



# **DIVORCE**

## **A guide to divorce procedure**

### **Divorce Procedure**

Divorce is a legal process, which is carried out by the County Court. The procedure begins with a petition and ends with a Decree Absolute, which dissolves the marriage.

#### **1 When can a divorce petition be issued?**

You cannot issue a divorce petition unless you have been married for more than one year. Although it does not matter where you were married, it does matter where you and/or your spouse are living at the time the petition is issued. The issue of where you or your spouse normally live or connections you have abroad may have to be considered by the courts, to determine whether a Court has authority to deal with a particular divorce (known as “the court’s jurisdiction”). These matters, known as domicile and residence can be complex.

#### **2 Will my marriage certificate be required?**

Yes. Your divorce petition needs to be accompanied by either your original or an official copy of your marriage certificate. A photocopy is not sufficient. If you were married in

England or Wales, you can easily obtain an official copy of your marriage certificate from the office of the Registrar of Births, Deaths and Marriages for the district in which you were married. The court does not return your marriage certificate at the conclusion of the divorce. If you were married abroad, the marriage certificate may need to be translated.

### **3 On what ground can a divorce petition be issued?**

The only ground for divorce is that the marriage has irretrievably broken down. This is proved by establishing the existence of one of five factual circumstances. These are:-

- (a) Your spouse has committed adultery and you find it intolerable to continue to live with him/her.
- (b) Your spouse has behaved in such a way that it would be unreasonable to expect you to continue to live with him/her.
- (c) Your spouse has deserted you for a continuous period of two years or more.
- (d) You have been living apart from your spouse for two years or more and your spouse agrees to the divorce.
- (e) You have been living apart from your spouse for five years or more, whether or not your spouse agrees to the divorce.

It is no longer necessary in a petition based on adultery to name the third person concerned.

### **4 Does the basis of the divorce have to be agreed?**

No. However, it might be a good idea for you or your solicitor to establish whether or not there is likely to be any opposition to the petition before it is actually issued at the court. As

a matter of good practice, and in accordance with the Family Protocol a draft of the petition should usually be sent to the other spouse concerned. Desertion petitions are highly unusual. It is difficult to pursue an adultery petition without your spouse admitting the adultery. You need the consent of your spouse to pursue a two year separation petition.

## **5 What information does the divorce petition contain?**

The Petition is a standard court form. It contains basic information about the names and address of the couple concerned, details of any children and a statement that the marriage has irretrievably broken down. It will also state the basis of the Petition, such as adultery or behaviour. The contents of the petition must be true.

The petition concludes with a section known as the “prayer” which includes a request that the marriage be dissolved and may also include a request for the other spouse to pay some, or all, of the costs of the divorce. In addition, a request is usually made for an order for financial provision to be made to the court, it is good practice to do this.

## **6 Will I need to attend Court?**

No, not in usual circumstances. You may have to attend court if you or your spouse are unable to agree arrangements for your children or for financial provision.

## **7 Are the divorce proceedings held in public?**

Court proceedings in family law are usually held in private. The press are able to publish the fact that a decree nisi of divorce has been pronounced.

## **8 When are financial issues dealt with?**

Negotiations in relation to financial arrangements for the future can take place at any time before, during or after the divorce. It is usual not to make decree absolute until financial matters have been concluded. This is particularly important in pension cases and your solicitor would advise you about this.

Particular issues, such as maintenance, may need to be resolved in advance of an overall settlement being reached.

## **9 When will I be able to remarry?**

Neither party to the marriage is free to remarry until the final decree of divorce has been made (known as the "Decree Absolute").

## **10 How much will the divorce cost?**

A standard divorce without complication or delay, tends to cost in the region of £600 plus VAT and court fees being £410 for issue of the petition. Certain factors can increase the costs and this would be discussed with you by your solicitor.

## **11 Timetable**

## **11.1 Issue of Petition**

The spouse who starts the divorce is known as the “petitioner”. The other spouse is known as the “respondent”. If a third person is named in a petition based on adultery, that person is known as the “co-respondent”. The divorce starts when the following papers are sent to the court:-

- (a) Divorce petition.
- (b) Statement as to advice given on reconciliation.
- (c) Marriage certificate.
- (d) Court fee (unless the Petitioner is exempt from paying such fees).

## **11.2 What happens next?**

The court or the petitioner’s solicitor sends by post a copy of the petition to the respondent, together with a form of acknowledgement for him/her to complete (known as the “acknowledgement of service”). If the respondent is represented by solicitors, the divorce papers are usually sent directly to them.

## **11.3 What must the respondent do once he/she receives the divorce papers?**

The respondent must complete and return to the court the acknowledgement of service with eight days of receipt of the divorce papers.

## **11.4 What happens if the respondent wishes to defend the divorce?**

The respondent must file a defence (known as an “answer”) with 29 days of receipt of the divorce papers (longer time limits apply where the respondent lives outside England and Wales). The petition then becomes defended and the remaining procedure outlined below no longer applies. However, it often still proves possible to reach a compromise over how the divorce is to proceed even when an answer has been lodged. Defended divorce proceedings rarely result in a fully contested hearing. It will however inevitably take longer to finalise the divorce, and costs will increase substantially.

## **11.5 What happens where the respondent agrees that the court has jurisdiction and does not wish to defend the divorce?**

The court will send a copy of the respondent’s acknowledgement of service to the petitioner’s solicitor who then prepares a sworn statement which confirms that the contents of the petition are true. The statement must be signed by the petitioner. This is then sent to the court with an application for decree nisi.

## **11.6 What happens if no acknowledgement of service is returned to the Court within the time limit?**

The petitioner will need to prove that the respondent and any named co-respondent have received the divorce papers. This may require a duplicate set of the papers being delivered to the respondent personally. In exceptional circumstances, where every attempt

has been made to ensure that the respondent has received the divorce papers, the court may make an order dispensing with the need to effect service. Your solicitor would discuss with you any necessary steps to take. This will cause delay and additional expense.

### **11.7 How does the court deal with the petitioner's application for a date for pronouncement of the decree nisi?**

The judge looks through the papers and decides whether the petitioner is entitled to a divorce. If so, the judge certifies that a decree nisi should be pronounced. Both the petitioner and the respondent (usually through their solicitors) are informed by the court of the date on which the decree nisi will be made. There is usually a few weeks after the judge issues his certificate. The parties do not need to attend court for the pronouncement.

### **11.8 Does the court make any orders in relation to the children?**

No. If there is any dispute a separate application must be made to the Court.

### **11.9 When can the petitioner apply for the decree absolute?**

The petitioner can apply for the decree absolute six weeks and one day after the decree nisi was pronounced. The application is made on a standard court form and is usually processed within a couple of weeks. You will need to discuss the timing and impact of the application with your solicitor before it is made. It is usual not to make decree absolute until financial matters have been concluded especially in pension cases.

## **11.10 Can the respondent apply for the decree absolute?**

If the petitioner does not apply for the decree absolute, the respondent may make a similar application, but will need to wait a further three months after the date on which the petitioner could have first applied (i.e. six weeks and one day plus three months). The application is not granted automatically and usually requires attendance at court.

It is usual for it to take approximately six months from the date the petition is issued until decree absolute. However as explained above, the petitioner may delay applying for decree absolute until financial matters have been resolved which could be considerably longer.

## **12. Financial Matters**

These are not dealt with as part of the divorce process. Decree absolute does not dismiss financial claims between spouses. If you remarry before financial matters are resolved you may lose your rights to make a financial application. You should discuss financial matters with your solicitor.

[www.craneandstaples.co.uk](http://www.craneandstaples.co.uk)

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