

My marriage has broken down. How do I get a divorce?

You can't apply for a divorce until you've been married for at least one year (or two years in Northern Ireland). There are no exceptions to this rule. To get divorced in England, Wales and Northern Ireland, the marriage must be recognised as valid by United Kingdom law and you must meet rules about how long you've been living in the country.

If you and your partner both agree to the divorce, this is called an undefended divorce. If one of you doesn't agree to the divorce, this is called a defended divorce.

Undefended divorce

An undefended divorce is dealt with:

- in the divorce county court; or
- the High Court in Northern Ireland; or
- in England and Wales the Principle Registry of the Family Division in London.

You can apply to any divorce county court. You can find court addresses in the local telephone directory or on Her Majesty's Courts Service website at www.hmcourts-service.gov.uk.

In an undefended divorce, you don't usually need to use a solicitor for the divorce procedure itself. However, it may be advisable to go to a solicitor for general advice before you apply for a divorce. A solicitor can be useful for advice on whether there are sufficient grounds, which grounds are appropriate and what evidence may be needed. If there are disputes about children, property or money which you and your partner can't resolve, it's usually advisable to consult a solicitor.

Defended divorce

A defended divorce will normally be heard in the High Court, although the case can be transferred to the divorce county court. In a defended divorce, both partners should always consult a solicitor. When the case is heard, you will usually need to use a barrister as well. Legal fees can be very high if there are long disputes. It is advisable wherever possible for both partners to try to come to an agreement before going to court.

What do you have to prove to get a divorce

The court will grant a divorce if you or your partner can show that the marriage no longer exists on a permanent basis. Legally, this is called an irretrievable breakdown of the marriage. For a marriage to have irretrievably broken down, one of the following things must be proved:

- adultery
- your partner has behaved unreasonably
- your partner deserted you at least two years ago
- you've lived apart for at least two years if you both agree to the divorce
- you've lived apart for at least five years if one of you doesn't agree to the divorce.

Adultery

A court may grant a divorce if one of you has had a sexual relationship with someone else (committed adultery) and the other partner cannot bear to carry on living together. You must decide that you can't bear to carry on living together within six months of the adultery taking place. A woman who is raped hasn't committed adultery but a man who commits rape has.

The court will need details of the adultery, for example, dates and places when it happened. The court will only grant the divorce if it's satisfied that adultery has occurred and that the other partner could no longer live with the partner who has committed adultery.

If you both agree to the divorce, the court will usually only need statements and details of the sexual relationship. If one of you doesn't agree to the divorce, proof will be necessary and this may be difficult and expensive to get.

Unreasonable behaviour

A court may grant a divorce if you or your partner has behaved so badly that the other can no longer bear living together. Unreasonable behaviour can include mental or physical cruelty, including violence or abuse, and less obvious things like dominating a partner, not letting the partner leave the house or speak to neighbours and friends or refusing to pay for housekeeping.

If one of you doesn't agree to the divorce, evidence and details will be needed, for example, evidence from witnesses such as friends or medical evidence. If your partner has been violent towards you, you can get specialist help. For more information about help you can get if your partner has been violent, copy this link into your web browser
http://www.adviceguide.org.uk/index/your_family/family/domestic_violence.

Desertion

Desertion means that your partner left home against your wishes with no good reason. If your partner was away continuously for two out of the last two and a half years, you can apply for a divorce without the agreement of your partner. If you live together for a total of up to six months during this period, this does not stop the desertion being continuous. A court will want proof of the desertion and, if one of you doesn't agree to the divorce, there may be disagreements about who deserted whom.

Living apart for two years

If you have lived apart (been separated) for two years continuously and you both agree to a divorce, a court will accept this as proof of irretrievable breakdown of the marriage. The two years apart will still be continuous even if you have actually lived together for up to six months in between.

Living apart for five years

If you have lived apart (been separated) for five years continuously, you can apply for a divorce without your partner's agreement. Your partner can object to the divorce on the grounds that it would cause unreasonable hardship. However, a court will usually agree to a divorce as long as you've been separated for five years.

Applying for a divorce

The partner who is applying for the divorce is called the petitioner. The other partner is the respondent.

If you want to start divorce proceedings you will need to get the forms from the court. You can also get them from Her Majesty's Courts Service website at www.hmcourts-service.gov.uk. The court office will tell you which forms you need, but court staff are not allowed to give legal advice to either partner or help you fill in the forms.

What the court will do

If you both agree to the divorce

If you both agree to the divorce, the court will look at the petition and grant an order called a **decree nisi**. No court hearing is needed.

If you have children, the court will need to be satisfied that you have made satisfactory arrangements for them. The court may want to discuss the arrangements and possibly meet the children if they are old enough (nine years and over). A divorce which you both agree to can take up to six months if there are no children or money issues involved. It can take longer if children are involved and the court is not satisfied with the arrangements being made for them.

Six weeks after the court grants the decree nisi, the partner who applied for the divorce can apply to the court for a final order called a **decree absolute**. This confirms the divorce. A decree absolute will be made as long the court has approved the arrangements for any children. After a decree absolute has been made, either partner can marry again or enter into a civil partnership.

If one of you doesn't agree to the divorce

If you start divorce proceedings and your partner doesn't agree, they will have to fill in court papers called an Answer. They have to say why they don't agree that the marriage has broken down. There might be a court hearing for a judge to decide whether the marriage has broken down. These hearings are very rare, as in most cases a defended divorce will be resolved before a court hearing.

Even if the court agrees that the marriage has broken down, they have to be satisfied that you have made satisfactory arrangements for any children. For more information about arrangements for the children, go to http://www.adviceguide.org.uk/index/your_family/family/ending_a_marriage.htm#children_at_the_end_of_a_marriage.

If the court agrees to grant the divorce, they will grant a **decree nisi**. Six weeks after the court grants the decree nisi, the partner who applied for the divorce can apply to the court for a **decree absolute**. This confirms the divorce. A decree absolute will be given as long the court has approved the arrangements for any children. After a decree absolute has been made, either partner can marry again or enter into a civil partnership.

This information applies to England and Wales

Further help

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. Contact **Citizens Advice Islington** for further help on **0844 856 3537**.