

A brief guide to the divorce procedure in England and Wales

Grounds for Divorce

To obtain a divorce in England and Wales you must demonstrate that the marriage has broken down irretrievably. In order to establish this you need to cite one of five possible facts:

1. Adultery
2. Unreasonable behaviour
3. Desertion
4. Two years separation with the consent of the other person
5. Five years separation without consent

In the vast majority of cases the divorce is dealt with by paperwork and there is often no need to attend Court at any stage.

Petition for Divorce and Service of Documents

The first step for the 'Petitioner' (the person starting the divorce process) is to prepare a Divorce Petition. This is a legal document which sets out the details of the parties and the marriage and the reason for wanting the divorce.

This is all sent to the Court to be issued. The Court will tell you when this has been done. At the same time the Court will send the divorce petition to your spouse the 'Respondent'.

The Respondent then has seven days to acknowledge the divorce by completing the Acknowledgement of Service sent to them by the Court. This is a straightforward form, mostly consisting of 'yes/no' answers, which confirms that they have received the petition. It will also ask whether they agree that the Courts of England and Wales have jurisdiction to deal with the divorce and whether or not they intend to defend the divorce. Most cases are not defended.

Decree Nisi

Once the Acknowledgement of Service has been returned to the Court the Petitioner can then apply for the Decree Nisi (provided that the divorce will not be defended). This again is done by completing more paperwork. You have to provide a statement in support of the divorce to confirm, amongst other things, that the content of the petition is true, presenting this information in a set way, depending on which of the five facts you relied upon in your petition.

Once the Court has received these documents, it will send out a notification of when the Decree Nisi will be pronounced and whether to make an order that the Respondent should pay costs. If the Court does make an order for the costs and the Respondent objects to paying these, then this is one stage in which a divorcing couple might need to attend Court.

The Judge would then consider, having heard evidence from both parties, whether an order for costs should be made or not. The Judge has the final say. If there is no claim for costs or no objection to paying the costs, then there is no need for anyone to attend Court. The Judge will read out in Court a statement that the Decree Nisi has been pronounced.

Decree Absolute

Once Decree Nisi has been pronounced, the Petitioner has to wait six weeks and one day before they can apply for the final Decree Absolute. This is the certificate of divorce and it is that which formally brings the marriage to an end. You are only legally divorced once the Decree Absolute has been granted.

If you are the petitioner you might not want to make the application straight away. For instance; if your spouse should die before financial arrangements are finalised you may be better off as his/her widow(er). There may also be pension rights or life policies which you would lose on Decree Absolute. It is important to seek legal advice before making the application for Decree Absolute.

If you are the Respondent, and the Petitioner has not made an application for the Decree Absolute then you have to wait a period of three months from the earliest date they could have applied before you can do so (i.e. four and a half months from the date of the Decree Nisi). There is a cost for doing this and ordinarily the Court will list a hearing that you are expected to attend in case there is a good reason why the Petitioner has not applied, as would be expected. Unless there is such a reason then the Absolute will be granted at that hearing. (Claims that arrangements for the children have not yet been finalised or finances settled are not usually enough of a reason).

How long will a divorce take?

All in all, the process should take around four - six months to complete, provided both parties do everything they should at the earliest opportunity. If there is any delay by either side then it will take longer. As you might expect, the process relating to "defended divorce" can be more complicated and so is not covered in this guide, given that very few cases occur.

Making it easy for you and your family

The divorce procedure can be overwhelming however, our dedicated professional Family Law Solicitors take care to provide; expert advice, support and reassurance throughout this difficult time to ensure you get the best possible outcome for you, your family and your assets.

High Standards and Accreditation

Resolution, which was formerly known as the Solicitors Family Law Association (SFLA), is an organisation of 6,500 family lawyers and other professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for improvements to the family justice system.

Resolution supports the development of family lawyers through its national and regional training programmes, through publications and good practice guides and through its accreditation scheme. Resolution also trains and accredits mediators and is the only body providing training and support for collaborative lawyers in England and Wales.

