

BREEZE & WYLES SOLICITORS LLP

***Guide to undefended divorce  
In England and Wales***



*By*

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**"Every new beginning requires acknowledgement of its ending"**

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## A guide to Legal Terms

Absent Parent	Parent who does not live in the same house as the child/ren.
Adjournment	Putting off/postponing a court event to another time
Adultery	Sexual intercourse taking place voluntarily between a married person and a person of the opposite sex, where the other person is not their spouse, whilst the marriage is still in existence. It is still adultery even if the parties to the marriage are already separated and the adultery was not the cause of the separation. Actual sexual intercourse must take place and that adultery can only take place between persons of the opposite sex and does not include same sex sexual relations.
Affidavit	Your written statement setting out the facts of your case (your evidence). It must be sworn or affirmed, usually before a Justice of the Peace, Commissioner of Oaths or lawyer, as a true statement. Affidavits may also be sworn by other people in support of your case (witnesses).
Ancillary relief	Financial claims that a person can pursue on the breakdown of their marriage within divorce proceedings.
Applicant	The person who first comes to the Court asking for an order to be made.
Certificate of Entitlement to Decree Nisi	This document will confirm that you have proved the contents of your petition and that you are entitled to a Decree Nisi. It will confirm the date when Decree Nisi will be pronounced in Court. It will also state whether the Court is considering making an order for costs and whether the Court wishes to see you and the Respondent about any issues concerning the children.
Certified Copy	When copies of an original document are made, you need to be able to show that they are true copies. A solicitor can do this by endorsing the copy – that is, writing on the copy that it is a true copy and then signing and dating the statement.
Child of the family	Child who has been treated by parties to a marriage as a child belonging to their family, irrespective of the fact of whether the child is a biological child or not, e.g. step child/ren.
Clean break	Settlement where the parties do not have any claims against each other for income, capital, property or pension, during their lifetime or in the event of their death.
Consent Orders	These are made where both parties come to an agreement and that agreement is lodged before the Courts for its approval, which the Court can do by sealing the order. These orders are as binding as any other order made by the Court once the order has been sealed by the Court.
Contact	The time that the child/ren spend with their non-resident parent. Contact arrangements can be made by agreement or by an order of the Court. (see also "Residence").
CSA/Child Support Agency	Government Department that deals with child maintenance from an absent parent.
Decree Nisi	The decree nisi is the first part of the divorce and the stage whereby the Court has approved that the Petitioner is entitled to the divorce as presented. The parties are not actually divorced at this time and a period of six weeks and one day must pass from the pronouncement of the Decree Nisi before the Petitioner may apply for

Decree Absolute. The Respondent may apply for Decree Absolute three months after the Petitioner may apply.

Decree Absolute	This is the final Order in divorce proceedings that dissolves the marriage between the parties.
Domicile	Domicile has a complex legal definition. However for these purposes, your domicile should be your country of permanent residence which may not necessarily be the country where you currently live. For example, if you were born in England but you are currently living and working in Germany on a 2 year contract and intended to return to England after your contract ended, then your domicile would be England. If you have any doubt with respect to your domicile then you should seek advice from a solicitor.
Habitually Resident	This is where you are ordinarily resident in a country. For you to be habitually resident in a country there must be a regular physical presence which must last for some time.
Judicial Separation proceedings	This confirms that the parties of the marriage are separated. It is an alternative to divorce, used mainly where there is a moral or religious objection to divorce but enables the parties to seek financial order similar to that available on divorce.
Mediation	This service is offered by the Court and Mediation Services to help settle disputes by agreement rather than at Court. Mediation can deal with child-related issues, financial matters and how to dissolve a marriage. This is a structured approach depending on the individual's needs and circumstances of their family. Mediators are often legally trained as solicitors or other equivalent but do not act in this capacity, their role is an independent third party to assist the parties in resolving the issues in dispute. Any agreement reached at Mediation is not legally binding. To make an agreement reached at Mediation legally binding, it should be drawn up into a Consent Order and sealed by the Court.
Negotiation	The process where each party sets out what they want and tries to reach agreement. This can be done in writing or by talking to each other at any time, or through their solicitors.
Order	The Court has the power to order a party to the proceedings to do certain things.
Parties	Both the Applicant and the Respondent are parties to the proceedings. If a third party is joined or someone is given permission to intervene they also become party to the proceedings.
Petition	This is the document that commences divorce proceedings. It sets out details about both parties and the fact that the marriage has irretrievably broken down and on what basis the petition is presented.
Petitioner	The person who presents the divorce petition to the Court.
Residence	Word used to describe where a child will live. This can be by agreement or by Court Order. The parent with whom a child lives is the "resident parent".
Respondent	The person who responds to the application by agreeing to or opposing the orders sought by the Applicant.
Parental Responsibility	This means the rights and Responsibilities that a parent has over a child. Where the parents are married, this responsibility is shared equally and is automatic and does not cease upon divorce or re-marriage. If the parties have never been married, the biological mother has parental responsibility and the father can apply to the Courts,

