

**Spire Barristers**

FAMILY & PUBLIC LAW SPECIALISTS

# Private Law

Guideline to Divorce  
Proceedings

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# Private Law: Guideline to Divorce Proceedings

At Spire Barristers, we understand that divorce proceedings are often difficult and emotive circumstances. That is why when we dealing with divorce, [our barristers](#) ensure they work with clients in a professional yet understanding, supportive and dedicated capacity throughout proceedings. As part of our service we are providing our guideline to divorce proceedings to advise and inform you, delivering critical information and giving insight into the process of undertaking a divorce to add clarity in complex times.

This guideline is strictly an advisory document to give a greater understanding of the process of divorce. If you require any more information or require the services of our experienced and knowledge legal practitioners then please do not hesitate to contact us.

This guideline will deliver information for both the Petitioner and the Respondent and will be structured in the following format:

1. Pivotal information to consider before undertaking divorce proceedings
2. Grounds for divorce
3. Divorce Process
4. Beginning divorce proceedings
5. Responding to a divorce petition
6. Decree Nisi
7. Decree Absolute

# 1. Pivotal information to consider before undertaking divorce proceedings

Before embarking on divorce proceedings it is very important to receive legal advice. Below are some of the general considerations that regularly arise upon which our barristers are asked to advise upon before a divorce petition is issued.

1. Divorce or Judicial separation?
  - Do I have to obtain a divorce or would a judicial separation be more appropriate for my circumstances i.e because of my religious beliefs.
2. Financial consequences of divorce?
  - What happens upon separation to the matrimonial home?
  - Can I obtain interim maintenance for myself and the children?
3. Child arrangements upon divorce?
  - Who is to be the main carer for the children?
  - Is there to be a shared care arrangement?

Further, there are numerous procedural considerations that must be taken into deliberation before beginning divorce proceedings:

1. **Certification** – Your marriage certification will not be returned after it has been sent to the court with your divorce application.
2. **Jurisdiction** – Jurisdiction can have a substantial bearing on the financial settlement and thus legal advice is advised. Furthermore, divorce can only be granted by English courts in special circumstances if one or both parties live abroad.
3. **One Year** – You cannot begin proceedings if you are still within your first year of marriage. This however does not apply to separation, meaning that you are able to try to establish agreements prior to the year date.

## 2. Grounds for divorce

When it comes to grounds for divorce there is only one. That is the 'Irretrievable breakdown of the marriage'. For the divorce application to be processed evidence of the irretrievable breakdown must be provided. This can cover the following instances:

1. **Adultery** – If your partner engaged in sexual activity and you can no longer bear to live with them then this is reasonable grounds for divorce.  
**! Note that this evidence is not accepted if you have lived with the person for 6 months after the adultery was committed.**
2. **2 Years** – If you have lived separately from your partner for more than 2 years this is deemed acceptable grounds for divorce.  
**! Note this applies only if your partner consents in writing to the divorce.**
3. **5 Years** – If you have lived separately for more than 5 years this is deemed acceptable grounds for divorce.  
**! Note this applies even if your partner does not agree with the divorce.**
4. **Desertion** – There are various elements that can be used as desertion evidence to support your case for divorce:
  - Your partner left to end the relationship
  - Your partner left without agreement
  - Your partner left without a good reason
  - Has been away for more than 2 years within the past 2.5 years.**! Note that desertion can still apply even if you have lived with your partner for a total of 6 months within this time period.**
5. **Unreasonable Behaviour** – There are various elements that can be used as evidence of unreasonable behaviour to support your case for divorce:
  - Insulting and threatening verbal abuse or violent physical abuse
  - Drug or alcohol abuse
  - Refusal to pay house maintenance

### 3. Divorce process

This gives a general guideline of the divorce procedure if there are no issues that arise during the process.

**Phase 1.** Divorce Petition is issued and the court sends the petition to the Respondent.

**Phase 2.** Acknowledgement of service is filed by the respondent and the court sends a copy to the Petitioner.

**Phase 3.** A supporting statement of the petition is filed by the Petitioner and the directions for the trial and a decree nisi are requested. This is then considered by the judge and listed for pronouncement of decree nisi.

**Phase 4.** The decree nisi is pronounced. At this point given a minimum six week wait, the Petitioner can apply for decree absolute.

