



A guide to  
obtaining a  
divorce or  
dissolution

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**Winckworth**  
Sherwood



## Winckworth Sherwood Family Guide

This guide is intended to provide an overview of the process of obtaining a divorce and includes:

- a summary of the legal basis for obtaining a divorce
- an outline of the divorce process
- practical steps to take when considering a divorce

If you would like to discuss anything raised in this guide, our experienced family law team is here to help. Their contact details can be found on the final page.

For more information, please visit [wslaw.co.uk/family](http://wslaw.co.uk/family).

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Many people have an image of what divorce entails. This is often informed by a mix of personal experiences and popular culture. However, despite this familiarity, divorce is still surrounded by unhelpful myths making the whole process more daunting, difficult and stressful than it needs to be.

People entering into divorce can face not only legal challenges, but also financial, emotional and practical concerns. However, in the vast majority of cases, the actual legal process of obtaining a divorce is relatively simple. A sensitive and pragmatic approach can allow you to focus your energies on your independent future.

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Divorce (or, in the context of civil partnership, dissolution) is the legal process of separation. It is distinct from:

- reaching an agreement as to how your finances should be divided; or
- agreeing appropriate arrangements for the children.

The above topics are not the focus of this briefing. However, our team is experienced in all of these areas and can help to assess your needs as part of any initial discussion about divorce.

There is often an understandable reluctance to begin divorce proceedings. However, the process need not exacerbate any underlying emotions. Obtaining a divorce is now a largely paper-based exercise and rarely requires attendance at court. Furthermore, because the processes of ending the marriage/civil partnership is separate from addressing the financial consequences, the reason for your divorce is irrelevant to the division of your assets, save in the most extreme cases.

# Entitlement to a divorce

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In England and Wales, there is one ground for obtaining a divorce: irretrievable breakdown of the marriage. Other grounds you may have heard, such as 'irreconcilable differences', are from other jurisdictions and do not apply in England and Wales. In practice, to show an irretrievable breakdown of the marriage, the party seeking the divorce (known as the 'Petitioner') needs to show one of the following five 'facts' about the other party (known as the 'Respondent') in the request for divorce (known as the 'petition'):

- 1 Unreasonable behaviour:** this requires five or six examples of the Respondent's behaviour which the Petitioner has found unacceptable, with dates where possible. What constitutes unreasonable behaviour varies from person to person. It is often possible to agree the description of the behaviour in order to minimise conflict, and with sensible drafting this need not prove contentious or inflammatory.
- 2 Adultery:** this requires an admission by the Respondent that he or she has committed adultery within the last six months, and that the Petitioner finds it intolerable to live with him or her. This admission merely requires the Respondent to tick a box when he or she receives the petition. To minimise any acrimony, it is generally considered better not to name any third party.
- 3 Two year separation with mutual consent:** a petition on this basis requires the parties to have lived apart for a period of two years prior to the petition being lodged at court, and for the Respondent to consent. Separation does not necessarily mean living in separate houses, but it does require the spouses to have led separate lives.
- 4 Five years' separation whether or not your spouse consents:** after five years, a Petitioner can seek a divorce regardless of whether the Respondent consents. However, this type of petition can be delayed if the Respondent says that divorce will cause grave financial hardship.
- 5 Desertion by your spouse:** the Respondent must have deserted the Petitioner for a continuous period of at least two years immediately before the petition is sent to the Court. This ground is rarely used as the Petitioner must be able to prove that the Respondent had the intent to divorce during the whole period of desertion.

# Petitioning for a divorce

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- The divorce process is started with a form called the petition, stating personal details and the reason for the divorce. This is sent to the court with a fee and your original marriage certificate (and a certified translation if this is in a foreign language).
- Our general approach is to let the Respondent know of the petition in order to begin the divorce on an amicable footing and minimise tension. Often, where unreasonable behaviour is relied upon, the contents are agreed.
- It is possible for a divorce to be defended where the Respondent disagrees with the petition. This is exceptionally rare given the significant costs involved and the fact that, by this stage, it is generally accepted by both parties that the marriage has come to an end. Therefore the remainder of this briefing describes procedures for an undefended divorce, which is far more common.

## The international aspect: where can I obtain a divorce?

It is not uncommon for one of the spouses to be a foreign national or for there to have been multiple ceremonies in different countries. The courts of England and Wales can only deal with divorce proceedings where certain requirements are met relating to domicile or residence. It is possible that you might be able to seek a divorce in more than one country, in spite of where you married.

Where this may be an issue, prompt legal advice is essential. Careful consideration needs to be given to the jurisdiction in which proceedings are issued as financial proceedings must follow in the same jurisdiction as the divorce, and this can result in significant differences in the level of financial award. Our team can provide guidance on which jurisdiction might be most appropriate for you and your family.

# The divorce process

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## Service and Acknowledgement

Filing the divorce petition is the first step in the process. Once the petition has been sent to the court, it will be served on the Respondent, together with a form called an 'Acknowledgement of Service'. This indicates whether the Respondent agrees with the petition (including whether they admit any adultery) and whether they intend to defend it (the vast majority do not). In order for the divorce to progress without delay, the Respondent must sign and return the Acknowledgement of Service to the Court within seven working days. A copy is then sent to the Petitioner's solicitor.

