

Guide to divorce proceedings

This guide is designed to take you through your divorce from start to finish. It concentrates on the Petitioner (the person bringing/starting the divorce proceedings). A section at the end looks briefly at the position of the

Respondent (the person who receives notice that their spouse/partner has filed for divorce). This guide assumes that your divorce is not opposed, in other words, if your spouse/partner does not want to divorce you then this guide will not enable you to take the proceedings through from start to finish. Also, it does not cater for cases where there are issues regarding children nor cases involving complex financial matters.

The document comes in two parts – there's a simple flow chart which takes you through the divorce process and this explanatory document which, together with links to the various forms you'll need, gives practical advice on how to get from start to finish.

There may be times where this guide will not be able to solve your queries or a problem that you have come up against. The guide tries to identify the common circumstances where that may occur and directs you to seek additional advice.

All the forms you will need are contained within this pack.

Understanding the terminology:

The divorce process is full of words and phrases which are rarely used day-to-day and can cause confusion.

Set out below are the most common terms used in divorces that you will need to understand:

The Petitioner - This is the person who is starting the divorce

The Respondent - This person is responding to the divorce brought by their spouse

Issuing the Petition - This is the sending of your petition to the court to be processed

Decree Nisi - The certificate that the court will send you at the half way stage of the divorce

Decree Absolute - The certificate that the court will send you when the divorce is finalised.

This confirms you are divorced and you should keep it safe when you receive it.

Do I have grounds for divorce?

There is only one ground for divorce in and that is that the "marriage has broken down irretrievably." You therefore must confirm that the marriage has broken down completely, before you can continue with the divorce.

Under English Law, this has to be supported by one of five facts:

- Adultery
- Unreasonable Behaviour
- Desertion
- Two Years Separation with Consent
- Five years separation

These facts are also set out at Section 6 on page 10 of the Petition.

How do I start the process?

To start your divorce you will need the following:

- Divorce petition ([Form D8](#))
- A cheque made payable to "HMCTS" for £550.00 **OR** a completed fee remission form ([Form EX160](#)) with supporting evidence
- Your original marriage certificate or a certified copy of your marriage certificate issued by the place you were married.

Completing the divorce petition

The divorce petition is set out in "sections."

Section 1, page 1- You need to tick that you are relying on the grounds that the marriage Has broken down irretrievably, and tick at 1.2 that you are including your original marriage certificate.

Section 2 and 3, pages 2-6 – All you need to do is insert all the information that the form asks for about you and your spouse. If you do not have your spouse's current address, you will not be able to progress with your divorce in the normal way and your divorce may not be as simple as you first thought. You should try your best to find out their address but if you are unable to do so, you should contact a solicitor for more information and advice about how to continue with your divorce.

Section 4, page 7 – Here you need to put all the details of the marriage. You must insert the details exactly as they appear on your marriage certificate. If you do not have your marriage certificate, then you will need to contact the registry office where your marriage was registered to obtain a copy. You cannot

progress your divorce without the marriage certificate.

Section 5, page 8-9– This section looks at jurisdiction (i.e. what country should be dealing with the divorce). It is likely that both you and your spouse live in the same house, have done so during the course of the marriage and intend on doing so for the foreseeable future. If this is the case you should tick “The Petitioner and Respondent are both habitually resident in and.” If this is not the case, you may need to get further advice from a solicitor about your circumstances.

Section 6, page 10 – You need to confirm to the court that the marriage has broken down irretrievably and the reason you are relying on to progress your divorce; adultery, etc (see below). You should tick the reason which applies to confirm to both the court and your spouse the basis for your divorce.

Section 7 and 8, page 11 and 12- You need to give a short statement in support of the reason you are basing your divorce on. The statement needs to give the details of why you are applying for the divorce and why the reason you have chosen applies to your marriage. For example, if you are applying for a divorce on “two years separation and consent” you might say something like this at Section 7.

“The Respondent and I separated on or around November 2009. We have not lived together since this time. The Respondent consents to the divorce.” There is no need to worry about using clever language. As long as you explain clearly to the court your reasons for wanting a divorce, that will be enough.

We will now take each one of the above five reasons and give you some helpful hints on each one.

ADULTERY

You can only claim adultery if you can prove that this occurred. It is often not used because your spouse may refuse to admit it and as such couples usually use another reason such as unreasonable behaviour. If your spouse does not admit the adultery and you cannot prove the adultery occurred, then you cannot proceed with this reason for divorce. Please note – you cannot pursue a divorce as a Petitioner on the basis that you yourself have committed adultery, it must be something that you are alleging that the Respondent has done.

UNREASONABLE BEHAVIOUR

This is the most common reason for divorce. In Section 7 of the divorce petition, you need to provide a short summary of the unreasonable behaviour shown by your spouse towards you. You should provide between 3 and 6 examples of the behaviour shown by your spouse which you consider to be unreasonable. We find that the “first, worst, last” approach works very well

– i.e. setting out the first, worst and last incident of unreasonable behaviour within the marriage.

