



## Divorce

The law about divorce is set out in the Matrimonial Causes Act 1973. The law has not changed for some time and there are unlikely to be any changes in the near future. We will continue to have divorce based either on “fault” or a period of separation, but there is no reason that divorce proceedings need to be contentious, lengthy or expensive.

Some of the common questions about divorce are set out below.

### **What are the grounds for divorce?**

The only ground for divorce is that the marriage has broken down irretrievably.

### **How do I prove that the marriage has broken down irretrievably?**

There are five facts, at least one of which must be proved to show that the marriage has broken down irretrievably. The five facts are:

- (a) Adultery - that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
- (b) Unreasonable Behaviour - that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- (c) Desertion - that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- (d) Two years separation and consent - that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;
- (e) Five years separation - that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

### **When should I start divorce proceedings?**

When you are ready and it is what you want to do. There is no time limit within which you must start a divorce and if you think there is a chance that you might reconcile then you should not start proceedings.

### **Are there any alternatives to divorce proceedings?**

Yes. It is possible to obtain a decree of Judicial Separation. The procedure for this is the same as for a divorce, but at the end of the proceedings you remain married. However a decree of Judicial Separation enables a court to make the same orders about children and financial matters as could be made in divorce proceedings. More common is that when people live separately they decide to reach an agreement about the arrangements for their children and about financial issues, which can then be recorded in a **Separation Agreement**.

### **Will I need to attend at court?**

In almost all cases "No". It is only in the rare cases that are defended or where there is a particular concern about the arrangements for the children that it might be necessary to attend at court.

### **How long does a divorce take?**

Usually about 4 to 6 months from when the petition is issued to the date on which the application for Decree Absolute can first be made. In most cases we advise that the application for Decree Absolute should not be made until financial matters have been resolved.

### **What do the different terms used in divorce proceedings mean?**

<b>Co-respondent</b>	The person adultery has been committed with (not usually named).
<b>Decree Absolute</b>	The final divorce decree. Brings the marriage to an end.
<b>Decree Nisi</b>	The interim divorce decree. Confirms that the court is satisfied that the ground of the divorce has been proved but does not end the marriage.
<b>Petition</b>	The name for a divorce application
<b>Prayer</b>	The part of a divorce petition that asks the court to make orders (dissolving the marriage and payment of legal costs and/or financial orders).
<b>Petitioner</b>	The person who starts the divorce proceedings
<b>Respondent</b>	The person who receives the divorce proceedings

The information set out above is an overview for general information only. Whitfield & Co. can not accept responsibility for any reliance placed on this information. You should always seek specialist legal advice about the law as it applies to your case and we will be happy to advise you about any queries you may have about Divorce.