

Divorce Procedure

The first thing to think about is whether you've got everything you need to issue the divorce. You need:

- The divorce petition;
- marriage certificate;
- statement of arrangements for children;
- fee - £340 – or a fee exemption if your client is on a low income.
- certificate of reconciliation if the client is privately paying. This is something that tells the court whether the solicitor has recommended marriage guidance and is not a requirement for the client to attend.

The court issues the proceedings and then the respondent must return the acknowledgement to the court within seven days of receipt. Service is usually effected by the court by first class post. Evidence for the divorce for the special procedure is by affidavit. An affidavit is simply a statement which is solemnly sworn to be true. The affidavit is also an opportunity to record any changes since the issue of petition, e.g. a change of address.

The affidavit must be sworn before an independent solicitor (i.e. not one in the firm advising the petitioner) or a court official. It is filed with the county court.

The affidavit must be accompanied by a form of application for directions for trial. This, again, is a pre-printed form and asks the district judge for 'directions for trial' of the action by entering it into the special procedure list.

A concern frequently expressed by clients is whether they will have to attend court during the proceedings. The vast majority of clients will not have to attend court and their divorce will not generally be publicized. On rare occasions, the parties may have to attend, for example, to discuss costs, or if the case becomes defended.

Once the affidavit has been filed, the file will be passed for the consideration of the district judge. The district judge will review the case to see whether it can be entered in the special procedure list. She will first check that:

- the respondent (and any co-respondent) has been properly served (or service has been dispensed with);
- no intention to defend has been filed and that the time limit for doing so has expired;
- the respondent has provided consent in respect of a petition based on two years' separation and consent;
- the adultery has been admitted or proved.

The respondent's consent/admission is proved by the petitioner identifying the respondent's signature in her special procedure affidavit as corroborative evidence of the allegations made in the petition (r2.24(3)(a) FPR).

The district judge has to consider the evidence provided to decide whether the ground for divorce (the irretrievable breakdown of marriage) is proved. The district judge must be satisfied that the peti-

tioner has sufficiently proved the contents of the petition. As the wording is 'sufficiently' this is not envisaging a high standard of proof. Once the district judge is satisfied the petition has been proved, she will certify that the petitioner is entitled to a decree. This is a standard court form.

The court will always ensure that children of a divorcing couple are fully protected in the proceedings.

Under s41 Matrimonial Causes Act 1973 (MCA 1973), before granting a decree of divorce, the court must consider:

- whether there are any relevant children; and, if there are,
- whether the court needs to exercise any of its powers in relation to them.

The district judge will check the petition for relevant children and certify the fact. 'Relevant children', for the purposes of s41, are children of the family who are under 16 and children of the family in respect of whom the court directs that s41 should apply. A 'child of the family' is defined by s52 of the MCA 1973.

The district judge will consider whether the court needs to exercise its powers under the Children Act 1989 (see Chapter 27). He will look at the statement of arrangements filed by the petitioner and check the acknowledgement of service to see the respondent's reaction to the statement. If the respondent has filed his own statement this too will be considered. It is possible that a dispute has led to the issue of Children Act 1989 proceedings and this will be recorded on the petition and on the court file.

If there are relevant children, the court will go on to consider whether it should exercise its powers. In the vast majority of cases there will be no need to exercise powers.

If the court decides it needs to act but cannot do so immediately, then the court will direct that a decree of divorce cannot be made absolute until the child's welfare has been resolved. This will have the effect of delaying a divorce. This direction will only be made where there are exceptional circumstances that make it desirable in the interests of the child to make one.

The petitioner's solicitor will then receive the two certificates from the court office (i.e. the certificate of entitlement to a decree and the certificate for the purposes of s41, if relevant). The petitioner must be advised of the date, time, and place that the decree nisi will be pronounced. The pronouncement is generally made in open court by a judge or district judge. The petitioner can be assured that this is a purely procedural matter. On the appointed date, the judge enters the courtroom and reads out a list of decree nisi appointments for the day. If there are no objections or representations, the decree nisi is formally pronounced in every case.

The decree nisi does not dissolve the marriage. It is extremely important that the client understands this and does not arrange to be married before the pronouncement of the decree absolute.

The decree nisi is the first decree in divorce proceedings and states that the marriage has broken down irretrievably and that the marriage can be dissolved unless cause be shown within six weeks from the decree why it should not be made absolute.

So how quickly can the marriage be dissolved after nisi? Following pronouncement of the decree nisi there is a six-week waiting period before a decree absolute is pronounced. The usual practice is that the petitioner will apply for a decree absolute following the lapse of six weeks from the pronouncement of decree nisi.

The court staff will check that:

- no appeal has been lodged against the decree nisi;
- the correct amount of time has elapsed following the decree nisi;
- there are no children or, if there are, there is no direction holding up issue of the decree absolute under s41 MCA 1973.

If all is in order the court staff will issue the decree absolute (Form M9) and send a copy to both parties and their solicitors.

When the decree absolute is forwarded to the client, advice should be given on the need to keep the decree safely (in case of remarriage) and the need to consider the effect of divorce on wills and inheritance. This may require a further letter or further conversation with the client

Although a decree absolute has been granted, the client retainer may continue with ongoing disputes about finances or children.