if the mother will not agree to provide parental responsibility to him. Even if the parties are not married the father will be deemed to automatically have parental responsibility if the child was born after the 1<sup>st</sup> December 2003 and is named on the birth certificate. Parental responsibility can relate to long term issues such as education, religion, serious health concerns or day to day issues such as attendances at sport, parties, homework etc.

Sealed Copy	A copy of a document which has an original Court seal (stamp) on it.
Service (of documents)	The provision of documents by one party to another. This can be effected by personal delivery, by post and, in some instances, by fax. If a party has an address for service (this could be their own address, or another person's address such as a business address or their solicitor's address) filed with the Court, you should make sure that the documents are delivered to that address. There are rules about what method of service of different types of documents you should use- check with your solicitor or the court. Documents that are being served need to be a Sealed Copy
Spouse	Your husband or wife.
Unreasonable behaviour	Where the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to have to live with the Respondent. It can cover a wide range of behaviour.
Witness	A person who gives evidence to the Court about their knowledge of a case.

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## Introduction

To commence divorce proceedings you have to complete a divorce petition.

The party who issues the divorce petition is referred to as a "Petitioner"; the party who receives the petition is referred to as a "Respondent".

In order to commence divorce proceedings, you must satisfy the following criteria:

1. You and your spouse must be married for more than one year immediately before a divorce petition is presented to Court.
2. One of the following must apply in relation to you and/or your spouse:
  - i) You are both habitually resident in England and Wales;
  - ii) You were both last habitually resident in England and Wales and either you or your spouse still resides there;
  - iii) Your spouse is habitually resident in England and Wales;
  - iv) You are habitually resident in England and Wales and have resided there for at least one year immediately before the divorce petition is presented to the Court;
  - v) You are domiciled and habitually resident in England and Wales and have resided there for at least 6 months immediately before the presentation of the petition to the Court;
  - vi) You are both domiciled in England and Wales.

Once you have established that you are in a position where you are able to present a divorce petition, you need to confirm that the marriage has irretrievably broken down. You do this by basing your divorce petition on one of the following facts: -

- a) Your spouse has committed adultery and you find it intolerable to live with them; [ADULTERY]
- b) Your spouse has behaved in such a way that you cannot reasonably be expected to live with them; [UNREASONABLE BEHAVIOUR]
- c) Your spouse has deserted you for a continuous period of at least two years immediately before you have sent a petition to the Court (this fact is rarely used as it is often difficult to proceed with) [DESERTION]
- d) You have both lived apart for a continuous period of at least two years before you present your petition to the Court and your spouse consents to a divorce proceeding on this basis.[2 YRS SEPARATION]
- e) You have lived apart from your spouse for a continuous period of five years before you present the petition to Court, you do not need their consent to proceed.[5 YRS SEPARATION]

***Depending on the fact upon which you are going to rely upon will dictate which divorce petition you will need to use.***

*DIVORCE PETITIONS ATTACHED*

## **How to complete the Divorce Petition**

Divorce Petition notes for Guidance – you should not cross out any of the paragraphs numbered 1 to 13. All five divorce petitions are completed in the same manner, save unless otherwise confirmed here: -

### **A Adultery petition**

You need to obtain the original or certified copy marriage certificate in order to complete this part of the divorce petition and you should be aware that you will not receive the return of the marriage certificate which will be sent to the Court and kept. You must explain any differences between the information given in your divorce petition and that contained on your marriage certificate. If either you or your spouse have changed your names since the marriage took place, you must explain how the name was changed, be it by deed poll or otherwise.

**Note 1** – You will need to provide the date upon which you were married, your full name (you as the Petitioner), the full name of your spouse (known as the Respondent), the exact details of where you were married. You should write the information exactly as it appears on your marriage certificate after the words “Marriage solemnised at”. A copy of a marriage certificate has been reproduced for your assistance.

At paragraph 1(a) the Petitioner must show either that their name has remained unchanged since the date of the marriage or should show the change made and how it was made e.g. by retained maiden name.

