

understandingdivorce

Starting divorce proceedings



Our guide is intended to help those members of the public who feel able to complete legal forms and manage the timetable of a divorce.

Her Majesty's Court and Tribunal Service produces a comprehensive guide to completing a divorce. This leaflet can be downloaded from <http://hmctsformfinder.justice.gov.uk> as D8 (Notes) Supporting Notes for Guidance on Completing a Divorce/Dissolution (judicial) separation petition. Our guide supplements this leaflet and does not replace it.

Our guide is intended to help those wanting to divorce.

Sometimes issues arise which mean that the basic procedure of a divorce cannot be followed and additional steps need to be taken. Our guide cannot cover all of these issues. If you encounter difficulties in progressing your divorce, or issues arise at any stage which you need clarification about, you must contact us or obtain other independent legal advice.

If you get things wrong it can lead to delay or additional expenditure by way of Court fees and/or legal fees being incurred in paying a solicitor to undo what has gone wrong.

If you are in receipt of a low income or benefits you may be exempt from paying Court fees. If so, we recommend that you download form EX160 and leaflet EX160a about how to fill in the form and the types of documentation you need to submit. These can be downloaded from www.hmctsformfinder.justice.gov.uk

Legal Jargon and Definitions:

- **Spouse:**
Your husband or wife.
- **Petition:**
An application form which is completed and sent to the Court to start divorce proceedings.
- **Petitioner:**
The person who starts the divorce.
- **Respondent:**
The person who responds to the divorce.
- **Acknowledgment:**
A form sent to your spouse by the Court which they must complete and return to the Court.
- **Decree Nisi:**
A certificate issued by the Court when the Petitioner applies for it.
- **Decree Absolute:**
A certificate issued by the Court when the Petitioner or Respondent applies for it.

Basic Procedure:

Step 1

A form D8 petition for divorce is completed by the person who wants to start divorce proceedings.

You should also read page 5 of this download entitled '**Recommended practices when divorcing or dissolving a civil partnership**'.

The following are sent to the County Court by the person who wants the divorce:

- **D8 Divorce petition and 2 copies.**
- **Court fee of £410.00 or form EX160 and accompanying documentation.**
- **Marriage certificate (this must be the original or certified copy and not a photocopy).**

Form D8 can be downloaded from www.hmctsformfinder.justice.gov.uk. It is sensible to make enquiries with your local County Court to check which court you should send your divorce forms to.

The Court office issues the divorce proceedings. This means that a Court file is opened up and the divorce proceedings are allocated a Case Number. You must quote this Case Number on all communication with the Court. This is how they find your case details.

The Court office sends to your spouse:

- **A copy of the D8 divorce petition.**
- **A form of Acknowledgment of Service.**

The Court will send you a notice confirming the Case Number and the date that the divorce papers have been sent to your spouse. The Court will not take any further action unless you ask it to after this stage. Your spouse should complete and return to the Court the form of Acknowledgment of Service within 7 days.

It is often the case that the form is returned late. This is for two reasons:

1. **The Court often operates under a backlog of routine work. The form of Acknowledgment of Service may have been received but not processed in time.**
2. **People often want to obtain some legal advice when they receive Court papers. It is difficult to do so within 7 days of service of divorce papers.**

For both of these reasons, you may want to:

1. **Allow your spouse longer to return the form. You could contact them to find out the reason for the delay.**
2. **Contact the Court to find out if they have received the form and/or what their backlog is of routine work. They will often tell you that they are processing documentation up to a certain day.**

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The Court will send you a copy of the form of Acknowledgment of Service if one is completed by your spouse.

The Court will not:

- **Contact your spouse to find out where their form is.**
- **Take any further action against them.**
- **Contact you to let you know that your spouse hasn't returned the form in time.**

This means that if you think that too much time has passed between the divorce papers being sent to your spouse and them returning the form of Acknowledgement of Service to the Court, you will need to take legal advice to find out what you must do next. There are usually a number of options and which option you take depends upon your own set of circumstances. If you encounter a problem, you must contact us or obtain other independent legal advice.

If your spouse's form of Acknowledgment of Service indicates:

- **They intend to defend the proceedings because they don't like what you say about them.**
- **They dispute the proceedings for some other reason e.g. they don't believe the Court in England or Wales has jurisdiction to deal with the case.**
- **They don't want to pay your legal costs.**

These are all issues you will need to take legal advice about and you must contact us or obtain other independent legal advice.

Step 2

If no issues arise once you have received the form of Acknowledgment of Service from the Court you then need to apply for Decree Nisi.

This application consists of two forms:

**1. A statement in support of your divorce proceedings. This is a pre-printed form.
There is a different form for each fact:**

- **D80A if you are divorcing on the basis of adultery.**
- **D80B if you are divorcing on the basis of behaviour that you find unreasonable.**
- **D80C if you are divorcing on the basis of desertion.**
- **D80D if you are divorcing on the basis of separation (two years).**
- **D80E if you are divorcing on the basis of separation (five years).**

2. Application for Decree Nisi (Form D84).

You can download forms D80A – E and D84 from www.hmctsformfinder.justice.gov.uk.

Continued

The forms need to be completed by the person who has started the divorce and sent to the Court. It may be appropriate to attach to your statement in support of your divorce or proceedings a copy of your spouse or civil partner's form of Acknowledgment of Service. If you need any help with this please contact us. The Court office is likely to take at least a couple of weeks to process these documents.

The Court office will send you and your spouse:

- **Notice of Decree Nisi**

Sometimes problems occur at this stage and if you don't receive these documents the District Judge may want more information or some procedural steps to be taken. If any issue occurs, you need legal advice and must contact us or obtain other independent legal advice.

