

You cannot start Divorce proceedings until you have been married at least 12 months.

What is the ground for a divorce?

The ground is irretrievable breakdown of marriage and it can only be proved by establishing one of five facts set out in an Act of Parliament. The two facts which enable you to apply for a divorce immediately are 'adultery' or 'behaviour' (commonly referred to as Unreasonable Behaviour) by your spouse. The other facts all require at least two years separation. A divorce can only be obtained by consent where a couple has lived separately and independently from one another (usually in separate households) for at least two years. The other facts are desertion and 5 years separation (with or without consent).

What are the stages in the divorce process?

STAGE 1

The Petitioner applies for a divorce. The application (Divorce Petition) is sent to the Court with a statement setting out the proposed arrangements for the children.

If there is a dispute over who the children should live with after the divorce the Court is unlikely to grant a divorce until after this issue has been resolved.

STAGE 2

The Respondent (the person being divorced) is sent a copy of the Divorce papers by the Court together with a form called the 'Acknowledgement of Service'. The Respondent has to notify the Court within seven days of receiving the papers if he intends to defend the divorce.

Before the Divorce can continue the court must be satisfied that the Respondent has received the Petition. If he has not returned the Acknowledgement to the Court then a Bailiff or Enquiry Agent will serve the papers on him personally.

If the Respondent intends to defend the Divorce, he must send his defence (“the answer”) to the Court within 4 weeks after receiving the petition. If this is done then the Divorce becomes defended and the procedure set out below does not apply. Defended divorce proceedings resulting in a fully contested Hearing are very rare but in such cases delay is inevitable.

STAGE 3

Once proof of service is available, the Petitioner swears an Affidavit (a sworn statement) confirming that the contents of the Petition are true and asking for the Decree Nisi to be granted.

STAGE 4

If the Judge is satisfied with the contents of the Petition, and the Affidavit he will grant a Certificate of Entitlement to a Decree which will give the date upon which the Decree Nisi will be granted and any other Orders (for example an Order for Costs) will be considered.

At the same time, the Judge will consider the information, which has been provided in the Statement of Arrangements for Children. If it is clear that arrangements are agreed, then the divorce can proceed. If there is a dispute about the children a court hearing may be necessary.

STAGE 5

Six weeks and one day after the Decree Nisi has been granted, the Petitioner can apply for the Decree Nisi to be made Absolute. However, in some cases the Court or the Petitioner may delay the Application for Decree Absolute until arrangements for the children or money matters have been sorted out.

If the Petitioner does not apply for Decree Absolute then the Respondent can do so but not less than 3 months, six weeks and one day after the Decree Nisi has been granted.

Will I have to go to court?

The process described above is sometimes known as 'special procedure'. Under this system a Court hearing will only take place if there is a dispute about arrangements made for the Children or in relation to the costs of the Divorce.

If you do not have children and costs are not disputed then there will not be any hearings, provided the divorce remains undefended.

If the divorce is defended or, in exceptional circumstances, if the Court directs that this special procedure cannot be used, then Court hearings will be necessary. This is very rare.

How long will the divorce take?

This really depends upon how quickly both parties return their forms. If both spouses respond promptly and the divorce is undefended then the divorce will usually take five to six months.

Do I have to pay court fees for the divorce?

A court fee is payable when the divorce proceedings are started. A further fee is payable on an application for the Decree Absolute. However, people who are on income support or receiving **Legal Help** are exempt from payment of these fees. This firm does not offer assistance under the **Legal Help Scheme**.

Can I stop the divorce once it has started?

Yes at any time up to the date that the Decree Absolute is granted.

What is judicial separation?

Unlike Divorce proceedings, there is no restriction on when a Petition for judicial separation can be presented. If one of the facts can be made out, a Petition can be presented the day after the wedding.

A Decree of Judicial Separation is a Court order recording that you are legally separated. The grounds and procedure are virtually the same as divorce although there is only one Decree - a Decree of Judicial Separation. A Decree of separation does not terminate the marriage but it does have the following important consequences:-

- i.** The Petitioner is no longer bound to cohabit with the Respondent.
- ii.** If either party dies without making a Will, his or her property devolves as if the other party to the marriage is dead. However, Wills are unaffected by Judicial Separation and therefore a new Will should be made if you do not wish for your spouse to benefit from your Will after Judicial Separation.
- iii.** The Court can make an Ancillary Relief Order as to finances and property but cannot make Pension Orders.
- iv.** The Court can make Orders in respect of the Children under Part I and II of the Children Act 1989.

The Parties are free to petition for Divorce even after they have been granted a decree of judicial separation.