

Grounds for Divorce

A divorce, which brings a marriage to an end, is a serious step to take and can have a significant impact on all the members of a family, including the children. When a marriage runs into difficulties most parties consider the full range of options, including whether there is any possibility of reconciliation (which can be explored with the help of experienced professionals such as Relate), separation, perhaps on a trial basis, and divorce.

If you wish to seek a divorce we will need to consider with you whether you have sufficient grounds. You will have to show that the marriage has irretrievably broken down. You will also have to show that the irretrievable breakdown was as a result of one of the following reasons:

- Your spouse has committed adultery and you find it intolerable to live with him or her.
- Your spouse has behaved in such a way that you cannot reasonably be expected to continue to live with him or her (the “behaviour” ground).
- Your spouse deserted you at least two years ago.
- You and your spouse have been separated for at least two years and your spouse consents to the divorce.
- You and your spouse have been separated for at least five years, in which case there is no need for your spouse to consent to the divorce.

We will advise you as to the most appropriate ground to use in the circumstances of your case.

If your spouse has committed adultery, the other party is no longer named in the Divorce Petition and takes no part in the divorce process.

If you rely on the “behaviour” ground it is necessary to set out in the Divorce Petition brief details of the behaviour relied on and what the effect has been on you. It is good practice to set out these details in as general and as mild a form as possible, consistent of course with obtaining a divorce at the end of the day, in order to keep hostilities to a minimum. Wherever possible, the wording of the draft Petition will be agreed with the other party in advance, so that the Petition can proceed by agreement.

You should note that it is not possible to start divorce proceedings in the first year of marriage, although it is possible to rely on events which have occurred within that first year as grounds for your divorce.

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If you live together for a period or periods totalling six months after the last act of adultery or the last incident of behaviour complained of, then you cannot obtain a divorce based on those events. Similarly, if you are relying on one of the separation grounds and live together for a period or periods totalling six months, that will break the continuity of the separation and the time will have to start running again. On the other hand, a period or periods of less than six months will not break the continuity, but cannot be relied on in the calculation of the relevant two or five year period. The reason for these rules is to give parties every opportunity to explore the possibilities of reconciliation without prejudicing their ability to obtain a divorce if attempts at reconciliation fail.

Divorce proceedings start with a Divorce Petition and finish, some four-six months later with a Decree Absolute, which brings the marriage to an end. The important issues of children and finances are dealt with separately, either by agreement or in separate court proceedings which can be initiated if necessary.

Please contact us if you need further information and/or advice as to how the law of divorce applies to the circumstances of your case.

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