

DIVORCE

Q. What are the grounds for a divorce?

A. You must have been married for at least one year. There is only one ground for divorce and that is irretrievable breakdown of the marriage. This has to be proven by establishing one of five causes.

Q. What are the five causes?

- A.
- i) Adultery
 - ii) Unreasonable Behaviour
 - iii) 2 years Desertion
 - iv) 2 years separation with both parties' consent
 - v) 5 years separation – consent not required

Q. Tell me more about adultery...

Adultery is when one married person engages in sexual intercourse with a member of the opposite sex, even if the married person has been separated. The other party involved does not have to be named or identified. Unless the adultery is admitted, proving it is extremely difficult; therefore, if the person committing the adultery is not prepared to admit it, another cause should be considered.

Q. Tell me more about unreasonable behaviour...

This is a pattern of behaviour that is found to be unreasonable. There is no definition of what type of behaviour constitutes “unreasonable behaviour” and this can cover a variety but there must be a pattern and examples of the behaviour must be given.

Q. Tell me more about 2 years desertion...

A person must have left their wife/husband for a period of 2 years and completely abandoned their responsibilities. This includes responsibilities and duties as a husband/wife and also all financial obligations/responsibilities.

Q. Tell me more about 2 years separation with consent...

You must have been separated for a minimum of 2 years (it can be longer) and you both agree to a divorce. No other reason has to be given. The period of separation can include a period where you have both lived in the same house provided you had both decided and agreed that you were living separate and apart and you were actually living separate lives albeit under the same roof. Detailed information in respect of your separate living arrangements will have to be provided.

Q. Tell me more about 5 years separation...

You must have been separated for a minimum period of 5 years (it can be longer). No other reason has to be given and the consent of the other person is not required. The same provisions in respect of living separate and apart apply in this case as for a 2 year separation.

Q. Can the divorce be defended?

Yes, a defence can be filed in certain circumstances. This would depend on the cause used.

Q. What do I need to start a divorce?

Your marriage certificate. If this cannot be provided a duplicate can be obtained from the Register office/Church in which you were married. The marriage certificate is sent to the Court with the divorce petition and is not returned to you. Therefore if you wish to keep a copy you must tell us.

Q. What is the procedure?

1. The Divorce papers are sent to the Court to be issued.
2. The Court post the papers to the Respondent and any Co-Respondent named.
3. The form of acknowledgement is completed and returned by the Respondent within 7 days.
4. If the Divorce is defended the Answer/Defence is returned by the Respondent within 28 days.
5. Once service of the papers is established (assuming the case is not defended) Application for Decree Nisi is made by lodging an Affidavit (sworn statement) at Court. The papers will be placed before a Judge who will consider the Application.
6. If the Judge is satisfied that there are grounds for Divorce and all of the papers have been completed correctly he/she will issue a Certificate of Entitlement containing a date for pronouncement of Decree Nisi.
7. Once Decree Nisi has been pronounced, Application for Decree Absolute can be made once six weeks and a day from the date of Decree Nisi has passed.

Q. So when am I actually divorced?

Not until Decree Absolute has been granted. This is usually about 2 or 3 days after the application is sent to the Court.

Q. What happens about the children?

If you and your husband/wife have agreed arrangements in respect of the children then this is simply confirmed to the Court in a document called Statement of Arrangements for Children. This is sent to the Court together with the Petition. The Court does not become involved and no Orders of the Court are required. There is no automatic requirement for a Residence Order.

Q. Will I have to go to Court in respect of the divorce?

No – Not unless there is an argument in respect of costs.

Q. How long will the divorce take?

The actual divorce procedure will take approximately six months. In some situations it is appropriate to delay submitting the application for Decree Absolute, which will make the procedure take longer, but this will be discussed with you in more detail if it is appropriate in your case.

Q. How much will it cost?

You may be eligible for public funding (previously called Legal Aid). This is the Government scheme offering assistance with legal costs. The Government sets the eligibility levels and also the rate of payment made to solicitors firms. To be eligible you must have a monthly disposable income of £649.00 or less. Deductions can only be made for a partner, children, mortgage/rent and limited travel. Debts, household bills and general living expenses are not classed as allowable deductions. We will calculate this for you at the first appointment. If you are eligible then you will not have to pay anything to obtain a divorce but the Statutory Charge may apply. This will be discussed in more detail at your initial appointment.

If you are not eligible, then the costs are likely to be in the region of £600.00 - £800.00 plus VAT (provided the divorce is not defended). There are also court fees that have to be paid. The issue fee is £300.00 and the Decree Absolute fee is £40.00.

Q. Can I claim the costs from my husband/wife?

Yes. A claim for costs can be included in the Divorce Petition. If your husband/wife objects to paying the costs, the issue will be determined by a Judge during the proceedings. This is when you would have to attend Court.

Q. I have separate questions concerning my child/children

Please refer to the separate leaflet in connection with children.

Q. I want to know more about the financial implications

Please refer to the separate leaflet in connection with financial matters.

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