



Divorce and dissolution

Ending a marriage

If you are reading this, you may be thinking about, or have already decided to leave your spouse. You may have discussed the idea together and be in agreement. Alternatively, you may not have spoken to your spouse yet, or he or she might disagree with ending the marriage.

To get a divorce in England and Wales you must have been married for at least a year and your marriage must have broken down irretrievably. This procedure is available if you are a UK citizen - even if you were married abroad - or if you are not a UK citizen and were married abroad but have been habitually resident in England and Wales for at least a year.

If you or your spouse feel you cannot continue with the marriage, either of you can apply to the court to have the marriage dissolved. To do this, one of you must file a petition for divorce with the court. The person instigating the action (issuing the petition) is known as the petitioner and the other person is known as the respondent.

The divorce petition will contain evidence in writing of the grounds for divorce. It is this evidence, and any other evidence the court requires, that will be used to decide whether the divorce is to be granted. There are five facts you can rely on to obtain a divorce (see Grounds for divorce proceedings below).

Sometimes the respondent will try to stop the divorce, which is known as defending the divorce proceedings. This rarely happens, however, as it can be expensive and time consuming.

If your spouse has lost mental capacity, it could be difficult to get a divorce. If you are in this situation, you can find more information on the .GOV website [here](#).

There are very significant changes in divorce law due to come into effect in April 2022 which will simplify the

procedure – these changes may influence your decision on how and when to proceed with divorce – please see the section at the end of this fact sheet.

Grounds for divorce proceedings

There are five facts you can rely on to obtain a divorce. These are:

- **adultery**
- **unreasonable behaviour**
- **two years of desertion**
- **two years of separation (where a divorce can be granted with the consent of the other party)**
- **five years of separation (where a divorce can be granted without consent)**

Where there has been adultery or unreasonable behaviour, and there is sufficient evidence for the court, you can issue a petition immediately. For the other grounds, you need to wait either two or five years. In our experience, longer marriages tend to result in a divorce petition based on two years of separation.

Adultery

For a divorce to be issued because of adultery, the respondent needs to have had sexual intercourse with a person of the opposite sex who is not their husband or wife. The result of this must be that the petitioner can no longer live with their spouse. The usual method of proof for this is admission by the respondent, rather than evidence gained in other ways.

Behaving inappropriately or having an affair that does not involve sexual intercourse is not adultery, but may be unreasonable behaviour (see below). Indeed, it is sometimes the case that a respondent will not admit adultery, but will agree to accept divorce proceedings on the basis of unreasonable behaviour.

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It is important to be aware that you cannot use adultery as a fact for divorce proceedings if you live with your spouse for a period of six months after discovering the adultery - unless the adultery is continuing. Living together can include sharing a house, household expenses and chores, therefore if you are still living in the same property you may need to provide additional evidence for the court.

Unreasonable behaviour

For a divorce to be granted based on the grounds of unreasonable behaviour you must be able to show the behaviour is such that that petitioner cannot reasonably be expected to live with the respondent. The test is a subjective rather than an objective one. In other words, it is not for anyone else to think that they may be able to live with the behaviour complained of, but whether it is reasonable to expect that the actual petitioner can.

To prove this fact, you will need to provide details of specific events or incidents. We generally suggest that you give several significant types of behaviour and provide detailed examples of that type of behaviour.

It is important to demonstrate that due to the behaviour you can no longer live with the respondent. Therefore,

if you are still living in the same house you will need to establish that you are living separately. To do this you will generally have to show that you do not sleep together, do not do household chores for each other, socialise or shop together. Each case will, however, depend on its own facts.

As with an adultery petition, if you live together for more than six months after the last act of unreasonable behaviour complained of, you could be prevented from obtaining a divorce.

Desertion

Petitions issued on the basis of desertion account for less than one percent of all divorces in England and Wales.

Desertion requires that your husband or wife has left you for more than two years without your agreement and without good reason to end your relationship.

As with divorce proceedings for adultery and unreasonable behaviour, you cannot claim desertion as grounds for divorce if you have lived together for more than six months in this two-year period.

Separation

For a divorce to be granted after either two or five years separation requires the parties to live separately and apart for that period of time. The difference in the two periods is one of consent. To divorce on the basis of two years separation requires the consent of the respondent. To divorce after five years separation does not require the consent of the respondent. The respondent can, however, object to the divorce on the grounds that it would cause unreasonable hardship.

Living separately and apart can sometimes be difficult to prove. Although it is easily demonstrated where the parties live in different properties, this can be more difficult when the parties are forced to remain in the same home. This is often the case where children

are involved and/or it is financially impossible to find alternative accommodation. If that is the case the court may require additional evidence of the separation and

it will be necessary to prove that the parties live in separately under the same roof. This means you will generally have to show that you do not sleep together, do not do household chores for each other, socialise or shop together. Each case will, however, depend on its own facts.

In each case, the period of separation should be continuous, although you are allowed to cohabit for up to six months during that period of separation. That cohabiting time will, however, be deducted from the separation time. In other words, the clock stops running during the period of cohabitation and starts again (provided it is no longer than six months) once the cohabitation stops.

If you are considering divorce proceedings on the basis of separation you may wish to consider a separation agreement. See our factsheet on finances and divorce for more information.

Completing the petition

If you are the petitioner (the person applying for the divorce) you will need to complete the petition. The



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petition is known as form D8 and can be downloaded free [here](#). There are five different petitions, one for each of the different facts (grounds) for divorce and you will need to identify the right one for you. With this link there is also a useful guide about divorce and dissolution providing further details about the procedure.

