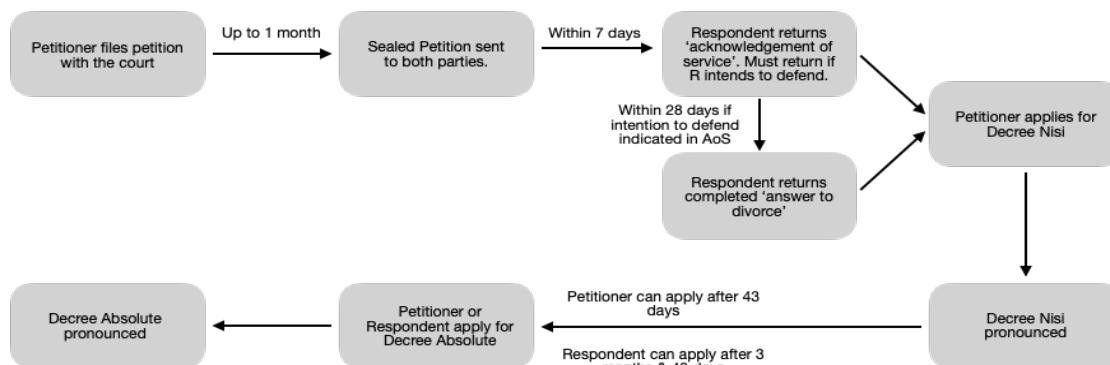


## An Introduction to Divorce

Webinar on 13 May 2020

### How long does the divorce process take and what does it involve?

In an uncontested divorce, where there are no concurrent financial remedy proceedings, it takes approximately 4 to 6 months, from the making to an application to the pronouncement of a Decree Absolute.



Once the divorce is applied for then the other party is given 28 days to reply to the application. If the matter is not contested or there is no response to the application, the petitioner can apply for a Decree Nisi. If the divorce is not contested, the petitioner will have to wait 43 days after the pronouncement of the Decree Nisi before they can apply for the Decree Absolute. The respondent will have to wait 3 months and 43 days after the Decree Nisi has been pronounced before they can apply for the Decree Absolute.

If the divorce is defended the matter is likely to be listed before the court for a hearing.

### How do you apply for a divorce?

An application should be made using form D8. Applications can be made on paper or online. The application must be accompanied by:

- Marriage (civil partnership) certificate;
- Reconciliation statement (where there is a solicitor acting) (Form D6); and
- The court fee (see Civil and Family Court Fees EX50) which is currently £550, or 'fee exempt' form.

### Who can apply for a divorce?

You can get divorced in England or Wales if all of the following are true:

- you've been married for over a year;
- the relationship has permanently broken down;
- your marriage is legally recognised in the UK; and
- the UK is your permanent home, or the permanent home of your husband or wife.

### How do you identify the date of separation and why is it so important?

The date of separation is the date the relationship ended. This is normally marked by one party leaving the family home, but this may not always be the case.

The date of separation is different from the date the application for divorce is made. The date of separation can have tax implications and can also have an impact on which assets may be deemed to be 'matrimonial' or 'non-matrimonial' as well as there being a risk that pensions may be affected.

### What are the grounds (also known as the 'facts') for a divorce?

Once a party's eligibility for a divorce is established it is then necessary to consider which fact should be relied upon in order to prove that the marriage is irretrievably broken down. There are 5 possible grounds. The petitioner should rely on at least one fact. The 5 possible grounds for divorce are:

1. Unreasonable behaviour
2. Adultery
3. Desertion
4. Separation of at least 2 years; and
5. Separation of at least 5 years.

### What type of behaviour is likely to be considered to be 'unreasonable'?

The mostly commonly used fact is **unreasonable behaviour**. The petitioner must provide examples of behaviour that show it is unreasonable for the petitioner to continue to live and be married to their spouse. The behaviour cannot be trivial or trifling. The behaviour could be physical, psychological, financial or mental abuse, drunkenness or drug taking or similar unacceptable behaviour. The examples need to provide sufficient detail to show that the behaviour is unreasonable.

### What information do you need to provide to the court where a spouse is alleged to have committed adultery?

The fact of **adultery** can also be relied upon. The petitioner will need to say that their spouse had sexual intercourse with someone else of the opposite sex. Homosexual relationships are insufficient for this fact (although could be cited as unreasonable behaviour). Adultery cannot be given as a fact if the parties continued to live together as a couple for more than 6 months after they found out about it.

### 2-year separation or 5-year separation: what is the difference?

The fact of **desertion** can be relied upon if the petitioner's spouse has left them for at least 2 years prior to the application for divorce. The petitioner can still rely on this fact if the parties have lived together for up to a total of 6 months in this period, but that will not count towards the 2 years.

**Separation for at least two years** can be relied upon as a fact. The petitioner can apply for a divorce if they have been separated for at least 2 years before applying for divorce, if both parties agree to it. This agreement must be in writing. This fact does not necessarily require both parties to have been living separately for the 2-year period, provided that they do not live together as a couple.

If there is no consent, then **separation for at least 5 years** can be relied upon as a fact.

## **What happens where there are periods when the parties have lived together after separation?**

Sometimes may not be possible for a party to move out when the relationship has broken down. This may be for financial, family or work-related reasons. However, parties can show that they are separated, even whilst living together by showing that the parties live separate lives, for example by not spending time together, eating together or sleeping together. There maybe occasions where parties have attempted to unsuccessfully reconcile. As long as these periods of reconciliation do not total more than six months in a two-year period the parties can still be viewed as separated by the courts.

## **What is the difference between Decree Nisi and Decree Absolute?**

The Decree Nisi shows that the court accepts the petitioner's grounds for divorce. The parties will still be married at this point.

The Decree Absolute document ends the marriage.

## **Who can apply for a Decree Absolute and when can they make the application for Decree Absolute?**

In order to obtain a Decree Absolute, the petitioner needs to wait 6 weeks and 1 day (43 days) from the granting of the Decree Nisi. The respondent party can also apply for Decree Absolute if the petitioner does not apply. The respondent will have to wait an additional 3 months on top of the 43 days. If you do not apply for a Decree Absolute within 12 months of the granting of the Decree Nisi you will need to explain your reasons for the delay to the court.

## **Is there any reason to delay applying for a Decree Absolute?**

A Decree Absolute can be granted without a financial settlement. The divorce process and financial settlement are completely separate procedures that can run in parallel to each. However, it is also possible to divorce without legally severing financial ties.

In most scenarios it will be in the parties' best interests to try and arrange a financial settlement at the same time as divorce proceedings, before the Decree Absolute. This is because entitlement to certain assets of the marriage could be affected if the parties are already divorced. By way of example, some trust funds or pension funds can only be transferred to a spouse. Equally, if assets are transferred when parties are still married they may be able to avoid certain tax charges that would be attracted to the transfer, if they were divorce. Further for some parties it may allow them to move on completely with their lives, for example, by re-marrying, without worrying what will happen to financial assets.

*This note is for general information only and is not intended to constitute legal advice on any general or specific legal matter. For legal advice on divorce or other family law matters, please contact Scarlett Watkins, on 0207 427 6821 to discuss instructing Counsel.*

**Charlotte Bull & Shárin Diegan**  
**Goldsmith Chambers**  
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