

10 need to know facts about divorce

1. You cannot petition for divorce until you have been married for over a year

Anyone who has been married for over a year, provided one or other of the couple is either domiciled here or has been resident in England or Wales during the whole of the preceding year can petition for divorce here. It does not matter where you were married. It is important to note that the country where divorce proceedings are first issued will usually seize jurisdiction for the proceedings.

2. The only ground for a divorce is that the marriage has irretrievably broken down

This ground must be supported by one of five facts within a divorce petition. A divorce will only be granted if one of the 5 facts are established:

- a) Adultery - your spouse has committed adultery and you find it intolerable to continue living together. It is not necessary to provide proof that adultery has taken place, provided that the Respondent will admit to it.
- b) Unreasonable Behaviour - your spouse/partner has behaved in such a way that it would be unreasonable to expect you to continue living together.
- c) Desertion - your spouse/partner has deserted you for a continuous period of 2 years or more.
- d) 2 years' separation with consent - you and your spouse/partner have been living separately for 2 years or more since the date on which you concluded that the marriage was over and your spouse agrees to the divorce.
- e) 5 years' separation - you and your spouse/partner have been living separately for 5 years or more, whether or not your spouse consents to the divorce.

3. There is no such thing as a "quickie divorce"

A straightforward uncontested divorce usually takes between 4 – 6 months and much depends on the speed of the administration of the Court. There is a set timetable and procedure to follow which can be summarised as follows:

- a) Petition is sent to the Court. The person who starts the divorce is referred to as the "Petitioner".
- b) Within 2-3 weeks the Court issues the petition and sends a copy to the other party, known as the "Respondent" together with an Acknowledgement of Service.
- c) The Respondent has 8 days to return the Acknowledgement of Service to the Court. If the Respondent intends to defend the petition, they must then file a defence (called an "Answer"). The petition then becomes defended and the procedure outlined here does not apply.
- d) If the Respondent does not cooperate in returning the Acknowledgement of Service, proof that the Respondent has received the petition will have to be obtained before the Petitioner can take the next step. This may involve arranging for someone to deliver the petition to the Respondent personally or, exceptionally, obtaining a Court Order that proof does not need to be given that the Respondent has received the petition.
- e) Within a few days of receiving the acknowledgement of service from the Respondent the Court sends a copy to the Petitioner's solicitor. In most cases, the Petitioner will rely on this in a statement in support of their Application for Decree Nisi, the first decree of divorce.
- f) If the Respondent is not defending the petition, the Petitioner can apply for the Decree Nisi to be pronounced. The Petitioner's solicitor prepares the Statement in Support of the petition for the Petitioner to sign confirming that the contents of the petition are true. The signed statement is sent to the Court with the request for a date for the first decree of divorce ("Decree Nisi") to be pronounced.

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- g) On receipt by the Court of the application for Decree Nisi, a District Judge looks through the papers and will normally give a certificate for the Decree Nisi to be pronounced.
- h) The Decree Nisi is then “pronounced” and a document confirming this is sent to both parties or their solicitors. At this stage, if an application has been made for the Respondent to pay the Petitioner’s divorce costs, you may also receive an order about the payment of those costs. It is only on pronouncement of Decree Nisi that the Court can make a final order in any financial proceedings.
- i) 6 weeks and 1 day after the date of the Decree Nisi the Petitioner may apply for the final decree (“Decree Absolute”). Decree Absolute is the final decree of divorce which brings the marriage to an end. A final financial Order made by the Court is not capable of enforcement until Decree Absolute has been granted.

4. A Court fee is payable to issue divorce proceedings

This is currently £550, which includes the cost of applying for Decree Absolute.

5. You need your original marriage certificate to issue a divorce petition

The original marriage certificate is sent to the Court with the petition. The certificate is not sent back to you; it is retained by the Court.

6. Contested petitions are to be avoided if at all possible

Contested Petitions occur when a spouse does not accept the contents of the divorce petition and seeks to defend it. They are very costly as the procedure is archaic, time consuming, and generally unnecessary. They are also held in public. It is often sensible to try to obtain your spouse’s consent to the petition and try to reach agreement over its contents. If your spouse accepts that the petition should be based on unreasonable behaviour, only a brief outline of the particular behaviour may need to be given. Listing only some of your complaints in fairly neutral language is generally sufficient and may cause less upset.

7. The petition is not concerned about arrangements for the children

The Court does not seek any information about arrangements for the children, other than their age and sex, which is set out in the divorce petition itself. The English Courts operate a ‘No Order Principle’ in respect of children matters, under which the Court will only make an order for a child in relation to residence and/or contact if there is a genuine dispute between the parties that can’t be resolved through negotiation and/or mediation.

8. Financial issues are dealt with separately

The reason for the breakdown of the marriage and the contents of the divorce petition have no bearing on the financial outcome (except in exceptional circumstances).

9. Financial discussions do not need to be completed by the time the divorce is final

It is not necessary for financial discussions to be completed by the time the divorce is final; however it is frequently advisable. Once the divorce is final, then certain financial rights on death, such as to a widow’s pension or life insurance, usually come to an end. It is therefore often not a good idea to finalise the divorce until financial agreements have been reached.

10. Divorce proceedings are usually private

This means that the public and press are not allowed access to the Court papers. However, the press are able to publish the fact that a divorce has been pronounced. The information that they may disclose is very limited. They may disclose the “facts” of the divorce i.e. whether it is based on adultery or unreasonable behaviour, as the case may be, but they are not able to publish any details.

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