

Divorce

Since the Matrimonial Causes Acts of 1969 and 1973, divorce has been based upon the irretrievable breakdown of the marriage. The person who petitions the Court for a divorce may only use one of five facts to show to the Court that the marriage has broken down irretrievably.

Throughout this information sheet, the person who issues the petition will be described as the Petitioner and the person who receives the petition as the Respondent.

The five facts just referred to are as follows:

- 1 The Respondent's adultery and the Petitioner finding it intolerable to live with the Respondent, although not necessarily as a result of the adultery.
- 2 The Respondent behaving in such a way that it is unreasonable to expect the Petitioner to continue to live with the Respondent.

These are the only two so-called "quick" divorces that do not rely on a period of living apart. If the parties live together as man and wife under the same roof for a period of six months or more, either after the adultery is known about or after the last incident of unreasonable behaviour, the Court will treat the Petitioner as having forgiven the Respondent, and it is extremely unlikely that a divorce will be granted.

- 3 The Respondent deserting the Petitioner, i.e. leaving without this being by agreement, and throughout the period of living apart, the Petitioner being willing for the Respondent to return. This desertion has to be for a period of two years at least, prior to the presentation to the Court of the Divorce Petition.

- 4 Separation for at least Two years and the Respondent's consent. The consent is vital to this fact: it may be withdrawn at any time prior to the grant of Decree Nisi.
- 5 Five years' separation. In this case either of the parties may petition and no consent is required. However, there is a specific defence to this if a Decree of divorce would cause grave financial hardship or other grave hardship. The classic example of this type of defence is the likelihood of being ostracised in one's community for loss of the married status.

In cases 3 - 5, a period of up to six months is allowed for attempts at reconciliation, that is the parties may live together again for periods of time totalling altogether no more than six months. Even a day over six months will bring the period of separation or desertion to an end. If there has been a period of living together, then the same period has to be added to the period of separation, so that a full two years or five years, as the case may be, of living apart is involved.

In both cases 4 and 5 there is a further provision that the Respondent may apply to have his or her financial position considered by the Court, which has the effect of delaying the pronouncement of the Decree Nisi, which cannot take place until this application has been resolved.

Once the Court has been satisfied that the Petitioner is entitled to a Decree of Divorce, there are two stages to the pronouncement of the Decree. The first of these stages is called the Decree Nisi, the second the Decree Absolute. It is only upon the Decree

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

Divorce (continued)

Absolute that the parties are fully divorced and are free to remarry.

Through the Special Postal Procedure, it is usually unnecessary for there to be a formal Court hearing. Instead, the District Judge considers the paperwork submitted by the Petitioner and a date is given for the pronouncement of Decree Nisi. In most Courts this consists of the posting on a noticeboard of a list of the names of the cases in which Decrees are pronounced that day. Sometimes a Judge will list the names in open Court on that day.

A period of at least six weeks has to elapse between the pronouncement of the Decree Nisi and the Decree Absolute. At first only the Petitioner may apply, but after 3 months the Respondent may do so. Usually no hearing is necessary on making the Decree Nisi absolute. All that is required is the lodging of a form with the necessary fee. However, if the Respondent applies there will be a brief hearing in private before a District Judge, or if there has been a delay of more than one year, the person seeking to make the Decree Nisi absolute has to provide the Court with additional information.

At any time following the issue of the Divorce Petition, either party may commence the process necessary to ask the Court to decide whether or not they should receive an income from the other party (usually known as "maintenance pending suit" when allocated to a spouse prior to the Decree Absolute).

The question of child maintenance has been altered dramatically by the Child Support Act. The question of child support in any case that has not already been to a Court, or which is not the subject of an

existing application before the Court, or of an existing written agreement between the parties as at 5 April 1993, or an agreement which can be recited in an agreed Court Order, may now only be determined by the Child Support Agency.

Although once the divorce has been commenced by the issue of a Petition either party may start the procedure that will lead to the determination by the Court of all capital and property issues between the spouses, the Court may only make an Order to deal with capital and property issues after the Decree Nisi has been pronounced.

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.

Although this information sheet highlights many of the key issues relating to divorce legislation, it should not be considered comprehensive and is not a substitute for seeking professional advice on specific issues.

Should you require further detailed information about the issues covered or have any other concerns simply contact Barbara Wright on 01892 510000 or by e-mail at barbara.wright@ts-p.co.uk.