



# Guide to online divorce

On 6th April 2022 the government introduced no fault divorce and launched a new online and paper service for couples wanting to divorce.

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**Stephensons**

## Introduction to online divorce

An application can be started by one person as a sole applicant or by the couple together as joint applicants. They do not have to give a reason for the divorce, other than a simple statement that the marriage has irretrievably broken down. This is confirmed within the application itself by simply ticking a box. There is no longer a requirement to blame or to have been separated for periods of time as in the old law – the new law no longer gives these choice of options.

The option of challenging the application is now severely limited. There is no opportunity to contest a statement of irretrievable breakdown although there can be challenges based upon a technicality e.g. jurisdiction or the marriage was not lawful to start with. These situations are going to be very few and far between and only relevant to a very small minority.

If the application is uncontested and there is no issue about the cost of it, there will be no need to attend court. The divorce process itself will take a minimum of six months if there are no delays and documents are provided on time.

The aim is to make the process of separation easier with the choice of self-representation which will keep costs limited to payment of the court fee, or to have representation which will cost more. Those costs will depend on the choice of solicitor.

The application does not provide the opportunity to ask for a contribution to some or all of the costs being spent. This does not prohibit that request but it will need to be made in a separate application if there is going to be an argument about payment.

This guide will explain how the online digital divorce process works. The government website has some helpful information entitled 'Get a Divorce' breaking the stages down into seven steps.

## Getting support

Whilst the legal process is now easier, there is a real danger that those applying for a divorce themselves may not be fully aware that ending the marriage alone does not bring to an end the financial claims and ties between them. These remain ongoing despite being divorced. And whilst there are warnings that they also need to sever their finances with the granting of a clean break financial settlement order, there are many who fail to realise the risk they face in the future in not doing so.

The good news is that a financial settlement order can be made by the court, without the need to attend if there is an agreement about what is going to happen with the assets, by lodging some additional paperwork. In many cases there is a divorce and a financial settlement order granted without anyone going to court for them. But dividing assets has important practical and legal consequences and it is important to get the paperwork right in order to give certainty and security going forward.

Because of this, if decisions have to be made about where best to spend money on legal costs, the recommendation would be on any financial settlement order.

A financial clean break is highly recommended as part of any financial settlement order if that can be achieved. It ensures that each person's financial affairs are completely severed from the other in the future and on death. Those future claims are dismissed when there is a request for a clean break. Without a clean break order, your ex-spouse could make a financial claim at any time in the future which can sometimes appear years after separation and divorce.

Deciding to divorce and applying for it via whichever means can be a daunting and overwhelming experience. For many applying themselves, the online option can be more accessible and speedy.

In terms of time-scales the new process will be longer than before. But as before it will involve two orders – a conditional order (which was the previous decree nisi) and a final order (which was the old decree absolute). There is no divorce until the grant of the final order which formally ends the marriage. You remain married until that final order is made which has important legal consequences as you remain next of kin.

Once the application for a divorce is sent to court, becoming divorced will then take a minimum of six months (28 weeks) if there is no delay in the process and there is cooperation. Our law sets out the stages and time-scales involved. There is a waiting period of a minimum 20 weeks between the divorce starting and being able to apply for the conditional order, and then at least a further six weeks between the date of the conditional order and being able to apply for the final order.

Here we break down the steps:

## Getting support

Getting divorced is an emotional process, regardless of the way you go about it. Before considering applying, no end of questions will have gone back and forth in your mind. It can be helpful to talk to someone you trust or to read self-help materials from third parties.

Relate has a range of information you can read during the decision-making phase and as you progress through the process itself. You can both consider speaking to them or any other approved counselling service either separately or together. There is help and support available if needed.

## Check the three conditions for divorce eligibility

These apply for divorces in England and Wales only. They vary for divorces in Scotland and Northern Ireland. If you are seeking to end a civil partnership you must also apply to court to do so. The practical legal process is the same as the application for a divorce.