You need to insert the date the incidents took place (it does not need to be specific, the month and year will do), what happened, and how it made you feel.

The court will expect you to be able to show that due to your spouse’s behaviour towards you, you cannot reasonably be expected to continue living with them.

You should also be aware that the examples need to be sufficiently strong to constitute “unreasonable behaviour.”

There have been occasions in our experience where behaviour set out in the divorce petition has not been considered by the court to be serious enough and the judge has asked for more detail or alternative examples.

DESERTION

This reason for divorce is rarely used in practice. This reason is used when your spouse leaves the relationship.

TWO YEARS SEPARATION WITH CONSENT

This fact has two parts to prove:

1. You must be separated for a period of not less than two years, AND

2. Your spouse must consent to the divorce This does not mean that you need to have lived apart for more than two years. It is possible to be separated but live in the same property. This is becoming more common and many estranged couples live together despite the fact that they are separated. In these circumstances you need to be able to show that you are both living separate lives despite the fact you are living under the same roof. For example, you need to be able to prove that you both live separately, i.e. that you do not socialise together, you have separate bedrooms, and/or that you do your own/separate washing, cooking and cleaning, etc.

You must have the consent of your spouse for you to be able to progress your divorce on this ground. Your spouse will indicate their consent in the Acknowledgement of

Service document (see below). If your spouse does not consent then you cannot move your divorce forward and apply for Decree Nisi. If this happens you may need to amend your divorce petition to use another reason. If this happens you should seek the advice of a solicitor as your divorce may be more complicated than you first thought.

It has been known for spouses to try and halt a divorce by not providing their consent. If you think that your spouse may not consent to the divorce, you should perhaps use another reason for your divorce.

This reason is a popular ground for divorce because it is blameless. Many people find that this reason allows them to proceed with their divorce on a more amicable basis.

FIVE YEARS SEPARATION

For this fact you must be separated for a period of not less than 5 years. You do not need to have the consent of your spouse to proceed with the divorce on this ground.

Section 9, page 13 – You need to tell the court if there have been any other court proceedings in relation to the marriage. If there are any proceedings, you need to insert this information.

Section 10, page 14 – you need to indicate whether you intend to apply for a financial order from the court, and whether you wish to apply on behalf of your children also. You will see in this section that it refers to a financial order. If there are financial matters within your divorce which need to be resolved, you should get advice from a solicitor as these are very serious and complex matters.

Section 11, page 15 you need to tick the boxes which confirm that you are asking for your marriage (or civil partnership) to be dissolved and also if you are asking the court to grant you an order to pay your costs for divorce.

REMEMBER TO SIGN AND DATE THE DIVORCE PETITION

Once you have completed your divorce petition, you need to make three extra photocopies:

- The original should be sent to the court with two photocopies keep one copy for yourself

Children

You and your spouse may need to decide about the arrangements for any minor children after you divorce. This is not dealt with in the divorce process and therefore out of the scope of this guide. If you have any questions about arrangements for children after divorce, we recommend you seek legal advice as soon as possible.

What fee do I have to pay? What if I cannot afford it?

There is a fee of **£550.00** to issue your divorce petition at the court. If you are on a **low income**, you may qualify for an exemption from the fee which means you will either not have to pay the fee or you may be able to pay a reduced fee.

The form you need to complete to seek remission of the fee is form [EX160](#). You must provide evidence of your income with this form. The information you must provide is set out in the notes of this form and you can get a copy of these notes from the court website at www.justice.gov.uk or from the court directly. Alternatively, you should send a cheque to the court for £550.00 made payable to “HMCTS.”

The marriage certificate

You must submit your original marriage certificate with all of your divorce documents. The court will reject your application if you do not send this. If you do not have an original marriage certificate, you can get a certified copy from the registry office where your marriage was registered.

Once sent in to the court **you will not get your marriage certificate back** so, if you think you may need the details in future, remember to take a photocopy of this.

I have completed all the forms, what do I do now?

Take the following documents to the court and inform the court staff that you want to issue your divorce petition:

- The original divorce petition and two copies
- A cheque for £550.00 or your completed fee remission form
- Your original marriage certificate Alternatively, you can send them to the court by post.

You should issue your divorce petition at your local Divorce Centre.

For example, if you live in Finchley, North London, you should issue your petition by sending it in the post to Bury St Edmunds Family Court, 2nd Floor, Triton House,

St Andrews Street North, Bury St Edmunds, IP33 1TR
For a list of divorce centres where you can issue your divorce see - [HMCTS Court Finder](#)

What happens next?

The Court will “issue” your divorce petition by giving it a case number and opening a file for you at court.

