

A GUIDE TO DIVORCE

Deciding that your marriage has ended can be very difficult. If you are not sure whether your marriage is at an end, there are relationship counselling services which may be useful in helping you to clarify how you feel and which can support you through your separation. You can attend counselling with or without your husband.



This legal guide sets out the law and procedure on divorce. When marriages break down there are often other issues that need to be resolved, such as child contact or financial matters. Further advice about these can be found on our legal guides **A Guide to Child Contact** and **A Guide to Financial Arrangements after Marriage Breakdown**, which are free to download from the Rights of Women website www.rightsofwomen.org.uk (see 'Other useful contacts' at the end of this legal guide).

The law

In order to apply for a divorce **you must be legally married**. Some foreign or religious marriage ceremonies are not recognised by the law of England and Wales (see below). If you are unsure whether or not you are legally married please consult our legal guide **A Guide to Marriage** or seek legal advice by telephoning our advice line or consulting a solicitor.

You cannot apply for a divorce until you have been married for one year.

There is only one "ground" or reason for divorce. This is that your marriage has **irretrievably broken down**.

In order to prove your marriage has broken down irretrievably you must set out in your divorce petition details of one of **five facts**:

- **Adultery**
Your husband has committed adultery with another woman or other women and you find it intolerable to live with him

Adultery is sexual intercourse between a married person and a person of the opposite sex who is not their spouse.

If your husband admits to committing adultery and consents to the divorce proceeding on this fact, then the divorce should succeed. If he does not admit to committing adultery you will have to provide the court with evidence to prove that he had sexual intercourse with another woman, and this can be very difficult.

It is also necessary to prove that it is intolerable to live with your husband but this does not have to be as a consequence of the adultery and can be as a result of some other behaviour.

If you continue to live with your husband for 6 months after you find out about his adultery, then you will not be able to apply for a divorce on the basis of that incident of adultery.

You may name the woman who committed adultery with your husband in the divorce petition, but if you do this, you will have to serve the divorce papers on her as well as your husband and this will cause further expense and delay if she does not co-operate.

- **Unreasonable behaviour**
Your husband has behaved in such a way that you cannot reasonably be expected to live with him

Unreasonable behaviour can include a wide range of behaviour from serious incidents of domestic violence to refusing to help with household chores. Generally you will need to set out details of 4 or 5 examples of your husband's behaviour. It is helpful, but not essential, to include the first, the worst and the most recent incident of his unreasonable behaviour during the marriage.

It is the effect of your husband's behavior on **you** that is relevant when relying on this ground.

If you continue to live with your husband as a couple for 6 months after the last incident of his unreasonable behaviour, you may not satisfy the court that you cannot reasonably be expected to live with him.

- **Desertion**
Your husband has deserted you for at least two years before you apply for your divorce

It is difficult to prove your husband has deserted you unless he left you, you do not know why and you do not know where he is.

- **2 Years separation with consent**
You and your husband have been separated for a continuous period of two years and both of you agree to the divorce

To prove this you do not necessarily have to have lived in separate homes but you do have to have lived separate lives, for example, eating and doing domestic chores separately.

- **5 Years separation**
You and your husband have been separated for a continuous period of five years

Your husband can oppose a divorce on this ground if he can argue that ending a marriage would result in grave financial or other hardship to him and it would be wrong in all the circumstances to end the marriage.

The procedure

First you must complete a **divorce petition**. This is a legal document sometimes called a **Form D8**, which will set out details of your marriage including when and where you were married and of the particular fact (see above) that you are relying on to prove your marriage has broken down irretrievably. This is available, along with “Notes for Guidance”, from your local County Court or can be downloaded from www.hmcourtsservice.gov.uk

If you have children who are under 16 or still in full time education, you will also need to fill in a **Statement of Arrangements for the Children (SAFC or Form D8A)**, which is available from your local County Court or can be downloaded from www.hmcourtsservice.gov.uk This will set out details of your children, including who they live with and where they go to school. The court will not make any orders in relation to the children in your divorce proceedings. If there are other issues that need to be resolved, such as who a child will live with or child contact arrangements, you will need to make a separate application to the court (see our legal guides **A Guide to Child Contact, A Guide to Parental Responsibility, A Guide to Residence and When Parents Separate: Some Common Issues**).

At the end of the divorce petition there is an opportunity to indicate whether you are intending to make a financial claim against your husband. This is sometimes referred to as the ‘prayer’. It is advisable to indicate all financial claims which you might need, as if you do not complete this correctly and later want to make certain claims, you may be prevented from doing so. If you are intending to make a financial claim see our information sheet **A Guide to**

Financial Arrangements after Marriage Breakdown.

The forms are designed to be completed without needing a solicitor, but it is important to seek legal advice from a solicitor or our legal advice line before starting divorce proceedings. You may be eligible to get free legal advice or help from a solicitor under the **Legal Help Scheme** (for further information see ‘Other useful contacts’ at the end of this legal guide).