We recommend that three copies of these documents are completed - one for you to keep, one for the court and one to be sent to the respondent (your husband or wife). If there is another person named in adultery proceedings you will need another copy to send to him or her.

You can also apply for a divorce online using the link [here](#).

These documents, along with your [marriage certificate](#) and the relevant fee, must be sent to the court to start the divorce proceedings. The current fee to issue a divorce petition is £593. However, if you are on a low income or are in receipt of benefits and have little or no savings (less than £3,000), you may be eligible for help. You can find out more about this [here](#).

What the court does

The court checks all the documents, and once satisfied the forms are completed correctly they will issue the petition with a court reference number and a court seal. A copy of the petition will be sent by the court to the respondent. Also included will be a copy of the acknowledgement of service, which is a form the respondent has to complete.

The acknowledgement of service of the petition

This form should be completed by the respondent within eight days of receipt to show the divorce petition has been received and that they agree to the contents of the documents and to a divorce being granted. In other words, they do not object to, or intend to defend, the petition. You cannot continue until it can be shown the respondent has received the divorce petition and they may have to prove the documents have been personally served i.e. handed to them personally.

If you do not know where your husband or wife is, you may have to make further enquiries to try and find them. More help with this can be found [here](#).

The statement

Once the court has received the acknowledgement of service from the respondent, a copy will be sent to the petitioner. You must then complete the statement (D80) to confirm that the contents of the petition are true and ask for a divorce to be granted. You can find the form and a useful explanatory booklet [here](#).

The decree nisi

The decree nisi is an order by the court stating the date on which a marriage will end unless a good reason not to grant a divorce is produced.

To obtain a decree nisi you will need to complete the relevant application known as a [D84](#). In practice this is done at the same time as completion of the statement (see above).

If all the documentation is correct, the court will set a date when the decree nisi will be pronounced (made). This does not mean the divorce is final at this stage, but will allow you or the respondent to apply to make the divorce final at the appropriate time.

The granting of the decree nisi does not require either party to be in court. When the order is made the court will send a copy of the decree nisi certificate to the petitioner and the respondent.

If for any reason the application for a decree nisi is unsuccessful the court will explain why. More information may be required and the court will give you details of what you need to do next.

Application for the decree absolute

If you are the petitioner, you can apply for a decree absolute to end the marriage six weeks after the date of the decree nisi. A form known as a [D36](#) here needs to be completed but there is no further fee to pay.

If you do not apply, the respondent can make the application three months after the end of the six-week period after the decree nisi is granted. For the respondent to make an application there will be a fee to pay.

Once the decree absolute is granted the parties are divorced.

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Effect of the decree absolute

The effect of the decree absolute and the finality of the divorce proceedings means the parties are no longer treated as husband and wife in law. This can mean some changes, including:

- inheritance laws mean there are no longer any automatic rights to inherit property or goods.

At this point it is worth considering making a Will or changing your existing Will.

- pension rights may change as you may no longer be entitled to certain benefits under company pension schemes.
- being divorced does not mean the marriage assets are divided between the parties - that is a whole different story - see our information - Finances on divorce.

Ending a civil partnership

The process required to end a civil partnership is to all intents and purposes a mirror procedure to that required to get a divorce. The main difference is, that unlike divorce proceedings, it is not possible to end the civil partnership on the basis of your partner's adultery.

You need to have been in a civil partnership for over a year before you can apply for a dissolution. To apply it is necessary to prove that the civil partnership has irretrievably broken down. This can be established by proving one of the following facts:

- your partner has behaved unreasonably
- you have lived apart for two years and you both consent to ending the civil partnership
- you have lived apart for five years or more - in which case your partner does not need to consent to ending the civil partnership
- your partner has deserted you for a period of two years or more

To end a civil partnership you should use the same form as for obtaining a divorce ([D8](#)). The petitioner will need to submit three copies of the petition, the original civil partnership certificate and the relevant fee.

A copy of the petition will be sent to the respondent by the court, with an acknowledgement of service. The respondent has eight days to complete the acknowl-

edgement form and return it to the court. If they do not do so it will be necessary for the petition to be personally served on the respondent before the matter can proceed.

Once the respondent has agreed to the dissolution, the petitioner can apply for a conditional order using this form [here](#). The petitioner will have to swear an affidavit at this stage to confirm the contents of the petition are true.

At this stage, the court will consider the contents of the petition and decide if a conditional order can be granted.

After the conditional order has been made the petitioner can apply for the final order. This application can be made six weeks after the date of the conditional order using this form [here](#). Once the order is made, the partnership is legally at an end.

As with a marriage, once the partnership has been dissolved, you will no longer be entitled to rights such as inheritance should your former civil partner die intestate.

Proposed Changes

In April 2022, a change in the law governing divorce and dissolution will enable married couples and those in civil partnerships to end their relationship in a more straightforward and less contentious way, therefore saving time, emotional stress, and cost.

Couples will have the option for either, one spouse or both spouses (acting together) to apply for divorce or dissolution by stating that the marriage has irretrievably broken down without the having to attribute blame to the other. It will not be possible to defend the application or make an alternative application as the statement of irretrievable breakdown will be sufficient proof for the court to make the conditional order. The language will be simplified using conditional order and final order instead of decree nisi and decree absolute as currently used in divorce.

The applicant or applicants will have to wait 20 weeks from the start of the procedure before applying for the conditional order. This will allow parties time to reflect on their decision and to agree to practicalities such as living arrangements for themselves and any children and a financial agreement.

NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.

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