

Divorce and Separation

Your questions answered

Q. *“On what grounds can I get a divorce?”*

A. Divorce proceedings cannot be started until after the first anniversary of the marriage. The ground for divorce is that the marriage has irretrievably broken down. However, to prove this you would have to show one or more of the following facts:

Adultery: that your husband/wife has committed adultery and you find it intolerable to live with him/her.

Behaviour: that your husband/wife has behaved in such a way that you cannot reasonably be expected to live with him/her.

Desertion: that your husband/wife has deserted you for at least two years immediately before the proceedings are started.

Two Years Separation

With Consent: that you have lived apart for at least two years immediately before the proceedings are started and your husband/wife consents to the divorce.

Five Years Separation:

that you have lived apart for at least five years immediately before the proceedings are started (in this case your husband/wife’s consent is not required).

Q. *“What happens when I apply for a divorce?”*

A. Once the Court is satisfied that you are entitled to a divorce, a **Decree Nisi** will be pronounced. This is the first decree of divorce but the divorce will not be final, nor will you be free to remarry, until the **Decree Absolute** is pronounced at least 6 weeks later. We have prepared a separate fact sheet explaining the procedure involved in divorce proceedings.

Q. *“What happens if we attempt a reconciliation?”*

A. If you are divorcing on the basis of adultery or unreasonable behaviour, you may not be able to rely upon a specific incident of adultery or unreasonable behaviour if you have lived together for more than six months in total after you discovered about that incident. However, you can still seek a divorce if further incidents occur.

If you are divorcing on the basis of separation or desertion, a reconciliation of up to six months will not affect your position although that time will not be taken into account in calculating the two or five year periods required. If your reconciliation lasts more than six months, then you must begin again in calculating the length of the separation.

Q. *“Can we continue living under the same roof whilst the proceedings are continuing?”*

A. Yes, it is often impractical for the parties to make alternative arrangements immediately. If this is to continue for more than six months, you will normally be required to show that you have been maintaining separate households, i.e. occupying separate bedrooms if possible and making separate domestic arrangements.



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Q. “Do I have to name the other person involved?”

A. No, it is not necessary for a “Co-Respondent” to be named in the proceedings. It is usually sufficient if your husband/wife simply admits to adultery.

Q. “Will I have to go to Court?”

A. Almost all divorces are undefended and it is not normally necessary for either party to attend Court for the divorce. However, it may be necessary to attend Court to sort out financial matters.

Q. “Can we just be legally separated?”

A. You can always agree to live separately from your spouse provided that suitable living arrangements can be made. If you agree this and your financial settlement, a **Separation Deed** can be drawn up recording the terms of the agreement reached. This will normally be binding upon you both, unless there is a material change in either of your circumstances not envisaged by you when the Deed was signed, when a Court could change the terms of the Deed.

You could also apply to the Court for a **Decree of Judicial Separation**. This can only be granted on one of the five “facts” referred to above, although it is not necessary for you to show that the marriage has irretrievably broken down. Judicial Separation is normally only used if there are particular reasons for not formally terminating the marriage, or if the parties have not been married for one year.

Q. “What happens about the children on divorce?”

A. Married parents have shared **Parental Responsibility** for their children, this will continue after divorce. Initially, both parents can act independently of the other in making arrangements for the children. If there is a dispute concerning a child's future, for example, both parties want the child to live with them, then you or your husband/wife can apply to the Court for an order determining the issue in dispute. Otherwise, the Court will want to know what arrangements are to be made for the children but, if there is no dispute, will not make any orders relating to the children in the divorce proceedings.

Q. “When are financial and property issues sorted out?”

A. Sometimes it is possible for these issues to be resolved by agreement before proceedings are issued. Sometimes negotiations begin after the petition has been issued. The Court cannot make a Consent Order approving the financial arrangements until after the first decree, the Decree Nisi, is pronounced.

If there is a dispute between the parties, financial matters are not resolved until after the Decree Nisi and occasionally the Decree Absolute (when the divorce is finalised) have been pronounced. A full court hearing can take some months to arrange.

This fact sheet is intended as a general guide only. If you have specific queries not covered in this fact sheet please ask for further advice.