



## Divorce

The mechanics of obtaining a divorce nowadays are usually quite straightforward – particularly if the couple agree that the marriage is over.

The difficulties tend to lie rather in resolving the related practical issues stemming from the divorce such as how to separate, where to live, arrangements for the children and any money matters.

Your attention will probably be concentrated on those related issues and the process of actually obtaining the divorce may seem blurred.

The purpose of this information is to outline a broad framework of the divorce process, to highlight key points and to set out the sort of timetable to expect.

### Who Can Start Divorce Proceedings?

Anyone who has been married for over a year provided one or other of the couple is either domiciled here or has been resident in England or Wales during the proceeding year. It does not matter where the couple were married.

### On What Grounds Can a Divorce Petition Be Started?

The only grounds for divorce are that the marriage has irretrievably broken down, but it is not as straight forward as just saying there has been irretrievable breakdown. A divorce will only be granted if one of the 5 facts laid down by law, proving irretrievable breakdown, is established.

### What Are The Facts?

Your spouse has committed adultery and you find it intolerable to continue living together.

Your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together.

The parties have lived separately and apart for a period of 2 years continuously and both consent to the divorce.

Your spouse has deserted you for a continuous period of 2 years or more.

You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.



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## What Happens Next?

If the marriage has “irretrievably broken down” and one of the 5 facts applies, this will depend upon your particular circumstances. It is often sensible to try to obtain your spouse’s consent to the petition and to try to reach agreement over the contents of the petition. For example, if the spouse accepts that the petition should be based on unreasonable behaviour, only a brief outline of the particular behaviour may need to be given. Not saying all that might be said will not generally prejudice you.

## What Does The Petition Actually Look Like?

Every petition follows the same form. It contains basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down. It will also state the “fact” on which it is intended to rely.

The petition will include a section (known as the “prayer”) which will include a request for the divorce to be granted. It may also include a claim regarding costs of the divorce; and an Order for financial provision.

## What About The Children?

A form is sent to the Court with the divorce proceedings which will outline the arrangements relating to the children. The law encourages couples to try and agree those arrangements. The form (known as “Statement of Arrangements”) is usually completed by the person filing the petition. Preferably it should be sent to the other spouse before it is filed. If agreement is not reached, this does not prevent the divorce from proceeding.

The Statement of Arrangements for the children is not legally binding it simply sets out the partners intentions in respect of the children.

## How Much Does The Divorce Cost?

This depends on the finances of each party to the divorce. Those who are unemployed or on a low income are possibly eligible for advice under the Legal Help Scheme (formally known as Legal Aid). This means the state may pay the majority, if not all, of the solicitor’s costs (although there are circumstances when these costs will need to be repaid to the LSC). Those who are ineligible for Legal Aid should ask his/her own solicitor for an estimate of the likely costs. Solicitors are obliged to provide an estimate of their costs at the beginning of the case. A straightforward divorce will usually cost between £700.00 - £800.00 including Court fees and VAT.

## Are Financial Issues Dealt With Before The Divorce Is Finalised?

It is not necessary for financial discussions to be completed by the time the divorce is final. Frequently they will still be in the early stages if finances are complicated. However, it should at least be possible to resolve immediate problems and make temporary maintenance arrangements.

## Are The Proceedings Public?

Court proceedings in family law are usually private. This means that the public are not allowed access to the Court papers. However, the press are able to publish the fact that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the “facts” of the divorce by they are not able to publish details of the adultery or unreasonable behaviour.



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## Time Table

### 1. After 1 Year of Marriage

Either spouse may start a divorce. He or she is referred to as the "Petitioner". The petition and statement of arrangements about the children are completed and then sent to Court together with the marriage certificate. A fee, currently £210.00 is payable unless the Petitioner is being advised under the LSC Legal Help Scheme.

### 2. After a Few Weeks of Sending the Petition to the Court

The Court sends a copy of the petition and statement of arrangements to the other spouse referred to as the "Respondent". A copy of the petition is also sent to anyone named as a "Co-Respondent". If the Respondent (or Co-Respondent) has instructed solicitors, the petition may be sent to them.

