

Divorce - respondent's guide

Divorce is the process which legally ends a marriage. A petition for divorce cannot be issued unless you have been married for more than 1 year and your husband or wife are able to prove to the court that they 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 you have committed adultery and your husband or wife finds it intolerable to live with you;
- (b) That you have behaved in such a way that your husband or wife cannot reasonably be expected to continue living with you;
- (c) That you have deserted your husband or wife for at least two years;
- (d) That you and your husband or wife have lived separate and apart for two years and you consent 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

In most circumstances your husband or wife's solicitors will write to you directly or to our offices to confirm their intention to commence divorce proceedings and the fact upon which they intend to rely to prove that the marriage has irretrievably broken down. If your husband or wife intends to issue proceedings on the basis of your adultery or on the basis of two years separation they will ask you to complete a form to confirm your agreement to the divorce or admission to the adultery.

In some circumstances your husband or wife will be able to make a claim for the costs of the divorce against you. A claim for costs will usually only be successful on the basis of an adultery or unreasonable behaviour petition. If however your husband or wife are on a low income compared to yourself this may also be a reason for us to advise you to pay your husband or wife's costs, or to make a contribution to their costs.

Drafting the petition

Your original or a certified copy of your marriage certificate must be filed with the divorce petition. The original or certified copy will not be returned at the conclusion of the divorce.

Your husband or wife will confirm in the petition the fact upon which they are relying to prove that the marriage has irretrievably broken down and to support the fact upon which they are petitioning they will need to confirm the following information:-

- (a) If they have alleged adultery they will need to give:- The date(s) and place(s) where the adultery took place.
- (b) If they have alleged unreasonable behaviour they will need to give: Details of the unreasonable behaviour including the most recent incident.
- (c) If they have alleged desertion they will need to give:- The date that the desertion took place.
- (d) & (e) If they have alleged either 2 or 5 years separation they 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 receiving training for a trade, profession 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 your husband or wife will need to confirm the arrangements they 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 prior to Issue

The Law Society protocol confirms that a petitioner to a divorce should provide the respondent with a draft petition and statement of arrangements for children form prior to issue. It is hoped that whenever possible the contents of both documents will be agreed. We will contact your husband or wife to request a copy of the draft divorce documentation for our consideration. In some circumstances however your husband or wife will proceed to issue the proceedings without notice to you and without providing you with a copy of the draft documentation.

Service of the petition

Your husband or wife will send their petition to the local county court or The Principal Registry in London for issue. Once the court has issued the petition you will receive a sealed copy of the petition, statement of arrangements for children form and a blank acknowledgement of service form. The court will serve you with the divorce documentation by sending it to you by first class post. In some circumstances we will inform your husband or wife's solicitors that we will accept service on your behalf and therefore our offices will receive the documentation directly from the court.

If your husband or wife is petitioning on the basis of adultery they may name as a co-respondent the person with whom you committed the adultery. Solicitors will normally only advise a client to name a co-respondent if costs are an issue and the client is unlikely to recover the costs against their husband or wife. If a co-respondent has been named, the court will also serve a copy of the petition on them.

On the acknowledgement of service form we will confirm your position

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regarding the divorce and statement of arrangements for children. We will also confirm your position in respect of the cost of the divorce if your husband or wife has made a claim against you.

There is a time limit of 8 days from the date the petition was sent to you to return the acknowledgement of service to the court. If the acknowledgement of service is not filed with the court within the 8-day time limit before your husband or wife can progress the divorce, they will need to prove that you have received the documentation. If we have corresponded with your husband or wife's solicitors after issue this will be sufficient evidence. Alternatively your husband or wife is likely to arrange for personal service using the court bailiff or a process server. If personal service proves necessary this will increase your husband or wife's costs and therefore the amount that they will be claiming against you.

If you intend to defend the proceedings your case will follow a different procedure from this stage.

Applying for directions for trial

Once the acknowledgement of service form has been returned to the court, your husband or wife will be in a position to ask the court to consider whether they have grounds for a divorce and if the arrangements they have proposed for the children are satisfactory. This procedure is called "Applying for Directions for Trial".

To apply for directions for trial your husband or wife will need to file an affidavit with the court. This is a statement confirming that the contents of their petition and statement of arrangements for children are true.

Certificate of entitlement to a decree

If the judge is satisfied with your husband or wife's 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 the divorce. This is called "Pronouncing the Decree Nisi". The decree nisi is the first of two decrees that must be pronounced 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 the order should not be made absolute 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, prohibited steps and a specific issue) or to make a care or emergency protection order.

If the judge decides that your husband or wife is 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 your husband or wife is not entitled to a decree. In most cases the court will simply require further information in correspondence. In some circumstances the judge may decide that both you and your husband or wife need to attend court. This is called removing the 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, rather than attend the hearing, we will file a statement or write to the court on your behalf to confirm your position on costs.

After the pronouncement we will receive your decree nisi. If your husband or wife has asked for you to pay the costs of the divorce we also receive an order supplementary to decree nisi. This will confirm details of the cost order made.

Decree absolute

Your husband or wife can apply for the decree absolute (the final decree) after 6 weeks and 1 day have passed since the pronouncement of the decree nisi. The decree absolute confirms that the marriage has been dissolved and from this date you are able to remarry.

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 your husband or wife can apply for the decree absolute they may delay the application. We will discuss this with you if a delay is likely in your case.

As the respondent on the divorce you are able to apply for the decree absolute at any time after the expiration of three months from the earliest date on which your husband or wife could have applied.

Time scale

It is difficult to give 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 quickly you and your husband or wife files documentation with the court, how busy the courts are and whether or not it is appropriate to delay applying for the decree absolute.

If your husband or wife completes the divorce as quickly as possible, then in most cases the decree nisi will be pronounced within 3 months from the date of issue of the petition. If they do not delay applying for the decree absolute then your divorce should be concluded within 6 months from the date of issue.

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