

# Divorce Factsheet

**There is only one ground for divorce, which is the irretrievable breakdown of marriage. This currently must be supported by one of five facts. These are: -**

1. The other party has committed adultery and you find it unreasonable to live with them
2. Behaviour which you find unreasonable to live with (unreasonable behaviour)
3. You have been separated over two years and the other party consents to a divorce on that basis
4. You have been separated over five years (the other party's consent is not required)
5. Desertion of over two years (rarely used)

## **How do I apply for a divorce?**

To apply for a divorce, you must be married for at least a year. It does not matter where in the world you were married, but you can only apply for a divorce in England and Wales if either you or your spouse meets certain residence conditions or are domiciled here. We will be able to advise you further about this if you are in any doubt.

The divorce process is generally administrative. This means that usually neither of you will need to see a Judge to get a divorce as it is almost always agreed by a Judge on the paperwork. The process is simple as long as your spouse does not contest the proceedings. When this happens, it is called a defended divorce and is a different process. Defended divorces can be costly and thankfully are very rare.

## **Starting Divorce Proceedings**

The document that is filed at Court to start the divorce proceedings is called a Petition. The law in this country still requires one spouse to petition against the other, even if both of you agree that there should be a divorce. We will need to have your original, or an official copy, of your marriage Certificate to file a Petition with the court along with an approved translation of it if you were married abroad. There is currently a Court fee payable of £550.00 to start the process. You may qualify for help with your Court fees if you are on a low income. If you think you may qualify, we would be happy to give you the appropriate form to complete.

To start a divorce, you or us, on your behalf must file a Petition with the Court. The Petition is a form that gives the Court information about you, your spouse, and the reasons why you feel that your marriage has irretrievably broken down. You must briefly set out evidence that your marriage has broken down by supplying certain details in relation to one of the five facts referred to above.

The person starting the divorce is called the Petitioner and the other party is called the Respondent.

## **Children and Finances**

For the purposes of any financial or children arrangements that need to be made, it does not matter in most cases who starts the divorce and why. You can ask the Court to make orders about money and about children if necessary, during (or after) the divorce, but these legal processes are completely separate from the divorce itself. However please be aware that if you remarry after your divorce, and before your financial issues have been agreed, you will no longer

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have the right to ask the court to make orders about money or your assets although your spouse may be able to if they haven't remarried.

## **Procedure**

It is considered good practice that the Family Lawyer acting for the Petitioner should send a draft copy of the Divorce Petition to the other party at least 7 days before it is filed at Court. This gives the other spouse the opportunity to obtain legal advice and to raise an objection if there was anything in the Petition that they find particularly offensive. It is better to agree what is in the Petition, if possible, as disputes about the wording of the document can have implications for the smooth progress of the rest of the divorce process.

## **Co-Respondent**

If your spouse has committed adultery, it is possible to name the person with whom they committed adultery as a Co-Respondent in the divorce. However, we do not recommend that you do so unless you believe that your spouse is likely to defend the proceedings. In our experience, naming a third party in divorce papers raises the emotional temperature between you and may make it more difficult to agree arrangements in other areas, increasing your stress levels and legal costs as a result. Further, by including them in the proceedings, they need to be served with a copy of the papers which can again result in increased costs and animosity.

## **Filing the Petition**

The Petition is filed at Court with the Court fee and your original (or an official copy) Marriage Certificate together with a Declaration that we have spoken to you regarding reconciliation.

## **Serving the divorce papers**

The Court posts Petition out to (serves) the Respondent together with a form for them to fill in called the Acknowledgment of Service. In this form the Respondent has to say whether or not they intend to defend the divorce. The form has to be returned to the Court. If the Respondent has no intention to defend the divorce that is the end of their part in the process and all further steps are taken by the Petitioner at their own pace. Sometimes it can be difficult to obtain the return of this form. Sometimes your spouse will not return the form. If that is the case, then we would have to talk to you about getting your spouse personally served with the papers. This would result in additional expense.

