



DIVORCE PROCEDURE

Set out below is information which we hope you will find helpful both before and during the actual divorce process but please bear in mind that this is a standard note not all of which may be applicable to you.

Starting a Divorce

A divorce is started by completing a document known as a "Petition" and filing this with the Family Court. The person beginning the divorce is called a "Petitioner" and the person answering, a "Respondent".

A divorce cannot be started unless you have been married for at least one year. It is necessary to explain to the Court why a divorce is wanted and show the reason (or a "ground") for saying the marriage is at an end. There is only one ground for divorce and that is that the marriage has "irretrievably broken down" but evidence that a marriage has broken down must be shown by the Petitioner establishing one or more "facts". The five facts upon which a Petition for Divorce can be based are:-

- The Respondent's adultery (the Divorce Petition must be filed within six months of the adultery taking place if the couple remain living together and the adultery is not continuing);
- That the Respondent's behaviour has been so bad the Petitioner cannot reasonably be expected to continue to live with him/her.
- That the Respondent has deserted the Petitioner for a period of at least two years;
- That the Petitioner and the Respondent have lived apart for a period of two years and agree to a divorce;
- That the Petitioner and the Respondent have lived apart for a period of at least five years.

You or your spouse must have your permanent home in England & Wales when the Petition is started, or have been living in England & Wales for at least one year.

If you and your spouse are able to agree about financial support, property and the arrangements for any children then you may not need to attend Court at all. If these things cannot be agreed, then you will probably need to attend Court.

If you are petitioning, your Marriage Certificate has to be sent to Court with the Petition. It will be kept by the Court and not returned. It must not be a photocopy but if you do not have the original document an official copy can be obtained from the Registrar on payment of a fee.

Claiming Costs from the Other Party

It is sometimes possible for the Petitioner to claim the costs of the divorce from the Respondent. Factors to consider are:

- Whether claiming your costs from your spouse will further damage the relationship between you.
- Can your spouse afford to pay your costs?
- In some cases it may be appropriate to agree that the Respondent should pay half the costs of the divorce, bearing in mind that the Petitioner's legal costs will be very much higher than those of the Respondent.

When responding to the Petition, the Respondent should state whether it is intended to oppose an application for costs and, if so, why. If the claim is opposed, the Court may fix a separate hearing for the matter to be argued. That in turn will add to the costs. The most likely ground for defending a costs claim is that although the Petitioner is not opposed to the divorce, the actual cause of the breakdown was the fault or at least equally the fault of the Petitioner.

Children

There are special rules concerning children in divorce. The Court will be concerned with any child who was born to you and your spouse, or who has been treated by you as your child and who is:-

- Under 16; or
- Between 16 and 18 and still in education

All such children are referred to as "children of the family" and include adopted but not foster children.

It is always better to try and agree any arrangements for the children between you and your spouse. If you cannot, the Court can be asked to make a decision. It will not usually make an Order unless there is disagreement. This will be dealt with as a separate application and not within the Divorce Proceedings.

Mediation

If there are any disputes between you concerning the children, or financial matters these may be settled by a process of mediation. Further information leaflets are available.

Further steps in the divorce

The Respondent, who will receive a copy of the Petition from the Court through the post, should state whether he or she intends to defend the divorce when completing a form known as the "Acknowledgment of Service". If, as is usual, the Respondent states an intention not to defend, the Petitioner can apply for a "Decree Nisi" This is done by completing a Statement confirming that everything in the Petition is true.

This Statement is sent to the Court and the District Judge will then look at the papers. Provided that he or she is satisfied, a date will be fixed for the Decree Nisi to be made, there is normally no need to attend Court when this happens. The Decree Nisi is a half way stage in the divorce process. You are not finally divorced until that decree is made "Absolute".

The Petitioner may apply for the Decree Nisi to be made Absolute six weeks and one day after the Decree Nisi is pronounced. If the Petitioner does not apply the Respondent may apply three months later.

If there are outstanding financial matters you will normally be advised to wait until these are settled before applying for the Decree Absolute unless you are in a hurry to re-marry.