

## **A Brief Guide to Judicial Separation**

### **The law regarding judicial separation**

This is contained in sections 17 and 18 of the Matrimonial Causes Act 1973.

A Petition for judicial separation may be presented by either a husband or a wife. It is presented on the ground that any of the facts exist which a Petitioner is required to satisfy the court as proof of breakdown of marriage for the purpose of obtaining a decree of divorce.

Those facts are as follows:

- That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.
- That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to a decree being granted.
- That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition.

### **Differences from divorce**

- Unlike divorce, a judicial separation Petition may be presented within the first year of marriage.
- The court hearing a judicial separation Petition does not need to consider whether the marriage has broken down irretrievably as it would do with a divorce Petition. If satisfied on the evidence that one of the above five facts has been proved, the Court will grant a Decree of judicial separation.
- Unlike with divorce, there is only one Decree of judicial separation.

### **Consequences of Judicial Separation**

- A Decree of judicial separation operates to relieve the Petitioner of the obligation of cohabiting with the Respondent.
- Such a decree also affects the transmission of a deceased's estate if he or she dies intestate (that is, without having left a will) whilst the Decree of judicial separation is in force. In such circumstances, any property in respect of which the deceased died intestate will devolve as if the other party to the marriage had already died.

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