At paragraph 1 (b) you will need to state if you believe your spouse has made any change to their name since the marriage.

**Note 2** – You will need to state the last address at which you and your spouse lived together with each other.

**Note 3** – You will need to say why the Court has jurisdiction to deal with your divorce, by saying one of the following: -

- 1) The Petitioner and the Respondent are both habitually resident in England and Wales
- 2) The Petitioner and the Respondent were last habitually resident in England and Wales and the (Petitioner) or (Respondent) still resides there *(delete as appropriate)*
- 3) The Respondent is habitually resident in England and Wales
- 4) The Petitioner is habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 5) The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least immediately prior to the presentation of the petition
- 6) The Petitioner and the Respondent are both domiciled in England and Wales

**\*If none of the above apply to you, you cannot use Tier One of the Breeze and Wyles Family Package and you should consult a solicitor.**

**Note 4** - You will need to provide details of yours and your spouse's occupation and yours and your spouse's current addresses of yourself.

**Note 5** – If there are no children of the family cross out the word “except”. In the event that there are children of the family you will need state the following: -

- a) Their full names.
- b) Their date of birth or if over 18 say that they are over 18 years of age.
- c) If they are over 16 but under 18, state if they are at school or college, or training for a trade or vocation or working full time.

**\* If you have children you will need to complete the supplemental form known as Statement of Arrangements for Children.**

**Note 6** - If you, as the Petitioner, are the husband and no child other than a child of the family has been born during your marriage, cross out the word Petitioner. If you are the wife and you are the Petitioner, cross out the word Respondent.

**Note 7** – If there have not been any proceedings relating to your marriage, or any child of the family, or any property belonging to either of you, cross out the word “except”. If there have been proceedings, you will need to provide the following details: -

- a) details of the Court in which such proceedings took place;
- b) details of any Order made;
- c) whether such proceedings were in relation to your marriage to the Respondent;
- d) whether you resumed cohabitation for any period thereafter.

**Note 8** – You will need to confirm whether there have been any proceedings in relation to the Child Support Agency regarding maintenance for any child of the family. If there has not, cross out the word “except”. If there have been, you will need to provide details of any application to the Child Support Agency and details of any calculation made.

**Note 9** – You will need to confirm whether there have been any proceedings in a Court outside England and Wales which could affect your marriage. If not you will need to cross out the word “except”. If there have been any proceedings you will need to provide the following: -

- a) the name of the country and Court in which the proceedings took place, or are taking place;
- b) details of any Order made;
- c) when the proceedings took place and whether they are still continuing;
- d) if they are still continuing, you will need to provide details of any further hearings that you are aware of at the time of filing the petition;

**Note 10** – There is nothing to add in this note.

**Note 11** – In relation to the Adultery, it is not necessary to name a third party and certainly this is not encouraged, as it simply serves to increase hostility between the parties and you would also have to serve the named third party with the paperwork. Therefore this paragraph should in all cases be deleted.

**Note 12**– As far as you can, set out the details of the alleged adultery. For example: -

- 1) The Respondent has committed adultery with a man/woman and the Petitioner finds it intolerable to live with the Respondent.
- 2) The Respondent has committed adultery with a person whose name and identity is known to the Petitioner but whom the Petitioner does not wish to name at this stage, and such adultery continues
- 3) On or about [DATE] the Respondent conducted a relationship with another person of the opposite sex and such adultery continues

**Note 13** - If you are going to ask the Respondent to contribute to your costs, you can do so within this paragraph. You may wish to avoid requesting a contribution to your costs if you are doing the divorce

yourself under Tier One. If you do not wish to claim any costs from the Respondent delete the paragraph completely.

**Note 14** – If you are a man state “he”. If you are a woman state “she”. If you wish to apply for any of the Orders listed on behalf of yourself or on behalf of the children of the family, do not delete any of these Orders. If you are unsure as to what to delete, you should seek legal advice. If you cross out any of the Orders and you later change your mind, you will not be able to apply for ancillary relief (full financial provision from your spouse) without the Court’s permission. Such permission cannot be granted if you as the Petitioner have remarried. An explanation is contained at page 19 of the Guide.

**Note 15** – You will need to sign the petition.

**Note 16** – You will need to place your spouse’s name and address, where you believe they currently reside, in order for the Court to serve the petition upon them. Cross out “Co-Respondent” if you are not serving a copy of the same upon the Co-Respondent. **(See Note 11)**

**Note 17**– You will need to place your address where the Court can serve you with confirmation that the divorce petition has been posted to the Respondent. Finally you will need to date the petition.