Once the forms are completed you can commence the divorce process by **“issuing the petition”**. Issuing is a legal term and means that the divorce petition (D8) must be taken or sent (with the SAFC if appropriate) to the court together with an original or certified copy of your **marriage certificate**. If you cannot find your marriage certificate, you can apply for a copy from the Registry Office in the district where you were married or from the General Register Office. This currently costs £7.00 but prices may vary. If your marriage certificate is in another language you will need to arrange to have it translated and the translation certified by a **notary public** – seek legal advice about this.

If you apply for the divorce you are the **“Petitioner”** and your husband will be the **“Respondent”**.

Once the divorce petition has been issued it will be sent to your husband. This is called **“service”** of the divorce papers. The Court will usually serve the petition by sending it by first class post to the address you have given for your husband in the petition. If postal service is unsuccessful then you can request that a Court Official serve the documents on your husband personally. You are not allowed to serve the papers yourself.

So the court can be satisfied that your husband has received the divorce papers he will be asked by the court to sign and return an **Acknowledgement of Service form**. This must normally reach the court within eight days, starting on the day after he receives the divorce papers, although time limits will be longer if your husband is being served outside England and Wales. The Acknowledgement of Service form allows him to say whether or not he agrees with the contents of the divorce papers and whether he wishes to defend the divorce or contest the arrangements proposed for your children. Defended divorces are rare, as the presentation of a divorce petition is often an indication that the marriage has broken down and consenting to the divorce will not normally affect rights in respect to the finances or the children. A defended divorce can also cost a lot of money, as a court hearing will normally be listed, which you may have to attend. If your husband defends your divorce petition, you should seek legal advice. Legal Aid is not normally available in defended divorces.

If your husband has told you that he has received the divorce papers but he refuses to file the Acknowledgement of Service form you can apply to the court to make an order of **deemed service**. You must prove to the court that your husband has received the divorce papers. If the court is satisfied that your husband has received the papers, it can make an order that your husband was served on a particular date.

The court needs your husband's address in order to serve the divorce papers on him. So if you have lost contact with your husband and do not know where he lives or works you may be able to use an **alternative method of service**.

Before requesting an alternative method of service from the court, it is important that you have made every effort to find out where your husband lives from his family, friends, employer and anyone else who knows him. If he still cannot be traced you can apply to the court for **substituted service**. This means that an alternative means of sending the documents can be used, for example an advertisement in a paper that it is known that your husband reads regularly, or for documents to be left at a different address, for example with a relative.

If, in spite of trying the above, your husband cannot be traced, you can apply to a district judge for an order **dispensing with service**. If the judge is satisfied that sufficient searches have been carried out and your husband cannot be found, the judge can make an order that the divorce can proceed without the divorce papers being served on him.

If your husband does not live in England or Wales, the usual methods of service apply and it is not necessary to get the judge's permission for this.

If your husband is not defending the divorce the court will then ask you to confirm the details set out in your divorce petition are true. You do this by filling in and swearing an "**affidavit**" in front of another solicitor and signing an **Application for Directions for Trial**.

The judge will then consider whether you are entitled to a divorce. You do not have to attend court for a hearing. The Judge simply looks at the paperwork.

If the judge is satisfied you are entitled to a divorce, then the Court will send you a **Certificate of Entitlement to Decree Nisi**.

This will give a date and time at which your Decree Nisi will be pronounced at court. **Decree Nisi** is the preliminary stage of the divorce and does not dissolve the marriage itself. It means the grounds for divorce have been proved. Again you do not have to attend court for this hearing although you can if you want to.

Six weeks and one day from the date of your Decree Nisi, you can apply for your **Decree Absolute**. You will need to fill in and sign an **Application for Decree Nisi to be made Absolute** and pay a £40 fee. If you do not apply for Decree Absolute for three months after you got your Decree Nisi your husband can apply for it.

It is only when Decree Absolute has been granted that your marriage is formally ended and you and your husband are free to marry again if you wish.

How long will it take?

Even the most straightforward divorce takes between 4 and 6 months and it is often advisable to postpone applying for Decree Absolute until any financial proceedings have concluded as it can affect your rights to live in the family home, to financial recovery, or to deal with your joint finances. If there are difficulties serving your husband with the divorce papers or if your husband contests the divorce it could take longer.

How much will it cost?

If you are applying for your divorce without the help of a solicitor the court fees for an undefended divorce are currently £340 in total. If you are on a low income the court may be able to waive or reduce the fee if you complete an **Application for a fee Remission form**

(EX160). This form is available from your local County Court or can be downloaded from www.hmcts-service.gov.uk. Court fees do increase from time to time and you should check with your local County Court or the Court Service for the up to date fees.

If you wish to instruct a solicitor to help you with your divorce you may be eligible for free legal advice under the **Legal Help Scheme** (sometimes called “legal aid” or “public funding”). Please consult Community Legal Advice for further information (see ‘Other useful contacts’ at the end of this legal guide). This may include preliminary advice on the grounds for divorce, drafting the divorce petition and service of the documents. Please note that Legal Help is not generally available for representation at a defended divorce hearing.

