

“I Want to Issue Divorce Proceedings – What do I do?”

If you (i.e. the Petitioner) want to start divorce proceedings you must have been married for at least one year.

The legal basis on which a petition for divorce may be presented to the court is that the marriage has irretrievably broken down. However, for the application to be acceptable to the court the Petitioner must satisfy the court of one or more of the following grounds:

- Your spouse (the Respondent) has committed adultery and you, the Petitioner, find it intolerable to live with them anymore.
- The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with them.
- The Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the presentation of the petition.
- Both parties to the marriage consented to live separate and apart for a continuous period of at least two years before the presentation of the petition and the Respondent consents to a divorce being granted.
- The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the petition.

Clarification of the Grounds

1. Adultery

Adultery is voluntary sexual intercourse between two persons of the opposite sex where one or both is married but not to each other. In order to petition for a divorce on the ground of adultery the Respondent would ideally have admitted the adultery, or alternatively the adultery must be inferred – by for example:

- a) The birth of a child to the Respondent wife when the Petitioner husband is not the father.
- b) A report from an enquiry agent stating that the Respondent is cohabiting with another person of the opposite sex. [Instructing an enquiry agent however can be expensive and therefore if the Respondent is not prepared to admit to the adultery, you may wish to consider relying on another ground.]
- c) Naming a Co-Respondent in the divorce petition who can then be called upon to give evidence to the court as to their relationship with the Respondent. However, if the Respondent admits the adultery we would usually avoid involving any Co-Respondent.

2. Unreasonable Behaviour

This is one of the most common grounds for divorce. There is no definition of unreasonable behavior and it is up to the discretion of the District Judge as to whether the behaviour entitles the Petitioner to a divorce.

The Petitioner must usually provide between three and six specific examples of the Respondent's unreasonable behaviour. The sort of conduct that can be included will always depend on the particular circumstances of the case, but relevant examples include:

- Physical violence,
- Verbal abuse (which could include insults, threats or nagging),
- Failure to provide money i.e. supporting the family financially,
- Failure to provide emotional support,
- Gambling and/or excessive drinking.

The Petitioner should include details of the worst and most recent incidents of the behaviour. It does not have to be grave and there is no need to prove the unreasonable behaviour unless the Respondent defends the petition – which happens rarely.

If petitioning for unreasonable behaviour, the fact that the Petitioner has become bored with the marriage, or that the parties have simply grown apart, *will not be sufficient grounds* for divorce.

3. Desertion

This fact is very rarely relied upon because of the complexity of the legal definition of desertion.

The elements are:

- i. There must be a separation, i.e. the Petitioner and the Respondent are no longer living together as husband and wife. Generally speaking the Petitioner and the Respondent will be living in separate properties. The Petitioner and the Respondent however can still remain living in the same house as long as they are leading separate lives, i.e. not sleeping in the same bedroom and each carrying out their own individual day to day chores such as cooking, cleaning etc. and not socialising together
- ii. There must be an intention to desert i.e. to bring the marriage to an end, on the part of the Respondent.
- iii. The Petitioner must not consent to or want the separation.
- iv. The Respondent must not have a good reason for the separation.
- v. The desertion must be for a continuous period (of two years)
- vi. The two year period must immediately precede the presentation of the petition.

4. Two Years Separation with Consent

This requires the parties to have lived separate and apart for a continuous period of two years immediately preceding the presentation of the petition. As for desertion, the parties would generally have lived in separate properties, but the court will usually accept the parties remaining in the same property if they have lived completely separate lives albeit under the same roof.

In addition, the Respondent must consent to the divorce.

We would usually ask the Respondent to confirm in writing that they agree to the divorce on this ground before the petition is sent to the court. If the Respondent does not consent then another ground will have to be relied on.

The advantage of petitioning for divorce on this ground (as opposed to say *Unreasonable Behaviour* or *Adultery*) is that it is not a fault based divorce and no blame is being attached to the other party.. You do not have to state the reasons for the breakdown of the marriage in the divorce petition.