The court will:

- Keep the originals of all the documents
- Send a copy of the divorce petition to your spouse with a document called the ‘Acknowledgement of Service’
- Send you a copy of the issued divorce petition with a letter which tells you what date the divorce petition was sent to your spouse

What should my spouse be doing?

When your spouse gets a copy of the divorce petition, they should complete the Acknowledgement of Service form and return it directly to the court.

The court will send you a copy of this document once they have received it.

This document is used by the court to confirm that your spouse has seen the divorce petition and knows that you wish to get a divorce, and to see whether or not your spouse has any comments on the divorce.

If your spouse does not return this document then you will need to seek further legal advice in relation to your divorce, because this may mean that further court applications within your divorce process need to be made.

When you receive the acknowledgement of service the first thing that you need to check for is whether your spouse wants to defend the proceedings. If this is the case, then you should seek further legal advice as defended divorce proceedings are too complex for this guide to address.

If you have based your divorce petition on two years separation, you also need to make sure that your spouse has said that they consent to the divorce. If they do consent, you can proceed to the next stage of the divorce. If they have refused their consent, then you will need to seek further legal advice.

How do I get the Decree Nisi?

There are two forms you will need to complete to get your Decree Nisi

1. The Application for a Decree Nisi ([Form D84](#))
2. Statement in support of your divorce – this will be Form D80 A, B, C, D or E depending on which fact you have relied upon in your application for divorce.

APPLICATION FOR DECREE NISI

Simply complete, sign and date this application form.

STATEMENT IN SUPPORT OF YOUR DIVORCE

There are five different statements that you can complete one for each reason for divorce. You only need to complete one statement – the one that matches up with the fact of divorce you relied on at the beginning of your case.

The form is self-explanatory and you should answer all of the questions on the form.

You must attach a copy of the acknowledgement of service to this document. You should sign this form on page 3. You will be signing to a statement of truth which verifies that the facts in your statement are true. Please note that proceedings for contempt of court may be brought against a person who makes, or causes to be made a false statement in a document which is verified by a statement of truth.

You should send the Application for a Decree Nisi, along with your statement in support of your divorce, to the Court. There is no fee for this application.

Do I need to do anything? - Respondent's Guide

Being the Respondent in divorce proceedings is far simpler as you are not involved (necessarily) in needing to consider the reason for the divorce and the only form you will need to complete and return is the Acknowledgment of Service form. You will receive this with the court papers that are served upon you.

It may be that you are aware in advance of the fact that your spouse is or will be seeking a divorce and you may both have discussed the reason that is to be used.

The Acknowledgment of Service form is very straightforward to complete and the current version is enclosed with this pack.

After sending in the application for Decree Nisi?

Once your application is sent to the court, you should wait for the court to send you a document which confirms that you are entitled to Decree Nisi. They will send you a document which tells you the date that Decree Nisi will be pronounced. You do not need to attend court on that date.

When Decree Nisi is pronounced the court will automatically send you a certificate confirming this.

It is possible for the court to send you an order which confirms that Decree Nisi was not pronounced and why.

There could be a variety of reasons why the court has chosen to do this. If this is the case and you feel you need further advice, you should see a solicitor.

How do I get the Decree Absolute?

The Decree Absolute is the final order of divorce. You can only apply for your Decree Absolute six weeks and one day after Decree Nisi was pronounced. Check your Decree Nisi certificate for the date. Make sure you calculate the six weeks and one day carefully as if you apply before this day then your application will be refused.

For example, if your Decree Nisi was pronounced on 15th April 2019, the earliest date you can apply for Decree Absolute will be on 28th May 2019. Please see the picture below. If there are any financial matters which need to be resolved in relation to your marriage, i.e. that either you or your spouse own any property or have any assets, you need to do this before you get your Decree Absolute. We would also recommend you resolve matters relating to the arrangements for any minor children before the Decree Absolute. You should seek legal advice about this as soon as possible.

You should complete the [Form D36](#) fully and send it to the court to be processed.

If your application is successful, then the court will issue you with a certificate called the Decree Absolute which confirms that your marriage is dissolved and your divorce is finalised.

You are then free to remarry if you choose to do so. You should keep your Decree Absolute safe as you will need to produce it if you choose to remarry.

Please note that if you do not apply for your Decree Absolute within 12 months of the date of pronouncement of the Decree Nisi you may need to seek additional advice as the Court will require an explanation for the delay.

Summary

This guide is designed to help people see their way from start to finish through a simple, uncontested divorce. It does not pretend to solve all problems and issues that may arise during a divorce and if anything arises in your divorce that this guide does not answer then we recommend you seek specialist legal advice.

We are specialists in all areas of Family Law. We also run a free Advice Clinic every Monday from 2.00 to 4.30 PM where you will receive preliminary free legal advice and information on any family matter. This advice may be sufficient for you to continue to deal with your divorce or, you may decide that you wish to be represented or continue to receive advice and assistance and we will be to discuss the options we can offer you.



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