

Divorce process

The following will outline the procedure for getting a divorce. The process is largely the same as that for dissolving a civil partnership. Information on the differences between divorce and dissolution of a civil partnership can be found here [link to 'Law on Civil Partnerships']. The full divorce process is estimated to last around 6 months, but this can vary greatly depending on how amicable parties are and the complexity of related issues such as finances and children.

Divorce Petition

The first stage of divorce is to file a Petition at court. The party to divorce who files the Petition is known as the 'Petitioner', and their spouse as the 'Respondent'. The Divorce Petition gives details of the parties and any children they have, as well as any existing legal proceedings between them. Importantly, it also includes details of the fact on which the divorce is based.

To apply for a divorce, you must have been married for at least one year and the court must have jurisdiction (usually shown by the parties being resident in England or Wales). The one ground for divorce is that the marriage has broken down irretrievably. This can be proved with reference to one of five facts:

- Adultery – defined as sexual intercourse between a man and a woman (one of which is the Respondent). This fact can be relied upon even if the adultery occurred after a couple separate, but not if the parties remained cohabitating for 6 months after the adultery was discovered. The Petitioner must also show that they find it intolerable to live with the Respondent.
- Unreasonable behaviour – this must involve behaviour displayed by the Respondent which causes the Petitioner to feel they cannot be reasonably expected to live with the Respondent.
- 2 years desertion – where the Respondent has separated from the Petitioner for 2 years with an intention to bring the marriage to an end without the Petitioner's consent.
- 2 years separation with consent – where the parties to the marriage have been separated for 2 years and both agree to the divorce.
- 5 years separation – when parties have been separated for 5 years, a divorce can be granted even without the consent of the Respondent, subject to the defence of grave hardship. Very rarely, the Respondent can show that the divorce itself will cause grave hardship to them and it would be wrong to dissolve the marriage, and therefore a divorce will not be granted.

The fee for filing the Petition at court is currently £340, although you may be able to apply for a full fee remission depending on your financial circumstances. It is possible for the Petitioner to ask that the court grant an order that the Respondent pays the Petitioner's legal costs and court fees in order to get this amount refunded. This is most common in divorces based on the facts of adultery or unreasonable behaviour.

The Petition must also be accompanied by your marriage certificate. If you have children under the age of 18, a Statement of Arrangements must also be filed, detailing your plans for the children with regard to maintenance, residence and contact.

Acknowledgment of Service

Once a Petition is received by the court along with the court fee, the court will issue the Petition. As part of this process, a copy will be sent to the Respondent along with an Acknowledgment of Service. If your spouse has applied for a divorce, this could be the first stage at which you become aware of proceedings.

The Acknowledgment of Service allows the Respondent to state whether they agree with the divorce and the facts as set out in the Petition. It also asks whether the Respondent agrees to pay the Petitioner's costs, if this has been requested. At this stage, the Respondent would be advised to take legal advice before filling out the form and filing it at court. It may be that an agreement over costs can be reached amicably so as not to incur further costs.

The Respondent must return the Acknowledgment of Service, which acts as proof that they have received the Petition, within a reasonable time. Should the Acknowledgment not be returned to court, the Petitioner is able to serve the Petition via alternative methods, such as use of bailiffs. Delaying proceedings in this way makes it more likely that the court will grant a costs award against the Respondent and therefore is not advised.

Finances

The financial details can be looked into at any time, but we would normally recommend trying to reach an agreement early on in the divorce process with a view that all matters can be settled by the time the final divorce is granted. For more detail on finances on divorce, please see [[link to 'Finances'](#)].

Decree Nisi

The Decree Nisi is the first decree granted in the divorce procedure, and will state the day on which the decree will be made Absolute. The Decree Nisi will be pronounced in open court. However, parties will not have to attend unless they wish to make an objection to paying costs.

Decree Absolute

The Petitioner can apply for this final stage of divorce 6 weeks after the date of the Decree Nisi. There is a fee of £45 for this application but, again, fee remission can be applied for. There is no need for parties to attend court for this stage. Should the Petitioner not apply for a Decree Absolute

for whatever reason, the Respondent is able to apply 3 months after the Petitioner was able to (i.e. 3 months and 6 weeks after the date of the Nisi).

Once the Decree Absolute is granted, the parties are officially divorced. This has a legal effect on a number of areas such as pensions, inheritance and the validity of wills. Parties should therefore consult legal advice as to whether further action (e.g. making a new will) should be taken.