5. Five Years Separation

Separation here means the same as for ground 4 above, but the Respondent does not need to provide his consent.

What is the divorce procedure and how long will it take?

Drafting a Divorce Petition

The divorce process starts by the Petitioner (or their solicitor) drafting a divorce petition. If we draft the divorce petition for you:

- We need your original, or a certified copy of your, *marriage certificate*. The information on your marriage certificate i.e. where you married, and your names must be copied exactly onto the divorce petition.
- Your marriage certificate will be sent to the court with the divorce petition. Your marriage certificate will not be returned to you. We can however provide you with a certified copy if you wish.
- Once the *Divorce Petition* (and if applicable the *Statement of Arrangements for Children Form* - see below) are completed we would usually send draft versions to your spouse for them to have a look at. Ideally they would take independent legal advice on the papers and revert to us approving the papers. However, if this is not done within a reasonable period of time (say ten to fourteen days) we would go ahead and simply send the divorce papers to court.

Statement of Arrangements for Children

If you have children under the age of eighteen you must complete a *Statement of Arrangements for Children Form*. This is a standard form which gives details of the children. – such as their names, dates of birth, where they live, who they are going to live with once the divorce is finalised, where they go to school and what contact they will have with the parent they will not live with. Ideally, we would want the Respondent to agree the contents of this form.

Issuing Proceedings

The divorce procedure is a purely administrative one as long as the Petition is not defended by the Respondent. The process is, in most cases, completed in 4 to 6 months. It is started by lodging the divorce papers (petition and children form) with the Court together with a fee and the original *Marriage Certificate*.

Acknowledgment of Service Form

Once the court receives the papers it will send a copy to the Respondent together with an *Acknowledgement Form* to complete. If you are the Respondent and we are representing you then we will go through the *Divorce Petition* with you and the *Acknowledgement Form* and help you complete the latter. We will have to decide whether or not you want to defend the divorce. Very few divorces are defended because of the cost involved and the outcome does not change i.e. you will still get divorced. We will also have a look at the *Statement of Arrangements for Children Form* and decide whether or not we agree with the content.

The Respondent has fourteen days to send the *Acknowledgment Form* back to the court. Once the court receives it they will send a copy to the Petitioner's Solicitor.

Decree Nisi – first divorce order

Once the Petitioner's Solicitor receives the *Acknowledgment Form* the next step is to apply for the *Decree Nisi*. To do this the Petitioner must complete an *Affidavit* (a statement which is sworn on oath in front of an independent Solicitor). The main matters which are dealt with in the *Affidavit* are as follows:

- a. The Petitioner must confirm that the contents of the petition are true and no amendments or alterations are required.
- b. State if they have cohabited with the Respondent since sending the petition to court, and if so give details of the cohabitation.
- c. If there are children the Petitioner will have to confirm if the contents of the *Statement of Arrangements for Children Form* is still correct.

The next step is to send the affidavit to the court along with a standard application form. A District Judge at the court will consider the content of the petition, the acknowledgement and *Affidavit* and assuming the paperwork is in order will give the Petitioner and Respondent a date when the *Decree Nisi* will be read out in court. This date will usually be two to three weeks later.

There is generally speaking no need for either the Petitioner or the Respondent to attend court when the *Decree Nisi* is read out. We will provide you with the original decree nisi order when we receive it from the court.

Decree Absolute – final order

This is the last step in the divorce process. The Petitioner can apply for the *Decree Nisi* to be made absolute six weeks and one day after the pronouncement of the *Decree Nisi*. Generally speaking however the Petitioner will not apply until an agreement is reached or there is an order of court with respect to the financial issues. This is to protect your position with respect to inheritance and pension orders. There is a standard application form and court fee which are submitted to the court, and the *Decree Absolute* is usually sent out around a week or so thereafter.

We would send you the original *Decree Absolute* to keep safe.

You Are Divorced When Decree Absolute Is Pronounced.

If you require advice regarding your particular circumstances, please telephone us to speak to one of our specialists in this field.

Or REQUEST A CALL BACK at a time convenient to you.

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