



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

If you are married and the marriage is in difficulties, you may wish to consider whether you want to begin Court proceedings.

If you are still unsure about the future of your marriage, you should think about attending counselling with your spouse. We can provide you with details of counselling services if you think this may help. Please ask for more details.

### **Will I be able to divorce my spouse?**

You cannot get divorced unless you have been married for at least one year. We will advise you about other requirements as appropriate. The only ground for a divorce is irretrievable breakdown of the marriage. This must be demonstrated to the Court within your Petition in one of five ways as follows:

#### **Your spouse has behaved unreasonably**

You will need to give details of the unreasonable behaviour. We will advise you as to whether the Court is likely to consider that the behaviour is sufficient to justify a divorce.

#### **Your spouse has committed adultery, and you can no longer live with them**

Your spouse will have to admit the adultery within the divorce proceedings or you will need to be able to prove that the adultery has taken place. You do not have to name the other party and indeed it is not usually considered desirable that you do not as this can antagonise the situation, increase costs and the complexity in the divorce proceedings.

If you have lived as man and wife with your spouse for a period of six months or more since you discovered the adultery, you will no longer be able to rely on this as a reason for the divorce. You must also find it intolerable to live with your spouse.

#### **You have lived separately from your spouse for a period of at least two years and they will consent to the divorce**

If you have resumed co-habitation since the separation began, this may affect your ability to rely on this as the reason for the divorce. It is possible for you to live separately in the same house, however, the Court will examine your living arrangements. You will be expected to make separate arrangements for all household tasks, meals and so on. Your



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

finances should also be separate. We can advise you as to whether your circumstances may be considered to be a separation.

### **Your spouse has deserted you for at least two years**

This fact is rarely relied on. "Desertion" means that you did not want your spouse to go. If your spouse has tried to resume your relationship and you have refused, then you will not be able to rely upon desertion. The law regarding desertion is very detailed. Where appropriate we shall give further advice.

### **You have lived separately from your spouse for at least five years**

This will not require your spouse's consent. It is unlikely that your spouse will be able to oppose this type of divorce however, if necessary we will discuss this further with you if these proceedings are relevant.

### **What if I have not been married for a year, or I have objections to divorce?**

You do not have to take any proceedings at all, even if you have separated. You should bear in mind however, that your spouse may have grounds to commence proceedings. You may wish to consider Judicial Separation proceedings if you have not been married long enough for there to be a divorce, or you do not consider the marriage to have irretrievably broken down, or you have religious objections to divorce. Judicial Separation proceedings are similar to divorce proceedings, but your marriage will remain intact.

### **What is the point of issuing Judicial Separation proceedings?**

Even though they do not affect the validity of your marriage, Judicial Separation proceedings can still be useful. They will underline that there are problems with your marriage, and once a decree of Judicial Separation is granted, you will be able to live "free from each other's marital control". The proceedings will also allow the Court to make determination of financial matters for you if necessary, which would not be possible without some proceedings. It is important to note however, that there are differences in the Orders that a Court may make in relation to pensions.

We will provide you with further information about financial matters if this is relevant.



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

### **What happens next?**

In order to begin proceedings, we will need you to provide your original marriage certificate, or a certified copy of it. If you are not able to find this, we can obtain a copy from the Register Office, or church where you were married (you may have to pay a small fee for this).

We will draft the petition with you, and if there are any minor children of the family, then we will also complete a document called the Statement of Arrangements for Children. This will inform the Court about the children - where they live, their education, health and arrangements for Contact and maintenance.

If you want to, then there is no reason why you should not show these documents to your spouse before the proceedings are commenced. It may make matters easier, and reduce the chances of your spouse objecting to the proceedings once they have begun. In some cases it may not be possible, or appropriate.

The documentation will be sent to the Court together with the Court fee. If you are on a low income, or a receiving Legal Help then you can apply to have this fee reduced, or to be made exempt from it altogether. The Court should post documentation to your spouse within 10 to 14 days. They will let us know when they have done this. Your spouse will receive a copy of the petition and any Statement of Arrangements for Children, together with a form called the Acknowledgement of Service. This form will allow your spouse to indicate their intentions in respect of the divorce, and raise any objections they may have.

If you are divorcing your spouse for something which is their fault (e.g. behaviour or adultery rather than separation) then you are entitled to ask the Court to order them to repay your legal costs. You are not obliged to ask for this, and you can withdraw the application at a later stage if it causes difficulties.