The Notice of Decree Nisi will list a Court hearing date. You may need to attend this Court hearing if your spouse disputes paying your legal costs if you have claimed them. You may want to take legal advice if this issue arises. After the hearing of Decree Nisi, the Court office will send you the Decree Nisi certificate or the Conditional Certificate. The Court will do nothing further unless any additional applications are filed. If you have issues relating to money or children which cannot be agreed you need to file separate Court applications. You will need legal advice about these issues before making any application.

Step 3

Six weeks and a day after the date of your Decree Nisi certificate, the Petitioner can make an application to the Court for the final Decree: Decree Absolute if you are divorcing and the Final Order if you are dissolving your civil partnership. To do this you need to send to the Court:

- **D36 form completed**

You can download this form D36 from www.hmctsformfinder.justice.gov.uk.

Sometimes it is strongly advisable not to apply for Decree Absolute. Sometimes the Court may prevent you from making the application until final living arrangements for your children are known, or contested children issues are resolved. If you are unsure about whether or not it is in your best interests to apply for Decree Absolute you need legal advice and must contact us or obtain other independent legal advice.

In some circumstances, if there is enough delay, the Respondent to the divorce can make an application for the Decree Absolute. There is a separate procedure for this. It is therefore important to obtain legal advice if you are the Respondent and think there is too much delay.

Your Decree Absolute is a certificate issued by the Court. The Court staff usually process your application and fee and send you the certificate within a few days. The Decree Absolute means that you are divorced and that you are free to re-marry or enter into a subsequent civil partnership.

It is important to make a new Will if you have divorced. If you need any help with this, please contact us.



Need to speak
to an expert?

For professional advice, call us on: 0113 201 4904

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Recommended practices when divorcing



The Family Law Protocol

If you don't give your spouse any warning of the Court proceedings, the first communication they will receive is an envelope from Her Majesty's Courts and Tribunal Service containing the divorce petition and a form of Acknowledgment of Service.

This can be very upsetting for the person receiving the papers particularly if your petition contains allegations of behaviour or adultery. This can lead to proceedings being defended which causes delay and increases costs. To reduce the likelihood of this, the Law Society recommends that the Family Law Protocol is followed. This is an established practice which most solicitors follow.

This Protocol recommends that before you issue divorce or dissolution proceedings you send a copy of the draft petition to your spouse or giving them 14 days to reply and/or obtain some legal advice. This gives them some warning about what you intend to say and means they can take legal advice to understand why your petition is completed in the way that it is. This Protocol lessens the likelihood of the divorce proceedings being defended.

If you want your spouse to contribute to the Court fees or other legal fees you can write to them about this when you send the draft divorce papers and let them know what amount you want to claim. This gives you the opportunity to negotiate before proceedings are issued.

Obtaining an admission of adultery

The Court fee to issue divorce proceedings is £410. The Court will not give you the fee back if your spouse does not formally admit adultery in writing.

Most solicitors will advise that it is sensible to obtain a short signed statement from your spouse admitting to adultery before a divorce petition is issued on this fact. This admission can then be referred to if your spouse refuses to return the form of Acknowledgement of Service to the Court once proceedings are issued.

Some Courts insist upon an admission statement being signed before they will issue a divorce petition on the basis of adultery.

Obtaining consent to a two year separation petition

If you are divorcing on the basis that you have separated for two years or more, it is sensible to obtain your spouse's written consent to proceeding on this basis before you send your petition to the Court.

Need to speak to an expert?

For professional advice, call us on: 0113 201 4904



The Family Law Protocol

If you don't give your spouse or civil partner any warning of the Court proceedings, the first communication they will receive is an envelope from Her Majesty's Courts and Tribunal Service containing the divorce or dissolution petition, a form about your children and a form of Acknowledgment of Service.

This can be very upsetting for the person receiving the papers particularly if your petition contains allegations of behaviour or adultery. This can lead to proceedings being defended which causes delay and increases costs. To reduce the likelihood of this, the Law Society recommends that the Family Law Protocol is followed. This is an established practice which most solicitors follow.

This Protocol recommends that before you issue divorce or dissolution proceedings you send a copy of the draft petition and form about the children to your spouse or civil partner giving them 14 days to reply and/or obtain some legal advice. This gives them some warning about what you intend to say and means they can take legal advice to understand why your petition is completed in the way that it is. This Protocol lessens the likelihood of the divorce or dissolution proceedings being defended.

If you want your spouse to contribute to the Court fees or other legal fees you can write to them about this when you send the draft divorce or dissolution papers and let them know what amount you want to claim. This gives you the opportunity to negotiate before proceedings are issued.

Your spouse may be prepared to sign the Statement of Arrangements about your children if it is sent to them first in draft. If they do, this reduces the likelihood of the District Judge asking you both to attend Court for a short hearing about your children.

Obtaining an admission of adultery

The Court fee to issue divorce proceedings is £410. The Court will not give you the fee back if your spouse does not formally admit adultery in writing.

Most solicitors will advise that it is sensible to obtain a short signed statement from your spouse admitting to adultery before a divorce petition is issued on this fact. This admission can then be referred to if your spouse refuses to return the form of Acknowledgement of Service to the Court once proceedings are issued.

Some Courts insist upon an admission statement being signed before they will issue a divorce petition on the basis of adultery.

Obtaining consent to a two year separation petition

If you are divorcing or dissolving your civil partnership on the basis that you have separated for two years or more, it is sensible to obtain your spouse's written consent to proceeding on this basis before you send your petition to the Court.

Need to speak to an expert?

For professional advice, call us on: 0113 201 4900