

## Divorce

### Criteria for Starting Divorce Proceeding from 6 April 2022

#### The Process

To begin divorce proceedings, you need to have been married for at least one year. An application for divorce can be made by one spouse (a **sole application**) or by the couple together (a **joint application**).

The person who starts a **sole application** for divorce proceedings is known as the applicant and the other spouse is known as the respondent. If a couple decide to make a **joint application**, they are both known as applicants and there will be no respondent.

An application that begins as a **joint application** can be changed to a **sole application** if one of the spouses decides they no longer wish to pursue divorce proceedings or refuses to progress the proceedings. However, an application that begins as a **sole application** cannot be changed to a **joint application**.

#### Jurisdictional Criteria

To be eligible to start divorce proceedings in England and Wales, the applicant(s) must meet at least one of the jurisdictional criteria, which are based on the habitual residence or domicile of one or both parties to the marriage. Habitual residence is difficult to define but is usually where someone lives most of the time and where they have their "centre of interests". Domicile is also difficult to define but, generally, a person is domiciled in a country if they consider their permanent home is there, even though they live in another country. The application for divorce provides various tick boxes on this and it is important to ensure that the correct boxes are ticked when the application is made.

#### Grounds for Divorce

There is only one ground for divorce, which is that the marriage has **irretrievably broken down**. If you think your spouse may also wish to divorce, you may want to discuss making a **joint application** for divorce.

If you decide to proceed with a divorce, once you have approved the draft application for divorce, it is good practice to send a copy to your spouse before submitting the application to the court. This allows your spouse to express any concerns they may have about the contents of the application.

Before issuing proceedings, you and your spouse may wish to consider an agreement about who will pay the costs of the proceedings or how you will share the costs.

#### Divorce Procedure: Sole Application

##### How do you start proceedings?

Once the sole application is finalised, it is submitted to the court online, together with an image of your marriage certificate and the court fee. A statement of truth is included in the application, which confirms that you attest that the contents are true and that you understand you could be held in contempt of court if, in fact, something is not true, and you knew it was not true, when you gave the statement of truth.

The court then issues the application which starts the divorce proceedings.

##### Applying for costs

Generally, judges discourage costs applications unless a respondent has held up the divorce, for example, by evading the application being served on them, so causing you to incur unnecessary costs. In a straightforward case (standard case), the guidance is for each party to pay their own costs. If there are circumstances that mean

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### Divorce Procedure: Sole Application continued

that it is appropriate to apply for a costs order that your spouse pays your costs relating to the divorce proceedings, in a straightforward case, the costs application must be made by the time of the application for a **conditional order** (see 'Applying for the first stage divorce order (conditional order)' below).

#### Who tells my spouse that I have started divorce proceedings?

The issued application and other documents produced by the court are then served on your spouse or their solicitors. Service means the documents are sent by a method permitted by court rules. The documents must be served within 28 days after the application is issued by the court.

Your spouse or their solicitors should then complete and submit to the court a document called the acknowledgment of service within 14 days. They can do this online. In the acknowledgment of service, your spouse acknowledges receipt of the application.

It is possible for a respondent to dispute the divorce, but on very limited grounds, such as the validity of the marriage. If your spouse disputes the proceedings, there will be court hearings to decide whether or not the divorce proceedings can continue or whether they should be dismissed.

#### Applying for the first stage divorce order (conditional order)

A divorce order is made in two stages. Provided your spouse is not disputing the proceedings, **20 weeks** after the divorce application was issued, you can apply for the first stage of the divorce order, called the **conditional order**. In the application for the **conditional order**, you must confirm that you wish to proceed with the divorce, and that everything in the divorce application remains unchanged or, if not, what has changed.

#### Applying for the final order of divorce (final order)

Once six weeks (and one day) have passed from the day the **conditional order** was made, you can apply for the **final order** of divorce. This brings your marriage to an end, and you are then formally divorced. However, you should not apply for the **final order** until any application for financial orders has been resolved or agreement has been reached about financial matters and the agreement has been made into a court order (see below).

If you do not apply for the **final order**, your spouse could apply, but only after three months from the first day you could have applied.

### Divorce Procedure: Joint Application

#### How do you start proceedings jointly?

Before issuing the joint application, the draft application is sent to your spouse or their solicitors to check over and add any details that are necessary. The application is then sent back to you or your solicitors to review any additions. The draft application can go back and forth in this way before it is finally submitted to court to be issued. Usually, the solicitors for each applicant discuss the contents to avoid the application going back and forth.

