

A Brief Guide to Divorce

The Ground for Divorce

The only ground for divorce in England and Wales is irretrievable breakdown of marriage. In order to prove this to the Court's satisfaction, it is necessary to establish one or more of five sets of facts. In summary, these are:-

- Adultery and intolerability;
- Unreasonable behaviour;
- Desertion of the Petitioner by the Respondent for a period of at least two years;
- Separation of the parties for a period of at least two years where the Respondent to the divorce proceedings consents to the pronouncement of a decree;
- Five years' separation where the Respondent's consent is not required.

Whichever fact is relied upon, the actual divorce procedure is broadly the same. Depending upon which Court is used, a straightforward undefended divorce will take in the region of three and a half to four months.

However, it is not possible to present a divorce petition within the first year of marriage.

Getting Started

The following is a brief guide to the main steps in a straightforward, undefended divorce. The person seeking the divorce is called the Petitioner. The other party to the divorce is called the Respondent. It has been assumed that the Petitioner is represented by a solicitor.

The Petitioner's solicitor will prepare a divorce petition, based on irretrievable breakdown of marriage and relying on one or more of the five sets of facts necessary to prove this.

In addition, the Petitioner's solicitor must also complete a Statement of Arrangements for children, if either the Petitioner or the Respondent has any children, either under 16 or over 16 but under 18 if they are at school, college or are training for a trade, profession or vocation.

The solicitor must also complete a document called a Statement of Reconciliation, stating whether s/he has discussed with the Petitioner the possibility of reconciliation and whether s/he has given to the petitioner the names and addresses of persons qualified to help effect such a reconciliation.

These documents are then sent to a divorce county court, accompanied by a certified copy of the parties' marriage certificate and a cheque in the sum of £340, being the fee for issue of the Petition. The Petitioner's solicitor will ask the court to issue the Petition and (usually) will request that the Court serves the Respondent with the documentation by post.

The Respondent will receive sealed copies of the divorce Petition; the Statement of Arrangements for Children (if there is one) and a Notice of Proceedings / Acknowledgement of Service. The latter document should be completed and returned to the Court, by or on behalf of the Respondent, within seven working days of service of the divorce papers.

The Acknowledgement of Service fulfils a number of functions:-

- It is the evidence required by the Court of service of the divorce papers upon the Respondent;
- In cases where the fact relied upon is the Respondent's adultery, an admission of this by the Respondent will be accepted by the court as evidence of such adultery;
- The Respondent can confirm his/her consent to a divorce where the fact relied upon is two years' separation;
- The Respondent can comment on any claim for costs contained in the Petition;
- S/he can also comment on the Statement of Arrangements for Children.

Finalising Matters

Once the court receives the Respondent's completed Acknowledgement of Service (and provided that it has not been completed to show an intention to defend the divorce proceedings) it will be photocopied, a court seal will be placed on the copy document and that will then be sent to the Petitioner's solicitor.

S/he then prepares an Application for a Decree Nisi (the first of the two divorce Decrees). Such an application has to be accompanied by a statement in support of divorce (called an Affidavit), sworn by the Petitioner, to which the sealed copy of the completed Acknowledgement of Service is attached.

Upon receipt of these documents at the Court, the file is referred to a District Judge. S/he has a number of functions. These include:-

- Ensuring that the divorce documentation is in order;
- Ensuring that the Petitioner has established that there has been an irretrievable breakdown of marriage and proved the facts necessary to establish this;
- Considering whether to order the Respondent to pay the Petitioner's costs of the divorce proceedings'
- Determining whether there are any "children of the family" and, if so, whether the Court needs to take any steps in respect of these.

Provided the District Judge is satisfied s/he will issue certificates of entitlement to a decree and in respect of the children. The Court will then list the matter for pronouncement of Decree Nisi and any other orders (for example, that the Respondent pays the Petitioner's costs). Unless either the pronouncement of the Decree or any other Order is opposed, neither party need attend the court hearing when the Decree Nisi is pronounced.

The Decree Nisi does not bring the marriage to an end. In order to do so, it is necessary to apply for a Decree Absolute of divorce. In a straightforward case, such an application can be made six weeks and one day after pronouncement of the Decree Nisi. This application requires the submission of a form and the payment of a £45.00 Court fee.

For further information regarding matters arising from this article, please telephone Martin Chambers on 0207 872 0023 or email him: martin.chambers@dwfmbeckman.com

DISCLAIMER: We have tried to ensure that the information in this guide is correct at the time of publication and may be subject to change without notification. The matters discussed in this guide are by necessity brief and comprise summations and introductions to the subject referred to. The content of this guide should not be considered by any reader to comprise full proper legal advice and should not be relied upon.