

*Act Family Law provides this guide as general information. We hope you find it helpful. It is not intended to replace legal advice. Each case has different issues and requires separate individual advice.*

*Act is not liable for any consequences if you rely on these notes rather than seeking specific guidance on your own case.*

## **GUIDE TO DIVORCE PROCEEDINGS**

### **Introduction**

Divorce is the legal process of ending a marriage. Divorce also allows both spouses to seek financial orders from the court, whether those orders are reached by agreement (consent orders), or decided by the court after contested court proceedings.

There is a separate process, called judicial separation, which ends a couple's obligations to each other but does not totally end the marriage. It is rarely used. It is mainly used by people with strong religious or other objections to divorce. It is not covered in these notes: please ask us if you want to know more.

This brief guide deals only with the divorce process itself. There are separate guides on the financial claims and on applications to do with children which may arise in divorce. This guide does not deal with defended divorce proceedings, which are now very rare.

### **Explaining some legal terms**

Some of the words used by the Court and Solicitors may be unfamiliar. Do ask about anything that you do not understand.

The person applying for the Petition is the **Petitioner**, the other person is the **Respondent**.

Together they are referred to as parties to the proceedings, or just **parties**.

**Proceedings** can mean any Court case and in this case, usually means the divorce.

The application form for divorce is a **Petition**. As divorce is dealt with in a way which avoids Court hearings, it is described as using "the special procedure", also called "quickie divorce", although 99% of divorces are now dealt with in this way.

The divorce order is made in two parts, called the **Decree Nisi (DN)** and the **Decree Absolute (DA)**. It is only the DA which legally ends the marriage.

### **What the law says**

All divorces are dealt with through the Court, usually the County Court for your area. It is normally managed by post and usually you do not need to go to the Court for a hearing.

To grant a divorce, a Court must be satisfied that the marriage has broken down irretrievably, and one of the following five facts exists:

- (a) Adultery
- (b) Respondent's behaviour that the Petitioner cannot reasonably be expected to live with
- (c) 2 years' separation, and the consent of both parties to divorce
- (d) 2 years' desertion by the Respondent
- (e) 5 years' living apart.

Even if both husband and wife want a divorce, they cannot get one simply by mutual agreement unless they have already lived apart for 2 years. Within 2 years of separation a divorce is only available on adultery or behaviour petitions.

Adultery is defined as sexual intercourse with someone of the opposite sex, other than the other party to the marriage, whether or not the husband and wife are already living apart. Any other relationship is not adultery but may be "behaviour".

Behaviour can cover many things including but not limited to violence, drunkenness, financial irresponsibility, lack of contribution to family life, relationships with other people which fall short of adultery. It may be one incident or the cumulative effect of several incidents.

Once a husband and wife have lived apart for 2 years they can agree to a divorce solely on that basis. One cannot force the other to agree. If there is no adultery or behaviour and one will not agree to a divorce, the other will have to wait for 5 years.

## **The Divorce Process**

The Petitioner (or their Solicitor) must complete a **Petition**, the application form for a divorce. This is filed at Court (sent to the Court Office). They must also send in their Marriage Certificate, or an official copy from the Registrar of Births, Deaths and Marriages. Unless the Petitioner is on a very low income or Income Support they must pay a court fee.

If there are children the Petitioner must complete a **Statement of Arrangements for Children**, a form giving the Court details of what will happen to the children after the divorce. The Court has a duty to ensure children are looked after properly.

Spare copies of both forms must be supplied to the Court for forwarding to the Respondent.

In most cases where a Solicitor is involved and acting for the Petitioner, the Solicitor has to file a form to confirm that the Solicitor has discussed whether there is any possibility of a reconciliation.

When the Court receives all the forms and the fee they will **issue** (start) the proceedings.

The Court sends a copy of the Petition and Statement of Arrangements for Children to the Respondent, with a form for the Respondent to complete to show that the Petition has been received and whether the Respondent agrees to it going ahead. This form is called the **Acknowledgement of Service**.

The Respondent must complete the Acknowledgement and send it back to the Court within 28 days. If the Petitioner has asked for an order that the Respondent should pay their Court fees and Solicitor's costs, the Respondent must say whether they agree to pay them or why they should not be expected to do so. Unless there is a good reason in law, the Respondent will usually be ordered to pay the divorce costs. In many cases, the division of costs is agreed between the parties in advance to avoid dispute.

When the Court gets the Acknowledgement form from the Respondent or their solicitor it sends a copy to the Petitioner's Solicitor who prepares an **affidavit in support of the Petition** and a **request for special procedure directions**. The Affidavit is a standard form of statement, which the Petitioner must swear is true in front of another Solicitor or a Court Officer. The Affidavit provides the evidence which the Court needs to grant the divorce. The request for directions is a simple form asking the court to go ahead with the divorce.

There are procedures to deal with the Respondent failing to return the Acknowledgement which are not covered here, but we explain them to you if it becomes necessary.

When the District Judge at the Court receives the Affidavit and request for directions, they ensure that the correct procedure has been followed and that there is sufficient proof for a divorce to be granted. Assuming they are satisfied, they will issue a **certificate**. This will state when the **Decree Nisi** will be made.

If there are children the DJ will also certify whether they are satisfied that the arrangements for the children are adequate. This does not interfere with any application that either parent may have made for the residence or contact relating to the children.

Although nobody has to attend, Decrees Nisi are still announced at the Court by a District Judge. If there are any disagreements between the Petitioner and Respondent about who should pay the Court fees and Solicitor's costs, the DJ usually deals with them at this hearing, or will decide when he is going to deal with them. Once the DN has been pronounced in Court the Petitioner and Respondent are sent a copy of the written DN.

No sooner than six weeks later the Petitioner can apply on a simple form for the **Decree Absolute**, paying a further fee.

A copy of the DA is sent to both the Petitioner and the Respondent. The marriage is ended as from the date shown on the DA.

It is only when the DA has been applied for, and granted by the Court, that the marriage is ended. Do not assume that the DA will automatically come through after six weeks, there can be delays for various reasons.

If the Petitioner fails to apply for DA then the Respondent can do so once three months have passed from the date on which the Petitioner could have applied (ie, after three months and six weeks).

If it is particularly important to fix the date of DA (for example, if you want to remarry quickly) it is essential that you raise this as far in advance as possible. It is safer never to make plans that rely on the DA being granted until after it has been made.

You should keep the DA safe as you may need to produce it for various reasons, for example on remarrying, applying for or renewing a passport, and for tax reasons.

### **How long does a divorce take?**

This depends on how quickly the Petitioner and Respondent (or their solicitors) act, and how quickly the Court deal with the papers at each stage (some Courts are significantly busier and therefore slower than others). Assuming no unnecessary delays, most divorces go through in between four and six months. This does not include the financial aspects (called "**Ancillary Relief**") which can take rather longer.

### **Things to think about**

Divorce revokes any parts of a Will which refer to your spouse, so this is the time to reconsider and amend your Will.

Divorce has a number of affects on state benefits, pensions and the way you are treated for tax purposes. Do ask about these.

Divorce proceedings create a right for each spouse to make Ancillary Relief claims against each other's income, assets, property and pensions. It is very important that these are dealt with as they may lay dormant for some time after divorce, but then pursued through the Court at a later date, even years later.