

GUIDE TO DIVORCE PROCEDURE

This document explains briefly what the normal procedure is in respect of a divorce where your partner in marriage does not seek to defend the case. It does not mean that your case will necessarily run precisely as shown below but is merely to assist you as to the procedure generally.

1. How are the proceedings started?

Procedure is commenced with a document called a 'Petition', which we will prepare. In it you ask the Court for a divorce and also notify the Court of the likelihood of claims to the Court as part of the proceedings in respect of costs, money matters and possibly children. In addition we need your marriage certificate, or alternatively a certified copy that you can obtain from the local Registrar of Marriages at your place of marriage. You sign the Petition if you have the benefit of Legal Help and Help at Court. If you are outside the scope of such Advice and Assistance we will sign the Petition ourselves and we will be asking you for the Petition fee currently in the sum of £300.00 and we will require this sum to be paid on account so that we can send that with your Petition to the Court.

2. Other documents filed

If there are relevant children i.e. under sixteen, or over sixteen but under eighteen and they are at school or college, or are training for a trade, profession or vocation, who live with you and your partner, then a form called the 'Statement of Arrangements' will also need to be prepared. We may send this to you to complete or alternatively complete it when you see us. That has to be signed by you and deals with the current arrangements of the children, to include where each lives, which school each attends and whether your partner sees that child, and also deals with maintenance.

3. Who issues the Petition?

We will send the Petition together with supporting documents to the Court and the Court will notify us of the date that the Petition was issued and the date upon which a copy of the Petition and Statement of Arrangements (if appropriate) are posted to your partner.

4. What does your partner have to do?

Your partner will have been sent with the Petition papers a form known as the 'Acknowledgement of Service' that your partner has to complete and return to the Court within fourteen days of the date that the Court posted the Petition documents. In practice we normally allow a little longer period, say twenty-eight days.

5. What happens if your partner does not send the Acknowledgement of Service back to the Court?

If your partner does not send it back then there are differing procedures dependent upon whether you have Legal Help, or a privately paying client. If you have Legal Help then a form called 'Request for Bailiff Service' will be sent to you for you to sign and that should be returned to us with a photograph of your partner. That will then be sent to the Court and the Bailiffs will be asked to personally serve your partner. If you do not have the benefit of Advice & Assistance then we have to instruct an enquiry agent to personally serve the papers on your partner. There will be a fee for this that we will require before service on an estimated basis. Dependent upon the amount of work involved this could cost up to £150.00.

6. Asking for a Hearing

When we receive either the Acknowledgement of Service or there is evidence of the service of the Petition, either by Bailiff or by an enquiry agent, the next step is to prepare a sworn document called an 'Affidavit' to confirm the truthfulness of your Petition. We will go through this document with you and thereafter arrange for you to swear it before an "independent solicitor" (a solicitor not from this firm or that firm acting for your partner). We then send the sworn document, together with a Request for Directions, to Court and the District Judge at the Court considers your case.

7. The Hearing

Assuming that the District Judge is satisfied with the documentation, he will give what is termed 'directions' which means that he will set aside a certain date when the hearing of the divorce will take place and will also indicate whether he is content with the current arrangements for any child of the family. We then receive from the Court the details of the Hearing and notification as to whether he is satisfied with the children. At that stage, we will write to you to tell

you when the Hearing is. However, it is unusual for you to have to go to Court for the divorce but sometimes there is a need if the District Judge wishes to have further information about the children or there is a dispute as to whether your partner should pay your costs. We will deal with costs below.

8. The Decree Nisi

When the District Judge grants you a Decree Nisi, which is the result of the above Hearing, the Decree Nisi is sent to us, and we will then send you a copy of it. You are still, however, married to your partner at this stage. If it is a divorce that you are seeking i.e. that you wish to dissolve the marriage, there is one further step to be taken, i.e. Decree Absolute.

Decree Absolute

In divorce proceedings the Court will issue, when asked, but not earlier than six weeks and one day from the Decree Nisi, a document which formally dissolves the marriage, known as the 'Decree Absolute'. You do not have to apply for the Decree Absolute unless you are sure that you wish to dissolve the marriage. We will need to know from you whether we are to apply for the Decree Absolute. We will not send this document to Court unless you inform us that we are to do so. It is sometimes in the interest of someone seeking a divorce that the request for a Decree Absolute is not sent in because it may affect pension rights in your partner's pension. If you are uncertain whether you wish to send in the Decree Absolute application do speak to the solicitor who is dealing with your case.

If you have the benefit of Legal Help then you must sign the application for the Decree Absolute. You should accordingly contact the solicitor dealing with your case and arrange to either come into the office to sign the application form, or alternatively, for us to send it to you. Please note your returning it to us signed, will be deemed to be your instructions that you do wish the Decree Absolute to be granted unless the contrary is clearly stated.

If you do not have the benefit of Legal Help but are instead a private paying client then we will sign the application for the Decree Absolute to be issued on your behalf. However, we will not submit it to the Court unless you have specifically instructed us to do so. A fee is payable to the Court for the Decree Absolute to be issued, which is currently in the sum of £40.00 and we will require this sum to be paid to us on account. Payment of the fee to us in this way will be deemed to be your instructions that you wish us to apply for the Decree Absolute unless the contrary is clearly stated.

Once the Court has issued the Decree Absolute, the marriage is formally at an end. You should always keep the Decree Absolute in a safe place, because should you ever wish to remarry you will have to produce this document to the Registrar of Marriages. There is also a note on the Decree Absolute which you should carefully read as a Decree Absolute affects your rights under any Will by your partner naming you and also affects your own Will, if you have already made one, of any bequest to your partner. You are then, once the Decree Absolute is granted, no longer married to your partner and hence are no longer her husband/his wife.

9. Costs

In the majority of cases where you have the benefit of Legal Help, costs are generally not sought because the State is paying for your divorce. You should, however, be warned that if subsequently the Court deals with money matters and the Legal Services Commission's Statutory Charge applies, the divorce costs are added to the amount of the legal fees which the Legal Services Commission will seek to recoup from you – this will be further explained to you should CLS Funding be sought for money matters.

If you are a private funded client, subject to instructions from you, you can apply for costs against your partner. However, even if an Order for costs were made against your partner, we will still require payment by yourself of our total bill for all work incurred whilst acting on your behalf. It will then be for you to obtain reimbursement from your partner. Do discuss this fully with your solicitor.

10. Can I stop the Proceedings if there is a hope that reconciliation might take place?

The view that any adviser has in relation to marriage, is that it is always better if there can be reconciliation rather than proceedings carrying on. The Court have exactly the same attitude and hence you can always stop the proceedings at any time. Never be embarrassed to do so if you think there is a chance of you and your partner getting back together again. In divorce cases you can only stop the divorce up to, but not after, the Decree Absolute is granted. Once the Decree Absolute is granted then your marriage no longer exists.

11. How long does it all take?

You can never be certain how long the procedure will take as a certain degree of co-operation is hoped for from your partner but if there is no co-operation then it takes a lot longer. From start to finish normally think in terms of four to six months, in some cases it may be quicker, in other cases far longer.

GENERAL

We trust these notes of guidance as to what will happen are of assistance to you. They are very general indeed but may help in covering general queries that you may have as to the procedure.

However, if you have any queries do not hesitate to raise them with your solicitor.

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