**Phase 5.** The application is granted and a decree absolute is issued.

#### Potential Issues and Resolution

Generally, the divorce process will take a minimum of four months, although the average is nearer six months. During a divorce process there are numerous potential elements that can impact upon the speed of a finalised resolution.

**! Issue 1.** The Respondent does not file an acknowledgment of service.  
Resolution: As the Petitioner you can have the documents served personally to the Respondent and other service can be made via applications to the court.

**! Issue 2.** The petitioner does not apply for a decree absolute.  
Resolution: The Respondent can apply for the decree absolute through the court after a period of 4.5 months.

**! Issue 3.** If your outstanding matters including but not exclusive to ancillary matters are finalised you cannot obtain decree absolute.

## 4. Beginning divorce proceedings

In order to commence divorce proceedings there are specific divorce documents that must be prepared as a prerequisite:

- Divorce Petition
- Marriage Certificate
- Statement of Arrangements for Children

### Divorce Petition

A divorce petition is essentially an application to the court for the divorce. Within the petition a fully detailed explanation of the background information as to why the marriage broke down. This must include information about one of the 5 reasons relating to the irretrievable breakdown of your marriage. As a part of this process you must outline whether you would like to pursue a claim for costs or a contribution towards legal expenses.

## 5. Responding to a divorce petition

For the Respondent, the next stage in the process is to complete a form known as an Acknowledgement of Service form. Within the document it will be demonstrated whether the Respondent intends to contest the divorce or let it proceed uncontested.

When the document is returned to the court the Petitioner can proceed with the divorce.

### **How sudden must I complete the Acknowledgement of Service form?**

The form must be completed within 8 days of receiving the form.

### **What happens if the forms are not completed?**

If the form is not completed then the court will serve the forms to the Respondent.

## 6. Decree Nisi

What is a Decree Nisi?

A Decree Nisi is a statement that is granted to Petitioners by the court which states that if there is no reason to the contrary, the Petitioner will in due course be entitled to apply for decree absolute and thereby dissolve the marriage. Essentially, a Decree Nisi means that the court is satisfied that the person who issued the divorce petition has adequately proved the contents of the petition and is entitled to a divorce.

### What is the process for receiving a Decree Nisi?

In order to receive a Decree Nisi two documents must be completed:

1. Application for Decree Nisi
2. Statement in Support of Petition

The statement in support of the petition confirms that the grounds for the divorce are true. This statement must correspond to the appropriate grounds for divorce:

- Unreasonable Behaviour
- Desertion
- Separated for 2 years with written consent
- Separated for 5 years without consent
- Adultery

If your husband or wife doesn't agree to the divorce, you can still apply for a decree nisi. However, you'll have to go to a hearing at the court to discuss the case, where a judge will decide whether to grant you a decree nisi.

When the documents have been submitted they will be reviewed by a judge over a period of approximately 3 weeks. If the judge accepts the application then the court will send you and your spouse:

1. A certificate of entitlement to a decree

2. A decree nisi

After a period of 6 weeks you can apply for a 'decree absolute' to dissolve the marriage.

### **What if my application is rejected?**

If your application is rejected then you may receive a 'notice of refusal of judge's certificate' form, which will provide an explanation of the reasons why the divorce has been rejected. The form will also provide relevant information into the next phase of the process.

# 7. Decree Absolute

## What is a Decree Absolute?

A Decree Absolute is the final decree of the divorce, it is a legal document issued by a court of law officially ending a marriage, enabling either party to remarry.

## What is the process for receiving a Decree Absolute?

In order to receive a Decree Absolute you must complete an application form. However, you must wait a duration of 6 weeks from receiving the decree nisi before applying. Furthermore, you will have to provide explanation to the court if the application is not completed within 12 months.

The delay provides adequate time to finalise ancillary matters, finances and other issues with your spouse that must be settled before the marriage can be dissolved.

## What if my partner started proceedings but has not completed the application?

In this case you are able to apply for a Decree Absolute however, you must wait an additional 3 months on top of the initial 6 week waiting period to complete the application process.

## Will I need to keep a record of the Decree Absolute for future reference?

Yes! In order to remarry or prove your marital status you will require the Decree Absolute.

If you require our professional and compassionate services in divorce and mediation or you would like additional advice on the process contact us directly on 0113 200 2400 or email us at [clerks@spirebarristers.co.uk](mailto:clerks@spirebarristers.co.uk).