

INFORMATION ON DIVORCE

Divorce and separation is a major step and can have enormous emotional and financial consequences. We have put together this guide to assist you in understanding what these might be. However, no two cases are ever the same, so if you have any queries please feel free to contact us and arrange your free consultation.

1. DIVORCE

Who can start divorce proceedings?

Anyone who has been married for over a year provided one or other of the couple is either living here or has been a resident in England or Wales during the preceding year. It does not matter where you were married.

What grounds can a Divorce Petition be started?

The only ground for divorce is that the marriage has irretrievably broken down but there is a complication. A divorce will only be granted if one of the five facts laid down by law proving irretrievable breakdown is established.

What are the facts?

- (a) Your spouse has committed adultery and you find it intolerable to continue living together.
- (b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together.
- (c) Your spouse has deserted you for a continuous period of two years or more.
- (d) You and your spouse have been living separately for two years or more and your spouse agrees to the divorce.
- (e) You and your spouse have been living separately for five years or more whether or not your spouse consents to the divorce.

Timetable

After one year of marriage

- (a) Either spouse may start the divorce. He or she is referred to as “the Petitioner”. The Petition and Statement of Arrangements about the children (if any) are completed and sent to the Court together with the Marriage Certificate. A fee, currently £300.00, is payable unless the Petitioner is on a low income. The Court carries out the assessment.
- (b) The Court sends a copy of the Petition, a Statement of Arrangements form and an Acknowledgement of Service form to the other spouse referred to as “the Respondent”. A copy of the Petition is also sent to anyone named in an Adultery Petition. That person may be referred to as a “Co-Respondent”. If the Respondent (or Co-Respondent) has instructed solicitors the Petition may be sent to them.
- (c) Within eight days of being served with the Petition, the Respondent should return to the Court the “Acknowledgement of Service” form. The form asks the Respondent whether or not they intend to defend the Petition, whether or not any claim for costs is disputed and whether or not Orders affecting the children are sought.
- (d) Within a few days of receiving the Acknowledgement of Service from the Respondent the Court sends to the Petitioner’s solicitor a copy of the form of Acknowledgement of Service.

- (e) The Petitioner's solicitor prepares an Affidavit for the Petitioner to swear confirming that the contents of the Petition are true. It will also state whether any circumstances (including those relating to the children) have changed since the filing of the Petition. The Petitioner will swear the Affidavit before an independent solicitor or a permitted Court Official and it will then be sent to the Court with a request for a date for the first decree of divorce ("Decree Nisi") to be pronounced.
- (f) If no Acknowledgement of Service is returned to the Court, proof that the Respondent and any named Co-Respondent have received the Petition will have to be obtained before the Petitioner can take the next step. This may involve arranging for someone to deliver the Petition to the Respondent and any named Co-Respondent personally or exceptionally, obtaining a Court Order that proof does not need to be given. This is called "dispensing with service".
- (g) The District Judge looks through the papers and if they seem in order gives a Certificate for the Decree Nisi to be pronounced. Both the Petitioner and the Respondent (through their solicitors) are then advised of the date fixed for Decree Nisi. Depending on the Court's diary the date is likely to be a few weeks after the application is lodged. The couple do not have to attend Court.
- (h) Six weeks and one day after the date of Decree Nisi the Petitioner may apply for the final decree ("Decree Absolute") by sending the appropriate form to the Court. This step is not automatic. This decree will be processed and may be available as quickly as the same day.
- (i) Three months after the Petitioner could first have applied for Decree Absolute the Respondent may apply for the Decree Absolute if the Petitioner has not already done so.

Divorce Costs

- (a) Legal costs for undefended divorce are approximately £650-£750 plus VAT, Court fees £340 and Affidavit fees £7 or £9.
- (b) Legal costs for defended divorce are approximately £2,500 plus VAT and disbursements unless eligible for Public Funding.

You may be eligible for Legal Help and Help at Court however this firm no longer undertakes legal aid work.

How Long Does It Take?

It varies from Court to Court.

Undefended divorces take approximately 5 to 6 months.

The financial side of divorce may take longer 6 - 18 (eighteen) months.

Marriage Guidance - Mediation

Try to save your marriage. Try Relate to help with your relationship.

REMEMBER –

THE DIVORCE CAN BE STOPPED AT ANY TIME

YOU CANNOT REMARRY UNTIL YOU HAVE THE DECREE ABSOLUTE

2. SEPARATION AGREEMENT

This is an alternative to divorce but may lead to divorce in two years time and the other party's consent but depends upon both parties obtaining legal advice and agreeing to sign a document. Usually appropriate when the marriage breakdown is amicable or friendly or within one year of the date of marriage.

Any financial agreement can be written into the Agreement and the finances settled at the time of the agreement or left until the divorce.

Termination of future financial claims against each other can also be written into the Agreement.

Any contact to the children can be written into the Agreement.

The Agreement is legally binding upon the parties in the future divorce **ONLY IF:**

- (i) Both parties have legal advice.
- (ii) There is sufficient disclosure.
- (iii) At the time of the divorce the Court considers that the Agreement contents are reasonable.