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**DIVORCE**

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There is only one ground for divorce in English Law and that is that the marriage has **irretrievably broken down**. The person who starts the divorce proceedings is known as 'the petitioner' and their spouse is called 'the respondent'.

The Petitioner must prove that the marriage has irretrievably broken down using one of the following five facts:

- (a) The respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
- (b) The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- (c) The respondent has deserted the petitioner for a continuous period of at least two years immediately before the start of the divorce.
- (d) You have lived apart for a continuous period of at least two years immediately before the start of the divorce and the respondent consents to a decree being granted.
- (e) You have lived apart for a continuous period of at least five years immediately before the start of the divorce.

Most divorces are based on facts (a) 'adultery' or (b) 'behaviour'. 'Adultery' is an act of sexual intercourse with a person of the opposite sex. To be able to rely on this in the divorce the adultery must have happened in the six months before separation or at any time after separation. There is no need to name the person with whom the adultery took place or indeed to involve them in the court proceedings. Indeed we would advise against including them in the proceedings.

The test for 'behaviour' is subjective and it does not need to consist of extensive violence, drug or alcohol addiction or other extreme behaviour. A combination of less obvious behaviour can be sufficient. Often issues like working too much (or not working enough), showing too much (or too little) affection, combined with a number of other similar factors are used. In the end it is about how the petitioner feels about the Respondent's behaviour.

### **Regularising your separation**

If you would prefer to regularise your separation without actually divorcing there are two options available:

1. judicial separation;
2. separation agreement.

#### *Judicial separation*

This involves a court procedure which is virtually identical to that which applies to a divorce. The essential difference is that the court pronounces a decree of judicial separation rather than a divorce and therefore you and your spouse would remain married. The main reason people choose judicial separation over divorce is for religious reasons or if valuable pension benefits are lost on divorce. However, since the court can now share pensions, this is no longer so important. In practice, judicial separation is very rare.

### *Separation agreement*

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving the court at all. The way this can be achieved is for them to sign a written document which incorporates the agreement they have reached. Commonly, such agreements deal with confirmation that the parties to the marriage are to live apart and the manner in which any maintenance and property issues are to be dealt with. Whilst there are no restrictions on what can or cannot be included in such an agreement, it is important to bear in mind that if either person makes a subsequent financial application to the court, the court is not bound by the financial arrangements in the separation agreement.

### **The 'Timetable' for Divorce**

The main question asked is 'how long will it take?' This of course varies from case to case and depends on a number of factors. The following is a timetable of the procedure from petition (application for a divorce) to Decree Absolute (the 'divorce').

1. The petitioner issues the petition at Court and the Court sends a copy to the Respondent
2. The Respondent completes an *acknowledgement of service* and returns it to the Court.

*Assuming the respondent does not defend the divorce...*

3. The Petitioner completes an *affidavit supporting the petition*.  
(in other words the information in the petition is at this time confirmed on oath by the petitioner to be true and prevents a hearing at court)
4. The District Judge considers the petitioners case and decides if the case is proved. If it is a date for decree nisi is set.
5. Decree nisi is pronounced

6 weeks must now elapse before

6. Petitioner can now apply for the decree nisi to be made absolute bringing the marriage to an end.

If the petitioner does not apply for decree absolute at the earliest opportunity, it is possible for the respondent to do it after 3 months *and* 6 weeks from the date of decree nisi.

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