

DIVORCE & CIVIL PARTNERSHIP DISSOLUTION INFORMATION SHEET

The party filing for a Divorce/Dissolution is called the “Petitioner”; the other party is the “Respondent”.

The one ground of Divorce is that the marriage has broken down irretrievably and is illustrated by one or more of five facts:-

1. ADULTERY

The Respondent has to admit that he/she has had sexual intercourse with a person to whom he/she is not married. It is no longer necessary for the third party to be served with the proceedings, and it is not recommended because it increases the costs involved in the proceedings. Adultery is the one fact of divorce that is not available if you are seeking dissolution of a Civil Partnership.

2. UNREASONABLE BEHAVIOUR

Between 4-6 allegations of behaviour have to be put forward, such as jealousy, meanness, verbal abuse, physical violence, which are sufficient for the Court to be satisfied that it is no longer reasonable for the parties to live together.

3. TWO YEAR SEPARATION BY CONSENT or FIVE YEAR SEPARATION

If adultery or unreasonable behaviour can be established then a divorce petition can be issued immediately, provided that the marriage has broken down irretrievably. If neither of those two facts is available, then the fact of either two years separation by consent or five years separation (without consent) have to be used. To divorce using the facts of separation, the period of separation has to have elapsed before the divorce proceedings can be issued. With two years separation by consent the respondent has to agree to the divorce proceedings. Separation on the fact of two years separation by consent is the most consensual ground, and usually no claim for costs is made by the petitioning party.

If a petition is based on two years separation by consent or five years separation then the petitioning party can make an application to the Court that the decree absolute be stayed until the financial issues are resolved.

4. DESERTION

Desertion is a technical ground, and is very rarely used. The facts of separation by consent or after five years being preferred. If the fact of desertion applies in your case then your lawyer will give you more details.

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WHERE THERE ARE CHILDREN OF THE FAMILY

If there are children involved a Statement of Arrangements has to be prepared and filed with the divorce petition. The Statement of Arrangements sets out where the children are living; their schooling; who looks after them on a day to day basis; the arrangements for contact and maintenance.

To accord with the Code of Practice issued by Resolution, 1st for Family Law (formerly the Solicitors Family Law Association), the Respondent husband will very often be sent the draft proceedings, to include the Statement of Arrangements for his signature.

PROCEDURE

Once the divorce proceedings have been approved and issued at the local County Court then the respondent will be sent an Acknowledgment of Service, which will have to be completed, confirming that they have received the divorce proceedings, and that they agree to the divorce proceedings undefended. Every possible step is now taken to try and avoid divorce proceedings becoming defended, and it is usually possible to arrange for a divorce to proceed on an undefended basis by agreement.

Once an acknowledgement of service has been received by the Court, the Court will forward it to the lawyers so that an application can be made for Decree Nisi. To make this application you will have to come in to approve and sign some documentation to include a Statement confirming the particulars of your petition.

This Statement will be sent to the Court for the District Judge to consider the paperwork, and to certify that the matter is fit to be placed in the special procedure list for a Decree Nisi Hearing. The Decree Nisi will take place before a Judge, and there is no need to attend this appointment unless from the point of view of interest. The only occasion on which you would have to attend Court at this stage of the proceedings is if the Court were not happy as to the arrangements for the children, or there was some dispute as to the costs applied for in the prayer of the petition. This is unusual and if it happens in your case your lawyer will give you further advice. The Decree Nisi is an interim decree. It does not dissolve the marriage; it merely legally separates you and your spouse.

You may apply for the decree absolute 6 weeks and 1 day from the decree nisi. It is the decree absolute which dissolves your marriage and returns you to the status of a single person. You should keep your decree absolute in a safe place as it does denote your status and will have to be produced if you wish to remarry.

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The Court, after the decree nisi have got jurisdiction to deal with the financial matters. It is usual, therefore, to make an application for ancillary relief or for approval of a consent order after decree nisi. However, the financial order made by the Court cannot take effect until after the decree absolute.

If you do not apply for the Decree Absolute after the 6 week, 1 day period, the Respondent may be able to apply for the Decree Absolute after a further three months. This application may be contested if financial issues have not been resolved.

Finally, please note that divorce can affect Inheritance under Wills. Your spouse/partner is still your next of kin until Decree Absolute and may inherit if you die before Decree Absolute and have not made a Will. Or, if you have made a Will leaving part/all of your Estate to your spouse/partner this gift is still valid until Decree Absolute. In either case you need to think about changing Will to ensure your estate passes according to your wishes. If you have children you need to consider providing for your children and also consider appointing a Guardian for any children under the age of 18 years. You are advised to make a new Will if you are considering a divorce/dissolution.

Accurate time estimates for divorce proceedings cannot be given because cases vary according to difficulties. A “no problem” divorce will probably be processed within 4 – 6 months.

OTHER OPTIONS

A) Separation Agreement

Your lawyer would discuss this with you as in the long term this may increase costs and a Separation Agreement does not bind the subsequent divorce/dissolution Court. Also a Separation Agreement can only be entered into if there is an agreement between your both.

B) Judicial Separation

Again, your lawyer will discuss this with you and is usually considered if there is a religious or cultural bar to a divorce/dissolution. A Judicial Separation has the benefit of being a legally recognised separation where it is possible to resolve financial issues either by agreement or by Order of the Court. You however remain legally married and therefore cannot re-marry.

C) Reconciliation

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If you believe that the marriage/civil partnership has not broken down irretrievably, your lawyer would then be able to recommend a counsellor or Relate. Relate are able to offer free or reduced rate relationship counselling for couples and/or individuals.