

A GUIDE TO DIVORCE

Coming to the decision that your marriage is at an end can be very difficult. If you are not sure whether your marriage is at an end, there are relationship counselling services which may be useful in helping you to clarify how you feel and support you through your separation. You can attend counselling with or without your husband.

If you have decided that your marriage has ended, this information sheet sets out the law and procedure if you wish to divorce. There may be other issues that need to be resolved such as child contact or financial matters. Information about these can be found on our other information sheets.

The logo for Rights to Women, featuring a stylized female symbol (a circle with a vertical line and a horizontal line) in the center. The words "RIGHTS" and "WOMEN" are written in a bold, sans-serif font on either side of the symbol. The logo is set against a white background with a thin black border.

RIGHTS  WOMEN

The law

In order to apply for a divorce **you must be legally married**. Some foreign or religious marriage ceremonies are not recognised by the law here. If you are unsure whether or not you are legally married please seek legal advice.

You cannot apply for a divorce until you have been married for one year.

There is only one “ground” or reason for divorce – that your marriage has **irretrievably broken down**.

To satisfy the court that your marriage has irretrievably broken down, you will have to set out details of one of the following **five “facts”** in your divorce petition:

- **Your husband has committed adultery with another woman or women and you find it intolerable to live with him**

It is sensible to ensure that your husband will admit that he has committed

adultery. If he does not, you will have to provide the court with evidence that he has had sexual intercourse with another woman and this can be very difficult.

Think carefully before deciding to name the other woman in your divorce petition. If you do you will have to serve the papers on her as well as your husband and this may cause further expense and delay if she does not co-operate.

If you continue to live with your husband for 6 months after you find out about his adultery, then you will not be able to apply for a divorce based on that incident of adultery.

- **Your husband has behaved in such a way that you cannot reasonably be expected to live with him**

Unreasonable behaviour can include a wide variety of behaviour from serious incidents of domestic violence to refusing to help with household chores.

Generally you will need to set out details of 4 or 5 incidents or examples of your husband's behaviour.

If you continue to live with your husband as a couple for 6 months after the last incident of his unreasonable behaviour, you may not be able to satisfy the court that you cannot reasonably be expected to live with him.

- **Your husband has deserted you for at least two years before you apply for your divorce**

It is difficult to prove your husband has deserted you unless he left you, you do not know why and you do not know where he is.

- **You and your husband have been separated for a continuous period of two years and both of you agree to the divorce**

To prove this you do not necessarily have to have lived in separate homes but you do have to have lived separate lives e.g. eating and doing chores separately.

- **You and your husband have been separated for a continuous period of five years**

Your husband can oppose the divorce if he can argue that ending a marriage would result in grave financial or other hardship to him and it would be wrong in all the circumstances to end the marriage.

The procedure

First you must complete a **divorce petition**, which is a legal document containing details of your marriage and the reasons for its breakdown. You can get "Notes for Guidance" and helpful leaflets from the Court Service to help you fill in your petition.

If you have children you will also need to fill in a **Statement of Arrangements for the Children (SAFC)** form setting out details of your children, who they live with and where they go to school etc. Please note that the court will not make any orders in relation to the children in your divorce proceedings. If there are issues that need to be resolved, such as child contact, you will need to make a separate application to the court.

You can complete these documents yourself. They are available from your local County Court. If you need help filling in the forms you can see a solicitor or telephone our legal advice line.

To start your divorce you must "**issue**" it by taking or sending your petition and SAFC, if appropriate, to the court together with an original or certified copy of your **marriage certificate** to accompany the other documents. If you cannot find your marriage certificate, you can apply for a copy from the Registry Office in the district where you were married or from the General Register Office. If your marriage certificate is in another language you will need a translated copy certified by a notary public. There is a fee of £300 for issuing your divorce.

If you apply for the divorce you are the "**Petitioner**" and your husband will be the "**Respondent**".

The divorce papers will be sent to your husband. This is called "**service**".

The court must be satisfied that your husband has received the divorce papers and will be asked by the court to sign and return an **Acknowledgement of Service** form. This gives him an opportunity to say whether he agrees with the contents of the divorce papers and whether he wishes to defend the divorce or contest the arrangements proposed for the children.

Defended divorces are rare and expensive. If your husband wishes to defend the divorce a court hearing will be listed and you should seek legal advice.

If your husband returns his Acknowledgement of Service form and is not defending the divorce the court will then ask you to confirm the details set out in your divorce petition are true. You do this by filling in and swearing an “**affidavit**” in front of another solicitor and signing an **Application for Directions for Trial**.

The Judge will then consider whether you are entitled to a divorce. You do not have to attend court for a hearing. The Judge simply looks at the paperwork.

If the Judge is satisfied you are entitled to a divorce, then the court will send you a **Certificate of Entitlement to Decree Nisi**. This will give a date and time at which your **Decree Nisi** will be pronounced at court. Decree Nisi does not end the marriage. It means the grounds for divorce have been proved. Again you do not have to attend court for this hearing although you can if you want to.

Six weeks and one day from the date of your Decree Nisi, you can apply for your **Decree Absolute**. You will need to fill in and sign an **Application for Decree Nisi to be made Absolute** and pay a £40 fee. If you do not apply for Decree Absolute for three months after you got your Decree Nisi your husband can apply for it.

It is only when Decree Absolute has been granted that your marriage is formally ended and you and your husband are free to marry again if you wish.

How long will it take?

Even the most straightforward divorce takes between 4 and 6 months. If there are

difficulties serving your husband with the divorce papers or if your husband contests the divorce it could take longer than this.

How much will it cost?

If you are applying for your divorce without the help of a solicitor the court fees for an undefended divorce are currently £340 in total. If you are on a low income the court may be able to waive the fee if you complete a Fees Exemption form. Court fees do increase from time to time and you should check with your local County Court or the Court Service for the up to date fees.

If you instruct a solicitor to help, you may be eligible for free legal advice under the **Legal Help Scheme** (sometimes called “legal aid”). Please note that Legal Help is not generally available for representation at a defended divorce hearing.

If you are not eligible for Legal Help the cost of instructing a solicitor will depend on your individual solicitor’s charges. You should ask for an estimate at the beginning of your case. The court may order that the Respondent should pay all or some of your costs or you might be able to agree to share the costs between you.

Other issues

Getting your Decree Absolute only brings your marriage to an end. If you cannot agree on money and property or on arrangements for the children, then please see our other information sheets or seek legal advice.

The law relating to divorce can be complex. We have provided only a very basic overview of the law. We would strongly advise any woman involved in these situations to seek legal advice from our advice line, a solicitor or the organisations listed below.

For free legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence, lesbian parenting or employment call the Rights of Women Advice Line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone).

Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm

Friday 12 noon – 2pm

Other useful telephone numbers

Community Legal Service (for finding a family solicitor)	0845 345 4345	www.clsdirect.org.uk
Court Service	020 7189 2000	www.courtservice.gov.uk
General Register Office	0845 603 7788	www.statistics.gov.uk
National Domestic Violence Helpline	0808 2000247	www.womensaid.org.uk
Relate	01788 573241	www.relate.org.uk
Resolution (for finding a family solicitor)	08457 585671	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575/6

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R



Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general advice only.