

## iGuide: Divorce Procedure in England and Wales

06 Apr 2022

Please note that where we refer to divorce, the same applies for the dissolution of a civil partnership.

Obtaining a divorce is usually quite straightforward, particularly if you and your spouse agree that the marriage is over. Difficulties tend to occur more in agreeing the practical issues such as where to live, arrangements for the children and financial matters. These issues are all dealt with separately in England.

The purpose of this brief guide is to explain the process of actually getting a divorce.

The divorce procedure set out in this I-guide is correct as of 6 April 2022 which is the date the new no-fault divorce procedure began.

### Who can start divorce proceedings?

Either or both spouses jointly may start divorce proceedings, provided that they have been married for over a year and satisfy the jurisdictional criteria (connectedness) for the English courts to accept a divorce petition. One of the following jurisdictional criteria must be satisfied :

- Both spouses are habitually resident in England or Wales
- Both spouses were last jointly habitually resident in England, and one still resides here
- The Respondent to the divorce is habitually resident in England and Wales
- The Applicant is habitually resident in England and Wales and has been residing here for the past 12 months
- The Applicant is domiciled here and is habitually resident and been residing here for at least 6 months
- One or both spouses are domiciled in England and Wales

If the marriage is between spouses of the same sex, there is a residual jurisdiction for the English court to accept jurisdiction even if it would otherwise not have jurisdiction pursuant to the above in circumstances when:

- The marriage was registered in England and Wales; and
- No other court has jurisdiction to deal with the divorce (i.e., where the spouses' local Court does not recognise same-sex marriages and/or their dissolution)

We can advise you further about the meaning of habitual residence and domicile and which is the best and most appropriate jurisdictional ground for you.

Admissions of residence and domicile have important tax consequences which should be considered. We advise that you liaise with an accountant or other financial adviser if you have concerns about this.

If you satisfy the jurisdictional criteria for a divorce in England and Wales, but either of you have connections to another country, there may be opportunity to bring a divorce there to your benefit. This issue is of fundamental importance to consider at the very outset of a relationship breakdown. A divorce in another country may be more beneficial or detrimental to you (e.g., the financial provisions available on divorce in England and Wales may be more generous when compared to the financial provisions available in that other country or vice versa).

It is therefore important to consider which country is best for you and we will advise you in relation to this, and if necessary, liaise with specialist family lawyers in other countries to help you make the decision.

For more information, please see the page on Forum on our website and the information contained there.

## On what grounds can a divorce application be started?

Prior to 6 April 2022 facts needed to be proved as well as meeting jurisdictional criteria; these facts comprised: adultery, unreasonable behaviour, separation for 2 years with consent, desertion or 5 years separation.

If you have issued divorce proceedings in England prior to 6 April 2022 your divorce will follow the old divorce procedure. If this is the case, please contact us for more information about how to proceed with your divorce.

## No-Fault Divorce

From 6 April 2022 the only ground for divorce or dissolution is that a marriage has irretrievably broken down.

An application for divorce can be made online by a single spouse or jointly by both spouses.

It is often a good idea and good practice to try and obtain your spouse's agreement to a divorce at the outset.

We may be able to reach agreement with his or her solicitor over the content of the application and whether it should be applied for in a spouse's sole name or jointly with their spouse. However, in some circumstances, particularly where there is more than one country with opportunity for a divorce this may not be either possible or advisable. We will advise you whether this is an issue in your case.

## What happens when a divorce application is issued?

If you are the applicant, we will prepare a divorce application on your and possibly your spouse's behalf if you are applying jointly. You will then be asked to approve the divorce application before it is issued at court via the court's online portal.

If a joint application for divorce is made then the person named as 'Applicant 1' will be responsible for paying the court application fee. The spouses can however agree to share the application fee.

When lodging the divorce petition, it is also necessary to upload a colour copy of your marriage certificate, although in some circumstances it is possible to seek permission to file it at a later stage.

After the application for divorce has been issued at court, unless the respondent spouse lives abroad or you request solicitor service, the court will serve the petition on your spouse or their solicitor via email.