**Note 18** – you should date the divorce petition in the following format:

Dated this *third* day of *September 2006*

**Note 19** – You need to enter the address of the Court in which you are going to issue the divorce petition.

There is a back page to the divorce petition, which should also be completed with details of the Court in which you are going to issue the petition and setting out your name confirming that it is your petition.

You will need to apply for an exemption from the Court fee if you cannot afford to pay the Court fee, as explained below but you will need to provide an extra copy if you are serving a Co-Respondent

## Divorce Petition for Unreasonable Behaviour

You need to obtain the original or certified copy marriage certificate in order to complete this part of the divorce petition and you should be aware that you will not receive the return of the marriage certificate which will be sent to the Court and kept. You must explain any differences between the information given in your divorce petition and that contained on your marriage certificate. If either you or your spouse have changed your names since the marriage took place, you must explain how the name was changed, be it by deed poll or otherwise.

**Note 1** – You will need to provide the date upon which you were married, your full name (you as the Petitioner), the full name of your spouse (known as the Respondent), the exact details of where you were married. You should write the information exactly as it appears on your marriage certificate after the words “Marriage solemnised at”. A copy of a marriage certificate has been reproduced for your assistance.

At paragraph 1(a) the Petitioner must show either that their name has remained unchanged since the date of the marriage or should show the change made and how it was made e.g. by retained maiden name.

At paragraph 1(b) you will need to state if you believe your spouse has made any change to their name since the marriage.

**Note 2** – You will need to state the last address at which you and your spouse lived together with each other.

**Note 3** – You will need to say why the Court has jurisdiction to deal with your divorce, by saying one of the following: -

- 1) The Petitioner and the Respondent are both habitually resident in England and Wales
- 2) The Petitioner and the Respondent were last habitually resident in England and Wales and the (Petitioner) or (Respondent) still resides there (*delete as appropriate*)
- 3) The Respondent is habitually resident in England and Wales
- 4) The Petitioner is habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 5) The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 6) The Petitioner and the Respondent are both domiciled in England and Wales

**\*If none of the above apply to you, you cannot use Tier One of the Breeze and Wyles Family Package and you should consult a solicitor.**

**Note 4** - You will need to provide details of yours and your spouse's occupation and yours and your spouse's current addresses of yourself.

**Note 5** – If there are no children of the family cross out the word “except”. In the event that there are children of the family you will need state the following: -

- a) Their full names
- b) Their date of birth or if over 18 say that they are over 18 years of age
- c) If they are over 16 but under 18, state if they are at school or college, or training for a trade or vocation or working full time.

***\* If you have children you will need to complete the supplemental form known as Statement of Arrangements for Children.***

**Note 6** - If you, as the Petitioner, are the husband and no child other than a child of the family has been born during your marriage, cross out the word Petitioner. If you are the wife and you are the Petitioner, cross out the word Respondent.

**Note 7** – If there have not been any proceedings relating to your marriage, or any child of the family, or any property belonging to either of you, cross out the word “except”. If there have been proceedings, you will need to provide the following details: -

- a) details of the Court in which such proceedings took place;
- b) details of any Order made;
- c) whether such proceedings were in relation to your marriage to the Respondent;
- d) whether you resumed cohabitation for any period thereafter.

**Note 8** – You will need to confirm whether there have been any proceedings in relation to the Child Support Agency regarding maintenance for any child of the family. If there has not, cross out the word “except”. If there have been, you will need to provide details of any application to the Child Support Agency and details of any calculation made.

**Note 9** – You will need to confirm whether there have been any proceedings in a Court outside England and Wales which could affect your marriage. If not, you will need to cross out the word “except”. If there have been any proceedings you will need to provide the following: -

- a) the name of the country and Court in which the proceedings took place, or are taking place;
- b) details of any Order made;
- c) when the proceedings took place and whether they are still continuing;
- d) if they are still continuing, you will need to provide details of any further hearings that you are aware of at the time of filing the petition;

**Note 10** – Do not delete this paragraph

**Note 11**– Do not delete this paragraph

**Note 12** – You will need to provide details of the allegations which you wish to rely upon with respect to the unreasonable behaviour of your spouse. You will need to state details of particular incidents including dates. You will not need to give more than 6 examples. If there are more serious allegations with respect to abuse, be it physical, mental or sexual, provide details of the most recent incidents first.