### 3. From the Date the Documents are Received, the Respondent has Strict Time Limits to Observe

a) Within 8 days

He or she should send to the Court a form called an "acknowledgement of service" which accompanied the petition. The form asks the Respondent whether it is intended to defend the petition, whether any claims for costs is disputed and whether orders affecting the children are sought.

B) Within 29 days of receipt (longer if the documents have to be sent to an address abroad)

Whether or not an acknowledgement of service has been filed, the Respondent must, if he or she intends to defend the petition, file a Defence (called an "Answer"). The petition then becomes defended and the procedure outlined below does not apply. Defended divorce proceedings resulting in a fully contested hearing are very rare. However, a delay finalising the divorce is inevitable.

### 4. Within a Few Days of Receiving the Acknowledgement of Service from the Respondent (and Co-Respondent)

The Court sends the Petitioner's solicitor a copy of the form(s) of acknowledgement of service.

### 5. If the Respondent is Not Defending the Petition, the Petitioner Can Apply for the Decree Nisi to be Pronounced.

The Petitioner's solicitor prepares an Affidavit for the Petitioner to swear confirming that the contents of the petition are true. It will also state whether any circumstances (including those relating to the children) have changed since the filing of the petition. The Petitioner will swear the Affidavit before a solicitor or Court Official and it will then be sent to the Court with the request for a date for the first decree of divorce ("Decree Nisi") to be pronounced.

### 6. If Acknowledgement of Service is Not Returned to the Court

Proof that the Respondent and any named Co-Respondent have received the petition will have to be obtained before the Petitioner can take the next step. This may involve arranging for someone to deliver the petition to the Respondent and any named Co-Respondent personally or, exceptionally, obtaining a Court order that proof does not need to be given that the Respondent and Co-Respondent have received the petition. This is called "dispensing with service".



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## **7. On receipt by the Court of the application for a date for pronouncement of the Decree Nisi and Affidavit.**

The District Judge looks through the papers and if they seem in order, gives a certificate for the Decree Nisi to be pronounced. Both the Petitioner and the Respondent (through their solicitors) are then advised of the date fixed for Decree Nisi. Depending on the Court's diary, the date is likely to be a few weeks after the application is lodged. The couple do not have to attend Court.

## **8. What normally happens with regard to the children?**

If agreement has been reached, the District Judge is unlikely to interfere.

If agreement has not been reached, the District Judge may ask the Petitioner and the Respondent (accompanied by their solicitors) to attend an informal appointment to explore a solution to the difficulties. The District Judge may also ask for a CAFCASS Officer (formally Court Welfare Officer) to become involved. If a solution cannot be reached, this will delay the application for the final decree of divorce until a solution has been achieved via the court if necessary.

## **9. If the arrangements in relation to the children are settled between their parents.**

6 weeks and 1 day from the date of Decree Nisi

The Petitioner may apply for the final decree ("Decree Absolute") by sending the appropriate form and £30.00 fee to the Court. This step is not automatic. This Decree will be processed and may be available as quickly as the same day.

3 months after the Petitioner could first have applied for Decree Absolute.

The Respondent may apply for the Decree Absolute if the Petitioner has not already done so.

## **How To Minimize The Pain & Hurt Children Feel When Parents Part**

1. Keep the children informed as to what is going on in terms that they are able to understand.
2. Reassure them that they are not to blame for your marital problems.
3. Repeatedly emphasise that they are loved by both parents and that they will continue to be loved and cared for.
4. Try to make sure that the children remain in regular and substantial contact with both parents.
5. Try to make sure that the children remain involved with both sets of grandparents and other relations and their friends.
6. Parents should try and remain on good terms with each other when discussing issues relating to the children.
7. Early introduction to prospective step parents should be resisted and talk of "new" families should be avoided.
8. A parenting plan setting out basic information and agreements with regard to the children and their wider family should be completed by both parents and a copy of each retained.

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