

The Divorce Process

Divorce is the ending of the marriage. Sorting the finances is a separate issue. It is not unusual for the legal process to be finalised before the financial settlement. However, since some provisions cannot be altered after the Decree Absolute this part of the process is often delayed until all issues are agreed.

To be granted a divorce you must have been married for at least a year (or two years in Northern Ireland) and your relationship needs to have permanently broken down. The marriage must be recognised as valid by UK law and you must meet rules as to how long you've been living in the country.

If you and your spouse both agree to the divorce it is known as an undefended divorce. If one spouse doesn't agree to the divorce, it is called a defended divorce.

Grounds for divorce

The only grounds for divorce are the irretrievable breakdown of marriage. You must show the court that the marriage has irretrievably broken down and that there are good reasons to end the marriage.

Under The Matrimonial Cause Act 1973 irretrievable breakdown is proved by reference to one of **five factors:**

- Adultery by your partner with someone of the opposite sex. However, you cannot rely on this reason if you lived with your spouse for six months after you knew of the adultery unless the adultery is continuing.



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- Unreasonable behaviour by your spouse. This is a subjective test determined by the judge. As with adultery, you cannot rely on a single event which took place more than six months ago if you continued to live with your spouse, unless other incidents have occurred.
- Desertion by your spouse, without your agreement, or without good reason.
- You have lived apart for more than 2 years, and you both agree to the divorce. You can have had periods of living together provided these periods don't add up to more than six months and you have been living apart for at least two years altogether.
- You have lived apart for more than 5 years, even if your spouse does not agree to the divorce.

The legal divorce procedure

To start the divorce process one spouse (known as the **petitioner**) must file a divorce petition with the court, and advise the reasons why they want the marriage to end. If there are dependent children in the marriage, the petitioner must also file a Statement of Arrangements for Children.

The court will serve a copy of the divorce petition, a copy of the Statement of Arrangements for Children and an Acknowledgment of Service on the other spouse. The other spouse is known as the **respondent**.

Having been served the papers the respondent returns the Acknowledgement of Service, to confirm that they have received the petition and confirm whether they intend to defend the divorce. The court will send a copy of the Acknowledgment to the petitioner.



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The petitioner now files an affidavit with the court confirming the details in the divorce petition are correct and that the signature on the Acknowledgment of Service is that of their spouse.

Once the affidavit is sworn it is returned to the court and the petitioner will then apply to the court for the court to decide whether the divorce should proceed.

If both parties agree to the divorce

The paperwork is reviewed and provided the judge decides all is in order he/she will grant a certificate and send a copy to the petitioner giving a date for the Decree Nisi hearing. If both parties agree to the divorce the Decree Nisi is pronounced and sent to both parties. The Decree Nisi is always pronounced at a hearing in open court, but there is no requirement for either party to attend.

This is the first stage of the legal dissolution of the marriage, but the Decree Nisi does not end the marriage.

To finalise the divorce and legally end the marriage the court must issue a **Decree Absolute**. The spouse who applied for the divorce can apply to the court for the final order, the Decree Absolute, at any time from six weeks after the announcement of the Decree Nisi. The Decree Absolute confirms the divorce.

If the petitioner does not make the application, the respondent can apply at any time after four and a half months of the Decree Nisi date.

Once the Decree Nisi has been pronounced an order about financial matters (i.e. the consent order) can then be lodged with the court.



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If one spouse doesn't agree to the divorce

If one spouse doesn't agree to the divorce that party will file papers called an Answer in court, and state why they don't agree that the marriage has broken down. If the situation cannot be resolved a court hearing may be necessary where a judge considers the petition and decides whether the grounds are accepted.

If the court agrees to grant the divorce they will grant a **Decree Nisi**. The procedure is then as above.



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