

# JUST FAMILY LAW

## Divorce

We understand that divorce and separation can be a traumatic time and that you may experience changing emotions throughout the process. In addition, there are many practical issues to organise as well as the legal formalities of ending your marriage.

The divorce procedure in England and Wales for uncontested divorces is relatively straightforward.

You are eligible to issue divorce proceedings if you have been married for at least one year and can prove that the marriage has irretrievably broken down by proving one of the following facts:-

- your spouse has committed adultery
- your spouse has behaved in such a way that it is unreasonable for you to be expected to continue living together
- your spouse has deserted you for a continuous period of 2 years
- you and your spouse have lived apart for 2 years or more and your spouse consents to a divorce.
- you and your spouse have lived apart for 5 years or more

## Ex-pats and foreigners living in the UK

You may have recently returned to the UK following a relationship breakdown, be living abroad or originally come from abroad but live in the UK. To issue divorce proceedings in England and Wales you will need to satisfy criteria laid down by Brussels II that the courts of England and Wales have jurisdiction to deal with the divorce.

Whether or not you can divorce in the UK depends on where you were habitually resident and domiciled. Habitual residence relates to where you currently live and domicile looks at where you originate from and if your domicile has changed following a period of time living in another country. Factual evidence will determine where you are habitually resident and where you are domiciled.

During the divorce procedure you may be requested to file full evidence as to your domicile or habitual residence to satisfy the district judge that the court has jurisdiction to deal with the case

There are many advantages to dealing with your divorce in England and Wales. There are types of financial relief available that may not be available to you in other jurisdictions. The procedure is often speedier and therefore less costly and stressful. The English courts however cannot make orders in respect of overseas assets unless agreement is reached. Implementation of orders by consent may be dealt with by local lawyers.

Please note that if you live in Scotland or originate from Scotland, you may not be able to divorce in England and Wales and may need advice from a Scottish lawyer.

## Divorce Procedure

- your solicitor prepares a divorce petition and statement of arrangements form for the children if applicable
- the divorce petition is issued at court and a court fee of £300 is payable .
- the court will post the proceedings to your spouse together with an acknowledgement of service form for your spouse to complete and confirm whether or not he/she intends to defend the divorce proceedings.
- your spouse returns this to the court and a copy is posted to your solicitor
- you make your application for decree nisi by application to the court supported by affidavit confirming the content of the divorce petition and statement of arrangements is true and annexing a copy of the signed acknowledgement of service form
- the court considers if it is satisfied that a divorce can be granted , that the procedure has been correctly followed and that the arrangements for the children are satisfactory. If this is the case, the court issues a date on which decree nisi will be pronounced
- you will need to attend the decree nisi hearing only if there are outstanding costs issues you wish to address
- once decree nisi is pronounced, the court may make financial orders. However, your marriage is not yet formally ended
- you may apply for decree absolute as petitioner 6 weeks and a day following decree nisi
- you may be advised not to apply for decree absolute until you have a financial order to prevent you from losing out on pension provision or other benefits should your spouse pre-decease you between decree nisi and decree absolute

This procedure takes a minimum of four months to complete.

You are not advised to remarry unless you have applied to the court for financial relief to be dealt with as you will be barred from making an application following remarriage