

Divorce – the grounds and facts

Since the Matrimonial Causes Acts of 1969 and 1973, divorce has been based upon one ground - the irretrievable breakdown of the marriage. The person who petitions for a divorce must then use one of five facts to evidence the ground that the marriage has broken down irretrievably.

The person who issues the petition is described as the petitioner and the person who receives the petition is described as the respondent.

The five facts referred to above are as follows:

- 1 Adultery: the respondent's adultery and the petitioner finding it intolerable to live with the respondent, although not necessarily as a result of the adultery.
- 2 Unreasonable behaviour: the respondent behaving in such a way that it is unreasonable to expect the petitioner to continue to live with the respondent.

These are the only facts that do not rely on a period of living apart. If the parties live together as man and wife under the same roof for a period of six months or more, either after the adultery is known about or after the last incident of unreasonable behaviour, the court will treat the petitioner as having forgiven the respondent, and it is extremely unlikely that a divorce will be granted.

- 3 Desertion: the respondent deserting the petitioner, i.e. leaving without this being by agreement, and throughout the period of living apart, the petitioner being willing for the respondent to return. This desertion has to be for a period of at

least two years, prior to the presentation to the court of the divorce petition.

- 4 Two years' separation with consent: The parties must have been living separately for a period of at least two years, prior to the presentation to the court of the divorce petition. It is possible in some circumstances to demonstrate that parties have been living separately, even if they are still living in the same household. The consent of both parties is vital to this fact and it may be withdrawn at any time prior to the grant of decree nisi.
- 5 Five years' separation: in this case either of the parties may petition the other as long as they have been living separately for a period of at least five years, prior to the presentation to the court of the divorce petition. Again, it is possible in some circumstances to demonstrate that parties have been living separately, even if they are still living in the same household. No consent is required when petitioning on this fact. However, there is a specific defence to this if a decree of divorce would cause grave financial hardship or other grave hardship.

In cases 3 – 5 above, a period of up to six months is allowed for attempts at reconciliation, that is the parties may live together again for periods of time totalling altogether no more than six months. Even a day over six months will bring the period of separation or desertion to an end. If there has been a period of living together, then the same period has to be added to the period of separation, so that a full two years, or five years, as the case may be, of living apart is involved.

Head Office
Heathervale House
2-4 Vale Avenue
Tunbridge Wells
Kent TN1 1DJ
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

Divorce – the grounds and facts

(continued)

In cases 4 and 5 there is a further provision that the respondent may apply to have his or her financial position considered by the court, which has the effect of delaying the pronouncement of the decree nisi, which cannot take place until this application has been resolved.

Once the court has been satisfied that the petitioner is entitled to a decree of divorce, there are two stages to the pronouncement of the decree. The first of these stages is called the decree nisi, the second the decree absolute. It is only upon the decree absolute that the parties are fully divorced and are free to remarry. Please see our information sheet entitled 'Divorce procedure – a brief guide' for further details of the divorce procedure.

This information sheet has been prepared to highlight some key issues relating to divorce procedures. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2015 and may be affected by subsequent changes in the law.

If you require any further information, please contact one of us on 01892 510000 or by email:

Joanna Pratt
joanna.pratt@ts-p.co.uk

Sarah Judd
sarah.judd@ts-p.co.uk

Kirstie Law
kirstie.law@ts-p.co.uk

Desmond O'Donnell
desmond.odonnell@ts-p.co.uk

Sarah Keily
sarah.keily@ts-p.co.uk

Helen Waite
helen.waite@ts-p.co.uk