



DIVORCE FACTSHEET

How do I apply for a divorce?

To apply for a divorce, you must have been married for at least a year. It doesn't matter where in the world you were married, but you can only apply for a divorce in England and Wales if either you or your spouse meet certain residence conditions or are domiciled here. You should speak to your family lawyer about this if you are in any doubt.

The divorce process is generally administrative. This means that usually neither of you will need to see a judge to get a divorce as it is almost always agreed by a judge on the paperwork. The process is simple as long as your spouse does not ask the court not to grant your divorce. When this happens, it is called a defended divorce and is a different process, but defended divorces are costly and thankfully very rare.

If you and your spouse are not in agreement regarding arrangements for children and finances these will be dealt with separately (but at the same time) from the divorce process.

Starting divorce proceedings

The document that starts the divorce is called a petition. The law in this country still requires one spouse to petition against the other, even if both of you agree that there should be a divorce. Your family lawyer will need to have your original (or an official copy) marriage certificate to file the petition and also an approved translation of what it says if it is in a language other than English. There is a court fee payable of £550 to start the process.



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To start a divorce, you (or your family lawyer, on your behalf) must file a petition at court. The petition is a form that gives the court information about you and your spouse, and tells the court that you feel your marriage has irretrievably broken down. You must briefly set out evidence that your marriage has broken down by supplying certain details in one of the following five categories:

- that your spouse has committed adultery
- that your spouse has behaved unreasonably
- that your spouse has deserted you for two years
- that you have lived apart for two years and your spouse consents to the divorce, or
- that you have lived apart for five years
- The person starting the divorce is called the petitioner and the other spouse is called the respondent.

Children and finances

For the purposes of any financial or children arrangements that need to be made, it doesn't matter in most cases who starts the divorce and why. You can ask the court to make orders about money and about children if necessary during (or after) the divorce, but these legal processes are completely separate from the divorce itself. (This guide only deals with the divorce procedure; see our guides to arrangements for children and financial arrangements for more information on these areas.)



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Procedure

Agreeing the contents of the petition

The Law Society says that a family lawyer acting for someone who wants a divorce should usually send a draft copy of the divorce petition to the other spouse at least seven days before it is filed at court. This gives the other spouse the opportunity to obtain legal advice and to raise an objection if there is anything in the petition that they find particularly offensive. It tends to be better to agree what is in the divorce petition if possible, as disputes about what goes in can have implications for the smooth progress of the rest of the divorce arrangements.

Co-respondent

If your spouse has committed adultery it is technically possible to name the person with whom they committed adultery as a co-respondent in the divorce. However, we do not recommend that you do so unless you believe that your spouse is likely to defend the proceedings. In our experience, naming a third party in divorce papers raises the emotional temperature between you and may make it more difficult to agree arrangements in other areas, increasing your stress levels and legal costs as a result.

Filing the petition

The petition is filed at court with the court fee and your original (or an official copy) marriage certificate.



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Serving the divorce papers

The court, or your family lawyer, sends the petition out to ('serves') the respondent together with a form for them to fill in called the acknowledgement of service. In this form the respondent has to say whether or not they intend to defend the divorce. The form has to be returned to the court. If the respondent has no intention to defend the divorce that is the end of their part in the process and all further steps are taken by the petitioner at their own pace.

Applying for the decree nisi

The next step is for the petitioner to complete a statement in support of the petition. This is another form that states that the contents of the divorce petition are true and asks for certain technical legal details such as whether you have lived in the same household since a certain relevant date. Your family lawyer will then file it at court with your application for a decree nisi. The decree nisi is the second-to-last phase of the divorce. It means the court has agreed that you are entitled to a divorce, but has not yet made it final. After the court has received your application for decree nisi, a judge will look at your papers to make sure they fulfil the legal criteria and if they do the court will issue a certificate telling you when the decree nisi will be pronounced.

Decree nisi is pronounced in open court. This means the judge reads out a list of names of people whose divorces have got to this stage, this week. Although anyone can go along if they want to, you do not have to attend court when this happens. At any time after decree nisi, the court is able to make a binding financial order



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setting out your arrangements for finances and property on divorce, either by consent or as a result of separate court proceedings. It will not do so unless you ask it to or your separate financial court proceedings have come to a conclusion.

Finalising the divorce suit

Six weeks and one day after the grant of decree nisi, the petitioner can apply for the decree absolute, which formally ends the marriage. Not everyone should apply for decree absolute as soon as it is available and you should make sure you have discussed whether you should do so with your family lawyer. It may not be sensible to apply immediately if, for example, financial arrangements are not yet settled. You should discuss your specific circumstances with your family lawyer as in some cases the grant of decree absolute will prevent certain types of financial claims being made. However, if the respondent is keen to end the marriage and the petitioner has not applied for the decree absolute, the respondent can ask the court for permission to do so after a certain period of time (about four-and-a-half months from decree nisi). The court will usually grant such an application unless there are particularly pressing reasons not to do so.

How long will my divorce take?

If each step in the divorce is taken promptly and financial arrangements do not hold things up, the divorce process usually takes between four and six months.

Other arrangements in relation to finances and children may take longer to resolve.



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Implications in relation to your Will

It's important to note that divorce may mean that certain provisions in your Will do not work as you might have intended them to. You will need to make a new Will quickly after decree absolute (or in contemplation of divorce) to ensure your wishes are carried out in the event of your death.