

GUIDE TO DIVORCE AND SEPARATION

A. DIVORCE:

There is only one ground for divorce and that is that the marriage has broken down irretrievably. The person who starts the divorce proceedings is known as "the petitioner" and his/her spouse is called "the respondent".

To satisfy the court that there has been an "irretrievable breakdown" the petitioner must prove one of the following five facts:

(a) That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.

(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

(c) That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately before the start of the divorce.

(d) That the parties to the marriage 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) That the parties to the marriage have lived apart for a continuous period of at least five years immediately before the start of the divorce.

Facts (a) i.e. "adultery", and fact (b) i.e. "unreasonable behaviour", are the two facts which are most often relied upon by divorcing couples since they do not involve any lengthy period of living apart.

"Adultery" is an act of sexual intercourse with a person of the opposite sex. For an act of adultery to be relied upon you must not have lived together or a period or periods totalling six months after such adultery. It is no longer necessary to name

the person with whom the adultery took place or indeed to involve such person in the Court proceedings.

“Unreasonable behaviour” is where the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with him/her. The test is subjective and the Court will consider what is unreasonable to the Petitioner. For behaviour to be “unreasonable” in this context it need not consist of extensive violence, drug or alcohol addiction or other extreme behaviour. A combination of less obviously unreasonable behaviour can and is often sufficient.

A number of Solicitors within Poole Alcock. are members of Resolution {Formerly the Solicitors Family Law Association}, which advocates a fair and conciliatory approach to resolving family disputes so as to avoid unnecessary acrimony wherever possible. If you require further details of this Scheme or its members, please do not hesitate to ask.

B. REGULARISING SEPARATION:

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

1. You live separate and apart without agreeing anything regarding finances of other matters.
2. You live separate and apart and matters of finance are agreed in writing between Solicitors.
3. Separation Agreement i.e. as 2 above, but in addition there is a formal separation agreement further details of which are given below.
4. Judicial Separation. You obtain an application to the Court a Decree of Judicial Separation, further details of which follow.

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.

Separation Agreement:

Many couples prefer to reach an agreement about financial matters arising out of their separation without involving any Court procedures at all. The way this can be achieved is for them to sign a written legal document that 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 maintenance and/or property 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 should either person make a subsequent financial application to the Court, the Court is not bound by financial arrangements contained in the Separation Agreement, but will certainly take them into account.

We hope this outline is helpful to you, but should you require any further information please contact any of our family law specialists who will be pleased to help you.