



Petitioners' Guide to divorce

An overview

To obtain a divorce you will need to prove to the court that your marriage has irretrievably broken down. The court will accept one or more of the following facts as proof:

- That your spouse has committed adultery and that you find it intolerable to live with them
- That your spouse has behaved in such a way that you cannot reasonably be expected to continue living with them
- That your spouse has deserted you for at least two years
- That you and your spouse have lived separate and apart for two years and he or she consents to a divorce
- That you and your spouse have lived apart for a continuous period of at least five years.

What are the stages that I will have to go through?

This fact sheet will provide you with a by step guide to the stages of a divorce. How long your divorce will take will depend on several factors. This will include how co-operative your spouse is, how quickly you both fill in the documentation and return it to the court and how busy the court is. The speed the court will deal with your documents varies from court to court. Some courts will deal with the documentation within 7 days and some can take up to 28 days. We will normally issue your petition in your local county court or at the Principal Registry in London. If however we are aware that your local county court has a backlog we will discuss with you issuing in an alternative court.

1. Notification of intention to divorce

A divorce will proceed more quickly, cost effectively and reduce the animosity between a couple if a petition is issued after there has been a period of consultation. Although this is not possible in every case we will where possible contact your spouse or their solicitors prior to issuing the petition to attempt to agree the fact upon which you will issue and the position on costs. If the marriage has broken down as a result of the behaviour or adultery of your spouse you can ask the court to make an order for them to pay your costs. We will discuss with you whether it is appropriate to claim for your costs in full, request a contribution or make no claim at all.

2. Drafting the petition

To draft the petition we will need your original or a certified copy of your marriage certificate. If you are not able to locate your original certificate we will help you obtain a certified copy. The marriage certificate will be filed with the petition and will not be returned at the conclusion of your divorce.

The petition will confirm the fact upon which you are petitioning and will include details to support that fact. If you have alleged adultery you will need to give the date(s) and place(s) where the adultery took place. The person with whom your spouse has committed adultery (the co-respondent) is not normally named in a petition. We will however discuss this with you and whether or not it is appropriate to name them. If you have alleged unreasonable behaviour you will need to give examples of the behaviour, including the most recent incident. If you have alleged desertion you will need to give the date that the desertion took place. If you have alleged either 2 or 5 years separation you will need to give the date of separation and brief details of how the separation came about.

3. Statement of arrangements for children

If you have children born to you and your spouse, or who have been treated by you as though they had been born to you and they are under 16 or between 16 and 18 and still at college or school full time, or training for a profession, trade or vocation, they will be regarded as "children of the family" and the court will require a statement of arrangements form to be completed. In this form you will need to confirm the arrangements you intend to make in respect of where the children will live, what the contact arrangements will be, details of their health and schools and whether maintenance has been agreed.

4. Communication with your spouse prior to issue

Once the petition and statement of arrangements for children form has been approved by you we will send a copy to your spouse. If your spouse requests amendments we will discuss these with you and thereafter make the necessary amendments before sending it to the court for issue.

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5. Notice of issue and service of the petition

Once the court has issued your petition we will receive Notice of Issue. This will confirm your case number and the date the court posted a copy of your petition and statement of arrangements form to your spouse. Most courts will issue a petition within 7 to 14 days from the date of receiving it from us. If we are unsure whether your spouse will co-operate with the divorce we may request that the documentation is sent to our offices so that we can arrange personal service. The court will not progress a divorce unless absolutely certain that your spouse has received the petition and that all attempts to serve your spouse have been taken.

6. Filing of the acknowledgement of service

With the divorce documentation, the court will send your spouse an acknowledgement of service form to complete. This will confirm their position on the content of your petition, statement of arrangements for children form and costs. There is a time limit of 8 days from the date the petition was sent to your spouse for them to return the acknowledgement of service form to the court. If your spouse does not return the form on time, the court will require personal service before your divorce can be progressed. We will arrange personal service either through the court bailiff or a process server.

7. Application for Decree Nisi

Once the acknowledgment of service form has been filed with the court we can apply for your Decree Nisi. This is the stage at which your petition and statement of arrangements for children form will be considered by the judge and they will confirm whether or not you are entitled to a divorce. To apply for your Decree Nisi you will need to swear an affidavit (a sworn statement) to confirm that the contents of your petition are true.

If your spouse intends to defend the divorce then your divorce will follow a different route from this stage onwards.

8. Certificate of entitlement to a decree

If the judge is satisfied with your petition they will authorise the issue of a Certificate of Entitlement to a Decree. This certificate will confirm the time and date when the judge will grant your divorce. This is called "Pronouncing the Decree Nisi". The decree nisi is the first of two decrees you must have before you are divorced. The second decree is called the Decree Absolute.

If the Judge is satisfied with the statement of arrangements for the children they will also authorise the issue of a Notice of Satisfaction. If the judge is not satisfied with the arrangements they will issue a notice that you cannot obtain your decree absolute until satisfactory arrangements have been made. Where the judge issues this notice they will also give directions on how they wish your case to proceed. This can include a written request for information, a short appointment

before the judge, the ordering of a welfare report on the children, requesting one party to make an application for a court order (e.g for residence or a contact order).

If the Judge decides you are not entitled to a divorce we will receive Notice of a Refusal of judge's Certificate. This form will tell us why the judge has decided you are not entitled to a decree. In most cases the court will simply require further information in correspondence. In some circumstances the judge may decide you need to attend court. This is called removing your case from the special procedure list and entering it into the undefended list.

9. Decree Nisi

It is not necessary to attend court upon the pronouncement of the decree nisi unless costs are still an issue. If you have asked for your spouse to pay the costs of your divorce and the judge agrees to award you your costs we will receive the order for costs with the decree nisi. Your spouse will be required to pay your costs within 14 days of the date of the order.

10. Decree Absolute

The decree absolute can be applied for after 6 weeks and 1 day have passed since the pronouncement of your decree nisi. Once pronounced this legally ends the marriage. Certain financial benefits are lost upon the grant of the decree absolute (for example the loss of a spouse's pension on death). If financial matters are not resolved by the time you can apply for the decree absolute we may advise you to delay the application. We will let you know if this is relevant to you.



Contact us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

Call: 0800 916 9055

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Our offices:

Birmingham, Bristol, Cardiff, Edinburgh (Associated Office), London, Manchester, Milton Keynes, Newcastle, Sheffield, Wakefield

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