## **Applying for the Decree Nisi**

Once the Acknowledgement of Service has been returned to the Court the next step is for the Petitioner to complete a Statement in Support of the Petition. This is a form that states the contents of the Divorce Petition are true and asks for certain details such as where you have both lived since separation. We will then file it at Court with your Application for a Decree Nisi. The Decree Nisi is the second to last phase of the divorce. It means the Court has agreed that you are entitled to a divorce but has not yet made it final. After the Court has received your Application for Decree Nisi, a Judge will look at your papers to make sure they fulfil the legal criteria and if they do the Court will issue a Certificate telling you when the Decree Nisi will be pronounced.

Decree Nisi is pronounced in open Court. Although anyone can go along if they want to, you do not have to attend Court when this happens. At any point after Decree Nisi is pronounced, the Court is able to make legally binding agreements or orders setting out your arrangements for

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finances and property on divorce. It will not do so however unless you make a separate application to the court.

## **Finalising the divorce**

Six weeks and one day after the grant of Decree Nisi, the Petitioner can apply for the Decree Absolute, which formally ends the marriage. Not everyone should apply for Decree Absolute as soon as it is available. It may not be sensible to apply immediately if, for example, financial arrangements are not yet settled. You should discuss your specific circumstances with us as in some cases the grant of Decree Absolute will prevent certain types of financial claims being made. However, if the Respondent is keen to end the marriage and the Petitioner has not applied for the Decree Absolute, the Respondent can ask the Court for permission to do so after a certain period of time (about 4 ½ months from Decree Nisi). The Court will usually grant such an application unless there are particularly pressing reasons not to do so.

## **How long will my divorce take?**

If each step in the divorce is taken promptly and financial arrangements do not hold things up, the divorce process usually takes between 6 months.

Other arrangements in relation to finances and children may take longer to resolve.

## **Implications in relation to your Will**

It is important to note that a divorce might mean that certain provisions in your Will do not work as you might have intended them to. We would recommend that you make a new Will if you are contemplating getting divorced and/or after Decree Absolute to ensure your wishes are carried out in the event of your death. Please contact us to arrange an appointment with one of specialist Wills solicitors if you believe that you would like to address this issue straight away.

## **Do I need to disclose an inheritance in divorce and financial proceedings?**

Generally, in the UK, inheritance is not automatically included in the pot of assets to be divided upon divorce as they are not considered matrimonial property. However, if you have received an inheritance or you know that you are going to receive an inheritance as there is a probate being sorted then you will still need to disclose it as part of your financial disclosure.

## **How are pensions divided on divorce?**

Start by listing all the different pensions you and your spouse have and then you will need to get a value of each pension fund. In divorce or dissolution matters. Pensions are valued using the "cash equivalent transfer value". The total value of the pensions you have each built up is taken into account, this doesn't just mean pensions that you or your ex have built up during the marriage but all of your private or workplace pensions. The rules of each pension scheme will determine which options work best for you whether that be a pension sharing order, pension offsetting, deferred pension sharing or a pension attachment order. If you are thinking about divorce and confused about what this might mean, the Pensions Advisory Service ("TPAS") has a free advice service. Alternatively, we can arrange for an Independent Financial Advisor ("IFA") from Pilgrim Hope Financial Wellbeing to contact you (at no cost) to discuss this with you.

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## **What if the family home is owned by my spouse?**

If your property is owned by your spouse, you can protect your position by registering a "matrimonial home rights notice" at the Land Registry. Once you have registered this your ex partner cannot sell the property or apply for a remortgage without you being told about it.

## **Do I have to attend mediation?**

If you are able to reach an agreement with your spouse then mediation is not necessary. However, if it is likely that you will have to ask the court to determine these issues for you, there is a mandatory requirement (subject to some exceptions) that you should attend a MIAM appointment with a mediator before you issue proceedings.

## **What happens if my partner will not disclose all of their financial assets?**

You should always have a full disclosure regarding each of your income and capital positions before any agreements are reached in relation to financial matters. If you suspect your partner is not disclosing all of their assets, you will need to make an application to the court for the financial matters to be determined. Within those proceedings, both you and your partner will be directed by the court to file what is known as a Form E which legally obliges you both to outline your full income and capital positions.