

Divorce - Client Guide

This document provides general guidance regarding divorce procedure. Your family lawyer will be able to provide specific advice based on your circumstances.

How do I apply for a divorce?

To apply for a divorce, you must have been married for at least a year. It doesn't matter where in the world you were married, but you can only apply for a divorce in England and Wales if either you or your spouse meet certain residence conditions or are domiciled here. You should speak to your family lawyer about this if you are in any doubt.

The divorce process is generally administrative. This means that usually neither of you will need to see a judge to get a divorce as it is almost always agreed by a judge on the paperwork.

If you and your spouse are not in agreement regarding arrangements for children and finances these will be dealt with separately (but at the same time) from the divorce process.

No fault divorce

The No Fault divorce system came into place on the 6th April 2022 following the Divorce, Dissolution and Separation Act 2020 (DDSA 2020). The Act has been described as a landmark reform for divorce law as it aims to make divorce an easier process for all parties and less acrimonious by relying on what is commonly known as 'no fault divorce.' This new legislation, for the first time, completely removes the need to assign blame when commencing divorce proceedings. The objective is to reduce the unnecessary distress and acrimony caused by the allegations of adultery and behaviour that featured in the majority of divorces in England and Wales before this new law.

Starting divorce proceedings - Joint/ Sole Application issued by the Court

Under the new law, anyone applying for a divorce will be able to apply jointly or individually. The document that starts the divorce is called an application. You will need to have your original Marriage Certificate and there is a court fee payable of £593 to start the process.

One or both parties must produce a statement that the marriage has irretrievably broken down.

Sole Application

To start the divorce proceedings as a sole Applicant, the applicant must submit an application to the court. The person applying is known as the Applicant and their spouse will be known as the 'respondent.'

Joint Application

To start the divorce proceedings as joint applicants, both parties will apply for their divorce together and arrange for the application to be submitted to the court. Both parties will be equally

responsible for the application. The parties will be known as applicant 1 and applicant 2. There will be no respondent in this instance. For applicants who have started a joint application but find themselves in a situation where the other party is not taking the necessary action to progress the application, it is possible to change the application from joint to sole. This can only happen at conditional order or final order stage (see below).

Service

The general rule is that the Court will send the application to the respondent, this being the simpler and cost-effective way, but the applicant can also request to serve the application directly. The application will not require service upon the applicants in a joint application.

Conditional Order

After 20 weeks of the application being made, the applicant or joint applicants must confirm that they wish to proceed with the divorce and then the Court can make a Conditional Order.

Final Order

6 weeks and one day after the grant of the Conditional Order, the applicant, solely or jointly, can apply for the final order, which formally ends the marriage. Not everyone should apply for the Final Order as soon as it is available, and you should make sure you have discussed whether you should do so with your family lawyer. It may not be sensible to apply immediately if, for example, financial arrangements are not yet settled. You should discuss your specific circumstances with your family lawyer as in some cases the Final Order will prevent certain types of financial claims being made.

Implications in relation to your Will

It's important to note that divorce may mean that certain provisions in your Will do not work as you might have intended them to. You will need to make a new Will quickly after decree absolute (or in contemplation of divorce) to ensure your wishes are carried out in the event of your death.

Children and finances

For the purposes of any financial or child arrangements that need to be made, it doesn't matter in most cases who starts the divorce proceedings and why. You can ask the court to make orders about money and about children if necessary, during (or after) the divorce, but these legal processes are completely separate from the divorce itself. This guide only deals with the divorce procedure; see our guides to arrangements for children and financial arrangements for more information on these areas. You should note however that if you are considering getting remarried you should speak to your family lawyer before doing so as that may affect your ability to make an application for financial provision.

How long will my divorce take?

Your family lawyer will be able to advise you how long your divorce is likely to take. This can vary depending on the current timescales for the court dealing with your divorce, and whether each step in the divorce is taken promptly and financial arrangements do not hold things up.

