

DIVORCE PROCEEDINGS

GROUND FOR DIVORCE

There is only one ground for divorce - Irretrievable Breakdown of Marriage. However this needs to be **PROVED** by one of five "facts". The "facts" are set out below. The **PETITIONER** is the person bringing the divorce proceedings. The **RESPONDENT** is the other party to the marriage. The "facts" are:-

1. That the respondent has committed **ADULTERY** and the petitioner finds it intolerable to live with the respondent.
2. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent (commonly referred to as the **UNREASONABLE BEHAVIOUR** ground).
3. That the respondent has **DESERTED** the petitioner for a continuous period of at least 2 years.
4. That the parties have **LIVED APART** for a continuous period of at least **TWO YEARS** and both parties consent to the divorce.
5. That the parties have **LIVED APART** for a continuous period of at least five years (there is no requirement for the other party to consent to the divorce as in a two year separation).

PROCEDURE

1. The petitioner lodges a **PETITION** in any County Court (the petition can be prepared by a Solicitor or a form can be obtained from your local county court). The petition must include basic factual information eg. names of the parties and the date of the

marriage and will also include the relevant "fact" to prove breakdown of the marriage. If there are children a **STATEMENT OF**

ARRANGEMENTS form has to be lodged at court providing routine information about the children and arrangements for their care. The **MARRIAGE CERTIFICATE** or a certified copy must also be lodged at the court together with a fee of **£340**.

2. When the court has received the papers the court office will arrange for the papers to be sent to the respondent with an **ACKNOWLEDGEMENT OF SERVICE FORM** which the respondent must complete and return to the court within 14 days confirming he/she has received the petition (in the case of an adultery petition the respondent will be asked whether he/she admits the adultery). On a two year separation petition the respondent will be asked whether he/she agrees to the divorce). The court will not allow the divorce to proceed until satisfied that the respondent has received the petition so if the acknowledgement is not returned it may be necessary to arrange for the papers to be personally served on the respondent eg by the court bailiff. The respondent can defend the divorce and file an **ANSWER** with the court but defended divorces are very rare as they are expensive.
3. When the court is satisfied that the respondent has received the papers the petitioner will prepare an **AFFIDAVIT** swearing that the contents of the divorce petition are true. This will then be lodged at the court with a **REQUEST FOR DIRECTIONS** which is a request for the District Judge to consider the petition
4. The District Judge considers the papers and will decide if the petitioner has grounds for a divorce. In most cases this decision will be made on the basis of the paperwork alone, although sometimes the Judge may ask to see the petitioner to ask further questions. If the Judge is satisfied there are grounds for divorce he will enter the matter in the **SPECIAL PROCEDURE LIST** and fix a date for pronouncement of **DECREE NISI** - the first stage of the divorce. The Judge will also consider whether it is necessary to make any orders in relation to the children and cost orders against the Respondent.

5. **DECREE NISI** will be pronounced by the court. There is no need for either party to attend court unless required to do so to discuss the arrangements for the children or if there is a dispute with regard to a claim for costs.
6. Six weeks after Decree Nisi has been granted the petitioner can apply for **DECREE ABSOLUTE** which is the final decree of divorce. This is usually a formality. A fee of £45 is payable. If the petitioner does not apply for Decree Absolute the respondent can apply but not until 3 months after the earliest date the petitioner could have applied for the decree).

FUNDING

The usual rule is that the petitioner's costs will be paid by the Respondent unless the Petitioner decides not to claim costs or the District Judge orders otherwise.

FURTHER INFORMATION

For more information about children and financial issues please refer to the fact sheets on those subjects.

Lees Solicitors LLP provide this fact sheet free of charge

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