



A guide to
obtaining a
divorce or
dissolution

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.

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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 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.

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 any children.

The above topics are not the focus of this guide. You can contact us for copies of our guides on these areas, which all members of our team are experienced in.

There is often an understandable reluctance to begin divorce proceedings. However, with the right approach, the process need not exacerbate any underlying emotions. Obtaining a divorce is a largely paper-based exercise and rarely requires attendance at court. Increasingly the majority of the process takes place online. Furthermore, because the processes of ending the marriage or civil partnership are separate from addressing the financial and children-related aspects of your separation, the reason for your divorce will not have a bearing on the division of assets or arrangements for your children, save in the most extreme cases.

Entitlement to a divorce

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 countries and do not apply in this jurisdiction. 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 years' separation with 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 to the petition. 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:** 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 period of desertion.

Is it possible to avoid the blame game?

The Divorce, Dissolution and Separation Act 2020 received Royal Assent on 25 June 2020. This will enact so-called "no fault" divorce, which will remove the requirement to show one of the above facts and will enable separating spouses and civil partners to petition for divorce simply on the basis of irretrievable breakdown. The legislative changes contained in the Act will not come into force until Autumn 2021 meaning that the current fault based system remains in place until then.

Petitioning for a divorce

- 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). Parties and their representatives are also able to submit the petition online, which tend to be processed more quickly than paper applications.
- The approach that is generally accepted as good practice 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 parties aim to agree the contents. The implementation of “no-fault” divorce will allow petitions to be submitted by parties jointly where appropriate.
- 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. In any event, the new rules will remove the possibility of defending the petition on the basis of anything other than technical grounds.

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, regardless 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 may 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

Service and Acknowledgement

Filing the divorce petition is the first step in the process. Once the petition has been submitted to the court, it will be served on the Respondent, together with a form called an 'Acknowledgement of Service'. As things stand, 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.

Applying for Decree Nisi

The Petitioner must 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. Under the new rules there would be a 20 week wait between filing the petition and making an application for the equivalent to Decree Nisi.

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 pressures on the Court. Under the new rules, it would be a minimum of six months.

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

Practical tips on divorce

- 1** Broaching the topic of divorce is often a difficult one, and many clients approach us before discussing matters with their spouse 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, particularly with the introduction of the online process. However, it is important also to address the financial aspects of a divorce and discussing this with a solicitor at an early stage can be a valuable investment in your future financial health. Moreover, the costs of divorce need not be exorbitant if handled sensibly.
- 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 your spouse 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 just that.
- 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

Significant changes to divorce law in England and Wales are coming. Legislators have responded to prominent campaigns to allow separating spouses to divorce without alleging any fault or blame but these changes will not be implemented until Autumn 2021.

However, there is no need to wait for these changes to be implemented before separating. Your divorce 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 simply 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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Jim is a Senior Associate in the Family team. Jim trained at a leading firm in Kent before working in London at a variety of firms. Jim has in depth experience in relation to financial claims, including those with an international element but is equally at home dealing with complex disputes involving children, and was for many years a member of The Law Society Children's panel.



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Stephanie is a Solicitor who qualified into Winckworth Sherwood's Family Team in 2021, after training with the firm. With experience in both financial matters and those involving children, Stephanie advises on all aspects of family law including divorce, complex financial disputes, cohabitation, pre and post nuptial agreements and children matters.



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

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