**Note 13** - If you are going to ask the Respondent to contribute to your costs, you can do so within this paragraph. You may wish to avoid requesting a contribution to your costs if you are doing the divorce yourself under Tier One. If you do not wish to claim any costs from the Respondent delete the paragraph completely.

**Note 14** – If you are a man state “he”. If you are a woman state “she”. If you wish to apply for any of the Orders listed on behalf of yourself or on behalf of the children of the family, do not delete any of these Orders. If you are unsure as to what to delete you should seek legal advice. If you cross out any of the Orders and you later change your mind, you will not be able to apply for ancillary relief (full financial provision from your spouse) without the Court’s permission. Such permission cannot be granted if you as the Petitioner have remarried. An explanation will follow as to what each of these Orders mean.

**Note 15** – You will need to sign the petition

**Note 16** – You will need to place your spouse’s name and address, where you believe they currently reside, in order for the Court to serve the petition upon them.

**Note 17** – You will need to place your address where the Court can serve you with confirmation that the divorce petition has been posted to the Respondent. Finally you will need to date the petition.

**Note 18** – you should date the divorce petition in the following format:  
Dated this *third* day of *September 2006*

**Note 19** – You need to enter the address of the Court in which you are going to issue the divorce petition.

There is a back page to the divorce petition, which should also be completed with details of the Court in which you are going to issue the petition and setting out your name confirming that it is your petition.

You will need to apply for exemption from the Court fee if you cannot afford to pay the Court fee.

## Divorce Petition for Desertion

You need to obtain the original or certified copy marriage certificate in order to complete this part of the divorce petition and you should be aware that you will not receive the return of the marriage certificate which will be sent to the Court and kept. You must explain any differences between the information given in your divorce petition and that contained on your marriage certificate. If either you or your spouse have changed your names since the marriage took place, you must explain how the name was changed, be it by deed poll or otherwise.

**Note 1** – You will need to provide the date upon which you were married, your full name (you as the Petitioner), the full name of your spouse (known as the Respondent), the exact details of where you were married. You should write the information exactly as it appears on your marriage certificate after the words “Marriage solemnised at”. A copy of a marriage certificate has been reproduced for your assistance.

At paragraph 1(a) the Petitioner must show either that their name has remained unchanged since the date of the marriage or should show the change made and how it was made e.g. by retained maiden name.

At paragraph 1(b) you will need to state if you believe your spouse has made any change to their name since the marriage.

**Note 2 –** You will need to state the last address at which you and your spouse lived together with each other.

**Note 3 –** You will need to say why the Court has jurisdiction to deal with your divorce, by saying one of the following: -

- 1) The Petitioner and the Respondent are both habitually resident in England and Wales
- 2) The Petitioner and the Respondent were last habitually resident in England and Wales and the (Petitioner) or (Respondent) still resides there (*delete as appropriate*)
- 3) The Respondent is habitually resident in England and Wales
- 4) The Petitioner is habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 5) The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 6) The Petitioner and the Respondent are both domiciled in England and Wales

**\* If none of the above apply to you, you cannot use Tier One of the Breeze and Wyles Family Package and you should consult a solicitor.**

**Note 4 -** You will need to provide details of yours and your spouse's occupation and yours and your spouse's current addresses of yourself.

**Note 5** – If there are no children of the family cross out the word “except”. In the event that there are children of the family you will need state the following: -

- a) Their full names
- b) Their date of birth or if over 18 say that they are over 18 years of age
- c) If they are over 16 but under 18, state if they are at school or college, or training for a trade or vocation or working full time.

**\* If you have children you will need to complete the supplemental form known as Statement of Arrangements for Children.**

**Note 6** - If you, as the Petitioner, are the husband and no child other than a child of the family has been born during your marriage, cross out the word Petitioner. If you are the wife and you are the Petitioner, cross out the word Respondent.

**Note 7** – If there have not been any proceedings relating to your marriage, or any child of the family, or any property belonging to either of you, cross out the word “except”. If there have been proceedings, you will need to provide the following details: -

- a) details of the Court in which such proceedings took place;
- b) details of any Order made;
- c) whether such proceedings were in relation to your marriage to the Respondent;
- d) whether you resumed cohabitation for any period thereafter.

**Note 8** – You will need to confirm whether there have been any proceedings in relation to the Child Support Agency regarding maintenance for any child of the family. If there has not, cross out the word “except”. If there have been, you will need to provide details of any application to the Child Support Agency and details of any calculation made.

