

## Obtaining a Divorce: A brief guide

This guide applies equally to Same-sex marriages and Civil Partnerships

### Divorce, Dissolution and Judicial Separation

**Divorce:** legally dissolves your marriage with your spouse and you are both free to marry again once you receive Decree Absolute.

**Dissolution:** legally ends ('dissolves') your civil partnership.

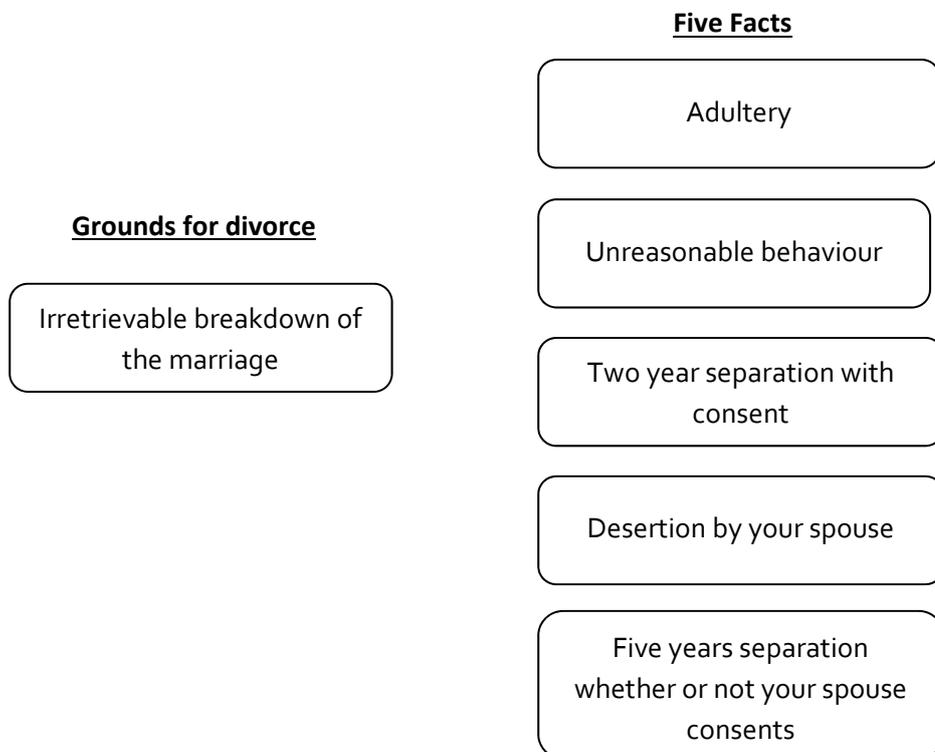
**Judicial Separation:** does not bring the marriage to an end and you are not free to re-marry at the conclusion of the proceedings in contrast to when you obtain your Decree Absolute in divorce.

### The Process

Divorce proceedings cannot be commenced until you have been married for at least a year.

The spouse who wants to begin divorce proceedings must file a petition at Court- this person is known as the Petitioner and the person who receives the petition is referred to as the Respondent.

If you divorce in the UK you have to be able to show that your marriage has broken down irretrievably. To do this you have to base your petition on one of the following 5 facts. We do not have 'no fault divorces' in the UK.



## The Procedure

- 1. Taking Instructions:** We usually begin with an initial face to face meeting. This gives you the opportunity to go through the background of your relationship. You can explain the circumstances which have led to you seeking advice on divorce. You can decide if you think the solicitor understands you and that you will be able to work together. You will then be given advice so that you can decide how *you* want to proceed. All of the family team at Russells are members of Resolution. Resolution is an organisation of family lawyers who believe in a constructive, non-confrontational approach to family law matters. One of their guiding principles is to avoid acrimony whenever possible and help achieve a reasonable outcome through negotiation. We would usually discuss how to write to your ex partner or their solicitor if they have already instructed someone, try to agree who is to petition and ideally agree a draft petition and contribution to costs before issuing. Sometimes it is essential that swift action is taken and if this is the case we can issue on the same day.
- 2. Lodging the Petition:** Once the draft Divorce Petition is approved it will be sent to the court to be issued. The Court fee is currently £550.
- 3. Service of the Petition:** A copy of the Divorce Petition will then be served on your spouse by the Court (or by personal service) together with a form called an “Acknowledgement of Service” or if they have a solicitor who has agreed to accept service it will be sent to their offices. Your spouse (or their solicitor) then has to sign and return the Acknowledgement of Service to Court within 7 working days confirming whether or not they intend to defend the divorce. The Court will then send a copy of the Acknowledgement of Service to us, your solicitors.
- 4. Applying for the Decree Nisi:** Once the Acknowledgement of Service has been filed with the Court, we will then prepare an application for Decree Nisi and a statement in support. You will need to sign this document and confirm the contents of the Divorce Petition are true.
- 5. Filing Documents at Court:** Your application for Decree Nisi and statement in support will be filed with Court and placed before a District Judge. They will then decide whether to grant you Decree Nisi on the basis of your Petition and whether it has been proved. At this stage, the District Judge can make directions requesting clarification or more information before Decree Nisi is granted. This is rare. This will not impact negatively upon your case but can cause a delay.
- 6. Decree Nisi:** Once the District Judge is satisfied that you are entitled to a divorce, they will sign the “Certificate of Entitlement to Decree Nisi”. The certificate is sent to us, with a date upon which the Decree Nisi will be pronounced. Although the date is in effect a “hearing” you do not have to attend this hearing.

