

DIVORCE

Frequently Asked Questions

Is there any criterion to be able to start divorce proceedings?

You can start divorce proceedings providing:

1. You have been married for at least one year. If you have not been married for one year but your marriage has broken down, there are other options such as Judicial Separation (details below) or a Separation Agreement (it should however be noted that separation agreements are not legally binding).
2. Either you or your spouse is domiciled in England and Wales or has been resident in England and Wales during the preceding year (domicile refers to the country, which a person chooses as their permanent home). It does not matter in which country you were married providing you have the marriage certificate.

What are the grounds for divorce?

There is only one ground for divorce, and this is that the marriage has irretrievably broken down. In order to prove this, you must establish one of the following "facts".

1. Your spouse's adultery (not available for same sex divorces)
2. Your spouse's unreasonable behaviour
3. Your spouse has deserted you for a period of at least two years
4. You have been separated for at least two years and your spouse consents to a divorce
5. You have been separated for at least five years (consent not necessary)

What information and documents are required to commence divorce proceedings?

In order to issue divorce proceedings on your behalf we require your Marriage Certificate. It must be the original and not a photocopy. It will be sent to the Court and the Court will keep it on file. If you need to obtain another marriage certificate you can do so at the office of the Registrar of Births, Deaths and Marriages for the district in which you were married. Alternatively, you can obtain a copy from the General Register Office at PO Box 2, Southport, Merseyside, PR8 2JD (Tel: 0300 123 1837) or online using the following link:

<https://www.gro.gov.uk/gro/content/certificates/login.asp>

We will obtain all other information required from you during your appointment. It is advisable to bring your marriage certificate with you to expedite matters.

How much will it cost?

We offer a fixed fee for undefended divorce proceedings. Please refer to our download which provides details of the fixed fee and what it does and does not cover.

It should be noted we do not offer a Public Fund Service (Legal Aid) and if you think you would be entitled to this you should contact the Law Society for a list of solicitors in your area who do offer this service.

In certain cases, the Petitioner will be able to recover the costs of the divorce from the Respondent. This will be discussed with you during your initial meeting. If the Court does order the Respondent to pay it would be the costs of the divorce only and if the Respondent did not pay you would be liable to settle our costs and would be responsible for enforcing the order either by instructing us or dealing with it yourself.

If you are the Respondent, you may be ordered to pay the Petitioner's costs as well as your own – this is likely if the Petitioner is relying on the fact of adultery or unreasonable behaviour. You do have the opportunity to object to a Costs Order.

How long will the divorce take?

The average length of time for the divorce to be made Absolute is six to eight months providing there are no difficulties, such as if the Respondent does not respond promptly or if the Respondent defends the divorce.

We may also advise you not to apply for the Decree Absolute if financial matters are not resolved but this would depend on your individual circumstances. It is not advisable to make any plans for re-marriage until you are in possession of the actual Decree Absolute. In addition, such plans for re-marriage would have a bearing upon the financial issues if you have not entered into a Consent Order or have a Final Order. It is therefore essential that you discuss any plans with us well in advance.

What if my husband/wife defends the proceedings/Can I defend the divorce proceedings?

If you issued the divorce petition your spouse could defend the divorce and likewise if your spouse issues divorce proceedings, you could defend them. If a defence is filed there has to be a hearing where the Judge decides if there is enough evidence for divorce. However, defending a divorce is very rare and costly so in the vast majority of cases it is not advisable.

What is the effect of the divorce?

Both Parties are free to re-marry. The former wife is entitled to call herself by her former husband's name or by her maiden name. Divorce also affects the provisions of any Will. Unless there is a clear intention to the contrary then any gift made to the former husband or wife in a Will pre-dating the Decree Absolute will fail. Divorce also affects the appointment of a guardian under a Will. It is normally advisable to prepare a new Will upon the Decree Absolute if you have not already done so following separation.

Each of the Parties will also lose any entitlement that they may have under the other's pension.

Do I need any orders concerning the children?

The rules have changed, and the Court no longer needs to know about the arrangements for the children when considering the divorce proceedings. However, if there are any disputes regarding the arrangements it is possible to apply for a Child Arrangements Order but this would be dealt with separately. Please contact us to discuss further if you require any advice regarding the arrangements for children.

Are the financial issues dealt with before the divorce is finalised?

An agreement with regard to financial issues can be made at any time during the divorce process but the Court cannot agree it until the Decree Nisi has been pronounced. If an agreement is reached it is advisable to have this put into what is called a Consent Order. The Consent Order can then be filed at Court once Decree Nisi has been pronounced. If an agreement cannot be reached amicably you will need to apply for a Financial Order at Court.

It is still possible to agree a settlement after the Decree Absolute is pronounced and a Consent Order can be filed at Court at any time by the Petitioner (provided the financial order box has been ticked on the Petition).

If you are the Respondent, it is crucial that the matrimonial finances are resolved before you remarry as your right to apply will cease upon remarriage. Therefore, if the finances have not been resolved (by a Consent Order or Final Court Order) before the date of your remarriage you must lodge your Application for a Financial Order with the Court before you remarry otherwise you will be barred from doing so.

If you are the Petitioner provided the financial order boxes are completed on the Petition properly your right to apply for a Financial Order will remain open even after re-marriage. However, your remarriage will have a bearing on the outcome, so it is always advisable to resolve matters first.

What is Judicial Separation?

If the Parties have not been married for one year, then they are entitled to a judicial separation rather than a divorce. It is also used for people who do not wish to divorce, for example, for religious or other personal reasons. The procedure for this is very similar to that of divorce but it is not necessary to show that the marriage has broken down irretrievably and the process concludes at the stage where the Decree Nisi is made. It is still necessary to show one of the five facts. By proceeding in this way then the Court has the power to deal with the parties' financial positions as it would upon a divorce. However, it is not usually advisable to proceed with a judicial separation if for no other reason than if the parties later proceed with a divorce, they will have to begin the whole process again.