

# LEGAL FACT SHEET

## DIVORCE PROCEEDINGS

There is only ground for divorce - Irretrievable Breakdown of Marriage. However this needs to be **PROVED** by one of five "facts". The "facts" are set out below.

The **PETITIONER** is the person bringing the divorce proceedings. The **RESPONDENT** is the other party to the marriage. The "facts" are:

1. That the respondent has committed **ADULTERY** and the petitioner finds it intolerable to live with the respondent.
2. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent (commonly referred to as the **UNREASONABLE BEHAVIOUR** ground).
3. That the Respondent has **DESERTED** the petitioner for a continuous period of at least 2 years.
4. That the parties have **LIVED APART** for a continuous period of at least **TWO YEARS** and both parties **CONSENT** to the divorce.
5. That the parties have **LIVED APART** for a continuous period of at least five years (there is no requirement for the other party to consent to the divorce as in a two year separation).

### PROCEDURE

1. The petitioner lodges a **PETITION** in any **County Court**. The petition must include basic factual information e.g. Names of the parties and the date of the marriage and will also include the relevant "fact" to prove breakdown of the marriage. If there are children a **STATEMENT OF ARRANGEMENTS** form has to be lodged at Court providing routine information about the children and the arrangements for their care. The **MARRIAGE CERTIFICATE** or a certified copy must also be lodged at the Court together with a fee of £410 (unless the petitioner is in receipt of Income Support, Family Credit, and has applied for and been exempted by the Court from paying the fee).
2. When the court has received the papers the court office will arrange for the papers to be sent to the respondent with **ACKNOWLEDGEMENT OF SERVICE FORM**, which the respondent must complete and return to the court within 14 days confirming he/she has received the petition (in the case of an adultery petition the respondent will be asked whether he/she admits the adultery. On a two year separation petition the respondent will be

asked whether he/she agrees to the divorce). The court will not allow the divorce to proceed until satisfied that the respondent has received the petition so if the acknowledgement is not returned it may be necessary to arrange for the papers to be personally served on the respondent e.g. by the court bailiff. The respondent can defend the divorce and file an **ANSWER** with the court but defended divorces are very rare as they are expensive and can be lengthy.

3. When the court is satisfied that the respondent has received the papers the petitioner will complete a statement of truth confirming that the contents of the divorce petition are true. This will then be lodged at the court with an **APPLICATION FOR DECREE NISI**, which is a request for the District Judge to consider the petition.
4. The District Judge considers the papers and will decide if the petitioner has grounds for a divorce. In most cases this decision will be made on the basis of the paperwork alone, although sometimes the judge may ask to see the petitioner to ask further questions. If the Judge is satisfied there are grounds for divorce he will enter the matter in the **SPECIAL PROCEDURE LIST** and fix a date for pronouncement of **DECREE NISI** - the first stage of the divorce. The Judge will also consider whether he is satisfied in relation to arrangements for the children, which is normally the case if there is no significant dispute between the parties over the children.
5. **DECREE NISI** will be pronounced by the court. There is no need for either party to attend court unless there is a dispute over costs. This is not the final order.
6. Six weeks after Decree Nisi has been granted the petitioner can apply for **DECREE ABSOLUTE**, which is the final decree of divorce. This is usually a formality (if the petitioner does not apply for Decree Absolute the Respondent can apply but not until 3 months after the earliest date the Petitioner could have applied for the Decree).

7. The Proceedings will take not less than about 16 weeks and can be stopped at any time prior to the pronouncement of Decree Absolute.

#### **FUNDING**

Legal aid is not available for Divorce Proceedings. The usual rule is that the Petitioner's costs will be paid by the Respondent unless the Petitioner decides not to claim costs or the District Judge can be persuaded to order otherwise.

#### **FURTHER INFORMATION**

For further information about children and financial issues please refer to the fact sheets on these subjects.

KHF Solicitors Ltd. provide this fact sheet  
free of charge

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