



**BTMK**  
SOLICITORS LLP

**FAMILY**



**DIVORCE INFORMATION**

# FOREWORD

This document is for your information and personal reference. Please retain it for your records.

**Facts:** In divorce proceedings the person starting the divorce is known as the Petitioner and the person receiving the divorce is known as the Respondent. There is only one ground for Divorce in England and Wales, namely that your relationship has broken down irretrievably. You must evidence the irretrievable breakdown by relying on one of five facts. These five facts are:



## 1. Unreasonable Behaviour

If you consider that your spouse has acted in an unreasonable way towards you then you may be able to secure a divorce on the basis of that behaviour. The behaviour relied upon will be something that you consider unreasonable, and such that you no longer feel that you are able to continue to live with your spouse. Common examples of unreasonable behaviour are violence, verbal abuse and put downs, possessive and controlling behaviour, excessive drink or drug use, an insensitive attitude, keeping you unreasonably short of money, or a lack of affection towards you. This is not an exhaustive list.

## 2. Adultery

Adultery is voluntary sexual intercourse between a man and a woman, at least one of whom is married. It is only open to you to Petition on the basis of your spouse's adultery and not your own. In addition, it must be shown that you now find it unbearable to live with your spouse as a result of their adultery.

You do not have to have specific proof of the adulterous relationship it will, however be necessary for your spouse to admit the adultery and confirm the same on the acknowledgement of service form (explained below) sent to them by the court. In practice it is better to obtain a signed admission statement from your spouse prior to the issuing of proceedings.

If you have continued to live with your spouse for a period of over 6 months after you learned of their adultery you are prevented from relying on this as a reason for your divorce.

It is generally not necessary for the person with whom your spouse committed adultery to be named on the Divorce Petition. This adds expense and can increase the time that the divorce takes to run its course.

## 3. Two Years Separation With The Consent Of The Respondent

You must show that you have been living apart from your spouse for a continuous period of two years before the Divorce Petition is issued. The person in receipt of the divorce petition must also show that they agree to the divorce on this basis. Agreement is given by the signing of the acknowledgement of service form sent by the court (see below for details). At any time during the proceedings, it is open to the respondent to withdraw their consent. If this happens it may be appropriate to Petition on another basis.

## 4. Five Years Separation

You must be able to show that you have lived apart from your spouse for a continuous period of at least 5 years before the Divorce Petition is issued. If this is satisfied a Divorce can be pursued whether or not the Respondent consents.

## 5. Two Years Desertion

If one spouse stops living with the other, without their consent and for no apparent reason, and for a continuous period of two years, a Petition can be presented to the court on the basis of desertion. This is a highly technical ground and is rarely used as in these circumstances, it is open for the parties to use two years separation, providing each party will consent, or unreasonable behaviour.

## Petition Of Divorce

It will be necessary to send a Petition to the court. A Petition is the document which provides details to the court such as the date and venue of your marriage, whether any children have been born during the marriage, where you and your spouse live and what you do for a living, whether you have been involved in any other court cases dealing with the marriage and confirming that the Petitioner considers the marriage to have broken down irretrievably. The Petition is the document on which the details of the ground for your divorce (one of the five reasons explained above) will be given to the court.

When submitting the completed Divorce Petition to the court it is necessary to send your original marriage certificate, which will not be returned to you. If you do not have your original marriage certificate, it will be necessary to obtain a certified copy either from the church in which you were married (if you were married in a church) or the local registry office or from the Family Record Centre in Southport.

The court will charge a fee to start the divorce procedure. If this firm is assisting for you under the Legal Help and Help at Court scheme then you will not be liable for the payment of the fee and in due course you will be sent a form of fee exemption for your signature.

## Statement Of Arrangements For Children

If you have children as a result of your marriage, it will be necessary to submit to the court a document called a 'Statement of Arrangements for Children'. This document will tell the court:

1. Where the children live.
2. Who lives with them.
3. The contact arrangements for the party with whom the children do not reside.
4. Who looks after the children on a day to day basis.
5. Any health problems the children have.
6. Arrangements for the children's education – both now and in the future
7. What financial support the children have i.e. maintenance paid informally or through the Child Support Agency.
8. Whether the children have ever been known to Social Services.

