

Divorce Law and Procedure

The law

Divorce law in England and Wales is rather outdated and the current statute dates from 1973. Sadly it is not legally possible for parties just to agree that they need a divorce.

All divorces in England and Wales are based upon irretrievable breakdown of the marriage. However, in addition, each divorce has to be based upon one of a limited number of grounds or “facts”.

The wording used by the law on this is unfortunate and often causes needless upset. As a matter of law it makes no difference who divorces who, or on what basis, unless particularly extreme examples of behaviour are used. It is recommended good practice to try to agree the exact wording of the divorce Petition with the other party before sending it to the Court; a small change in wording can make the difference between that divorce being defended or agreed.

Terminology

The person starting the divorce is the “Petitioner” and the person receiving the divorce is the “Respondent”.

The grounds

As mentioned above, there are only a limited number of possible grounds for a divorce. Note that **nobody can be divorced unless they have been married for at least 12 months**. There might be other options if the marriage needs to be ended before that period but that is more complex and you should discuss it with us. The available grounds for divorce therefore are: -

1. **Adultery** - the exact words are “*the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent*”. It is very rarely necessary, or indeed wise, to involve the third party concerned, as it generally just increases costs. NB unless the Respondent admits the adultery you are unlikely to be able to use this ground.
2. **Behaviour** - “*the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent*”. This is the most commonly used ground but the choice of examples of behaviour is crucial. Advice can be very important on this, as the wrong words can create a totally unnecessary dispute.
3. **Two years separation with consent** - this requires the parties to have been separated for at least 2 years and for the Respondent to agree. You can be separated whilst still living under the same roof, but that can be difficult to prove to the Court.
4. **Desertion** - the Respondent has deserted the Petitioner for at least two years. This is rarely used and sometimes difficult to prove.
5. **Five years separation** - this does not require the Respondent to agree, unlike the two years separation ground.

Procedure

It is very unusual for a divorce to be defended, especially if the Respondent has been consulted in advance about the contents of the divorce Petition. If the Respondent does oppose the divorce, then the procedure is different and it is very wise to have advice.

There are many tools and techniques for resolving disputes about the divorce, and indeed any other family issues, without a Court battle: see our [“Alternatives to Court”](#) website page.

The procedure for an uncontested divorce is somewhat laborious but it is not normally necessary to attend the Court personally; it is a paperwork exercise. The steps are as follows: -

1. The Petitioner sends the divorce Petition to the local divorce centre with various supporting papers. The Petitioner must also file an official copy of the Marriage Certificate (in England, that is usually the yellow and green copy given to the parties at the wedding). The Petitioner must also pay the Court fee unless one of the very limited exemptions or reductions applies.
2. The Court sends a copy of the Petition to the Respondent with an Acknowledgment of Service form, effectively asking if they agree.
3. The Respondent returns the completed Acknowledgement of Service form to the Court.
4. The Petitioner applies to progress the divorce on an undefended basis. A Statement in Support is required.
5. If the Court is satisfied that the Petitioner is entitled to the divorce, a certificate is issued.
6. The Court formally pronounces the Decree Nisi - essentially a “halfway point”. There is no need to attend the Court unless there is an argument about who pays the costs. At this point the Court can also make final financial orders, which can be prepared by agreement.
7. From six weeks after the date of the Decree Nisi, the Petitioner can apply for the Decree Absolute to finalise the divorce. **Do not do this without taking advice first** as there may be implications for financial matters.
8. The Court issues the Decree Absolute, usually fairly quickly. The parties are then fully divorced and free to remarry.

Finances, children and other risks

This is a very brief summary of what is a complex and rather antiquated area of law and the procedure can vary significantly in certain circumstances. The law also does change and this leaflet only recites the law at the time of writing.

A divorce only dissolves the marriage so the parties are free to remarry. It will not resolve finances, children or any other matters. There is no actual *requirement* to be divorced after separating and, in some circumstances, it can actually be financially a bad idea.

For all of these reasons and more, it is very wise to have some advice at an early stage, to make sure this is the right course to take. Even if you then deal with everything else yourself, that initial advice is invaluable.