### **What happens if my spouse does not respond?**

If your spouse does not return the Acknowledgement of Service within 14 days (allowing for postage) then you should consider whether the papers should be personally served upon them. This can be done using the Court bailiff or a process server. It may become necessary to apply to the Court for an order that service be effected by some other method (substituted service), or; that service be deemed. We will give you further details if this becomes necessary.



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

Once it can be established that your spouse has received the papers, unless your divorce is based upon two years' separation where your spouse's consent is necessary, you will be able to proceed with your divorce even if they still do not respond.

You will need to swear an affidavit indicating that you still want the divorce to continue, and that the details in the petition and any Statement of Arrangements for Children are true and correct.

If there are any basic amendments, such as change of address, or withdrawal of your claim for costs, then these can be made at this stage. If there have been considerable changes in your circumstances since you issued the proceedings (for example, if you have had a reconciliation with your spouse) then this may affect your ability to continue with the proceedings. We will give you further advice about this if necessary.

This affidavit is then submitted to the Court together with your application for the matter to be listed for Decree Nisi (known as directions for trial).

The Court will check the papers, and will decide whether you are entitled to a divorce. Further information may be sought by the judge. If everything is in order then they will give a date for pronouncement of Decree Nisi.

The Court must always consider the welfare of any minor children of the family, and if it appears from the appears that there are any concerns, then the Court may not allow the divorce to proceed until the concerns have been addressed.

### **What is Decree Nisi?**

The Decree Nisi is a procedural stage in the divorce. It does not end the marriage. There will be a date fixed, although in most cases, neither party needs to attend Court. If your spouse has disputed that they should pay your costs, then they will have an opportunity to be heard about this at the Decree Nisi hearing. You should still not need to attend, although it may be wise for us to write to the Court explaining why you feel that your spouse should pay the costs.

Once Decree Nisi has been pronounced the Court will have the power to decide any disputes about financial matters. The Court will also be able to formally approve any agreement which has been reached regarding the finances.



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

### **How do I finalise the divorce?**

You will be entitled to apply for the final decree, Decree Absolute, six weeks and one day after the Decree Nisi. You will need to complete a form to do this. Again, there is a fee payable, but you may be exempt from this if you are in receipt of Legal Help, or you can apply to have it reduced if you are on a low income.

In some circumstances we may advise you not to apply for your Decree Absolute straight away. This will generally be if you could suffer some financial loss as a result - e.g. if your spouse has a pension with a widow(er)'s benefit that would not be paid to an ex-spouse, or if no final agreement has been reached in respect of financial matters

If you do not apply for the Decree Absolute, your spouse will be able to do this three months after the date when you could have first applied. There will need to be a Court hearing for this happen, and if there is a reason why you have not applied yourself, the Court will decide whether it is appropriate for there to be Decree Absolute.

### **What does the Decree Absolute mean?**

This is your final decree of divorce. The marriage will be dissolved and you will be free to re-marry. You should keep the original document in a safe place as you may be required to produce it in the future.

The proceedings can be stopped at any time up until the Decree Absolute. The proceedings would remain, dormant on the Court file, unless you take action to remove them. We can advise you about this, if, for example, you reconcile with your spouse.

If you have made a will which contains reference to your former spouse, then the Decree Absolute will invalidate those references. You should consider making a fresh will, and this applies even if you had not made one previously. If you have minor children, then you would be able to appoint testamentary guardians in your will, to care for the children in the event of your death. Please ask for more information if you have any queries.

### **How long does it all take?**

So far we have assumed that the proceedings are not defended. If there are no complications such as lack of co-operation by your spouse, or difficulties with finances or children, then the divorce will take approximately six months from start to finish. This is also dependent on the Court dealing with matters quickly, and unfortunately, there are often delays whilst waiting for the Court to process matters.



## **Information Sheet – Divorce/Judicial Separation (Petitioner)**

### **What if the proceedings are defended?**

It is rare for divorce proceedings to be contested. If your spouse indicates in their Acknowledgement of Service that they intend to defend the proceedings, then they will be required to file an Answer to your petition, within 28 days of receiving the papers.

In the majority of cases, even if this happens, an agreement may be negotiated with your spouse or their solicitors, to allow the divorce to proceed. This may involve, for example, the amendment of some of the allegations in your petition.

If your spouse continues to dispute your allegations, and indicates that they do not agree that the marriage has irretrievably broken down, then there will need to be a hearing from the Court to hear evidence from both parties. The Court will decide, on a balance of probabilities, whose evidence they prefer, and whether you are entitled to a divorce. Please bear in mind that this would be a very unusual occurrence.

### **CONTACT:**

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.