

Deciding that your marriage has ended can be very difficult. This legal guide is designed to give information about the law and procedure on divorce.

When marriages break down there are often other issues that need to be resolved, such as child arrangements or financial matters. Rights of Women publishes a number of other legal guides that may be useful including **Children and the law: when parents separate** and **A guide to financial arrangements after marriage breakdown**. You can access our full range of legal guides at www.rightsofwomen.org.uk

In this guide **spouse** means your husband or wife.

Who can get divorced?

If you have been legally married for at least one year, either you or your spouse can apply for a divorce. Some foreign or religious marriage ceremonies are not recognised by the law of England and Wales. If you are unsure whether or not you are legally married please consult our legal guide **A guide to marriage** or call Rights of Women's legal advice line – see **Useful contacts**.

Jurisdiction

The English courts can dissolve foreign marriages so long as there is an appropriate connection, for example if one or both of you live in England or Wales or you are both from England or Wales. It may be that you and your spouse have connections with more than one country and that you have the option to get divorced here or abroad. Choosing the right country to get divorced in is important as it can have a big impact on how the marital finances are shared.

If you think your spouse intends to start divorce proceedings in another country, you should seek family law advice urgently as you may wish to start divorce proceedings in England or Wales before they do. This is known as a **petition race**.

Grounds for divorce

The only ground (reason) for divorce is that your marriage has irretrievably broken down. Irretrievably means the marriage has broken down permanently and cannot be fixed.

To prove that your marriage has broken down irretrievably, you must state one of five facts in your divorce petition:

- a) **Adultery – your husband has committed adultery with another woman or your wife has committed adultery with a man**

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

If your husband or wife admits to adultery and agrees to the divorce proceedings, the divorce is likely to be accepted by the court. If your spouse does not admit to committing adultery you will need to provide the court with evidence of the adultery.

In addition to the adultery, you must also prove that you find it **intolerable** to live with your spouse, either because of the adultery or because of some other behaviour. Intolerable means that you cannot bear to be in the marriage any longer.

If you continue to live with your husband or wife for 6 months after you find out about their adultery, then you cannot use that incident of adultery as the reason to divorce.

You have the option to name the person who committed adultery with your husband or wife in your divorce petition (the "co-respondent"). However, if you do so you will have to send the divorce papers to that person as well as to your spouse. This will cause additional expense and delay if they do not co-operate.

b) Unreasonable behaviour – your husband or wife has behaved in such a way that you cannot reasonably be expected to live with them

Unreasonable behaviour can include a wide range of behaviour from domestic violence to withholding love and affection. Generally you will need to set out 4 or 5 examples of your spouse's behaviour. It may be helpful to include the first, the worst and the most recent incident of the unreasonable behaviour during the marriage.

If you continue to live as a couple for 6 months after the last incident of unreasonable behaviour, it may be harder to prove to the court that you cannot reasonably be expected to live with your spouse.

c) Desertion – your husband or wife has deserted you for at least two years

You need to show that your spouse left you in order to end your relationship, without your agreement and without a good reason, for at least two years. This is difficult to prove so it is very unusual to use this fact.

d) 2 years separation with consent – you and your spouse have been separated for a continuous period of two years and you both agree to the divorce

You need not necessarily have lived in separate homes but you need to have

had separate lives, for example, eating and doing domestic chores separately and sleeping in different rooms. Your spouse must agree to the divorce on the basis that you have been separated for a continuous period of two years. It is a good idea to check whether your spouse will agree before sending your divorce petition to the court.

e) 5 years separation – you and your spouse have been separated for a continuous period of five years

If you have been separated for 5 years you are entitled to apply for divorce, even if your spouse does not consent. Your spouse can only oppose the divorce if they can argue that ending the marriage would result in serious financial or other hardship.

How much will it cost?

If you are applying for your divorce without the help of a solicitor, the court fee is currently £550 in total. If you are on a low income the court may waive or reduce the fee if you complete an **Application for a fee Remission form (EX 160)**. This form is available from your local County Court or can be downloaded from **www.hmcourts-service.gov.uk**. Court fees do change from time to time and you should ask your local County Court or check:

<https://www.gov.uk/court-fees-what-they-are>

If you would like a solicitor to help you, then your solicitor's costs will depend upon their rates. Many law firms now offer a fixed fee for divorces. Legal aid is not usually available for divorce. See our legal guides **Family Court proceedings: where can I get advice and support?** and **A guide to family law legal aid** for further information.

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 spouse should pay all or some of your costs, or you might be able to agree to share the costs between you.

The application process

To apply for divorce you must complete a divorce petition (Form D8), setting out details of your marriage and of the fact you are relying on (see **Grounds for divorce** above). You can get a petition form and Notes for Guidance from your local County Court or from www.hmcourts-service.gov.uk.

On the last page of the petition it asks if you intend to make a financial claim against your spouse. This is sometimes called the 'prayer'. It is advisable to tick all the financial claims you could possibly wish to make in future, or you may later be prevented from doing so. If you want to make a financial claim see our legal guide **A guide to financial arrangements after marriage breakdown**.

The forms are designed to be completed without needing a solicitor, but you should seek advice from a solicitor or our legal advice line if possible.