## Applying for Decree Nisi

The Petitioner's solicitors then prepare an application for Decree Nisi and a statement in support in which the Petitioner confirms that the contents of the petition are true. Decree Nisi is the first of two decrees of divorce. It does not end the marriage or civil partnership; it simply confirms that unless there is an objection, the Petitioner is entitled to a divorce. The application for Decree Nisi is placed before a District Judge, who will decide whether or not the petition is proved. This normally happens without any need for either of the spouses or their solicitors to attend court.

## Applying for Decree Absolute

Six weeks and one day after the Decree Nisi is granted (or pronounced), the Petitioner can apply for the Decree Absolute. It is only with this Decree that you are finally divorced.

If the Petitioner does not apply for the Decree Absolute, the Respondent can themselves apply, three months after the date when the Petitioner was first able to do so.



### How long will my divorce take?

It can take between four to six months to obtain a divorce, depending upon the speed with which the Respondent engages and the business of the Court.

We usually advise the Petitioner not to apply for Decree Absolute until the financial arrangements following the divorce are finalised. In some circumstances, this can delay the completion of the divorce.

# Practical tips on divorce

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- 1** Broaching the topic of divorce is often a difficult one, and many clients approach us not yet having done so with their spouses or anyone else. It may put your mind at rest to discuss confidentially the wider implications of a divorce, including financial and child-related matters, with a member of our team. We can assist with decisions about whether divorce is right for you and, if so, when and how to communicate your intentions, taking into account your personal circumstances and preferences.
- 2** It is possible to petition for divorce without the assistance of a solicitor. However, it is important also to address the financial aspects of a divorce and discussing this with a solicitor can be a valuable investment in your future financial health. Moreover, the costs of divorce need not be exorbitant if handled sensibly and appropriately for your circumstances.
- 3** Once your divorce is complete, your Decree Absolute serves effectively as a replacement to your marriage certificate, and you will need to produce it in the event that you re-marry.
- 4** Your divorce also has implications for your will. If you have made any bequests to your spouse, these will be treated as if they had predeceased you. Depending on the drafting of your will, this may mean that their share falls into your residuary estate, or it may even have to be divided according to the intestacy rules. With this in mind, it is wise to use divorce as an opportunity to consider your arrangements, and our Private Client team is experienced in doing so.
- 5** You may also have death-in-service benefits through your workplace, through which a nominated person would be paid if you were to pass away while still employed. As people often name their husband, wife or civil partner, it may be worth contacting your employer's Human Resources department to check, and if necessary change, who you have nominated.

# Conclusion

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Calls continue for changes to be made to divorce law in England and Wales. There are prominent campaigns to allow separating spouses to divorce without alleging any fault or blame. However, there is no need to wait for Parliament to re-examine the matter to separate. It can still be handled in a manner that, even if not amicable, is courteous and swift.

While this briefing serves to explain some of the key concepts of legal separation, our team understands that divorce is not just a legal process. Divorce is a moment of significant change which deserves to be handled with care, compassion and pragmatism. We recognise that each marriage or civil partnership is different; our aim is to guide you through divorce swiftly and effectively, while respecting those differences.



# Our core team

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Katie specialises in complex, high value and often emotionally charged matrimonial cases, involving children, cross-jurisdictional issues and substantial assets.



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Anna-Laura's practice includes divorce and complex financial matters, especially pre and post nuptial or civil partnership agreements, cohabitation and cases involving an international element. She also advises clients in relation to issues involving children following the breakdown of a relationship.



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Selena advises on a wide range of issues associated with the breakdown of marriage and relationships, including complex children and financial matters.



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Hannah has a wide range of experience working on both children and financial matters, including relocation cases and complex financial remedy proceedings.



Our Family Team is part of Winckworth Sherwood's **Private Business and Wealth** group, which provide a range of legal services to support individuals and their business interests, including:

- Tax and estate planning
- Succession planning
- Probate
- Trust management
- Family law
- Philanthropy
- Family office services
- Employment
- Commercial and residential real estate
- Dispute resolution
- Reputation management
- Cyber security
- Data protection
- Corporate and transactional advice

## Divorce Clinic

We offer free 30 minute meetings at our offices to anyone wishing to discuss a family issue. If you, a friend or a colleague have a query relating to a relationship, potential marriage or cohabitation, a potential separation or divorce, or issues concerning children, pop in to see one of our qualified and experienced family lawyers for an initial chat to consider your options and the best route forward.

Meetings are held on the first Thursday of every month between 8:00am and 6:00pm. To check availability and make a booking, please contact **Katie Spooner** on [kspooner@wslaw.co.uk](mailto:kspooner@wslaw.co.uk) or 020 7593 5032. Our offices are based in London Bridge, and meetings are held privately and in the strictest confidence.

*“An impressed source notes that the lawyers ‘were simply delightful and provided the best client care I have experienced from a law firm’.”*

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