The court considers it very important that the future arrangements for the children have been considered, and in extreme circumstances can delay the finalisation of the divorce until satisfied with the arrangements for the children.

This document will be sent to the Respondent along with the divorce papers, and if they object to anything included within it they may file their own copy of the Statement of Arrangements. If the differences between your forms are irreconcilable then it may be necessary for a court appointment to be made to discuss arrangements for the care of the children.

## Divorce Procedure

Once completed, a full set of documents will be sent to the local court and the court will send a set of these documents to the Respondent at their home address. The court must have an address for the Respondent. If you are the Petitioner and do not have this information, it will be necessary to make enquiries as to your spouse's whereabouts.

Once the documents have been sent out to the Respondent, they have 14 days to respond to them. The Respondent will receive a form called the 'acknowledgement of service' form. This form is a question and answer document and the Respondent will be required to complete it to prove that they have received the divorce papers. If they wish to defend the divorce, or disagree with anything contained within the statement of arrangements, they can so indicate on this form.

If your divorce is based on adultery or two years separation, matters will not be able to progress unless or until the Respondent sends the acknowledgement of service form back to the court. If the Respondent does not return the form, then provided your divorce is not based on two years separation or adultery, it may be necessary for the Petitioner to employ the court bailiffs or a process server to personally hand (or serve) the papers to the Respondent. Once personal service has been effected the divorce can be progressed. In the event that your divorce is based on two years separation or adultery and the acknowledgement of service form is not returned, then the Petitioner may have to amend the Divorce Petition to rely upon a different fact e.g. unreasonable behaviour, to secure a divorce.

Once the acknowledgement of service is returned, a document called 'application for directions for trial' will be prepared by the Petitioner and submitted to the court. This is the application for Decree Nisi of Divorce. It is necessary to send to the court an affidavit in support alongside the application for Decree Nisi. The Petitioner will need to swear to the truth of this document at the office of another firm of solicitors (who will make a charge) or at the County Court, where no charge will be made. By swearing the document, the Petitioner confirms to the court that everything contained within the Divorce Petition is true, it will also provide to the court, evidence of service of the Petition upon the Respondent.

If satisfied with the Petition and related documents, the court will send a certificate of entitlement to a Decree. This document will confirm the date upon which Decree Nisi will be pronounced.

Decree Nisi is an interim Decree and does not end your marriage. On the day indicated in the certificate of entitlement a judge will pronounce your Decree Nisi. You will be sent a document, which is the Decree Nisi. Once a Decree Nisi has been granted, the court has the ability to deal with any financial matters that are outstanding between yourself and your spouse. For further details of how financial matters are dealt with on divorce, please see the 'Financial Matters' information sheet.

Six weeks and a day after your Decree Nisi is pronounced, the Petitioner is entitled to apply for the Decree Absolute. This is the document that will end your marriage. If financial matters are outstanding, it is generally advised that the Decree Absolute is not obtained until they are settled. This is because, if your spouse was to die and you had become divorced but still had financial matters outstanding, you may lose an automatic entitlement to benefit from certain assets held by your spouse. The Respondent can apply for the Decree Absolute three months after the date on which the Petitioner could have applied for the same.

At the present time, a straightforward divorce takes around six months from commencement to Decree Absolute. This time estimate is subject to change due to delays at court, which are out of our hands or additional applications which may need to be made but cannot be predicted at the outset. This time estimate takes no account of financial matters being dealt with.

**If you are the Petitioner It is open to you at any point within the proceedings detailed above to withdraw your petition and end the process of divorce.**

**If you wish to do so at any point, we would ask for your written confirmation of your request.**

**We would advise you not to make any arrangements to remarry without firstly discussing same with us. Your remarriage could affect your financial claims against your spouse.**

We confirm that any dispute may be referred to mediation, additionally, you are able to make a will at any time, if you wish to do so, please let us know.



## **FAMILY**

Below is a list of all of our family services, if you would like a copy of any of these documents please contact us on 01702 339222

**>> Children Matters**

**>> Divorce Information**

**>> Domestic Violence**

**>> Financial Matters**

**>> Children In Care**

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