



## **DIVORCE FACTSHEET**

### **WHAT IS DIVORCE?**

Divorce is the formal and irrevocable way of ending the marriage through the court's and civil procedure.

### **WHO ARE THE PARTIES?**

The Petitioner is the person who starts the divorce proceedings by filing a petition in court.

The Respondent is the person the petition is filed against

### **THE COURT**

Divorce proceedings are dealt with by the County Court and the Petition can be issued in any County Court.

### **MINIMUM LENGTH OF MARRIAGE**

Divorce proceedings can only be issued after one year of marriage.

### **FOUNDATIONS FOR DIVORCE**

The Court has to be satisfied that there has been an 'irretrievable breakdown' of the marriage before a Divorce Decree can be granted. 'Irretrievable breakdown' is proved by establishing any one or more of the following facts/grounds :-

- a) The Respondent has committed adultery (had sexual intercourse with the opposite sex who is not the spouse) and the Petitioner finds it intolerable to live with the Respondent (adultery)
- b) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent (unreasonable behaviour).
- c) The Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition (desertion).
- d) The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to a decree being granted (two years separation with consent).
- e) The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition (five years separation).

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## **COSTS**

Advice and Assistance under the Legal Services Legal Help Scheme is available for undefended Divorce Proceedings. You will have been assessed and told whether or not you are eligible.

If the proceedings become defended then application for a full civil legal aid certificate may have to be considered. If you are not eligible for advice and assistance under the Legal Help Scheme you will have to meet the costs yourself. These will have been discussed with you and payment arrangements made.

## **THE STATEMENT OF ARRANGEMENTS**

The Court has to be given details of the arrangements proposed for any children of the family under 18.

Therefore where there are such children involved the Petitioner must file with the Petition a Statement of Arrangements giving information about where the children are living, where they go to school, what Residence/Contact and financial arrangements are proposed etc.

However it is usual before filing the Statement of Arrangements in the Court to send the document to the Respondent. It is hoped that the Respondent will agree with the arrangements stated and sign the document to this effect.

A Statement of Arrangements signed by both parties will assist the smooth passage of the divorce when the papers eventually come to the District Judge for consideration.

## **ISSUE AND SERVICE**

The Petition and Statement of Arrangements are sent to the chosen County Court. Copies are then sent by post to the Respondent together with a document called the Acknowledgement of Service.

The Acknowledgement of Service consists of a series of questions mainly enquiring whether the Respondent intends to contest the divorce.

The Respondent hopefully completes the Acknowledgement of Service and returns it to the Court.

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If the Respondent does not return the Acknowledgement of Service to the Court then personal service of the Petition and Statement of Arrangements may have to be attempted through the Court Bailiff or a privately engaged processor server.

This is because definite proof is required by the Court that the Respondent has received the divorce papers before any further steps can be taken into the proceedings.

### **DISTRICT JUDGE'S CERTIFICATE (DECREE NISI)**

Once the Court receives the Affidavit in Support this document together with the Petition and Statement of Arrangements is considered by the District Judge.

If the District Judge is satisfied that :

1. The ground for Divorce is proved
2. Arrangements for any children of the family have been agreed between the parties then he will grant his Certificate.

The Court will list a date for pronouncement of Decree Nisi and you will be informed.

### **DECREE NISI**

The Decree Nisi will be pronounced automatically by the Judge on the date fixed.

You will not need to attend.

The Decree Nisi is an intermediate Order. It does not end the marriage.

### **DECREE ABSOLUTE**

The Decree cannot be made Absolute until at least 6 weeks have elapsed since the date of the Decree Nisi.

The Petitioner applies to the Court on a standard form for the Decree Absolute which is made immediately.

A copy of the Decree Absolute will be sent to you.

### **EFFECT**

The Decree Absolute ends the marriage and leaves both parties legally free to re-marry whenever they so wish.

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## **ANCILLARY RELIEF**

The Decree Absolute finalises the Divorce itself. However other matters may still remain to be resolved such as division of the matrimonial home or other matrimonial assets, maintenance for one of the parties. These matters will be dealt with in separate Ancillary Proceedings.

## **UNDEFENDED OR DEFENDED**

If the Respondent completes the Acknowledgement of Service indicating that the divorce is **NOT** to be defended or if proof is available that the papers have been served on the Respondent and no steps to defend have been taken within a period of 28 days from service then the Petitioner can take the next steps in the proceedings.

If the Respondent completes the Acknowledgement of Service indicating that the divorce **IS** to be defended then the proceedings become complicated. It is beyond the scope of this information sheet to explain the consequences. Specific information and advice will be given to you if the situation arises. However the vast majority of divorces today proceed undefended.

## **AFFIDAVIT**

The Affidavit is a written statement under oath by the Petitioner giving evidence in support of the Petition. It is in a standard form. The Affidavit is completed once the divorce is in a position to proceed undefended.

## **DECREE ABSOLUTE**

This is the final Decree which ends the marriage. You cannot remarry until the decree absolute has been granted.

## **HOW LONG WILL IT TAKE?**

An undefended divorce usually takes six months depending on the cooperation of the Respondent. The divorce may take longer if the Respondent is un-cooperative or the Judge is not satisfied with the proposed arrangements for the children.

**Please note that this fact sheet should be used as a guide only. The general advices given do not relate to specific circumstances and we strongly recommend that you make an appointment to see us.**

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