

## Divorce Procedure - A Brief Guide

### Starting the Proceedings:

Proceedings begin when a Petition for Divorce is filed at the Court, along with certain additional documentation.

The person who starts the proceedings is known as the Petitioner whilst their spouse is the Respondent. If there are allegations in the Petition of an improper relationship or adultery by the Respondent with someone else, this person is known as the Co-Respondent. If there are allegations in the Cross-Petition (see later) between the Petitioner and someone else this person is known as the Party Cited. This person cannot be involved until after the original petition is defended by the Respondent should this happen at all.

To commence proceedings in a case where no Co-Respondent is involved, the Court will require:-

1. a fee of £300.00 (fees change regularly – this is the current fee as at 10 January 2006. For the up to date fee, check with the Citizen Advice Bureau, the Court office or your lawyer).
2. original Marriage Certificate or a copy prepared by the Church/Registry Office where the marriage took place, or the Central Records Office. If in a foreign language, an official interpretation must also be filed.
3. Two Petitions signed by the Petitioner and completed in accordance with the Court Rules (if there is a Co-Respondent(s) an additional copy of the Petition is required per Co-Respondent).
4. Two signed Statements of Arrangements for any children under 16 or between 16 and 18 who are undergoing education, noting on the divorce petition that this is the situation. (One may also volunteer a Statement of Arrangements for any child under 21 who is undergoing education, for the Court's information, but the cost of preparation will not be included in an order for the other party to pay costs.) If possible, it is desired that both parents sign the Statement of Arrangements but if the Respondent does not agree with the contents, then the Petitioner alone should sign it and submit it to the Court - the Respondent will have his/her chance to say what he/she wishes at a later stage.
5. If a Solicitor is involved he or she will also have to submit to the Court a Reconciliation Certificate.

6. If any previous orders have been made regarding the children or the parties or their property, and the Court does not have access to those Orders already, then copies of these Orders will also have to be produced.
7. If any child is suffering from a physical handicap, disability or severe illness, it is usual also to lodge a medical certificate about that child's health.

The Petition will be issued by the Court office and all of the documents submitted to the Court are sealed and given a reference number.

### Serving the Petition:

Unless requested otherwise in advance, the "second" copies of the Petition and Statement of Arrangements are sent by post by the Court office to the Respondent along with a form called an Acknowledgement of Service. If there is a Co-Respondent, he/she too will receive a copy of the Petition and Acknowledgement, but not the Statement of Arrangements for the Children.

### Acknowledging Service:

The Respondent and any Co-Respondents have eight days from receipt to reply.

This is done by completing the Acknowledgement of Service. This form is in 2 parts - a tear off set of notes and a table of questions. The table has to be completed. The questions asked include:-

- Where and when the document was received
- Whether any alleged adultery is admitted
- Whether the Respondent intends to defend the Divorce
- Whether he/she has any comments about claims for costs in the Petition
- For the Respondent, whether he/she has comments about any arrangements for children described in the Statement of Arrangements
- Whether they want to be heard by the Court about those arrangements
- Whether the marriage is a polygamous one.

The Co-Respondent's Acknowledgement makes no reference to arrangements for children.

Once completed, dated and signed this part of the document must be returned to the Court within 8 days

of receipt. Court Offices are open from 10 am until 4 pm on weekdays only but not Bank Holidays and often have additional local closures of a day or half a day near a Bank Holiday.

### **Defending the Petition:**

If the Respondent wants to defend the Petition, he/she has 21 days after the initial eight days response time, to lodge a formal Answer to the Petition in Court. This must be done in duplicate.

If the Answer is not lodged within the time limit, the Respondent will have to seek special leave from the Court. This involves paying a Court fee, issuing an application to a District Judge and a hearing before a District Judge.

A formal Answer is usually accompanied by a Cross Petition which gives the Respondent's other factual reasons to evidence the breakdown of the marriage and request for a divorce. If another third party is referred to, this time by the Respondent, this party is called a "Party Cited" (see above).

