

Divorce

The Legal Process

Divorce can be an emotional and difficult time for any couple. This guide provides information on the divorce process and some of the issues you will need to consider when separating.

The Divorce Procedure

Before divorce proceedings can commence, the parties must have been married for at least one year.

Stage 1 - the Petition

A petition is the document which asks the Court for permission to divorce, and outlines the reason for wanting to end the marriage.

The reason must fit into one of these five categories:

- Adultery
- Unreasonable behaviour
- Desertion
- Two years separation, with both parties in agreement
- Five years separation, whether or not the other party agrees

One party, the Petitioner, sends the petition to Court with the marriage certificate and a fee.

The Court sends the papers to the other party, the Respondent.

Stage 2 – Acknowledging the Petition

- If the Respondent agrees to the divorce going ahead and the contents of the divorce papers, the Respondent completes the acknowledgement form and returns this to the Court.
- If the Respondent does not acknowledge the papers, but does not object to the divorce, the divorce may still go ahead in certain circumstances, depending on the reason used for ending the marriage. In this case, it will be necessary for the papers to be served personally on the Respondent before the divorce can proceed.
- If the Respondent does not agree to the divorce, then the Respondent must state this on the acknowledgement form and complete a document called an answer. There will be a Court hearing and it will be up to the Judge to decide whether the divorce can proceed.

Stage 3 - Apply for a Decree Nisi order

If the Respondent agrees to the petition, then the next step is for the Petitioner to apply for a Decree Nisi. A decree nisi is a document that says that the Court does not see any reason why the divorce should not be granted. An application is made by completing further forms and sending these to Court. Once the Court approves the papers, the parties will be notified of the date when the Decree Nisi will be made. There is no need for either party to attend Court on that date. The Court will issue a Decree Nisi certificate and send it to both parties.

Stage 4 - Apply for a Decree absolute

- Six weeks and one day after the date of the Decree Nisi the Petitioner can apply for the decree absolute. This is the document which legally ends the marriage. Again, this is done by sending a form and a fee to Court. If the Judge is satisfied that the papers are in order, the time limits have been met, and there is no reason not to proceed, a Decree Absolute will be issued and sent to both parties.

- If the Petitioner does not make the application, the Respondent can apply after waiting three months, six weeks and one day. In this case, there will be a hearing before a Judge who will decide if the Decree Absolute can be granted.
- If neither party applies for a Decree Absolute within 12 months from the date of the Decree Nisi, it will be necessary to explain the delay to the Court.

It is important to keep the Decree Absolute safe as it will be required should you wish to remarry.

Sometimes, the divorce process does not run smoothly. In such cases, it is important to seek advice.

Other issues

Finances

Discussions about financial arrangements should take place alongside the divorce process. When agreement has been reached it is important to ensure that the terms are set out in a Court order so that the agreement is enforceable.

Children

Arrangements for care of the children including financial support should also be discussed during the divorce process. If agreement cannot be reached, it may be necessary to involve the Court in resolving the issues.

A Will

If you do not have a Will, it is advisable to do one once divorced. If you have a Will, then it is important to review it, as divorce affects any gift to a former spouse made in a Will or the appointment of a former spouse as an Executor.

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