

Divorce Procedure



Can anyone start the divorce?

Anyone who has been married for a year or more can start the divorce proceedings provided one of your permanent places of residence is in

England and Wales or one of you has been resident here during the last year. It does not matter if you were married in another country.

What are the grounds for divorce?

There is only one ground and that is that the marriage has irretrievably broken down. To show this and end the marriage you will need to prove one of the following five facts in order to end your marriage:-

- Your spouse has committed adultery
- Your spouse has behaved 'unreasonably'
- Your spouse has deserted you for a continuous period of 2 years or more
- You have lived apart for at least 2 years and your spouse agrees to a divorce
- You have lived apart for at least 5 years or more whether your spouse agrees to a divorce or not

How do I get the divorce proceedings started?

A divorce petition is drafted, signed and then sent to a Family Court once you have decided which fact to rely upon. The petition will contain information about your marriage, any children and your reasons for wanting a divorce. Your original marriage certificate will have to be sent to the court and there is also a fee to pay (currently £550).

What happens next?

Following receipt of the petition the court issue the case and assign a case number. The court will then send a copy of it to your spouse. When your spouse receives the petition from the court, he or she will have to complete and return an 'Acknowledgement of Service' form usually within 8 days (longer if your spouse lives abroad). This document confirms that the petition has been received and provides certain information to the court. Your spouse will need to indicate in this form whether or not he or she intends to defend the divorce proceedings. This document will generally provide the proof you need to advance the divorce.

After your spouse has returned the Acknowledgement of Service form to the court, the decree nisi is then applied for. This is done by preparing a formal standard form statement. The papers are reviewed by a Judge who decides whether you have 'proved' your case and whether a decree nisi should be pronounced. If they are satisfied a date is fixed by the court for the decree nisi to be pronounced.

What happens if my spouse does not return the Acknowledgement of Service form to the court?

In these circumstances it will be necessary to take steps in order to prove to the court that your spouse has received the petition and any other documents. This may involve a third party personally handing the divorce papers to your spouse.

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What happens if my spouse wants to defend the divorce?

Defended divorce proceedings are very rare mainly because they are extremely costly and are of little benefit to either spouse. Should the proceedings be defended then we will discuss the necessary steps with you.



What is the decree nisi?

The decree nisi is the first decree of divorce which is pronounced when the court is satisfied that you have met the legal and procedural requirements of a divorce. The decree nisi does not mean that the marriage has ended. The marriage is only finally dissolved when the decree nisi is made absolute.

When can the decree nisi be made absolute?

Usually the decree absolute can be applied for six weeks and one day after the date of the decree nisi. In some situations it is possible for the decree absolute to be held back until any financial issues have been finalised. This is because the marriage is formally over once the decree absolute is pronounced and means that you would no longer be a widow or widower and might lose out on some pension entitlements if your former spouse were to die before financial issues were dealt with.

Will I have to go to court?

A divorce is a largely an administrative process, provided it is not defended. Nobody needs to attend court when the decree nisi is pronounced as normally the names of the parties are simply read out. However, either spouse may have to attend if there is a dispute over costs for example. There is no formal court hearing for the granting of the decree absolute.

How long does it take?

Most divorces are finalised within 4-6 months but it depends very much on the court involved and your spouse's cooperation.

Who pays for it?

If you are the one who is being divorced, you can be ordered by the court to pay all the legal fees for the divorce proceedings, including court fees. The person starting the divorce (the Petitioner) has the initial liability for legal costs and court fees. It is always possible for spouses to agree how costs should be met or indeed the Petitioner may decide not seek a costs order against his or her spouse.

What happens if the Petitioner doesn't apply for the decree absolute?

If the Petitioner fails to apply for the decree absolute within 3 months of the date they could apply for it (six weeks and one day after the pronouncement of the decree nisi) the Respondent can apply for the decree absolute. It is likely that the court will fix a short hearing before a Judge who will consider whether it is reasonable for the divorce to be finalised.

How can we help you?

We will advise you on the best way to proceed, whether you can start proceedings and when those proceeding should be issued. We can help you by drafting the petition and pursuing the proceedings to decree nisi and decree absolute. We will consider the timing of the decree absolute order when looking at your financial position.



Contact details

If you would like to discuss issues arising in this factsheet or if there is some other legal issue we can help you with then please contact a member of the team on 01273 646900 or by email: info@familylawpartners.co.uk