

Alison Fielden & Co.

Solicitors & Notary Public

FACTSHEET

Divorce - Answers to Common Questions

If you have decided you have no alternative but to divorce your partner and you are about to consult a Solicitor, you may find the following information of some use. If you are unsure about whether to get a divorce, a Solicitor will be able to advise you in total confidence about the implications of divorce for yourself and your children before you take any steps to end your marriage.

Here you can find answers to some commonly asked questions about divorce.

Can I apply for a divorce straight away?

This will depend on how long you have been married. You cannot get a divorce unless you have been married for one year.

What happens if I am living abroad?

To get a divorce in England and Wales you, your husband or both of you must have their permanent home here or have been living in England or Wales for at least a year preceding the date the petition is filed.

What information is put in the petition?

The information in a divorce petition is fairly standard. For example, the petition will state the date and place of your marriage, the full names of yourself and your husband/wife, the full names of your children and their dates of birth and so forth.

Will I get a divorce automatically?

No. This will depend on whether you have sufficient grounds. Many people believe that you can get a divorce simply by showing the court that you and your husband/wife have irreconcilable differences. This is not the case. You have to prove to the Court that your marriage has irretrievably broken down because one of five things happened:

- that your husband/wife has committed adultery; or
- that your husband/wife had behaved unreasonably and the behaviour is so bad you cannot reasonably be expected to live with them; or
- that your husband/wife has deserted you for at least two years; or
- that you and your husband/wife have lived apart for a period of two years and your husband/wife consents to a divorce; or
- that you and your husband/wife have lived apart for five years.

What papers do I need to take to the Solicitors?

The Solicitor will need your original marriage certificate. If you do not have it a duplicate can be obtained usually at a cost of £7.50. Your Solicitor will advise you how to get a duplicate or can apply for one him/herself. If you require financial

advice it will be useful to take information concerning your assets and income so that the Solicitor can get an overall picture about your financial circumstances (see later).

What happens to the children?

If you want a divorce you will also have to demonstrate that the arrangements that are in place or which you propose to put into place are the best that can be devised in the circumstances and that it is not necessary for the Court to make any orders. You will be required to fill out a form called "Statement of Arrangements for Children" which gives the Court basic information such as where the children live, who looks after them from day to day and whether they are seeing the 'absent parent'. The Court will not interfere with any arrangements that may be in place unless there is an obvious dispute between the parents and will not make any Court Orders unless absolutely necessary. For what to do if there is a dispute, see later.

What will I have to pay?

If you are on a very low income or in receipt of certain State Benefits you may exempt from paying any Court Fees. Otherwise the fee payable when you file your petition is £300. A further fee of £40 is payable when you apply for the Decree Absolute. Your Solicitor will make a charge for the work he has to do and this is usually by reference to an hourly rate. Most Solicitors will be able to give you an idea of how much they will charge for a straightforward divorce whether at the initial interview or in advance by telephone.

Do I have to go to Court?

In most cases no Court appearances are necessary as most divorces today are undefended. In these cases getting a divorce has largely become an administrative exercise although still subject to the scrutiny of a judge. If your husband/wife objects to there being a divorce and files a defence then your divorce will have become defended and it might become necessary for you to attend Court. There are very few defended divorces today and your Solicitor would be able to advise you about what to do should your case become defended.

What happens once the petition has been filed?

Your Solicitor will receive a notice that the Petition has been issued and will be told the date it was posted to your husband/wife. Your husband/wife will receive a copy of the petition and Statement of Arrangements for Children (if applicable) together with a form called an Acknowledgement of Service which they must complete and return to the Court. They will have to state whether they agree with the petition and whether they intend to defend the proceedings.

What happens if they don't send the form to Court?

You have to prove to the Court that they have received the petition and you can do this by requesting a Court bailiff to serve the papers personally.

What happens once the form has been returned to the Court or a bailiff has served the papers?

Your Solicitor will prepare an affidavit (a sworn statement). You will have to sign the affidavit and swear on oath in the presence of a Solicitor or Commissioner

for Oaths or a Court official that everything contained in the Petition and Statement of Arrangements for Children is true. Your Solicitor will then send the affidavit and an application to the Court for the Decree Nisi to be pronounced.

What is a Decree Nisi? Does it mean I am then divorced?

A Decree Nisi is a declaration from the Court that you have sufficient grounds for a divorce and that your marriage can be dissolved. It does not mean you are legally divorced. You have to wait six weeks and one day (a cooling-off period) from the date of the pronouncement of the Decree Nisi before you can apply for the Decree Absolute. A Decree Absolute is a declaration from the Court that your marriage has officially come to an end. You are then free to re-marry.

What do I do about money and property matters?

Your Solicitor will be able to advise you about this. It is helpful before your first appointment to compile a list of your assets, liabilities, monthly income and outgoings. This will save time and money and will mean your Solicitor will be in a better position to advise you about such matters. The Solicitor can help you reach an agreement with your husband/wife about financial matters. If this is not possible, it may be necessary to issue court proceedings so that the court decides what should happen. This would mean that an attendance or several attendances at Court would be necessary. If you can agree financial matters then your Solicitor can prepare a court order which can be sent to the Court for approval so that it is not necessary to attend court.

What happens if there is a dispute about the children?

The Court is always there to assist with disputes concerning children during their minority. The court can make orders about who the children are to live with (a Residence Order), who they can see and how often (a Contact Order), they can decide whether a parent should be prohibited from taking certain steps in relation to a child (a Prohibited Steps Order) and can make decisions about certain issues, for example, which school a child should go to (a Specific Issue Order).

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