

Divorce

Each year over 135,000 couples divorce in England and Wales. This is the highest divorce rate in Europe.

One-Year Rule

A petition for divorce cannot be presented to the court before the end of a period of one year from the date of marriage. This one year bar does not however apply to nullity petitions.

The Ground for Divorce

The sole ground for divorce is that the marriage has broken down irretrievably. To prove this the petitioner must establish that one of the following five facts exists.

1. Adultery and intolerability
2. Behaviour
3. Desertion
4. Two years' separation and consent
5. Five years' separation

If the court is satisfied that one of the five facts is proved it must grant the decree nisi unless it is satisfied that the marriage has not broken down.

1. Adultery and intolerability

The petitioner must prove that the respondent committed adultery and the petitioner finds it intolerable to live with the respondent. Both elements need to be proved however there does not have to be a causal link with the two. Adultery has to be voluntary sexual intercourse between two persons of the opposite sex. Intolerability does not have to arise out of the adultery therefore it is enough to state that the petitioner finds it intolerable to live with the respondent because of some other aspect of the respondent's behaviour. The person whom the respondent committed adultery can be made a party in the proceedings but this is not compulsory.

It is important to remember that if both the petitioner and the respondent cohabit for a period exceeding 6 months from the date when the petitioner learns of the adultery they will not be able to rely on this fact for divorce.

2. Behaviour

Probably the most common fact used is behaviour. The petitioner has to prove that the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent, for example alcohol abuse. Unlike adultery and intolerability the fact they have cohabited in excess of 6 months will not automatically prevent a divorce. Clearly the longer they have cohabited the less likely it will be that the court will grant the divorce.

3. Desertion.

The petitioner must show that the respondent has deserted the petitioner for a continuous period of at least 2 years immediately preceding the presentation of the petition. Desertion arises when the parties are living apart in circumstances where

the respondent, without good cause or the consent of the petitioner, has shown an intention to bring the matrimonial union to an end.

4. Two years' separation and consent.

Here the petitioner must prove that the parties to the marriage have lived apart for a continuous period of at least 2 years. There are two elements to this fact; separation and the respondent must consent.

People can be living apart even though they are living under the same roof if they live separate lives. There must be a mental element to physically living apart.

5. Five years' separation

The petitioner has to show that they have lived apart for a continuous period of at least 5 years immediately preceding the petition. After the 5 years there is no need to obtain the respondent's consent.

There is a defence to this fact and that is grave hardship. The respondent must show that dissolution of the marriage would result in grave financial or other hardship to him/her and in all circumstances it would be wrong to dissolve the marriage.

Once the petitioner is clear which fact they will rely on they must file at court a divorce petition plus a copy of the respondent and any named co-respondents together with a statement of arrangement, marriage certificate and the fee (currently £300.00).

The respondent must return the completed acknowledgement of service form within 7 days after receiving the papers.

Then the petitioner will complete the request for directions and file together with the sworn affidavit.

The district judge will consider the petition and propose a date for the pronouncement of the decree nisi.

Once the decree nisi is pronounced after 6 weeks the petitioner can apply for the decree absolute.

Public funding can be available. Please speak to one of specialist solicitors who will be able to advise if you are eligible.