

## Family Law Department

### Divorce Procedure

#### Who can start the divorce?

Anyone who has been married for a year or more can start divorce proceedings so long as one or the other of you is 'domiciled' in England and Wales or has been resident here during the year beforehand. It does not matter if you were married elsewhere. The person who starts the divorce is known as the Petitioner. The other party is known as the Respondent.

#### Deciding the reasons for divorce

To divorce, you will need to prove to the court the reasons why you want your marriage to end. These are known as 'facts' and 'grounds' for divorce.

There is only one ground for a divorce and that is that the marriage has 'irretrievably' broken down. However, to support this you must be able to show that the marriage is at an end by proving one of the following five 'facts':-

- That your husband or wife has committed adultery and you find it intolerable to live with him/her.
- That your husband or wife has behaved in such a way that you cannot reasonably be expected to live with him/her.
- That your husband or wife has deserted you for a continuous period of at least 2 years.
- That you and your husband or wife have lived apart for a continuous period of at least 2 years and your husband or wife agrees to a divorce.
- That you and your husband or wife have been living apart for 5 years or more whether or not your husband or wife agrees to the divorce.

#### How is the divorce started?

Once you have decided which supporting fact to use, you can start the divorce by sending a Petition to a divorce court. The Petition is a document in a standard form and contains basic information about the parties to the marriage and any children.

It will also contain the reasons why you want a divorce. Your original marriage certificate has to be sent too and will be kept by the court. There will be a fee to pay to the court.

#### What do you do if you have children?

If possible you should agree the arrangements for children with your husband or wife before you file the Petition. If you have children who are under 16 (or under 18 and at school, college or training for a trade, profession or vocation), you'll also need to fill in a form called a 'Statement of Arrangements for children' and send it to the court with the other documents.

This form contains information about the children including:

- your children's names, addresses, dates of birth, health, education and training needs
- child care arrangements and whether they will change if you divorce
- details of maintenance arrangements you have made or intend to make
- details of contact ('access') arrangements with your children you have made or intend to make
- any existing arrangements about the children you have made with Social Services, Probation Officers or Court Orders

#### Do any financial issues have to be sorted out before the divorce is finalised?

The divorce can be finalised before the financial issues have been resolved. Unless they are very straightforward it will often be the case that financial negotiations are still under way when the divorce is completed. It may well be necessary for a separate application to be sent to the court to resolve these issues.

#### Are the divorce proceedings public?

Family matters are usually private. However, the first Decree of divorce known as the Decree Nisi is announced in a court room to which the public and the press are allowed access. The press is able to publish the fact that a divorce has been pronounced. The information that it may disclose is however very limited.

#### What happens once the Petition has been sent to the Court?

Within a few days the court will send a copy of the Petition and any Statement of Arrangements relating to the children to your husband or wife. He or she will also be sent a form called an Acknowledgement of Service and will be asked to return this form within 8 days to the court to confirm that he or she has received the divorce papers and to indicate whether or not he or she intends to defend the divorce proceedings.

**What if my husband or wife fails to return the Acknowledgement of Service?**

In these circumstances it will be necessary to take some other steps to prove that your husband or wife has received the Petition and any other documents. We will discuss the necessary steps with you should this situation arise. You will need to prove to the court that your husband or wife has received the divorce papers before the divorce can proceed any further. This may involve a third party personally handing the divorce papers to your husband or wife.

**What if my husband or wife decides to defend the divorce?**

Defended divorce proceedings are very rare because they are extremely costly and of little benefit to either party. In certain circumstances your husband or wife may be able to defend the divorce and delay or even stop the marriage from being dissolved but it is unlikely that this will be of any help in repairing a failed marriage. Should the proceedings be defended then we will discuss the necessary steps with you.

**What if my husband or wife indicates that the divorce is not being defended?**

In these circumstances a copy of the Acknowledgement of Service will be sent to you (or your solicitor) and an application can then be made for the Decree Nisi. To make this application it is necessary to complete a form of request for the Decree Nisi and an Affidavit (a sworn statement) confirming that the contents of the Petition are true. These documents are sent to the court. The District Judge will then look through the papers and if they are in order give a certificate for the Decree Nisi to be pronounced. Both parties are then advised of the date upon which the Judge will pronounce the Decree Nisi.

**Will I have to go to court?**

Nobody needs to attend when the Decree Nisi is pronounced: normally, only the names of the parties are read out. However, either party may have to attend if there is a dispute over who should pay for the divorce. You may have to go to court on other occasions if you ask the court to resolve financial issues or you cannot agree about the arrangements for the children but these are dealt with as separate issues.

**Does the Decree Nisi mean that the marriage has been dissolved?**

No, you are still married following the pronouncement of the Decree Nisi. The marriage is only finally dissolved when the Decree is made Absolute.

**When can the Decree Nisi be made Absolute?**

As the Petitioner you can generally apply for the Decree Absolute by sending a form to the court six weeks and one day after the date of the Decree Nisi. If you do not apply for the Decree to be made Absolute then your husband or wife can apply for the Decree Absolute three months after the first date upon which you could have made an application.

**How long will it take?**

You should allow 4 - 6 months. There can sometimes be delays at the court even if everyone else involved deals with each step quickly.



For further advice or information please contact a member of our Family Law Team at [enquiries@mayowynnebaxter.co.uk](mailto:enquiries@mayowynnebaxter.co.uk)  
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