7. **Application for Decree Absolute:** You can apply for your Decree Nisi to be made Absolute six weeks and one day after receiving your Decree Nisi. Once Decree Absolute is pronounced you are legally divorced. It is advisable to keep your Decree Absolute safe in the event you need to change any documentation or in the event of re-marriage.
8. We generally advise not to apply for Decree Absolute until any financial issues have been resolved as you retain certain rights at Decree Nisi which are extinguished on Decree Absolute. These include pension and inheritance rights.

### Common Queries Answered

#### **Should I be the Petitioner or the Respondent?**

In most cases it does not matter if you are the Petitioner or the Respondent. However, it is generally preferable to be the Petitioner as it gives you more control over the timetable of the divorce itself and you may also obtain an Order for costs against the Respondent on the fault based petitions: adultery or unreasonable behaviour.

#### **What is a 'defended divorce'?**

A defended divorce arises when the Respondent is not prepared to agree to the Divorce. When they return the Acknowledgement of Service they indicate what their intentions are.

The Respondent then has to prove to the court that the marriage has not irretrievably broken down. The defending party must provide an answer to the petition either denying the adultery or the unreasonable behaviour; or accept that the marriage has broken down but defends the petition by filing their own petition. This is often referred to as a "cross petition".

It is rare for divorce petitions to be defended nowadays. It will inevitably increase costs for both parties. However, it is sometimes possible to agree that the Decree should be pronounced on both petitions called cross Decrees. Only in rare circumstances will a defended divorce be appropriate.

#### **How long will the divorce take?**

The process usually takes between 5 to 8 months to obtain a divorce although this can be expedited if for any reason the timings are crucial.

At Russells we sometimes advise our clients not to apply for Decree Absolute until all the financial matters have been resolved. However, once all matters relating to the finances (and possibly children) have been resolved the Decree Absolute serves as finality to the divorce proceedings.

### **Are my finances and matters concerning my children dealt with at the same time at my divorce?**

Generally the answer to this is yes. They run parallel, however it is usual that correspondence concerning all three aspects: your divorce, your finances and your children (if applicable) are dealt with in separate correspondence.

### **Do I have to go to Court?**

You can obtain a divorce without setting foot in a court room. However, if you or your spouse issue financial proceedings you could in certain circumstances attend Court. However, as far as your divorce is considered there is no legal requirement for you to attend Court.

### **I was married abroad; can I still get divorce in the UK?**

Yes, you can still issue divorce proceedings in the UK if the Court has jurisdiction. For the Court to have jurisdiction, one of the following need to apply:

- If you and your spouse are both habitually resident in England and Wales
- If you and your spouse were last habitually resident in England and Wales and one of you continues to reside here
- If your spouse is habitually resident in England and Wales
- If you are habitually resident in England and Wales and have resided here for at least one year before the divorce petition is presented
- You are domiciled in England and Wales and have been habitually resident in England and Wales for at least 6 months before the divorce petition is present
- You and your spouse are both domiciled in England and Wales
- No Court of a Brussels II Regulation signatory state has jurisdiction and either party is domiciled in England and Wales when proceedings are begun.

### **I do not have my marriage certificate, what do I do?**

If you were married in England and Wales, you can go to the General Register Office website to order a copy of your marriage certificate in England and Wales or you can order your certificate from the local register office where the marriage was registered. Certificates currently cost £9.25. We can do this for you.

### **The Russells Approach**

There is no “one size fits all approach” to a divorce. Every case is different and unique.

We encourage our clients to have a conciliatory approach to their divorce where possible to avoid unnecessary acrimony between you and your partner/spouse.

## Next Steps

If you would like any further advice in respect of divorce or would like to make an appointment please contact Carol Ellinas, Dario Maggiulli or Laura Plumbly at Russells.

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This briefing note is not intended to be exhaustive statement of the law and it should not be relied upon as legal advice nor is to be applied to any particular set of circumstances. Instead, it is intended to act purely as an aid and a brief guide of some of the legal considerations relevant to the subject in question.