



**Family &
Matrimonial**

FAQ **Divorce**





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FAMILY LAW FAQ: DIVORCE

What are the grounds for divorce?

The only ground for divorce is that the marriage has irretrievably broken down. This breakdown must then be supported by one of the five divorce facts as follows:

Adultery – your spouse has committed adultery and you find it intolerable to live with them

Unreasonable behaviour – your spouse has behaved in such a way that you can't reasonably be expected to live with them

Two years separation with consent – you and your spouse must have lived apart for at least two years and your spouse consents to the divorce

Desertion – your spouse has deserted you for a period of two years before you commence your divorce

Five years separation – you and your spouse must have lived apart for at least five years.

Can I rely on the divorce fact of two years separation if my spouse and I are still living in the same household?

Yes, provided you and your spouse can show the court that you have been living separately for at least two years in the same household. For example, that you sleep in separate bedrooms, take separate meals and do your own household chores.

My spouse has issued a divorce petition based on my unreasonable behaviour. I agree the marriage has broken down but not with the allegations against me. What should I do?

There is space on the acknowledgement of service form for you to confirm that you agree to the divorce but do not accept what is being said about you. This should be sufficient for the divorce to proceed.

How does a divorce petition based on unreasonable behaviour or adultery impact financial and children issues?

Except in very exceptional circumstances, adultery or unreasonable behaviour will have no effect upon your financial entitlement or parental rights.

How long does a divorce take?

A non-contested divorce can take between 3-6 months although there can be various complications and other issues to resolve such as finances and children issues that often lengthen this period.

Do I need my original marriage certificate to commence proceedings?

Yes, but don't worry if you no longer have the original or cannot find it. The court will accept a certified copy which can be obtained from the appropriate Register Office for a nominal fee. The marriage certificate will have to be sent to the court with the divorce petition and the court fee.

I was married abroad. Can I issue proceedings in this country?

Provided your marriage is recognised in this country and either you or your spouse is habitually resident in England and Wales, you can get divorced here. If your marriage certificate is in a foreign language you will need to obtain an official translation.

Can I still get divorced if my spouse refuses to co-operate?

If your spouse fails to respond to the divorce petition issued to them by the court, any evidence that they have received the papers or personal service on the papers upon them will usually allow the divorce to proceed in the absence of their co-operation.

I am not in contact with my spouse and do not know their address. Can I still get divorced?

If you are able to demonstrate to the court that you have made all reasonable enquiries to trace your spouse then the court can rule that the divorce can proceed without the paperwork being served on your spouse.

Will getting divorced sort out all the financial arrangements between us?

No, sorting out financial and property matters is a separate issue from divorce. If you and your spouse reach an agreement regarding your matrimonial assets, this agreement would not be final and binding until it has been endorsed by the court as an order. If the court does not make an order in relation to financial matters as part of the divorce then there is a risk of one party making a financial claim against the other in years to come, even if your divorce has been finalised. **See our Q&A on Financial Matters.**

Will getting divorced sort out the arrangements for the children?

No, arrangements for children will have to be either negotiated or decided by the court in a separate application under the Children Act 1989. Getting divorced simply brings your marriage to an end. **See our Q&A on Children.**

What is the difference between Decree Nisi and Decree Absolute?

A Decree Nisi is the provisional decree of divorce pronounced when the court is satisfied that the Petitioner has met the legal and procedural requirements of a divorce. The Decree Absolute is the final decree which dissolves the marriage.

When can I apply for Decree Absolute?

The person who issued the divorce petition can apply for Decree Absolute 6 weeks and 1 day after the pronouncement of Decree Nisi. If they have not done so within 3 months of this date, the Respondent can apply instead. It is advisable that financial matters should be resolved and sealed by the court as an order before an application for Decree Absolute has been made. **See our Q&A on Financial Matters.**

Useful Links

www.resolution.org.uk
www.relate.org.uk
www.lawsociety.org.uk
www.gov.uk/divorce

**For more information, contact
Ian Lipscombe or Emma Rothstein
on 020 8949 9500.**



Both are members of Resolution, which means they are committed to dealing with family disputes in a constructive and non-confrontational way.

We offer an initial free 20-minute consultation or a fixed-fee appointment for 40 minutes.

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