

THE DIVORCE PROCESS

1 FILING THE DIVORCE APPLICATION

This step is the request to the court to start the divorce. The application (previously known as the petition) is the formal document that applies for the divorce and contains amongst other things the details of both parties and the reason for seeking the divorce. There is only one ground for divorce and that is that your marriage has broken down irretrievably.

The person applying for the divorce is referred to as the applicant (formerly the Petitioner). The other spouse is referred to as the Respondent.

It is good practice to send a copy of the divorce application to the other party to see if the details can be agreed before sending it to the court to issue the divorce proceedings so as to try to avoid a defended divorce. The divorce application is then sent together with the original marriage certificate and the court fee, currently £593, to the court, or the details are entered on the court portal and the marriage certificate uploaded to the court portal, to start the divorce process.

2 SERVICE OF THE DIVORCE APPLICATION

The court checks the documentation and, if they are satisfied that it complies with all the requirements, they officially 'issue' the divorce. They will then send a copy of the divorce application in the post to the Respondent, or by email if an email address has been provided, together with a form for the Respondent to complete and return to the court.

This form is known as the Acknowledgement of Service form, it can be completed via the court portal also, the court will provide the Respondent with details of how to do so.

3 ACKNOWLEDGING SERVICE OF THE DIVORCE APPLICATION

The Respondent is required to return the Acknowledgment of Service form to the court within 7 days of receipt of the divorce papers, or longer if the court specifies a longer period, indicating whether or not they wish to dispute the divorce proceedings. If they do want to dispute the divorce they have to file another form called an 'Answer' within 28 days of receiving the application.

In the event the Respondent fails to return their acknowledgement form, it will be necessary to consider personal service of the papers by either the Court Bailiff or a process server. In many cases proving that the Respondent has received the divorce papers, by providing the court with a sworn statement from a process server or the Court Bailiff will be sufficient for the court to progress with the divorce even if the Respondent chooses to take no part in the process.

If the Respondent does not respond to the application, it will be important to make a note of any admissions by them that they have received it, i.e. text messages or emails that state they have received and read the divorce application or any reference in correspondence to the content of the divorce application. This may be sufficient for a statement to be provided to the court showing that the Respondent clearly has knowledge of the divorce proceedings but has chosen not to reply and for the court to allow the divorce to proceed without the Acknowledgement of Service being received.

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CONFIRMING THE FACTS IN THE DIVORCE APPLICATION

When the Acknowledgement is received by the court (assuming it is returned by the Respondent) the court will notify the applicant or their legal representative, or notify them via the court portal, who must then confirm the facts in the original application are true and that there have been no changes since the application was signed and request that the court make a Conditional Order (what was previously known as Decree Nisi). The earliest date a conditional order can be applied for is 20 weeks after the divorce application.

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CONDITIONAL ORDER OF DIVORCE

The court office will pass the divorce application to a Judge for consideration. If the Judge is happy with all the documentation and the reasons for the divorce then he or she will sign the necessary form to approve the divorce and the court will set a date on which the first of the two 'orders' of divorce, the Conditional Order (formerly the Decree Nisi), will be pronounced in court.

It is not usually necessary for the parties to attend court to obtain the Conditional Order, the Judge will simply read out the list of names of the parties to the divorce in the court and 'pronounce' it. If however there is a dispute in relation to the costs of the divorce, then the court may require the parties to attend at the hearing to make representations to the Judge.

The Conditional Order is only the first stage of the divorce and it is just confirmation that the Judge is satisfied there are grounds for a divorce, the parties remain married until the Final Order (formerly Decree Absolute) is granted and in many cases, where there are outstanding financial issues to be resolved, the Final Order will come much later once there has been a financial settlement reached by agreement or ordered by the court.

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APPLICATION FOR THE FINAL ORDER OF DIVORCE

Six weeks and one day after the Conditional Order, the applicant can apply for the Final Order, (previously called the Decree Absolute). Once this has been granted by the court, the parties are legally divorced.

If the Applicant fails to apply for the Final Order after six weeks and one day, then the Respondent can apply 3 months after that date, but it is usually preferable for both parties not to have the Final Order on the divorce until financial issues are resolved, because there are certain potential benefits such as life insurance, death in service benefits and widow's or widower's pensions which can be lost on divorce.

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HOW LONG DOES THE DIVORCE PROCESS TAKE?

If the divorce is allowed to proceed undefended, which is usually the case, because both parties have agreed to the divorce, provided the parties complete and return the divorce paperwork quickly, a divorce can be obtained in 4-6 months. There is a mandatory waiting period of 20 weeks between the issue of the divorce and the application for Conditional Order. The Final Order can be applied for 6 weeks later, there may be reasons however why the application for the Final Order should be delayed, for example because the financial issues have not yet been resolved, and there are also occasions where the court has a backlog of cases, which can create delay. The divorce process is now dealt with at specified divorce centres where a number of Judges are considering the cases that are not defended so the timescale for divorce can vary greatly depending on the court workload and number of Judges available each day.

If the parties cannot agree or delays are made in the completion and return of papers to the court this can also extend the time it takes to complete a divorce.