

Success Starts Here Free Information Guide

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Family Law



This free information guide explains the basis for divorce in England and Wales and the facts you can rely upon in your divorce petition.

The 'grounds' for divorce

Contrary to popular belief, there is only one ground for divorce, i.e. that the marriage has irretrievably broken down. Confusion arises because the Court cannot find that the marriage has broken down unless you can show that one or more of five things has happened and that in turn has caused the "irretrievable breakdown". The five facts on which you can rely are examined in more detail below.

1 Adultery

Adultery is defined as voluntary sexual intercourse. Any behaviour that falls short of this, no matter how inappropriate it is, will not be enough to enable you to use adultery as the basis of your divorce petition.

In order to rely on the fact of adultery, you need to either be able to prove that it happened, or to be confident that your spouse will admit to it in writing. You will also need to show that, once you found out about the adultery you were no longer able to live with your spouse. If you continue to live together for a period of more than six months afterwards, you will not be able to rely on it in your divorce petition, unless the adultery is still continuing.

As it is difficult to prove adultery, or even to be sure that technically adulterous behaviour has happened, it is often easier to rely on the fact of unreasonable behaviour (see below) and use your spouse's inappropriate relationship with another person as an example of that behaviour.

2 Unreasonable behaviour

In order to rely on this fact, you need to show the Court not only that your spouse has behaved unreasonably but also that you cannot be expected to continue living with them. The Court will look at examples of your spouse's behaviour and at the impact that behaviour has had on you.

You will need to provide four or five examples of the behaviour that you feel make it impossible for you to carry on living with your spouse. The behaviour can be extremely serious, such as violence towards you or your children, or much less so. As long as the behaviour has had an impact on you it will be

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taken into account. A huge range of behaviour can be included, such as:

- Domestic violence
- Relationships with other men/women
- Excessive drinking, gambling or drug taking
- Aggressiveness
- Controlling behaviour (both financially and emotionally)
- Deceptive behaviour
- Neglect of you or the children
- Rudeness to your friends and family
- Lack of affection and intimacy

Of course there are many other examples, every behaviour petition is different!

In reality unreasonable behaviour is often the simplest, and the most relevant, fact to rely on. It does not have to be about point scoring and laying blame. By using mild examples of behaviour and explaining to your spouse in advance what you are planning to do, and what the particulars will be, it may be that you can both agree it is the best way forward. It is important to strike a balance between including enough information to satisfy the court but not unnecessarily inflaming the situation between you and your spouse.

It is possible, and often a good idea, to prepare a petition relying on both adultery and unreasonable behaviour (assuming of course that both apply). If your spouse is willing to admit the adultery, you can then proceed on that basis but if not you have the unreasonable behaviour as a fallback position.

3 Desertion

If your spouse has deserted you for a period of more than two years, you can rely on that fact in your divorce petition.

For desertion to happen, your spouse must have an intention to stop living with you and he or she must physically separate from you. In addition, you must not have consented to your spouse leaving nor behaved in any way that might have caused them to leave.

In reality desertion is very rarely used as a basis for divorce as it is very difficult to establish. It is likely that in most cases one of the other, easier to establish, facts will also apply and will therefore be used instead.

4 Two years separation

If you and your spouse have lived apart for at least two years, you can use that in your petition, as long as your spouse agrees. In some circumstances you can 'live apart' while still being under same roof, for example if you live in separate rooms, cook and eat separately etc.

It can be tempting to rely on this fact as it is, in effect, a blameless divorce which can help to keep things amicable. The problem is that the consent of the other person can be withdrawn at any time. If, therefore, you apply for divorce on the basis that you have been separated for two years and you both consent but you then fall out with your spouse for some reason, he or she can make things very difficult by withdrawing their consent.

5 Five years separation

If you and your spouse have been separated for five years or more you can rely on that fact when applying for divorce and you will not need your spouse to agree.

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It may be that more than one of the above facts applies to your case and a solicitor will be able to help you decide which is best to use, or whether a combination of more than one would be most appropriate.

I'm unhappy in my marriage and I think I have grounds for divorce. What should I do?

Following the breakdown of a marriage you should seek legal advice and assistance to determine the best way to proceed.

Taking legal advice early on will make the whole process seem less daunting and can help to keep things civil between you and your spouse, which is particularly important if there are children involved.

Fisher Meredith has a dedicated and sympathetic team of Family Law solicitors who would be happy to assist you at this difficult time.

Useful links

Resolution
www.resolution.org.uk

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