one extremely serious incident. Behaviour can be material such as violence, abuse, etc but may also comprise of a number of more minor incidents in the alternative such as arguing, lack of communication, poor physical and emotional closeness/support.

3. desertion

The Petitioner must show that the Respondent has deserted him/her for a continuous period of at least two years.

In practice, desertion is rarely used because it is rather technical to prove, and because other facts can usually be cited where the parties are living separately.

4. two years separation with consent

To prove this fact the parties to the marriage must have lived apart for at least two years and the Respondent must agree to a divorce.

5. five years separation

The parties must have lived apart for at least five years. There is no need to obtain the Respondent's consent.

Usually the parties will be living apart when divorce is considered, but a divorce can be granted if the couple are still living under the same roof. If this is the case, the Petitioner must show that the parties are in fact two separate households and sharing no aspect of domestic life.

the divorce petition

If one of the five facts applies, we can complete a Divorce Petition for you. The Petition contains information such as names, addresses of the parties, and names of your children if applicable. It states that the marriage has irretrievably broken down and gives details of the fact which applies.

The Petition asks for a divorce to be granted. It may also include a claim for costs of the divorce and for orders for financial provision for the Petitioner and/or the children of the marriage.



the children

If you have children, we will also complete a form known as a Statement of Arrangements for Children. This gives details of the children's lives, e.g, who they live with, contact with the other parent and education and medical details. The Statement of Arrangements is sent to the Court along with your Petition.

marriage certificate

Your original marriage certificate has to be sent to the Court along with your Divorce Petition. If yours is lost, you or your Solicitor can obtain one from the Registrar, as long as you know the date and place of your marriage. Please note that the marriage certificate will not be returned to you as it is kept by the Court.

acknowledgement of service

The Court will send your Petition and Statement of Arrangements to the Respondent (and Co-Respondent if applicable), along with a form known as an Acknowledgement of Service which the Respondent should complete and return to the Court. This form asks the Respondent to state, for example, whether or not they intend to defend the divorce.

If the Respondent or Co-Respondent fails to return the Acknowledgement of Service you can apply for the Court Bailiff to deliver a copy to them personally.

application for decree nisi

As long as the Respondent is not defending the Petition (and it is rare for a Respondent to defend) the Petitioner can apply for a Decree Nisi once the Acknowledgement of Service has been received. We will prepare a statement for you to swear known as an Affidavit, confirming that the contents of your Petition are true. We will then send your Affidavit to Court along with a request for your Decree Nisi to be pronounced. This involves the names of the parties being read out by the Judge in open Court. There is usually no need for either party to attend unless the costs of the divorce are in dispute when it is advisable to attend the hearing to make representations to the Judge. It is important to note that at this stage you are not divorced.

decree absolute

This is the final step in the undefended divorce procedure. Any time after a period of six weeks and one day from the grant of your Decree Nisi, you can apply to the Court for your Decree Absolute. This is done by us sending a form to the Court. The Court will send the Decree Absolute to both the Petitioner and the Respondent and at this point your marriage is at an end.

The Decree Absolute does not end the former spouses rights to make financial claims. It is recommended to seek advice upon this aspect of your divorce from one or our specialist lawyers.



timescale

An undefended divorce will usually take approximately five months from the time your Petition is completed to the arrival of your Decree Absolute.

financial aspects of the marriage

Please see fact sheet "Financial Arrangements on Divorce".

effect of divorce on wills and intestacy

Until Decree Absolute existing Wills are unaffected. You should therefore ensure your Will is up to date when you first provide us with instructions and we can advise you on a new Will.

Immediately on Decree Absolute any gift to the ex-husband or ex-wife contained in any Will lapses. This means that you will lose any gift made to you in the Will of your former spouse and, in the same way, any gift in your Will to your former spouse automatically comes to an end.

Decree Absolute also ends any automatic entitlement of the former spouse to benefit from the estate of the other on the intestacy rules, as the former spouses are no longer treated as next of kin.

Decree Absolute does NOT affect rights in certain jointly owned property on death. This most commonly applies to a house which you and your ex-husband or ex-wife still own jointly. This type of property passes by "survivorship" to the ex-spouse. There are steps which can be taken to avoid this and we can advise you on these points.

the effect of re-marriage on wills and intestacy

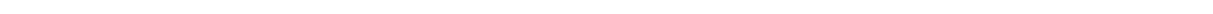
Re-marriage has the effect of revoking (cancelling) your Will unless your Will has been specially worded to avoid this.

Your new husband or wife becomes your next of kin and so benefits from the intestacy rules if you die without a valid Will. You need to be aware that this could cut out your children from your first marriage from benefiting from your estate.

Wills and inheritance matters are closely linked with divorce and re-marriage and it is very important that you keep your Will under review at these times. We can advise you further about this.

costs of divorce

You will be told our hourly charging rate which is exclusive of VAT. We estimate that, for the divorce itself, (therefore not including any matters relating to it such as the finances, children etc) our costs are usually in the region of £550.00 plus VAT for a straightforward undefended divorce. There are also fees to pay to the Court in





addition which amount to £340.00. (£300.00 issue fee on Petition plus £40.00 fee for Decree Absolute). In some cases where unreasonable behaviour or adultery are the grounds for divorce you can seek to recover your costs from the party at fault.

You may be entitled to "Public Funding" and/or financial "Legal Help" (formerly known as Legal Aid and Green Form) to assist you with the costs of the divorce. We are not able to offer this to you as we do not have a franchise to undertake such work. If you think you may be entitled, you should speak to us about this immediately so that we can advise you further.

get in touch

To find out more about what we can do for you contact:

Catherine Longshaw - Partner

t 01782 619225

e catherine.longshaw@knightsllp.co.uk