The appropriate arrangements for service will depend on the circumstances of your case and we will advise you fully about this.

The divorce application should be served within 28 days of it being issued, unless an application to court for time to extend service is sought from the court.

Your spouse will have a specific number of days to acknowledge service of the divorce. The number of days will depend on which country they are in when the proceedings are served on them.

It is no longer possible to seek a costs order for divorce costs within the divorce application, and therefore a separate costs application will need to be made where appropriate. We will advise whether any costs application is appropriate in your case.

As divorce is no longer fault based, it's envisaged fewer costs orders for uncontested divorce applications will be made.

## What happens once my husband or wife has been served with the divorce application

### Consented proceedings

On the basis a spouse consents to the divorce, they will need to log into the Court Portal (using the details they were sent by the court via email or received via post or personal service) and complete a short questionnaire known as an Acknowledgement of Service and upload it to the Court Portal.

Upon receipt of the Acknowledgement of Service an email will be sent to the Applicant to say the Acknowledgement has been completed.

An online application for a Conditional Order (formerly known as Decree Nisi) can then be made.

If the divorce application was started jointly, either Applicant can apply for the Conditional Order.

However, if a divorce application was only started by one party it is only that party who can apply for a Conditional Order.

Once the application for a Conditional Order is made a judge will review the papers to ensure that all is in order and will list a date for pronouncement of the Conditional Order. The date for pronouncement will be a minimum of 20 weeks from the date the divorce application was issued.

It is not necessary to attend court for pronouncement of a Conditional Order. Once the Conditional Order has been made a copy of it will be uploaded to the Court Portal and can be accessed by either spouse.

The Conditional Order is the first of two orders required to divorce and it is the stage when a court can approve a final financial order pursuant to a divorce or dissolution.

## Defended Proceedings

From 6 April 2022 the only grounds for defending a divorce are:

- Jurisdiction (where the applicant does not have enough connectedness to bring divorce proceedings in England)
- If the marriage was not a valid marriage in the first place; or
- If the other spouse says they are already divorced

If the respondent seeks to defend the divorce application they must say so in the Acknowledgement of Service and complete an Answer.

The applicant also has an opportunity to prepare a Reply to an Answer.

If the respondent indicates they intend to defend the divorce proceedings we can help you respond to their position.

## Can I proceed with a divorce if the respondent fails to return the acknowledgement of service?

If the Acknowledgement of Service is not returned by the respondent within the required timescale it may be necessary to apply to the court for permission to proceed with the divorce in the absence of a response from your spouse. We can advise about this should this arise in your matter.

## When will the divorce be finalised?

The Applicant can apply for the Final Order of divorce (formerly known as Decree Absolute) 6 weeks and one day after the Conditional Order has been made.

The Respondent can only apply 4½ months after the Conditional Order has been made and must provide at least 14 days' notice to the other spouse of their intention to do so.

In some exceptional circumstances it can be possible to obtain a Final Order for divorce in a shorter timescale.

The Final Order of divorce means you are no longer married, and free to remarry or enter a civil partnership if you so wish.

It also terminates any rights you have to any financial entitlements you would have received as their spouse and so it's sensible to review various pension and life policies and Wills.

## Are financial matters dealt with before the divorce is finalised?

In practice final financial resolution has often not been reached by the time the applicant can apply for the Final Order.

In certain circumstances, it may be advantageous for the making of the final order of divorce to be postponed until all the financial matters have been resolved. We will advise you further about this at the appropriate time.

## What about religious divorces?

In conjunction with a civil divorce, some faiths seek a pronouncement by their religious authorities on their marriage. This may be in the form of a Get, a Talaq or similar. In our experience, the timetable for obtaining these divorces within the civil divorce proceedings is often very important.

If this is relevant, you must advise us in order for us to co-ordinate the civil divorce with other steps you may be taking for a religious divorce.

For more information about the divorce procedure in England and Wales, or other questions you may have, please contact a member of our specialist family law team.

You can do so via our website, by email to [enquiries@iflg.uk.com](mailto:enquiries@iflg.uk.com) or telephone on +44 (0) 203 178 5668.

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