



## **DIVORCE PROCEDURE**

The mechanics of obtaining a divorce are usually quite straight forward, particularly if the couple agree that the marriage is over. The difficulties are more likely to arise regarding where the couple and their children are to live, arrangements for the children and financial matters. As your attention will be concentrated on these related issues, the process of actually obtaining a divorce may appear blurred. The purpose of this leaflet is to outline a broad framework of the Divorce Process.

### **WHO CAN START DIVORCE PROCEEDINGS?**

Anyone who has been married for over a year provided one or other of the couple is either domiciled or has been resident in England or Wales during the preceding year. It does not matter where the couple married.

### **ON WHAT GROUNDS CAN A DIVORCE PETITION BE STARTED?**

The only grounds for divorce are that the marriage has irretrievably broken down. To show this is the case one of the five facts laid down by law needs to be established, namely:

- (a) your spouse has committed adultery and you find it intolerable to continue living together;
- (b) your spouse has behaved in such a way that it would be unreasonable to expect you to continue living together;
- (c) your spouse has deserted you for a continuous period of two years or more;
- (d) you and your spouse have been living separately for two years or more and your spouse agrees to the divorce;
- (e) you and your spouse have been living separately for five years or more whether or not your spouse consents to the divorce.

### **FORM OF THE PETITION AND ACCOMPANYING PAPERS**

Every Petition follows the same form. It contains basic information about names, addresses, ages of children and a statement that the marriage has irretrievably broken down and the statement of the fact relied upon. The Petition will include a section known as “a prayer” which will include a request for the divorce to be granted, request for Orders in relation to children, a claim regarding the cost of the divorce and an Order for financial provision.

Accompanying the Petition for divorce, if you have children, is a document known as “Statement of Arrangement for the Children”. This will provide all the details concerning where the children live, whom they are cared for, where they attend school, etc. The original marriage certificate, or a certified copy, is filed at court and remains on the court file.

## TIME TABLE

- (a) After one year of marriage either spouse may start the divorce. This person is referred to as the Petitioner. The Petition and Statement of Arrangements for the Children are completed and sent to the Court together with the marriage certificate. A fee currently of £300 is payable.
- (b) The Court will issue the Petition and accompanying papers and return them to us for service on the other spouse referred to as the Respondent, or the Court will send the papers directly to the Respondent. The Court will normally do this within 30 days.
- (c) From the date the documents are received, the Respondent has 8 days in which to return "the Acknowledgement of Service". If the Respondent indicates a wish to defend the Petition a defence called "an Answer" must be filed within 29 days of receipt of the documents. If the Respondent does nothing, it will be necessary to prove to the Court that the Respondent has received the papers.
- (d) The Court will send us a copy of the Acknowledgement of Service. If the divorce is not defended the Petitioner can apply for the *Decree Nisi* to be pronounced. The Petitioner's solicitor prepares an Affidavit for the Petitioner to swear confirming that the contents of the Petition are true. The Petitioner will swear the Affidavit before another solicitor or Court official and return this to their solicitor. The Affidavit and request for a date for the first decree of divorce namely *Decree Nisi* is submitted to the Court.
- (e) The District Judge at the Court will look at the papers and provide a certificate for the *Decree Nisi* to be pronounced provided all matters are in order. It is at this time that the District Judge will consider whether the arrangements for the children are satisfactory. The Petitioner and the Respondent are advised of the date fixed for the *Decree Nisi*. Depending on the Court's diary, the date is likely to be 6-12 weeks from the date on which the application is lodged. It is not necessary for either the Petitioner or the Respondent to attend Court.
- (f) If the arrangements in relation to the children are settled between their parents six weeks and one day after the date of the *Decree Nisi* the Petitioner may apply for the final decree of divorce namely the *Decree Absolute* by sending an application to the Court with a fee in the sum of £40. If the Petitioner does not apply for the *Decree Absolute* the Respondent may apply three months after the Petitioner is able to apply for the *Decree Absolute*.

## NEGOTIATIONS IN RELATION TO FINANCES

These can take place at any time before, during or after the divorce. The Decree Absolute may be delayed until after the finances are resolved. The Court will not of its own volition impose a Financial Order. The Financial Order either needs to be agreed or an Application made to the Court for determination. An Application can be made by either spouse.

## RE-MARRIAGE

Neither party to the marriage is free to remarry until the final decree in divorce has been made known as the 'Decree Absolute'. It is important to note that neither person should remarry until they have taken legal advice in relation to the financial implications for them of remarriage. Rights to spousal maintenance cease upon remarriage. Maintenance for children continues, as does any Child Support Assessment, but any change in circumstances may affect the level of payment. The right to apply for financial provision is lost if the application is not made to the Court prior to remarriage.

## **EFFECTS OF DIVORCE**

The Decree Absolute should be kept safely as this replaces the Marriage Certificate. Divorce affects inheritance and your Will. Unless a contrary intention appears in the Will, the Decree Absolute will mean gifts to the former spouse and their appointment as Guardian or Trustee will fail. A Will is revoked by the marriage or remarriage of the person making the Will, unless the Will is made in contemplation of that marriage. Where a person dies without having made a Will, the Intestacy Rules apply. The former spouse will not benefit under those rules, but they may in certain circumstances, be able to make a claim against the deceased's Estate under the Inheritance (Family and Dependents) Act 1975.

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