If you are not eligible for Legal Help the cost of instructing a solicitor will depend on your individual solicitor’s charges. You should ask for an estimate at the beginning of your case.

You will need to decide whether you wish to include a claim for your legal costs in your divorce petition. The court may order that your husband should pay all or some of your costs, or you might be able to agree to share the costs between you.

Is a religious divorce valid?

The law in England and Wales which recognizes divorce is **civil law**. This means that other forms of personal or religious divorce law such as Islamic law or Jewish law are not legally recognised.

For a divorce to be valid in England and Wales, it must be issued in a civil court according to the procedure which has been outlined above.

Religious divorces which take place in England and Wales are not recognised by law.

What happens if I get divorced in another country?

An **overseas** divorce is a divorce which is obtained in a country outside the UK.

Divorces which take place overseas are not automatically legally recognised in England and Wales. This means that a divorce can be valid in the country where it took place, but it will not necessarily be recognised in England and Wales. As a consequence, you may still be married and any subsequent marriage, before being granted a legally recognised divorce, would be **void** (see below) and **bigamous**. Bigamy is a civil and criminal offence. The rules recognising overseas divorces are complex and vary depending on which country your divorce took place in. Because of this, we strongly advise that you seek legal advice from a solicitor.

Can my husband ask me to leave our home or can I ask him to leave?

A person has a right to occupy (live in) a property if they own it (their name is on the title deeds to the property), they have a financial interest in it (because they have made financial contributions) or because it is their matrimonial home. This means that even if your husband owns the property in his sole name you have the right to live there until your marriage ends. This is called **Home Rights**. The only way that a person can be forced to leave the property if they do not want to is if the court suspends their right to occupy it with an **Occupation order**.

This means that your husband cannot ask you to leave your home, exclude you from it or change the locks. If your husband does any of these things you can apply for an occupation order to enable you to return to the property. If your husband is violent or abusive to you the only way you can exclude him from your home is by applying to the court for an occupation order or, if the police or courts are involved, he is given bail conditions which prevent him from returning (see our legal guide **A Guide to Domestic Violence**).

Judicial separation

Married couples who do not want a divorce can apply to the court for a decree of **judicial separation**. This is also sometimes referred to as a legal separation. Although judicial separation is rare, it can be useful for people who wish to avoid any perceived stigma from divorce but who no longer wish to continue living together.

Judicial separation leaves the marriage legally intact, but enables the parties to apply to the court for financial and property orders in exactly the same way that they can upon divorce (see our legal guide **A Guide to Financial Arrangements after Marriage Breakdown**).

Unlike getting divorced, there is no requirement to have been married for a year before applying for a judicial separation. The application process is very similar to that of divorce although it is not necessary to show that the marriage has 'irretrievably broken down'. If you wish to divorce after getting a judicial separation, however, it is necessary to go through the full divorce procedure.

Separation agreements

Sometimes married couples decide to separate informally without applying for a divorce or judicial separation. In these circumstances, you will remain legally married. If you are in this situation you can draw up an agreement with or without the involvement of a solicitor about how you will manage your finances, for example, in a **separation agreement**. This is a private agreement and is not binding on the courts.

Annulment

Annulment is a legal procedure ending a marriage which is different from divorce as it puts the parties back in their original position, as if the marriage had never taken place. This can be a useful option if you don't want to get divorced.

To get a decree of nullity your marriage must be void or voidable.

A marriage will be **void** if, for example, either person is already married; the parties to the marriage are of the same gender or where either person is under 16. If your marriage is void it is

invalid from the beginning and can be treated as if it never took place. An application for annulment does not need to be made, although it is usually advisable to make an application for annulment.

Your marriage may be **voidable** for a number of reasons including where the marriage has not been consummated; if either party did not validly consent to the marriage (for example, if you were forced or pressured into marrying) or where either party is seeking gender recognition or has changed their gender. If your marriage is voidable it will be valid until it is annulled by a **decree of nullity** (an order from the court). Annulment is likely to be appropriate in cases of **forced marriages**. If you believe your marriage may be void or voidable seek legal advice by contacting a solicitor or our advice line.

The law relating to divorce can be complex. We have provided only a very basic overview of the law. We would strongly advise any woman involved in these situations to seek legal advice from our advice line, a solicitor or the organisations listed below.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this guide. This legal guide is designed to give general advice only.

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For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)** on **Tuesdays 11am–1pm and Thursdays 2–4pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 2–4pm and Wednesdays 11am–1pm.**

Other useful contacts

Community Legal Advice (for finding a family solicitor)	0845 345 4345	www.legaladvisorfinder.justice.gov.uk/AdviserSearch.do
Department of work and pensions		www.dwp.gov.uk
Gingerbread (advice for single parents)	0808 802 0925.	www.gingerbread.org.uk
National Domestic Violence Helpline	0808 2000 247	www.nationaldomesticviolencehelpline.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Shelter	0808 800 4444	www.shelter.org.uk

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