

Undefended Divorce

A Short Guide to the Procedure

This information leaflet gives you introductory guidance to undefended divorce. It does not however give you legal advice. If you need legal advice please contact Karen Atkins in our Family department on 01942 774136.

This leaflet:

- Outlines the various grounds for divorce in England and Wales.
- Outlines the documentation needed during the procedure.

Overview

The Executive or Solicitor in charge of your file will have explained to you that in England and Wales the only ground for divorce is that the marriage has broken down irretrievably. This must be established by proving one or more of the following facts:

That your partner has committed adultery and that you find it intolerable to live with them;

That your partner has behaved in such a way that you could not reasonably be expected to continue living with them;

That your partner has deserted you for at least two years;

That you and your partner have lived separate and apart for two years and your partner consents to a divorce; or

That you and your partner have lived apart for a continuous period of five years.

You will have been advised of the best course of action in your particular case.

Once all the necessary information has been supplied by you, including providing us with your original marriage certificate or a certified copy, your petition will be drafted and will be submitted to you for your approval and signature. You should ensure that the contents of your petition are correct in every way, as you will be required to swear an Affidavit confirming its contents at a later stage.

Documentation and Procedure

If you have children who are under 18 and are receiving full time education or training for a profession, then we also need to prepare a Statement of Arrangements in respect of the children. This sets out to the Court all the arrangements which have been made in respect of the children, i.e. who they reside with, what accommodation is available, whether the other party has contact with the children and to what extent, details of their education etc., and proposals for any change in these arrangements.

If you are being advised under the Legal Help scheme then the court must also be asked to exempt you from the payment of any fees in respect of the divorce. This is a simple document which will be signed by you at the same time as the petition.

The documents will then be lodged with us at the court where they will be allocated a Case Number. This will usually be done in the County Court which is most convenient for you, i.e. Bolton. Occasionally we may file these in a different court for procedural ease, i.e. where the local County Court is extremely busy and your divorce would therefore be delayed, but we would advise you of this. The original marriage certificate will be lodged with these documents at the Court. The petition and accompanying documents will then be served upon your partner by post. If your petition is based upon adultery, then the co-respondent will also receive a copy of the petition only. The Court also sends an acknowledgement of service for them to complete and return. There is a time limit during which this document must be returned of 14 days, and if no acknowledgement has been received in that time then the Court Bailiff may be asked to serve the documents personally. In the event that this becomes necessary, you will be asked to supply a recent photograph of your partner, or a very clear description in order that the Bailiff may identify him. If any further service difficulties are encountered, then we would discuss this with you at the time.

Once the acknowledgement of service is filed, or we are notified that the Bailiff has been successful in serving your partner, you will know whether your partner intends to defend the proceedings. If so, then the matter will follow a different procedure from this stage, and you will be advised.

However, should your partner indicate that he or she does not intend to defend we must then ask the District Judge of the Court to consider the contents of your petition and to decide whether you have sufficiently proved the contents of your petition and are entitled to a decree. A Request for Directions for Trial (Special Procedure) form and an Affidavit confirming the contents of your petition will be required at this stage, and these will be prepared by us on your behalf. Despite its name, it will not be necessary for you to attend at Court (other than to swear the Affidavit) when this is being considered. If the court considers that you have sufficiently proved the breakdown of your marriage, then a date will be set for pronouncement of the Decree Nisi. Once again, it will not be necessary for you to attend on that day, and the Decree Nisi will be pronounced in your absence.

If you have relevant children, then the Court will also at that stage consider the arrangements which have been made for them, and if satisfied will issue a certificate to this effect. If the Court is not satisfied then you would be asked to provide such further information as they require. Unless the Court is satisfied as to these arrangements, then it will not permit the Decree Nisi to be made absolute.

If the arrangements for the children are satisfactory, or if there are no relevant children, then the Decree Absolute can be made six weeks and one day after the pronouncement of Decree Nisi and we will prepare the necessary application for this on your behalf.

No reference has been made within these notes to the questions of financial matters, i.e. maintenance for yourself or the matrimonial home, and these are matters which vary from case to case and which need to be discussed in some detail.

DISCLAIMER : **These notes are prepared for general interest and it is important to obtain professional advice on specific issues. Stephenson's believe the information contained in these notes to be correct at the time of circulation. While all possible care is taken in the preparation of these notes, no responsibility for loss occasioned by any person acting or refraining from acting as a result of the material contained herein can be accepted by Stephenson's, the author, or the publisher.**

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