

## Briefing Note: Divorce – Frequently Asked Questions

### An Introduction to the Guide

This guide sets out the framework of the divorce process, highlighting key areas and placing the various issues arising into a legal context. It serves as a general introduction. For specific advice tailored to your own circumstances you should consult a specialist family solicitor.

#### Briefing Note

##### Summary:

A general introduction to the framework of the divorce process, including frequently asked questions.

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### 1. Can I start divorce proceedings?

Yes if,

- You have been married for at least a year and either you or your spouse are habitually residence in England and Wales; or
- You and/or your spouse have been resident in England or Wales for the preceding year. If this condition is not met, there are alternative provisions relating to "Domicile".

If you have not been married a year but believe your relationship has broken down, there are other options including Judicial Separation or a Separation Agreement.

### 2. What are the grounds for divorce?

Under the Matrimonial Causes Act 1973, there is only one ground for divorce, namely "irretrievable breakdown of the marriage". However in order to satisfy a court that the marriage has broken down irretrievably, you must establish at least 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 you cannot reasonably be expected to continue living together (unreasonable behaviour).
- Your spouse has deserted you for a continuous period of two years or more.
- You and your spouse have lived apart for a period of two years or more and your spouse agrees to divorce.
- You and your spouse have lived apart for a continuous period for at least five years (your spouse does not need to consent).

### 3. Is there a standard form to commence proceedings?

Yes, the Divorce Petition. The Petition is a standard document into which your individual details are inserted. The document will recite details of your marriage, the reason why you assert that the same has broken down and will end with a "Prayer" (essentially a request) for dissolution of the marriage. The Prayer may also include a request for the costs of the divorce itself (from your spouse) and financial orders for you and any dependent children.

### 4. Where are the proceedings commenced?

Divorce proceedings can be issued either out of the Principal Registry of the Family-Division (in London) or any county court in England and Wales. For ease of administration and attendance (if necessary) the papers are normally filed at the county court most convenient to the parties.

### 5. Is the Divorce Petition the only document filed?

The documents which must be filed, as prescribed by the Family Proceedings Rules 2010 are:-

- The Petition.

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- A copy of the Petition for service on your spouse.
- A certified copy of your marriage certificate
- A Statement of Arrangements (form D8A). This document must be completed and filed in respect of any minor child of the family who is:-
  - (a) Under the age of sixteen years; or
  - (b) Between sixteen and eighteen and receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he/she is also in gainful employment.
- A copy of the form D8A for service upon your spouse.

### 6. How much will it cost?

It depends on a number of factors. At your initial appointment with one of our specialist lawyers, we will assess whether you will be eligible for legal aid. If so, the Legal Services Commission will be responsible for our fees (but will seek reimbursement if any property or money is recovered or preserved). If you are not eligible for legal aid, we will give you full details of our charging rates and an estimate of the overall cost to you to include any fees we need to incur on your behalf (e.g. court fees) and VAT. Such will confirmed to you in writing and you will receive regular updates.

At present, the Court Fee payable on filing the Petition is £340 and upon request for Decree Absolute, £45.

### 7. What if my husband/wife defends the proceedings?

Defended proceedings are very rare. Before issuing divorce proceedings, we would recommend that you discuss and seek to agree as much as possible with your husband/wife, including who is to be the Petitioner. Our solicitors are all members of Resolution (formerly the Solicitors Family Law Association) and adhere to a Code of Conduct designed to encourage constructive negotiation and agreement wherever possible. Defended divorce proceedings tend only to heighten tension and increase the potential for acrimony, in turn deflecting attention away from resolution of the important issues arising from the breakdown, namely those concerning any children and finances.

### 8. How long will it take?

The average length of time from presentation of the Petition to Decree Absolute is between four and six months assuming:-

- Your spouse responds promptly;
- The proceedings are not defended.

We may, however, advise that you do not make application for Decree Absolute until financial matters are resolved (any decision in relation to that will depend on your individual circumstances). If, unusually, the proceedings are defended, inevitably the timetable will extend, sometimes for up to a year.

### 9. What if I change my mind?

You may stop the proceedings at any time before Decree Absolute. In those circumstances we would normally recommend that the Petition is formally dismissed by the court. If you and your spouse get back together and remain together for six months you will not be able to rely on any previous adultery or unreasonable behaviour if you wish to divorce subsequently.

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### 10. Who will see the divorce papers?

Family cases are very rarely within the public domain. There are strict rules and guidelines prohibiting public and press access to court papers. The fact of Decree Nisi and Decree Absolute can be reported but no details given (e.g. in relation to allegations of unreasonable behaviour).

### 11. Do I need orders in relation to the children?

Orders for "Residence" or "Contact" can be sought under section 8 of the Children Act 1989 but only where there is a significant disagreement between you and your spouse.

For many years now, the courts have adopted a policy of non-intervention wherever possible. If you and your spouse reach an agreement as to where and with whom any child is to live (and how often he/she will see the parent with whom they do not routinely live), those details will be set out on the Statement of Arrangements form referred to above. Provided that the arrangements are reasonable and sensible, the court will not seek to interfere or indeed make formal orders recording the agreement. If, however, there is a material disagreement over a child, any dispute will need to be resolved before Decree Absolute can be made.

### 12. Will I need to go to court?

The vast majority of divorce cases are undefended and accordingly dealt with in the absence of the parties and advisers. If you have a dispute ancillary to the divorce (e.g. in connection with any child or financial matters) and proceedings are necessary, you will need to attend court hearings.

### 13. On Decree Absolute, do I need to do anything else?

Not as far as the divorce itself is concerned. However, as part of the process, you should have considered revising the content of your will. If you intend to remarry for example you should be aware that such would automatically revoke your will.

### 14. The Civil Partnership Act

The Civil Partnership Act 2004 came into force on 5 December 2005 and enables same sex couple to obtain legal recognition of the relationship. Couples who form a civil partnership achieve a new legal status of "Civil Partners" acquiring significant rights in a wide range of legal matters (e.g. tax (including Inheritance Tax), state and occupational pensions, protection for domestic violence etc). Those rights include a right to claim financial provision upon dissolution of the Civil Partnership. By and large Civil Partners will enjoy the same rights on dissolution as married couples do upon divorce. For further information concerning the dissolution of Civil Partnerships, you should consult a specialist family law solicitor.

If you would like to know more about this topic or our other legal services, please contact:

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