

Information Sheet

Divorce Procedure

Who can file a divorce petition?

Anyone who has been married for over a year provided one or other of the couples is either domiciled here or has been resident in England and Wales during the whole of the preceding year. It does not matter where the couple were married.

What are the grounds for divorce?

The only ground for divorce is that the marriage has irretrievably broken down. It is necessary to establish one of the following facts:

- Your spouse has committed adultery and you find it intolerable to continue to live together.
- Your spouse has behaved in such a way that it would be unreasonable to expect you to continue to live together.
- Your spouse has deserted you for a continuous period of 2 years or more.
- You and your spouse have lived separately for 2 years or more and your spouse agrees to the divorce.
- You and your spouse have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

The first steps

It is often advisable to try and reach agreement to a petition which alleges fault against the other spouse eg, unreasonable behaviour. In such cases the family law protocol recommends that only a brief outline of the particular behaviour may need to be given. Any international issues must be identified as between member states of the European Union. It is normally the habitual residence of the parties that will determine the jurisdiction for divorce and marital proceedings.

The petition

Every petition contains basic information giving names, addresses, ages of children, a statement that the marriage has irretrievably broken down and the fact (from the list above) on which you rely.

Arrangements for children

The law encourages couples to try to agree arrangements relating to children. A form is sent to the court with the divorce petition, which will outline these

arrangements. The person filing the petition (“ the petitioner”) usually completes this form (known as “ statement of arrangements”). Preferably, it should be presented to the other spouse beforehand for agreement but some times this is impracticable.

Financial Issues

Reaching financial agreements is not a prerequisite for filing divorce.

Timetables after filing the divorce papers

The court will forward a copy of the petition and statement of arrangements to the other spouse (“the respondent”). A copy of the petition is also sent to anyone else named in an adultery petition (the “co-respondent”) though mostly it is unnecessary to name a co-respondent. If the solicitors are instructed the petition may be sent to them.

From the date that these documents are received, the respondent has strict time limits to observe. Within 8 days he or she must return the “acknowledgement of service”, which accompanied the petition, to the court. This form asks the respondent, amongst other things, whether jurisdiction is challenged or if it is intended to defend the petition and whether orders affecting the children are sought.

If there are existing foreign proceedings, the petition is likely to be frozen until the issue is determined by the District Judge.

Within 28 days of receiving the petition and statement of arrangements, whether or not an acknowledgement of service has been returned, the respondent must file a defence (called an “answer”) if the intention is to defend the petition. If the petition becomes defended the procedure set out below does not apply. Defending divorce proceedings is rare these days. In such cases, a delay in finalising the divorce is inevitable.

Within a few days of receiving the acknowledgement of service from the respondent (and co-respondent, if applicable) the court forwards a copy to the petitioner’s solicitors.

If an acknowledgement of service is not returned to the court, proof that the respondent (and co-respondent) has received the petition will have to be obtained before the petitioner can take the next step. This is likely to mean that the petition must be delivered personally to the respondent or some other means used to bring the papers to his/her attention. Sometimes, however, the court can be persuaded that further service is not required.

If the divorce is undefended, the petitioner can apply for a decree of divorce (decree nisi) to be pronounced. The petitioner’s solicitor prepares an affidavit for the petitioner to swear confirming that the contents of the petition are true and any changes to the proposed arrangements for the children of the family. The petitioner will swear the affidavit before a solicitor or court official. This will then be sent to the court with a request for a date for the decree nisi to be pronounced.

On receipt of the petitioner's affidavit and application, a district judge will decide whether the petitioner is entitled to a decree. If he is not satisfied, he may ask the petitioner to file further evidence in support of the petition. Once he is satisfied, the court will fix a date for the decree nisi to be pronounced and notify both the petitioner and respondent through their solicitors. The date is likely to be a number of weeks after the application is lodged. Neither party need attend court although sometimes they may wish to do so if there is an argument about costs.

In most instances the court will simply issue a certificate that there are children of the family and it does not need to intervene to make orders for residence or contact arrangements. The emphasis is on encouraging the parties to reach agreements on suitable arrangements. Absent an agreement the District Judge may ask the parents to attend an informal appointment to explore possible solutions. Exceptionally, if a solution cannot be reached the court may delay the final decree of divorce (decree absolute).

Once the arrangements for the children have been settled and six weeks and one day have passed since the date of the decree nisi, the petitioner may apply for decree absolute by sending the appropriate form to the court and a fee.

If the petitioner does not apply for decree absolute then 3 months after the date when he or she could first have applied for decree absolute, the respondent may do so. The court is not bound to grant it and may refuse to do so if there is prejudice to the petitioner pending outcome to financial matters. It is not uncommon to leave the decree absolute in abeyance until all issues have been settled.

After the decree nisi has been made absolute you will be free to remarry. Note that upon remarriage you may lose important rights to claim financial provision within divorce proceedings. You should therefore always check with your solicitor in good time before remarrying.

Duration

A straightforward undefended divorce process takes between 3 to 6 months. If there are disputes in relation to children, property or money, expect the whole process to take a lot longer. 12 months or longer is not unusual particularly where there are court proceedings.

For further information or advice about divorce or related matters contact any member of the Howell Jones family law team.