



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.

WS

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 a divorce can face not only legal challenges, but also financial, emotional and practical concerns. However, with the right approach, the process need not exacerbate any underlying emotions.

Our sensitive and pragmatic approach allows you to focus your energies on your independent future and building a new life.

There is often an understandable reluctance to begin divorce or, in the context of civil partnership, dissolution proceedings. However, in the vast majority of cases, the legal process of obtaining a divorce is relatively simple. The majority of the process now takes place online and rarely requires attendance at court.

Divorce is the legal process of separation. It is distinct from and has no bearing upon:

- 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 to advise on.

Within this guide we refer to divorce throughout, although the same process is applicable to the dissolution of a civil partnership.

Entitlement to a divorce

In England and Wales, there is one ground for obtaining a divorce: irretrievable breakdown of the marriage. Prior to 6 April 2022, the party seeking a divorce needed to show that their marriage had broken down irretrievably by proving one of the following five 'facts': unreasonable behaviour, adultery, two years' separation with consent, five years' separation without consent or desertion.

However, since 'no-fault divorce' law came into force on 6 April 2022, you are no longer required to prove fault in order to obtain a divorce. The party applying for the divorce, or parties if it is a joint application, now simply needs to make a statement that their marriage has broken down irretrievably by ticking a box.

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 wedding ceremonies in different countries. It is possible that you might be able to seek a divorce in more than one country, regardless of where you were married. However the courts of England and Wales can only deal with divorce proceedings where certain requirements are met relating to domicile or residence.

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.

Applying for a divorce

- The divorce process is now largely conducted online. It is started by completing an application
 which includes personal details about you and your spouse, as well as details about your
 marriage. The application is submitted to the court with a fee and a copy of your original marriage
 certificate (and a certified translation, if this is in a foreign language).
- You can either apply for a divorce by yourself in a sole application or you can do so jointly with your spouse. In a sole application, the person applying will be known as the 'applicant' or 'sole applicant' and their spouse will be known as the 'respondent'. In a joint application the parties will be known as 'applicant 1' and 'applicant 2'.
- If one party stops cooperating where a joint application has been made, it can be severed.
 However, a sole application cannot be converted to a joint application at a later stage of the proceedings. Therefore, the decision on whether to apply solely or jointly must be made at the outset.
- If a sole application is made, it is generally accepted as good practice to let the respondent know so that the divorce can begin on an amicable footing and minimise tension.
- It is no longer possible to defend a divorce, but it is possible for it to be disputed by the respondent on limited legal grounds including jurisdiction and the validity of the marriage. It is not possible to dispute the divorce simply because the respondent does not wish to get divorced.

Applying online

Parties and their legal representatives can apply for a divorce either online or on paper, but it is generally much quicker and easier to apply online. In 2021:

- over 75% of all applications were made using the online service; and
- the average time it took to become legally divorced was 30 weeks quicker when using the digital service.

Use of the online divorce service also results in a significant reduction of applications being returned due to user error: only 1% are now returned compared with 40% using the old paper system.

The divorce process

Service and Acknowledgement

Once the application has been submitted to the court, it will be checked and if it is correct, it will be issued (sent out) to all parties. In a joint application, the parties will also receive an 'acknowledge receipt'.

In a sole application, the application will be served on the respondent by email along with an 'acknowledgment of service' notification. They will also receive a postal notification that divorce proceedings have been issued. The respondent must complete the acknowledgment of service within 14 days of being served with the divorce documents.

Applying for a Conditional Order

There is a 20-week waiting period between when the divorce application is issued and when the applicant(s) can apply for a conditional order.

The conditional order is the first of two orders. It does not end the marriage; it simply confirms that unless there is an objection, the applicant(s) is entitled to a divorce. If the Judge reviewing the application agrees with it, the court will certify entitlement to a conditional order and send the parties a certificate confirming when the conditional order will be granted. This normally happens without any need for either of the spouses or their solicitors to attend court.

Applying for a Final Order

Six weeks and one day after the conditional order is granted, the applicant(s) can apply for the final order. It is only with this order that you are finally divorced. If the applicant does not apply for the final order, the respondent can apply themselves once three months have passed (on top of the six weeks and one day).



How long will my divorce take?

Obtaining a final order will take a minimum of 26 weeks. This includes the initial 20-week waiting period between the application and conditional order, and the 6-week waiting period between the conditional and final orders.

We usually advise the applicant not to apply for the final order until their financial arrangements are finalised. Practically speaking, this can delay the completion of the divorce process as financial matters can take time to resolve.

Practical tips on divorce

- 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 ease 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.
- It is possible to apply for divorce without the assistance of a solicitor, particularly with 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.
- Once your divorce is complete, your final order effectively serves as a replacement to your marriage certificate, and you will need to produce it in the event that you re-marry.
- 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.
- 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.

Legacy divorces

If you petitioned for divorce prior to the introduction of the new law on 6 April 2022, you will have a 'legacy' divorce. Aside from changes to the language used within divorce proceedings, there are also some timing differences between the old and new law. If your divorce is a legacy divorce, it will still be governed by the old law.

In legacy divorces, once the divorce petition has been issued by the court, 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. As with the new conditional orders, Decree Nisi does not end the marriage; it simply confirms that unless there is an objection, the Petitioner is entitled to a divorce.

Six weeks and one day after the Decree Nisi is granted (or pronounced), the Petitioner can then 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.

Conclusion

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.

Key contacts



SARAH INGRAM
Partner
+44 (0)20 7593 5071
singram@wslaw.co.uk

Sarah is a partner in Winckworth Sherwood's Family Team. She advises on divorce, complex financial disputes, pre and post nuptial agreements, cohabitation, children (including residence and contact disputes, assisted reproduction and surrogacy issues, Schedule 1 Children Act and child abduction cases) and Inheritance Act claims.



Partner +44 (0)207 593 5149 hmacdougald@wslaw.co.uk

Hugh heads the Private Client team and specialises in estate planning, capital preservation, private and charitable trust administration, family equity issues, resolution of disputes over wills and trusts, capital tax advice and compliance, probate and related residential property services.



TIM SNAITH
Partner
+44 (0)207 593 51747
tsnaith@wslaw.co.uk

Tim is a Partner in Winckworth Sherwood's Private Client team. He regularly advises on trusts, estates and succession planning, including the many tax issues that arise with the same and the problems presented by the loss of mental capacity.

WS

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

"This team always provides its clients with a first class service. Every solicitor I have worked with in this Firm has an impressive knowledge of the law and a flexibility of approach to suit each client. The excellent advice from the outset ensures that clients have balanced expectations and faith in their legal representatives"

Legal 500 UK 2022

WS