

Respondent's guide to divorce

Overview

To obtain a divorce your spouse 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 you have committed adultery and your spouse finds it intolerable to live with you
- That you have behaved in such a way that your spouse cannot reasonably be expected to continue to live with you
- That you have deserted your spouse for at least two years
- That you and your spouse have lived separately and apart for two years and you consent to a divorce
- That you and your spouse have lived apart for a continuous period of at least five years.



Steps you have to go through to obtain a divorce

This factsheet will provide you with a step by step guide to the stages of a divorce. How long your divorce will take will depend on several factors. These 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 seven days and some can take up to 28 days.

1. Notification of intention to petition

In most circumstances your spouse's solicitors will write to you directly or to our offices to confirm their intention to commence divorce proceedings and the fact upon which they intend to rely. If they intend to petition on the basis of your adultery you will normally be asked to sign a statement (called a confession statement) to confirm that you admit to the adultery. In some circumstances your spouse will be able to make a claim for the costs of the divorce against you. A claim for costs will usually only be successful on the basis of an adultery or unreasonable behaviour petition. If your spouse intends to make a claim for costs against you we will advise you as to whether or not they are likely to be successful and attempt to negotiate an agreement on your behalf.

2. Drafting the petition

The petition will confirm the fact upon which your spouse is petitioning and will include details to support that fact. If they have alleged adultery they will need to give the date(s) and place(s) where the adultery took place.

The person with whom you committed adultery (the co-respondent) is not normally named in a petition. If your spouse has alleged unreasonable behaviour they will need to give examples of the behaviour, including the most recent incident. If they have alleged desertion they will need to give the date that the desertion took place. If they have alleged either two or five years separation they will need to give the date of separation and brief details of how the separation came about. In most cases we will receive a draft of the petition prior to your spouse issuing it with the court. If therefore there are errors or you take issue with some of the content and provided your spouse is prepared to co-operate, the petition can be amended by agreement.

3. Service of the petition

Once the court has issued the petition they will send it to you by first class post with a form called the acknowledgement of service. We may accept service on your behalf and therefore in some cases the court or your spouse's solicitors will send the documents directly to our offices.

On the acknowledgement of service form we will confirm your position in relation to the petition. If your spouse is making a claim for costs we will also confirm your position in relation to their claim.

The acknowledgment of service form needs to be returned to the court within 8 days from the date it was sent to you or us. Your spouse cannot progress with the divorce until they can prove service of the documents upon you. Therefore if you do not return the acknowledgement of service form they will have to arrange to personally serve you by either the court bailiff or by a process server.

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It is important that you file the acknowledgement of service on time otherwise your spouse is likely to claim their additional costs of arranging personal service against you.

If you intend to defend the proceedings your case will follow a different procedure from this stage.

4. Application for Decree Nisi

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

5. Certificate of Entitlement to a Decree

If the Judge is satisfied with your spouse's 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 the 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 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.

6. Decree Nisi

It is not necessary to attend court for the pronouncement of the Decree Nisi unless costs are still an issue. If costs are an issue then we will discuss with you whether or not your attendance at court is required. If an order for costs has been agreed or if the court makes an order against you the order will be sent to you with the Decree Nisi. You will have 14 days from the date of the order to make the payment to your spouse.

7. Decree Absolute

Your spouse can apply for the Decree Absolute after 6 weeks and 1 day have passed since the pronouncement of the 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 therefore financial matters have not been agreed by the time your spouse can apply for the Decree Absolute they may be advised to delay the application. We will let you know if this is relevant to you and depending on your instructions ask your spouse to confirm that they will or will not apply at the earliest date.

As the respondent on the divorce you are able to apply for the Decree Absolute at any time after the expiration of three months from the earliest date on which your husband or wife could have applied.

Please feel free to discuss your own position and concerns. Contact your nearest office on:

T: 0800 916 9015
E: enquiries@slatergordon.co.uk
W: www.slatergordon.co.uk

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