Once the forms are complete you can start the divorce process by issuing the petition. You issue the petition by sending it with two extra photocopies (along with extra copies for any third parties you have named in your petition), an original certified copy of your marriage certificate, and the court fee or EX160 to your nearest divorce centre. 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. If your marriage certificate is in another language you must 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 spouse will be the **Respondent**.

Once the divorce petition has been issued it will be sent to your spouse. This is called **service** of the divorce papers. The court will usually post the petition to your spouse at the address you have provided in the petition. If service by post is unsuccessful and your spouse either does not receive or does not acknowledge receipt of your petition, then you can request that a court bailiff serve the documents on your spouse personally. You are not allowed to serve the papers yourself.

Responding to a divorce petition

Your spouse will be required to sign and return an Acknowledgement of Service form to the court, in order to show that he or she has received the petition. This must normally reach the court within eight days, starting on the day after they receive the divorce papers, although time limits will be longer if your spouse is being served outside England and Wales. The Acknowledgement of Service form allows your spouse to say whether or not they agree with the contents of the divorce papers and whether they wish to defend the divorce.

Defended divorces are rare because if one person wants a divorce, that is usually a sign that the marriage has broken down.

Consenting to a divorce will not normally affect a person's rights in terms of finances or the children. The child arrangements and finances may need to be resolved, but it is unlikely to matter who divorced whom or what reason was given in the petition. 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 spouse defends your divorce petition, you should seek legal advice.

If your spouse refuses to acknowledge your divorce petition?

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

If you do not know where your spouse lives or works?

The court needs your spouse's address in order to serve the divorce papers on them. If you have lost contact with your spouse and do not know where they live or work 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 spouse lives from their family, friends, employer and anyone else who knows them. If you still cannot trace them you can apply to the court for **substituted service**. This normally means sending the documents to a different address, such as a friend or family member you know he is close to, or his work address, or email or even Facebook.

If, in spite of trying the above, you simply cannot trace your spouse, you can apply to a district judge for an order **dispensing with service**. If the judge is satisfied that you have done everything you can to try and find your spouse, the judge can make an order that the divorce can proceed without the divorce papers being served on them.

After your spouse has been served?

Once the court is satisfied that your spouse has been served with the divorce petition or has dispensed with the need for service, you may apply for a **Decree Nisi**, on a Form D84. There is a £50 fee. If you cannot afford to pay the fee then you can apply for a fee exemption using a form EX160. If your husband or wife is defending the case, fill in section B of the form, saying you want a 'case management hearing' before the judge.

If your spouse is not defending the case, just complete section A, sign and date the form. You also need to fill in a statement confirming that what you said in your divorce petition is true. There are five different statement forms and you should complete the one which matches the fact you are relying on to divorce:

- Form D80a – adultery statement
- Form D80B – unreasonable behaviour statement
- Form D80C – desertion statement
- Form D80D – 2 years' separation statement
- Form D80E – 5 years' separation statement

The court should send you a form D84 and the appropriate statement form but if not you can find them at: **www.hmcourts-service.gov.uk**.

The judge will then consider whether you are entitled to a divorce. If the divorce is undefended 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. You do not have to attend court for the pronouncement although you can if you want to. **Decree nisi** is the first stage of the divorce and does not dissolve or end the marriage itself.

Six weeks and one day after the date of your decree nisi, you can apply for your **decree absolute**. You will need to fill in and sign a form D36 **Application for Decree Nisi to be made Absolute**. The application is simple. However if it has been over 12 months since the date of the decree nisi then the court will require further information from the Petitioner. If it has been over three months since the decree nisi, the Respondent may apply for a decree absolute if the Petitioner has not done so already.

It is only when decree absolute has been granted that your marriage has formally ended. You and your spouse are then 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, pensions, or other issues relating to joint finances. If your spouse is uncooperative or there are complications resolving the finances, the divorce could take much longer.

Is a religious divorce valid?

A religious divorce may dissolve a religious marriage. However, to end a legal marriage in England and Wales, you must obtain a legal divorce, through the courts.

What happens if I get divorced in another country?

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. This means you may still be married and if you remarry before you legally end your first marriage, the second marriage would be **void**. You would also be guilty of bigamy which 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.

My home rights

A person has a right to live in a property if it is their matrimonial home. This means that even if your spouse owns the property in their sole name, you have the right to live there until your marriage ends. This is called **home rights**. If your home is in your spouse's sole name the divorce may end your right to live there so it is important to seek legal advice. For further information about home rights see our legal guide **Marriage: your rights to your home**.

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children:

Women living and working in London: call **020 7490 2562** the advice line is open Mon 11am–1pm, and Tues – Thurs 2–4pm.

For all women: call **020 7251 6577** the advice line is open Tues – Thurs 7–9pm and Fri 12–2pm.

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit **www.rightsofwomen.org.uk** for our advice line details.

Useful contacts

Finding a solicitor

The Law Society
0207 320 5650
www.lawsociety.org.uk/find-a-solicitor/

Ministry of Justice
020 3334 3555
<http://find-legal-advice.justice.gov.uk/>

Resolution
01689 820272
www.resolution.org.uk/

Emergency contacts

Police (emergency)
999

24 hour domestic violence helpline
0808 200 0247
www.nationaldomesticviolencehelpline.org.uk

RIGHTS of
WOMEN
helping women through the law

52 – 54 Featherstone Street,
London EC1Y 8RT

Office: **020 7251 6575**

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