### **Undefended Divorce:**

If the Respondent does not want to defend the Petition and says so in his/her Acknowledgement, the Court will send the Petitioner a photocopy of the Acknowledgement of Service bearing the Court seal. It will be accompanied by two more forms. The first is an Affidavit. This form performs the same function as giving evidence in person to a Judge and must be completed as accurately as possible and then sworn.

The Affidavit must be taken before either a County Court Officer or a Solicitor not representing any of the parties to the divorce, so that the Petitioner can formally identify the Respondent's signature on the Acknowledgement and swear, on oath, that the contents of the Affidavit and therefore, the Divorce Petition and accompanying documents, are true.

Whilst a Solicitor will make a small charge for swearing an Affidavit and any exhibits (the documents identified in the body of it), the Court Office will not.

The second form is the Petitioner's request to the Court Office to place the Court file before the District Judge for consideration of whether or not a decree nisi should be pronounced. The Judge will consider the contents of all of the documents and decide whether it is appropriate to grant the Decree Nisi of the divorce. This form is lodged with the Court at the same time as the sworn Affidavit. But the Court will wait for the 21 day period for the filing of an Answer to defend a Petition to elapse before the next step will be taken, that is to pass the Court file to a District Judge for consideration.

### **The Special Procedure Trial:**

In addition to determining whether or not the Petitioner should be allowed a Divorce the District Judge must decide on what grounds it should be granted and whether any costs ie reimbursement of solicitors fees and court fees, should be paid by the Respondent to the Petitioner. The District Judge will also consider whether there should be a hearing

about the arrangements for children or whether they should be referred to the CAFCASS Officer for a conciliation session.

In those cases where no Orders, appointments or conciliation are required for the children because the parents are in full agreement, the Judge will ask the Court Office to simply list the date on which the Decree Nisi will be pronounced.

In the other cases, parents will be told to visit the Court on a particular day to discuss arrangements for their children.

### **The Decree Nisi Hearing:**

Where the parents are in agreement about children, the pronouncement of the Decree Nisi need be no more than the names being read out in open Court or even the posting of a list in the Court Office and Court waiting room. There may be times when one party or another wants to address the District Judge about costs. In such a case there would be a brief hearing following which the District Judge will decide the issue.

The District Judge must have decided that the arrangements made for the children are satisfactory or, at least, the best that could be devised in the circumstances, before the Decree Nisi can be made Absolute.

A couple of weeks after the hearing, the parties should receive the Decree Nisi of Divorce through the post together with a Certificate stating whether the District Judge was satisfied with the proposed arrangements for the children, and any order made for the payment of or contribution towards the Petitioner's costs.

If an Order for Contact or Residence has been made during a hearing about the children, this will also follow.

### **The Decree Absolute:**

The Petitioner can apply for the Decree Nisi to be made Absolute six weeks and one day after the pronouncement of the Decree Nisi which is made on a simple form, returned to the Court office for process along with a court fee currently £40.00. There is no hearing on the Petitioner's application, unless it has been left more than a year after the Decree Nisi was pronounced. If so, the Petitioner also has to give an Affidavit setting out the reasons for the delay and certain other prescribed information. The Application for the Decree Absolute is often delayed until the financial issues have been resolved.

The Respondent can only apply after a further three months have elapsed. In such a case a formal application to the District Judge, a payment of a Court fee, currently £40.00, and a hearing is required.

What is important however is that if one party re-marries before they have lodged with the Court an application for financial provision from their prior marriage, either by including this in their own petition for divorce or by a separate formal application, they lose the right to make an application for financial

provision from the previous marriage. If there are remarriage plans the solicitor must be notified.

This information sheet has been prepared to highlight some key issues relating to divorce procedures. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2006 and may be affected by subsequent changes in the law.

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