The conditions are:

- 1) You need to have been married for at least one year
- 2) Your marriage must be legally recognised in UK and,
- 3) It must have irretrievably broken down.

### Agreement in relation to children, finances and your home

Before starting the process it can be helpful to see if you can reach agreement in relation to children and the division of your assets. There is nothing to prevent you talking to each other even though you have decided to separate. You are encouraged to do this if you can.

Try and talk through the practical day to day arrangements for the children - where they will spend their time including days of the week, weekends and holidays as well as financial arrangements for their care.

Children thrive from routine and consistency. Having agreed arrangements can help them to adjust and reinforce stability when facing the split of their family. If you are able to agree and support those arrangements the children will be happier and more secure knowing that the adults in their lives are working together to sort things out. Think about what is in their best interest and happiness. Consider completing a parenting plan which can give you all some structure. This is not legally binding but it is an acknowledgement of your joint agreement.

If you find it difficult to agree, you may need professional support. Communication can become difficult during a separation but mediation can help. The role of a mediator is to provide help and support in continuing to communicate effectively and to find solutions. You can choose a mediator in your area and contact them directly if you think it would be a positive experience for you. Some mediators can involve the children as well.

Applying to the court because of a dispute about the children should be the last resort. It will mean that you will be asking someone else to get involved in your family arrangements and ultimately to make decisions about the future arrangements for the children. However you cannot take this step unless a mediator has been tried and failed, or there are exemptions to it.

In order to go to court you will need to demonstrate that you have attended a meeting with a mediator and they agree that mediation is not appropriate. The mediator will confirm this in a form called a MIAM which needs to be produced to the court with the application. A court form needs to be completed. This is called a Form C100. There are examples of this on the internet. The cost of the application is £232\*. This needs to be paid when the application is sent to court. When going to court, in the majority of instances you will not be entitled to legal aid for legal representation unless you were in an abusive relationship, there is prescribed evidence that a child of the family is at risk or social services are involved because of concerns about the children. You should always explore whether legal aid is available but if not, you can either represent yourself or pay for legal representation.

Dividing your financial assets can often lead to disputes in what may have started as an amicable process. You should always try to agree how to split things such as pensions, investments, property, shares, cars and other assets if you can. There are choices in how to do this. You may be able to do this yourselves or with the help of a mediator. Solicitors can negotiate settlements too.

There are a number of options which will enable you to work together to reach a settlement. If that is possible you are highly advised to get your agreement confirmed in a legally binding financial settlement order. This will provide you with certainty and security for the future.

Many people seek the advice of a divorce solicitor to draw up the terms of an agreed financial settlement as it is important to ensure that what is agreed is fair and proportionate. It is also really important that the paperwork is accurate and correct as once an order is made by a judge it becomes legally binding and you are then simply required to carry out what you have agreed to do.

The positive is that an agreed financial settlement order involves a small court fee of only £53\* and is unlikely to require anyone to go to court. There will also be legal costs if you choose to ask a solicitor to draw up the documents for you.

If you cannot agree how to divide your assets and if mediation was unsuccessful, inappropriate or there is an exemption, an application can be made to the court to sort things out. This will take time due to the work being undertaken and there will be costs if you choose to be legally represented which will include the court fee of £275\*. You will also be asking a judge to decide how your assets should be divided if you remain in dispute during the court process.

Regardless of whether there is an agreed financial settlement order or if you are having to apply to court because of a dispute about the asset division, a court can make orders dealing with properties and what should happen to them, splitting cash and investments, sharing pension funds and determining any financial support and payments needed going forward. Our judges have a wide discretion to make whatever orders they consider to be fair and reasonable based on all the circumstances and a number of important factors.

## Starting the application process online

In order to start this you will need the following pieces of information:

- Full names and addresses
- Any contact telephone numbers
- Email addresses if you prefer communication this way. Your partner can be served papers by email if you have their email address to which only they have access to.
- Original marriage certificate or a certified copy (and a certified translation if it's not in English)
- Proof of any name change if changed since the marriage – e.g. a deed poll or change of name deed.

