

Divorce - petitioner's guide

Divorce is the process which legally ends a marriage. You cannot issue a petition for divorce unless you have been married for more than 1 year and are able to prove to the court that you have reasons (or "grounds") for saying the marriage has "irretrievably broken down". The court will accept one or more of the following facts as proof:-

- (a) That your husband or wife has committed adultery and that you find it intolerable to live with them;
- (b) That your husband or wife has behaved in such a way that you cannot reasonably be expected to continue living with them;
- (c) That your husband or wife has deserted you for at least two years;
- (d) That you and your husband or wife have lived separate and apart for two years and he or she consents to a divorce;
- (e) That you and your husband or wife have lived apart for a continuous period of at least five years.

The procedure

Notification of intention to issue

Unless we advise you otherwise, we will write to your husband or wife to confirm your intention to commence divorce proceedings and the fact upon which you intend to rely to prove that the marriage has irretrievably broken down. Where appropriate, we will ask your husband or wife to complete a form to confirm their agreement to the divorce or admission to the adultery.

In some circumstances you will be able to make a claim against your husband or wife for your costs. A claim for costs will usually only be successful on the basis of an adultery or unreasonable behaviour petition. We will discuss with you whether it is appropriate to make a claim for your costs in full, request a contribution or make no claim at all. In the first letter we send to your husband or wife we will confirm your instructions in relation to the costs of the divorce.

Drafting the petition

We will require your original or a certified copy of your marriage certificate. If you are not able to locate your original certificate we will help

you obtain a certified copy. The marriage certificate will be filed with the divorce petition at the court. It will not be returned at the conclusion of your divorce.

To prepare a draft of the petition, we will take both you and your husband or wife's full names and details of any name changes, your occupations and addresses and details of any children and their dates of birth. We will also take details from you to support the fact upon which you are petitioning.

- (a) If you have alleged adultery you will need to give:- The date(s) and place(s) where the adultery took place.
- (b) If you have alleged unreasonable behaviour you will need to give: Examples of the behaviour, including the most recent incident.
- (c) If you have alleged desertion you will need to give:- The date that the desertion took place.
- (d) & (e) If you have alleged either 2 or 5 years separation you will need to give:- The date of separation, and brief details of how the separation came about.

Statement of arrangements for children

If you have children born to you and your husband or wife, or who have been treated by you as though they had been born to you and they are under 16 or between 16 and 18 and still at college or school full time, or training for a profession, trade or vocation, they will be regarded as "children of the family" and the court will require a statement of arrangements form to be completed. In this form you will need to confirm the arrangements you intend to make upon the divorce in respect of:-

- Where the children will live
- Who they will live with
- Whether the other parent will see the children and how often
- Details of the day to day care arrangements
- Details of their health
- Details of where they will go to school
- What financial support they will receive

Communication with your husband or wife prior to issue

Once approved by you, a copy of your draft petition and statement of arrangements for children form will be sent to your husband or wife. Wherever possible we will attempt to agree the contents of both documents prior to issue. We will also at this stage attempt to agree with your husband or wife the position on costs.

Notice of issue and service of the petition

We will send your petition to your local county court or The Principal Registry in London to issue. Once the court has issued your petition we will receive Notice of Issue. This will confirm your case number and the date the court posted a copy of your petition and, if applicable, statement of arrangements for the children to your husband or wife.

It is usual practice not to name a co-respondent within divorce proceedings. We will discuss with you whether or not it is appropriate to name as a co-respondent the person with whom your husband or wife has committed adultery. We will normally only advise you to name a co-respondent if you are unlikely to recover your costs against your husband or wife. If the co-respondent has been named, the court will also serve a copy of the petition on them.

With the divorce documentation, the court will send your husband or wife an acknowledgement of service form to complete. This will confirm their position on the contents of your petition statement of arrangements for children and if applicable your claim for costs.

There is a time limit of 8 days from the date the petition was sent to your husband or wife for them to return the acknowledgement of service form to

the court. If your husband or wife does not return the form on time, the court will require personal service of the documents before your divorce can be progressed. We will arrange personal service either through the court bailiff or a process server. If this is necessary we will require a photograph or written description of your husband or wife (and any co-respondent).

Applying for directions for trial

If your husband or wife (and any named co-respondent) have confirmed on the acknowledgement of service that they do not intend to defend the case you can ask the court to consider whether you have grounds for a divorce and if the arrangements you propose for any children are satisfactory. This procedure is called "Applying for Directions for Trial".

If your husband or wife (or any named co-respondent) confirms their intention to defend the proceedings your case will follow a different procedure from this stage.

To apply for directions for trial we will draft an affidavit for your completion. This is a statement you must swear to confirm the contents of your petition are true.

Certificate of entitlement to a decree

If the judge is satisfied with your petition and affidavit they will authorise the issue of a Certificate of Entitlement to a Decree. This certificate will confirm the time and date when the judge will grant your divorce. This is called "Pronouncing the Decree Nisi". The decree nisi is the first of two decrees you must have before you are finally divorced and free to remarry. The second decree is called the Decree Absolute.

If the Judge is satisfied with the statement of arrangements for the children they will also authorise the issue of a Notice of Satisfaction. This will tell you that the Court does not need to exercise its powers under The Children Act 1989.

If the judge is not satisfied with the statement of arrangements for the children, we will receive notice that you cannot obtain your final decree until satisfactory arrangements have been made. Where the judge issues this notice they will also give

directions on how they wish your case to proceed. This can include a written request for information, a short appointment before the judge, the ordering of a welfare report on the children, requesting one party to make an application for a court order (e.g. for residence, contact order, prohibited steps and a specific issue) or to make a care or emergency protection order.

If the Judge decides you are not entitled to a divorce we will receive Notice of a Refusal of Judge's Certificate. This form will tell us why the judge has decided you are not entitled to a decree. In most cases the court will simply require further information in correspondence. In some circumstances the judge may decide you need to attend court. This is called removing your case from the special procedure list and entering it into the undefended list.

Decree nisi

It is not necessary to attend court upon the pronouncement of the decree nisi unless costs are still an issue. In some circumstances we may advise you not to attend but instead we will file a statement on your behalf setting out your position on costs.

After the pronouncement we will receive your decree nisi. If you have asked for your husband or wife (or any co-respondent) to pay the costs of your divorce we will also receive an order supplementary to decree nisi. This will confirm details of the costs order made.

Decree absolute

The application for your decree absolute (your final decree) can be applied for after 6 weeks and 1 day have passed since the pronouncement of your decree nisi. Once pronounced this legally ends the marriage and you are free to remarry.

If the judge was not satisfied with the arrangements for the children we will not be able to apply for your decree absolute until the judge has issued Notice of Satisfaction of Arrangements or a further order confirming permission to apply.

Certain financial benefits are lost upon the grant of the decree absolute (for example the loss of a spouse's pension on death) and therefore if financial

matters are not resolved by the time you can apply for the decree absolute we may advise you to delay the application. We will discuss this with you if a delay is appropriate in your case.

Time scale

It is difficult to give you a specific estimate of the time it will take from the start of your divorce to your decree absolute. How long your divorce will take will depend upon how co-operative your husband or wife is, how busy the courts are and whether or not we will advise you to delay applying for the decree absolute.

If your husband or wife co-operates with the divorce then in most cases the decree nisi will be pronounced within 3 months from the date of issue of the petition. If we do not advise you to delay applying for the decree absolute then your divorce should be fully concluded within 6 months from the date of issue.

GORVINS

FAMILY LAW

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