

Divorce - Respondent

The legal basis for a divorce

As the law stands at present, there is only one basis for a divorce - the irretrievable breakdown of the marriage. This has to be established by the person bringing the proceedings (“the Petitioner”) in one of five ways:-

1. an allegation, which has to be proved, that the other spouse (“the Respondent”) has committed adultery. An admission in writing by the Respondent that adultery (i.e. sexual intercourse with a person of the opposite sex) has taken place will normally be accepted by the court as adequate proof. More often than not, the third party will not now be named in the divorce proceedings: OR,
2. an allegation that the Respondent has behaved unreasonably. Physical violence is the most obvious example of this, but other kinds of behaviour often form the basis of a divorce petition. The Petitioner has to satisfy the court, by giving examples, that the conduct of the Respondent has been so unreasonable that the Petitioner cannot be expected to live with him or her: OR,
3. an allegation that the Respondent has deserted the Petitioner for at least two years. A separation which has been by mutual consent cannot constitute desertion. OR,
4. an agreement between the spouses, following a two year separation, that there shall be a divorce. The Respondent will have to sign a court form confirming consent at the time of the divorce proceedings: OR,
5. a separation for a period in excess of five years. There is very limited scope for a Respondent to oppose a petition on this ground.

Under grounds 3, 4, & 5, there can be attempts at reconciliation during the separation without having to restart the 2 or 5 year period, as long as those attempts do not total more than six months in all. However, the time spent together would have to be added on to the end of the 2 or 5 year period before divorce proceedings could be commenced. It is possible for a couple to be accepted by the courts as living apart even if they are occupying the same house, although there would normally be some inquiry to establish that there had been a genuine separation and to ensure that some elements of a matrimonial relationship had not continued.

The law is designed to encourage the possibility of a reconciliation and so at any time up to the grant of the initial decree (“decree nisi”), the Petitioner can bring the divorce proceedings to a halt. Even after decree nisi, he or she can delay the grant of the final decree for up to 3 months, after which period you could ask the court to make the divorce final. If you want to seek assistance with exploring the possibility of reconciliation, please let us know and we can refer you to one of a number of counselling services for assistance.

Please note that divorce proceedings cannot be commenced under any circumstances before the marriage is at least one year old. A divorce petition under grounds 3, 4 or 5 can only be filed with the court once the required period of separation has fully elapsed.

Petitions sometimes contain an application that the Respondent should meet the costs of the divorce. On occasions, payment of these costs can be avoided and sometimes a compromise can be reached so that the request for costs is abandoned. If this is an issue in your case, we will consider the position with you and give you appropriate advice to try to minimise your financial liabilities.

Procedure

Commencement of proceedings

The divorce petition and, if you have children, a statement about the practical arrangements for their care are filed at court to start the proceedings; copies of these documents are sent to you by either the court office, the Petitioner, or the Petitioner's solicitors, usually initially by post. There is included a questionnaire to be completed by you, called the "Acknowledgement of Service". That form is designed to act as a receipt of the papers and also as an indication of whether or not you intend to contest the divorce. It should be sent back to the court completed within 8 days of receipt.

If you fail to return the Acknowledgement of Service to the court, it is likely that steps will be taken to arrange for the divorce papers to be served upon you personally, unless that has already happened.

The next stage

You will have to decide whether you intend to oppose the petition. Even if allegations are made against you that you find upsetting, it has to be said that in the vast majority of cases, very little is to be achieved by contesting the divorce. Examples of cases where it might be justified are where the petition contains an allegation of child abuse which could have a bearing on future arrangements for the children, or of substantial financial fraud, which might have a bearing on financial matters. These are going to be the exception rather than the rule.

You need to bear in mind that defending a divorce petition is unlikely to have the effect of saving the marriage and in practically all cases, you will have an opportunity of disputing at a later stage allegations made in the petition which might have a bearing on the outcome of disputes over children or finances and property. You will rarely be put at a disadvantage over these issues by not having defended the divorce - we can advise you further about this.

If you are defending, you will have to file a statement ("an Answer") in response to the petition. Legal aid is not normally available to prepare this document. Unless you are financially at or below the level of income support, a fee is payable to the court at the time of

filing an Answer. The document has to be with the court within 3 weeks of the due date for the return of the Acknowledgement. In the event of you filing an Answer, we will give you further advice as to the procedure; the details fall outside the scope of this factsheet.

If you are not defending, your Acknowledgement will be sent to the court indicating this and a copy of it will be sent to the Petitioner, who can then ask the court to process the divorce.

Provided that request is made promptly, the court hearing when the initial decree of divorce (“decree nisi”) is formally granted in this area will usually follow within 2 months of the Acknowledgement. That is not a court hearing that you will be required to attend.

Decrees

We will advise you as soon as we know the date upon which your decree nisi is to be granted.

The decree nisi is not the final decree. For example, it does not permit you to remarry. It does however open up the court’s powers to make orders dealing with capital and property if those financial matters are to be dealt with by an order of the court.

The Petitioner may apply for the final decree (“decree absolute”) 6 weeks after the date of the decree nisi. If that is not done, you may seek the court’s permission to apply for the decree absolute yourself after a further 3 months from that time has elapsed.

If financial matters remain unresolved, you may (but only if the divorce proceeds on either ground 4 or 5) seek to delay the grant of the decree absolute until the finances have been dealt with. There are times when that will be appropriate, particularly, for example, when pension entitlements might be lost by the pronouncement of a decree.

The decree absolute dissolves the marriage finally, enabling remarriage to take place. It can have a dramatic adverse effect on your ability to make financial claims and if those have not been resolved, you should always seek our advice before taking the step of remarrying. The decree absolute also affects any will you may have made previously by removing automatically any provision it contains for the former spouse and you should always therefore seek our advice about whether it is appropriate to make or revise a will.

This brief note is designed only to give a general outline of the law and procedure relating to divorce proceedings. It is not comprehensive and we will be glad to supplement it with further advice relevant to your particular