

Dealing with the breakdown of a marriage or civil partnership can be one of the most stressful life events you are likely to face.

The breakdown of such relationships often also brings far reaching financial consequences.

- Divorce
- Judicial separation
- Dissolution of civil partnership

Divorce

There is one ground on which you may be able to obtain a divorce in England and Wales, which is the irretrievable breakdown of your marriage. This must be proved by relying on one of the following facts:

- Adultery of the spouse (not applicable in civil partnership)
- Unreasonable behaviour of the spouse
- Two years separation and the consent of the spouse (parties have not cohabited together within the preceding 2 years before filing the petition)
- Five years separation (parties have not cohabited together within the preceding 2 years before filing the petition)
- Desertion by your spouse for a period of at least two years.

Any individual who has been married for over one year can commence divorce proceedings provided he or she is either 'domiciled' in England or Wales or has been resident in England or Wales during the preceding year.

Procedure

The divorce proceedings are initiated by way of filing a Divorce Petition at Court. The person bringing the divorce proceedings is known as the "**Petitioner**". The other party is known as the "**Respondent**".

A third party may be involved in the case, for example, anyone named as having committed adultery with the Respondent is known as the "**Co-Respondent**". However, the Court discourages the naming of a third party within adultery proceedings.

The Divorce Petition is a document which essentially sets out basic factual information about the marriage and will state the fact on which the Petitioner intends to rely. The Petition must also set out other information required by the Court such as whether the parties have any children.

The original marriage certificate will need to be lodged at Court when the Petition is issued (the marriage certificate is not returned thereafter to the divorcing parties).

Additionally, if there are any relevant children of the family, a "**Statement of Arrangements Form**" will need to accompany the Divorce Petition when lodged at Court.

This form sets out the arrangements proposed for the children in the future. It is encouraged that couples agree these arrangements beforehand, if possible.

The Court requires this information in order to satisfy itself that those arrangements are appropriate. Subject to that, the Court will not intervene in matters relating to the children, unless asked to do so by a party themselves. [See the section on Children.](#)

Once the Petition has been issued by Court, the divorce papers are sent to the Respondent. On receipt, the Respondent must complete the **"Acknowledgement of Service"**.

This is a form sent by the Court to the Respondent (and Co-Respondent if any) with the Petition. The Respondent must complete the form confirming that they have received the paperwork and whether or not they agree with the divorce and return this to Court.

If the Respondent wishes to contest the divorce, he or she does so by filing an **"Answer"** which is the defence to a Divorce Petition.

The Respondent may defend the Petition, denying the allegations in the Petition, on the basis that the marriage has not irretrievably broken down or may also choose to issue their own cross-petition on the basis that he/she has grounds to petition against the Petitioner.

Divorce Proceedings are rarely contested and due to the cost implications in defending a divorce, this is only recommended in exceptional circumstances. Taylor Walton follow the Resolution Pre Action Protocol by sending a copy of the proposed Petition to the other party before filing the Petition with the Court, this is in order to avoid contested proceedings.

If the Respondent does not contest the divorce, once he completes and returns the Acknowledgement of Service, the Petitioner will need to complete and submit to Court an **"Affidavit"**.

This is a sworn statement confirming that the contents of the Petition is true and whether anything since the Petition was issued, has changed. Provided the divorce is not defended, there is usually no need for either party to have to attend Court.

The Affidavit is then placed before the Judge. If the Judge is satisfied that the Petitioner has sufficiently proven that the marriage has broken down, he will set the date for the formal pronouncement of the **"Decree Nisi"**.

The Decree Nisi is the document issued once the Court is satisfied that the grounds of divorce are established. It is the first decree in the divorce but does not end the marriage.

Six weeks and one day after the pronouncement of the Decree Nisi, the Petitioner can apply for a **"Decree Absolute"** (the Respondent may apply for decree absolute on notice three months after the date upon which the Petitioner could have applied). This finalises the divorce, ends the marriage and frees the parties to remarry.

WARNING

The Petitioner/Respondent should, however, seek advice from their legal adviser before applying for the decree absolute as this may affect their rights in relation to their claims against the other spouses pension or property in certain circumstances.

How long should a divorce take?

The length of the divorce process varies from case to case, although it usually takes between 4 to 6 months to be finalised. However, it is not unusual for the application for Decree Absolute, which finalises the divorce, to be postponed until all financial issues have been resolved. If the divorce is contested, or either party lives abroad or does not cooperate and delays in taking any particular steps during the proceedings, the procedure will take longer.

Costs

The costs incurred in obtaining a divorce vary from case to case. If the divorce is contested, or either party does not cooperate, the costs of the divorce are likely to increase.

The Petitioner is also responsible for payment of the following Court fees:

- Issuing the Divorce Petition: £300 (currently)
- Application for Decree Absolute: £40 (currently)

The Judge has the discretion to order the Respondent to pay the costs and may sometimes exercise that discretion usually on adultery or unreasonable behaviour petitions if the circumstances warrant this. It may also be possible to reach an agreement regarding a contribution towards the Petitioner's costs.

Judicial Separation

If you have not been married for a year, or if either party is opposed to the divorce due to religious or moral reasons, for example, a **“Judicial Separation”** can be applied for. This is a legal separation and the Court declares that the parties will no longer have a duty to cohabit. It does not dissolve the marriage, however, and the parties are therefore not free to remarry. Such applications are, however, less common.

Although you do not need to show that the marriage has irretrievably broken down, the party bringing the proceedings will still have to prove one of the five facts as in divorce mentioned above. The procedure is similar to that of divorce. A Judicial Separation Petition will need to be completed.

A Statement of Arrangements Form for any minor children of the marriage will also need to be completed. This, along with the original marriage certificate will need to be submitted to the Court.

The procedure is essentially the same, although there is only one decree – a decree of judicial separation, once the Court is satisfied that the requirements for Judicial Separation have been met.

The Court has the same range of powers to deal with financial matters as they can within divorce proceedings – [see ancillary relief](#). [This is a link to Financial Matters on Relationship](#) However, a clean break is only available on divorce.

A couple who have obtained a Judicial Separation can subsequently apply for a divorce based on the relevant grounds described above.

Civil Partnership

The Civil Partnership Act 2005 came into force on 5th December 2005 and has allowed same sex couples who register their partnership to obtain legal recognition of their relationship and acquire almost the same rights as marriage couples.

As with married couples, their partnership can be brought to an end only by Court Order.

“Dissolution” is the term used to describe the termination of a Civil Partnership and the Dissolution process is similar to the divorce process – see the section on divorce at the top of this page.

The parties cannot apply for dissolution of civil partnership until the expiry of one year of entering into the civil partnership. The person making the application for dissolution of civil

partnership must prove that the civil partnership has irretrievably broken down. The facts relied on are the same as those for the divorce, save for adultery, which is not applicable.

A Petition, as with a divorce will need to be completed. Where relevant a Statement of Arrangements form will also need to be completed and submitted to Court. The original Civil Partnership Certificate must also be sent to the Court with the Petition and a fee will also be payable.

The Court can also make similar orders for financial provision as can be made within divorce proceedings – [see ancillary relief](#). [This is a link to Financial Matters on Relationship](#)