

JUDICIAL SEPARATION PROCEEDINGS

GROUNDS FOR JUDICIAL SEPARATION

A request for a decree of Judicial Separation needs to be proven by one of five "facts". The "facts" are set out below. The Petitioner is the person bringing the judicial separation 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. The Respondent has deserted the Petitioner for a period of at least 2 years.
4. The parties have lived apart for a continuous period of at least 2 years and both parties consent to the separation.
5. The parties have lived part for a continuous period of at least 5 years. There is no requirement for the other party to consent to the proceedings as in a 2 year separation.

PROCEDURE

1. The Petitioner lodges a petition in any County Court. The Petitioner 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 marriage.

2. If there are children a Statement of Arrangements form has to be lodged at Court providing information about the children and the arrangements for their care. The marriage certificate or a certified copy must also be lodged at the Court together with a fee of £340.
3. When the Court has received the papers a Court Officer will arrange for the papers to be sent to the Respondent with an Acknowledgment of Service form which the Respondent must complete and return to the Court within 14 days confirming he/she has received a petition (in case of an adultery petition the Respondent will be asked whether he/she admits the adultery. On a 2 years separation petition the Respondent will be asked whether he/she agrees to the divorce). The Court will not allow the proceedings to proceed until satisfied that the Respondent has received the Petition so if the Acknowledgment 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 judicial proceedings and file an Answer with the Court but defended petitions are very rare as they are expensive.
4. When the Court is satisfied that the Respondent has received the papers the Petitioner will prepare an Affidavit swearing the contents of the 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.
5. The District Judge considers the papers and will decide if the Petitioner has grounds for a judicial separation. In most cases this 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 that there are grounds for a judicial separation he will enter the matter into the special procedure list and fix a date for pronouncement of decree of judicial separation. The judge will also see if it is necessary to make any orders in relation to the children.

6. Decree of judicial separation 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. This is the final order. The decree relieves both parties from their respective obligation to live together. The decree relieves both parties from their respective obligation to live together. The decree does not prevent subsequent divorce proceedings on the same or substantially the same facts.

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

For further information contact

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