When the joint application has been finalised, it is submitted to court together with an image of your original marriage certificate and court fee. A statement of truth is included in the application for both you and your spouse. This confirms that each of you attests that the contents are true and that you each understand you could be held in contempt of court if in fact something is not true and you knew it not to be true when you gave the statement of truth.

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### Divorce Procedure: Joint Application continued

#### What happens once the joint application is issued?

On issuing the application, the court produces a notice of proceedings and emails and posts this to each applicant or to their solicitors. Each applicant must acknowledge receipt of the notice of proceedings within 14 days from the application being issued.

#### Applying for the first stage divorce order (conditional order)

A divorce order is made in two stages: **20 weeks** after the divorce application was issued, you and your spouse can apply for the first stage of the divorce order, called the **conditional order**. In the application for the **conditional order**, you must each confirm that you wish to proceed with the divorce, and that everything in the divorce application remains unchanged or, if not, what has changed.

If one of you no longer wishes to apply for divorce or simply refuses to progress the divorce proceedings, the other applicant can make the application for a **conditional order** on a sole basis. The application then becomes a **sole application** and that applicant can then make the application for a **final order** of divorce. The spouse who is no longer participating in the proceedings is called the respondent from this stage of the proceedings. See Divorce procedure: sole application above for how the proceedings then progress. See also Applying for costs above.

#### Applying for the final order of divorce (final order)

Once six weeks have passed from the day the **conditional order** was made, you and your spouse can apply for the **final divorce** order. This brings your marriage to an end, and you are then formally divorced. However, you should not apply for the final divorce order until any application for financial orders has been resolved or agreement has been reached about financial matters, and this has been made into a court order (see below).

If financial matters have been resolved, but one of you at this stage no longer wishes to apply for divorce or simply refuses to progress the divorce proceedings, the other applicant can apply for a final divorce order. However, that applicant must first formally inform the other spouse of their intention to make the application. They can only apply for the final divorce order 14 days after they have informed their spouse of their intention to apply. This is to allow the other spouse an opportunity to apply to court to prevent the final divorce order being made until financial matters have been resolved.

## Finances

The **final order** of divorce ends the marriage but it does not dismiss any potential financial claims the parties have against each other and nor does it sort out where the parties are going to live.

Decisions have to be made regarding property, pensions and maintenance issues. In order to ensure that any financial settlement is fair, the parties are encouraged to disclose details of their income and assets.

When a divorce application has been filed at court, either party can apply for financial orders. The orders available in financial remedy proceedings include the following:

- Periodical payments (also known as maintenance).
- Lump sum orders.
- Property adjustment orders (altering the ownership of property, for example the family home).
- Pension sharing orders and pension attachment orders.

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### Finances continued

Once agreement is reached regarding financial matters, the solicitors draft a Financial Remedy Order (also known as a Consent Order), which both parties need to sign. This is then sent to the court for the District Judge to approve, along with a Statement of Information for a Consent Order (Form D81) which provides details of the parties' assets and income.

### Children

Where there are children of the relationship and issues arise relating to where the children will live and who they will spend time with, if the parents are unable to reach an agreement, a separate application can be made by one or both parents for a Child Arrangements Order (CAO).

If the parents cannot agree what, if any, child maintenance is appropriate, either parent can make a referral to the Child Maintenance Service (CMS) for an assessment.

### Options

There are various options available to you when resolving disputes and it is important that you are aware of all of them so that you can choose the best way forward for you and your family.

- 1 Direct Agreement between you.** This is where you come to an agreement yourselves by talking to each other directly and, as mentioned above, it is now possible to make a joint application for a divorce. It is important that you instruct a lawyer who specialises in family law to advise on any agreement you reach as the lawyer can then take steps to make the agreement legally binding for you, if it is appropriate to do so.
- 2 Mediation.** You can seek the assistance of a third person to help you and your partner communicate and reach an agreement. The mediator cannot give legal advice. Again, once an agreement is reached, a lawyer must be instructed to advise on the proposed agreement and, thereafter, take the necessary steps to make the agreement binding for you, if it is appropriate to do so.
- 3 Instruct a Lawyer.** Your legal adviser can pursue an Out of Court Agreement or, alternatively, deal with proceedings at Court provided the parties are able to demonstrate to the Court that they have attempted to mediate prior to making the Court application.
- 4 Deal with matters collaboratively,** with lawyers who are trained in collaborative law. This involves a series of open discussions with everyone present and the parties and their collaborative lawyers signing up to a commitment not to use the court process.

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