You will need to pay a fee of £593\* on sending the application to court. You will need a credit or debit card to make the payment if you are wanting to use the online process.

You may be eligible for help if you are on a low income or in receipt of benefits. You may be exempt from paying some or all of the fee but you will need to make an application to determine eligibility by completing a form known as a EX160. You can get this application form online.

You will be taken to a screen to start the creation of a secure login and then directed through the online process step by step.

## After you apply either jointly or separately

Whether you are applying for the divorce on your own or jointly with your partner the application and details you give will be checked and if accurate and correct the court will send out:

- a notice that your application has been issued
- a copy of your application stamped by Her Majesty's Courts and Tribunals Service (HMCTS)
- an 'acknowledge receipt' (joint applications only) and
- a case number.

Joint applicants must complete all the documents together. They jointly apply for each stage in the process. So there needs to be cooperation throughout the case.

Once a joint application has been processed by the court, there is then a minimum waiting period of 20 weeks before a joint application can be made for a conditional order. The court will send out details of the date when this will be made and then send out the conditional order itself once it has been granted. Once the conditional order is granted there is a further minimum waiting period of at least six weeks before there can be the joint application for the final order. The final order will then be sent out by the court once granted.

Given the process takes a minimum of six months it is possible that during that time, joint applicants find themselves in disagreement about the divorce or about other issues such as the children or their assets. This could lead to a partner not wanting to sign paperwork to progress the divorce itself. This does not mean that the divorce cannot happen but action will need to be taken to move things forward without their involvement.

If you are applying as a sole applicant your partner will be sent a copy of the application and information about how to respond to it. You will be told when they have been sent the paperwork. The time-scales for responding will depend on whether they have received the court papers by email or by post. They are given a limited time to do this and the court will advise you of the date by which they should.

They should respond and either agree not to contest the divorce or confirm that they intend to dispute it but they will need to have the ground to do so.

If your partner fails to respond the court will tell you what you need to do next.

### Applying for the conditional order

You will be advised how to apply for a conditional order but you will have to wait for the appropriate date before you can. The court will tell you when this is. You will need to complete an application form known as a D84 and send it to court for processing. If you have applied too early the application will be rejected but it doesn't matter if you waited and applied and made the application more than 20 weeks later. It just won't be processed before the date you have been given by the court.

On receiving the application the court will look at the application for a divorce, your partner's response and what you have said in the form D84. It must be satisfied that you have the ground for a divorce and that the documents are correct and accurate.

If this is the case, you will receive a notice confirming that you are entitled to a divorce and confirming the date when the conditional order will be made. There is unlikely to be any need for you to attend court on this date.

You will then be sent the conditional order once it is granted together with information about the next step.

Once the conditional order is granted you can ask the court to make a financial settlement order because on or after this date the court has power to grant one. There is no power to grant an order before the date of the conditional order.

### Applying for the final order

You will be advised how to do this but you will need to wait at least six weeks from the date of the conditional order before being able to apply. The application is made on a form called a D36 If you apply too early it will just be rejected.

You are not divorced until the final order is made. Only on that date does your marriage formally come to an end.

The court will send you the final order. This is an important legal document which you will need to keep safe. You may need to produce it from time to time as evidence of your divorce. If you lose or misplace it you will be able to get a further copy from the court by paying a fee and giving the divorce case number.

Just because you are divorced does not bring to an end the financial claims that you have against each other as a formally married couple. These remain ongoing and could be brought at a later date. You would be recommended to deal with your assets and achieve a settlement so that you have a divorce along with certainty about the assets. Any delay in dividing them could prejudice the outcome as valuations can fluctuate and personal circumstances can change.

Remarriage can prevent financial claims being made if the original application for a divorce did not specify a wish to seek a financial settlement or you received the application for divorce from your partner and didn't make a financial claim yourself. You must take legal advice before remarriage if there is no financial settlement order in place.

\*All prices correct as of June 2022