

FACT SHEET

How To Guide: Divorce

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Step 1: Establish How to Begin the Divorce

Establish the fact to use in the divorce proceedings, to prove to the court that the marriage has irretrievably broken down.

Whilst 'no fault' divorce is due to come into force in late-2021, currently irretrievable breakdown must be proven by reliance on one of five facts:

- » Adultery;
- » Unreasonable behaviour;
- » Desertion;
- » Two years separation with the consent of both parties to divorce;
- » Five years separation.

If possible, it is sensible to agree the content of the petition with your spouse before it is sent to the court.

Step 2: Petition for Divorce

The petition should be sent to the court along with the court fee and your original marriage certificate.

Once the court has issued the petition, it will be returned to you. A copy will also be served on your spouse. Special arrangements may need to be made if your spouse is abroad. Your spouse will then need to complete an acknowledgment of service form, in which they must confirm if they intend to defend the divorce and their position in relation to your claim for costs.

In 'fault based' divorces (such as adultery and unreasonable behaviour), the starting point is that the respondent (i.e. your spouse) should be responsible for the petitioner's (i.e. your) divorce costs.

Please note that these are solely the costs in dealing with the divorce, and do not include the costs in dealing with the financial settlement or the arrangements for the children. However, it is common for there to be negotiation on this point.

In divorces that are based on two years separation by agreement/five years separation, the starting point is that you each meet your own costs. However, it may be fair to suggest that the court fee is shared between you.

Step 3: Apply for Decree Nisi

Decree nisi can be applied for once your spouse has completed the acknowledgment of service and returned it to the court.

Step 4: Finalise the Divorce (Decree Absolute)

As the petitioner, you can apply for decree absolute six weeks and one day from the date of decree nisi.

Once decree absolute is made, you and your spouse will no longer be married, and are each free to remarry.

It is usually sensible to delay applying for decree absolute until a financial order has been approved by the court. This is to preserve claims by one spouse against the other's estate in the event of their death before a financial order is made.

If decree absolute is made and no financial order is in place, the survivor's claims against the deceased ex-spouse's estate will be far more limited and may be non-existent.

This fact sheet has been provided for information purposes only and should not be construed as legal advice. Whilst every effort has been made to ensure that the information in this fact sheet is correct (as at November 2020), it is intended as a guide only and should not be relied upon. Specialist legal advice should be sought so that all the factors specific to your circumstances can be taken into account.