

A Short Guide to Divorce

In order to obtain a divorce under current law in England and Wales the Petitioner (the person applying) has to be able to show to the Court's satisfaction that there has been an irretrievable breakdown of the relationship. In order to achieve this the Petitioner has to prove one of five facts :-

- Adultery
- Unreasonable Behaviour
- Desertion for a period of 2 years
- 2 years separation with consent by the Respondent to a divorce
- 5 years separation – no consent needed

Procedure

The divorce papers are lodged at Court, together with a Statement of Arrangements for Children (if applicable). This is a document outlining the arrangements for any children and can be agreed previously with the other party (Respondent).

Once issued the Divorce Petition and other documents are sent by the Court to the Respondent by post.

The Respondent then completes and returns a short form known as an Acknowledgement of Service so that the divorce can proceed.

The Petitioner then signs an Application and Affidavit (sworn statement) asking for the case to be set down in what is known as the Special Procedure List for a Decree Nisi.

The Court sets a date for Decree Nisi and gives a Declaration in respect of any children as to whether or not they need to make any Orders.

The Decree Nisi is pronounced in open Court on the date given and it is not usually necessary for either party to attend.

The Decree Absolute can be applied for 6 weeks and one day from the Decree Nisi being pronounced by the Petitioner and if the Petitioner does not apply then the Respondent can apply three months after the date the Petitioner could have done so.



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Decree Absolute is pronounced.

MATTERS OF NOTE

If the Respondent does not return the Acknowledgement of Service to the Court then service must be proved in other ways, i.e. for example, Bailiff Service.

In a two years separation divorce the Respondent must give consent.

In an adultery petitioner there must be an admission of adultery or a finding of adultery to allow the divorce to proceed.

No attendance at Court is necessary if the divorce is undefended.

Where the proceedings are undefended the procedure takes on average 4 to 6 months.

If the Petition is defended and the other party files an Answer then the matter has to be heard in open Court, usually after a preliminary consideration by the District Judge who gives the parties a view as to whether or not in his view the divorce will be pronounced in open Court or whether it will be successfully defended. This is not usually available under Legal Help.

If you require any further information please contact Barbara Kemp or Jenny Lapwood. Either will also be able to advise you as to how much the divorce proceedings will cost.

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