

DIVORCE

In 2001 over 165,000 couples divorced in the UK, the highest divorce rate in Europe. According to research from 'The Family Matters Institute' the overall Divorce rate is now 40% of all marriages.

An application for Divorce cannot be made within the first year of marriage.

The person who starts the divorce proceedings is called 'the Petitioner' and his/her spouse is called 'the Respondent'.

Under the law in England & Wales, there is only one ground for divorce: that the marriage has *broken down irretrievably*.

To satisfy the Court that the marriage has broken down irretrievably, the Petitioner must prove one of the following five facts:

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

The Divorce Petition

The application form for a divorce is the Divorce Petition. This document briefly outlines the details of both parties and any children, together with the fact on which the Petitioner is relying to prove that the marriage has irretrievably broken down.

The Statement of Arrangements for Children

If there are children of the family, either children of both parties or from a previous relationship, the proposed arrangements for the care of the children both now and following the divorce will need to be set out in the Statement of Arrangements for Children.

The Petitioner sends the Divorce Petition and Statement of Arrangements for Children to the Court, together with the original marriage certificate. There is a court fee for issuing divorce proceedings.

The Acknowledgement of Service

Once the Court has processed the Divorce Petition and Statement of Arrangements for Children copies are sent to the Respondent by post together with an Acknowledgement of Service form. The Respondent completes this form and by this form he/she will indicate whether they intend to defend the divorce. Only 1% of all Divorces are defended.

The Respondent has eight days from receipt of this form to return it to Court. Should the Respondent fail to return the Acknowledgement of Service, then unless it can be proven that he/she has received the Petition, it may be necessary for the Petitioner to arrange for a further copy to be served.

The Decree Nisi

Decree Nisi is a declaration by the Court that it is satisfied that the parties are entitled to a divorce.

When the Petitioner receives the Acknowledgement of Service form back from the Court, or once service of the Petition has been proved, an Application for Decree Nisi can be prepared. The application for Decree Nisi is by an affidavit sworn by the Petitioner, and there is an oath fee. The forms applying for Decree Nisi are sent to the court, and it is at this point that the Court will decide whether the parties are entitled to a divorce. If it approves the application, a date will be set on which the decree nisi will be pronounced.

The Decree Absolute

A Decree Absolute is an order of the Court dissolving the marriage.

The Petitioner can apply for Decree Absolute six weeks after the Decree Nisi has been pronounced. There is a court fee for the application for Decree Absolute. If the Petitioner fails to do so, the Respondent can apply for Decree Absolute after a further three months. It is usually not advisable to apply for Decree Absolute until the finances have been settled.

Time scale

A divorce can take as little as four to five months from start to finish, however this depends on prompt application for each stage of the Divorce. The time taken is very much governed by the complexities of the finances involved, these are usually dealt with between Decree Nisi being granted and application for Decree Absolute. Please see our 'Financial Claims on Divorce' fact sheet