

## Grounds for divorce

If you believe that your marriage has irretrievably broken down, you can issue a divorce petition if you and your spouse have been married for at least one year.

You will need refer to one of five facts as evidence that your marriage has irretrievably broken down, as follows:

- **your spouse has committed adultery and you find it intolerable to live with them.** In practice, your spouse will have to admit to the adultery, as otherwise you will have to prove they have committed adultery, which may not be easy and will add to the cost of proceedings.
- **your spouse has behaved in such a way that you cannot reasonably be expected to continue living with them.** This is known as unreasonable behaviour. It is necessary to provide five or six relatively brief points, detailing your spouse's unreasonable behaviour and how you feel this has affected you.
- **your spouse has deserted you for at least two years.** This is rarely relied upon, as most individuals would likely choose to issue a divorce petition upon the basis of unreasonable behaviour, so that they do not have to wait for a period of two years to pass from the date of separation.
- **you and your spouse have lived separately and apart for two years and they consent to a divorce.** You do not have to be living in two separate properties for all or part of the two years, but you need to show that you have lived as two separate households, not sharing bedrooms and not sharing domestic chores i.e. not living as a "couple".
- **you and your spouse have lived apart for a continuous period of at least five years.** After you have been separated for five years you do not need to show that your spouse agrees to a divorce. Again, you do not have to be living in two separate properties for all or part of the two years, but you need to show that you have lived as two separate households.

## Other factors you should consider before issuing your divorce petition

There are various factors, some of which may restrict your ability to issue a divorce petition and some of which may impact your financial settlement, which you should consider before you issue your divorce petition, which are as follows:



- **do the courts in England and Wales have jurisdiction to deal with my divorce?** You can issue a divorce petition in England or Wales if you and your spouse are domiciled or habitually resident in England or Wales. It is important to consider whether another EU state might have jurisdiction to deal with the divorce. Jurisdiction is a tricky area and it is important that you obtain advice on your specific circumstances before divorce proceedings are issued.
- **should I get Divorced in England and Wales?** If you and/or your spouse live abroad or are from another country it may be possible for the divorce to take place in that country. In this scenario you need to take advice from specialist family lawyers in all the countries where you may be able to issue proceedings, to take advice about where you may receive the most beneficial financial settlement. This is often known as "forum shopping".
- **does it matter when I get divorced?** The date of separation can have tax consequences if there are assets that may attract capital gains tax on disposal. There is usually no capital gains tax payable on transfers of assets between a husband and wife in the tax year of separation. If you separate just before the end of the tax year you may not be able to take advantage of this. It is very important to consider obtaining tax advice from your accountant, if you have one, or independent tax advisor about the implications of any such transactions as they relate to you.



## How do I start the process?

Often your divorce will proceed more quickly, cost effectively and with less animosity if your divorce petition is issued after there has been a period of consultation with your spouse and it is best practice to do so. The situation may be different if there is a need to consider any risks of putting your former partner on notice of proceedings, for example if they are living abroad and you are seeking to prevent a petition being issued in another country, or if proceedings need issuing quickly in conjunction with an urgent financial application, such as a freezing order or an application for maintenance pending suit (which is maintenance until a financial settlement is reached).

## What else will the court need to issue my petition?

When your divorce petition is sent to court for issuing it will need to be accompanied by your original marriage certificate or a formal copy. If you were married abroad and your marriage certificate is not in English, you will also need to provide the court with a certified translation of your marriage certificate. We can help you obtain these.

A court fee of £550 will also need to be paid when the divorce petition is sent to court, unless you qualify for fee exemption, which depends on you meeting the set financial criteria.

## What court will my divorce petition be sent to?

Divorce petitions must be sent to your nearest regional divorce centre.

## The divorce process

In a straight forward divorce, the process is usually as follows:

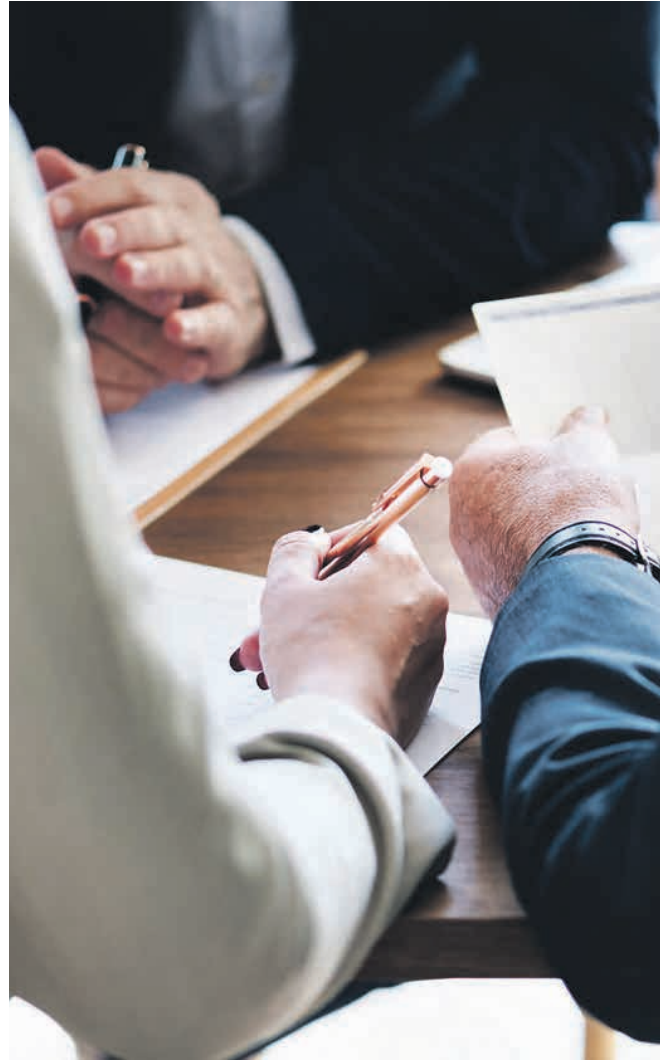
- we will draft a divorce petition and send it to you for your approval.
- once approved by you we will send the draft divorce petition to your spouse or their solicitor and ask for their comments.
- any amendments requested by your spouse will be discussed with you. The divorce petition will then be finalised and sent to your local regional divorce centre with your original marriage certificate and the court fee.
- the court will issue your divorce petition, giving it a case number, and will then send a copy of the divorce petition and a form called the acknowledgment of service to your spouse or their solicitor. The court will also send us confirmation of the date that this was done.
- your spouse needs to complete the acknowledgment of service form and return it to court. If the divorce petition is based upon their adultery they need to admit to the adultery. If it is based upon their unreasonable behaviour they need to state that they do not intend to defend the divorce petition. It should be noted that they do not have to accept the allegations of unreasonable behaviour. If the divorce petition is based upon two years separation they must state that they agree to the divorce proceedings proceeding on this basis.
- the court will process the acknowledgment of service and send a copy to us. We will then prepare your application for decree nisi and statement in support, which you will need to sign. We will then send these to court.
- a judge will consider all the divorce papers and if they are satisfied that there are grounds for divorce and procedurally everything is in order, the court will send us and your spouse or their solicitor, a certificate of entitlement to a decree which states the date upon which the decree nisi will be granted.
- the decree nisi is granted. There is usually no need to attend court unless there is disagreement about who should pay the costs of the proceedings.
- after six weeks and one day after the decree nisi has been granted we will can send your application for the decree absolute, which ends your marriage, to court. This is processed by the court office. The court will send us and your spouse or their solicitor the decree absolute. You may be advised not to apply for your decree absolute until a financial settlement has been agreed.

## What if my spouse ignores my divorce petition?

If your divorce petition is based upon your spouse's unreasonable behaviour or upon the fact that you have been separated for at least five years, you can progress your divorce if you can show the court that your spouse has received the divorce papers. This is usually done by having the papers personally served upon your spouse by a process server who then provides a sworn statement confirming that they served the papers upon your spouse. We can assist you with this. If your petition is based upon two years separation, your petition cannot be progressed if your spouse does not agree to the divorce proceeding on that basis. Also, if your petition is based upon your spouse's adultery, unless there is agreement, or you can prove it you will have difficulties in progressing matters which may increase costs.

## What if my spouser decides to defend my divorce petition?

If your spouse decides to defend your divorce petition, there will need to be contested proceedings which would involve you both giving evidence in court, with a judge deciding which spouse they believe and therefore whether your divorce petition is proved. This is rare and is a much costlier process than proceedings that are broadly agreed, which is why it is important to try and agree the contents of the petition and basis of the divorce proceedings at the outset. Divorce proceedings are a process to end the marriage and the reasons stated rarely impact upon how financial arrangements are determined.



To find out more, please contact our team now on:



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