**Note 9** – You will need to confirm whether there have been any proceedings in a Court outside England and Wales which could affect your marriage. If not you will need to cross out the word “except”. If there have been any proceedings you will need to provide the following: -

- a) the name of the country and Court in which the proceedings took place, or are taking place;
- b) details of any Order made;
- c) when the proceedings took place and whether they are still continuing;
- d) if they are still continuing, you will need to provide details of any further hearings that you are aware of at the time of filing the petition;

**Note 10** – Do not delete this paragraph

**Note 11**– Do not delete this paragraph

**Note 12** – If you have alleged desertion, there must be a separation between you and your spouse. You must be living apart and you must establish that there are in fact two separate households. **All** of the following must apply to you: -

- a) There must be an intention to desert to bring the marriage to an end permanently;
- b) you must not consent or agree to the separation;
- c) there must not be a justified reason for the separation – for example that your spouse is away on business; and
- d) the desertion must be continuous and the desertion must immediately proceed the filing of the petition.

***This is a very technical divorce fact to rely upon and therefore the above elements must be proved***

**Note 13** - If you are going to ask the Respondent to contribute to your costs, you can do so within this paragraph. You may wish to avoid requesting a contribution to your costs if you are doing the divorce yourself under Tier One. If you do not wish to claim any costs from the Respondent delete the paragraph completely.

**Note 14**– If you are a man state “he”. If you are a woman state “she”. If you wish to apply for any of the Orders listed on behalf of yourself or on behalf of the children of the family, do not delete any of these Orders. If you are unsure as to what to delete you should seek legal advice. If you cross out any of the Orders and you later change your mind, you will not be able to apply for ancillary relief (full financial provision from your spouse) without the Court’s permission. Such permission cannot be granted if you as the Petitioner have remarried. An explanation will follow as to what each of these Orders mean.

**Note 15** – You will need to sign the petition

**Note 16** – You will need to place your spouse's name and address, where you believe they currently reside, in order for the Court to serve the petition upon them.

**Note 17** – You will need to place your address where the Court can serve you with confirmation that the divorce petition has been posted to the Respondent. Finally you will need to date the petition.

**Note 18** – you should date the divorce petition in the following format:  
Dated this *third* day of *September 2006*

**Note 19** – You need to enter the address of the Court in which you are going to issue the divorce petition.

There is a back page to the divorce petition, which should also be completed with details of the Court in which you are going to issue the petition and setting out your name confirming that it is your petition.

You will need to apply for exemption from the Court fee if you cannot afford to pay the Court fee

## **Divorce Petition for Two years Separation with your spouse's consent**

You need to obtain the original or certified copy marriage certificate in order to complete this part of the divorce petition and you should be aware that you will not receive the return of the marriage certificate which will be sent to the Court and kept. You must explain any differences between the information given in your divorce petition and that contained on your marriage certificate. If either you or your spouse have changed your names since the marriage took place, you must explain how the name was changed, be it by deed poll or otherwise.

**Note 1** – You will need to provide the date upon which you were married, your full name (you as the Petitioner), the full name of your spouse (known as the Respondent), the exact details of where you were married. You should write the information exactly as it appears on your marriage certificate after the words “Marriage solemnised at”. A copy of a marriage certificate has been reproduced for your assistance.

At paragraph 1(a) the Petitioner must show either that their name has remained unchanged since the date of the marriage or should show the change made and how it was made e.g. by retained maiden name.

At paragraph 1 (b) you will need to state if you believe your spouse has made any change to their name since the marriage.

**Note 2 –** You will need to state the last address at which you and your spouse lived together with each other.

**Note 3 –** You will need to say why the Court has jurisdiction to deal with your divorce, by saying one of the following: -

- 1) The Petitioner and the Respondent are both habitually resident in England and Wales
- 2) The Petitioner and the Respondent were last habitually resident in England and Wales and the (Petitioner) or (Respondent) still resides there *(delete as appropriate)*
- 3) The Respondent is habitually resident in England and Wales
- 4) The Petitioner is habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 5) The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 6) The Petitioner and the Respondent are both domiciled in England and Wales

**\* If none of the above apply to you, you cannot use Tier One of the Breeze and Wyles Family Package and should consult a solicitor.**

**Note 4 -** You will need to provide details of yours and your spouse's occupation and yours and your spouse's current addresses of yourself.

**Note 5** – If there are no children of the family cross out the word “except”. In the event that there are children of the family you will need state the following: -

- a) Their full names
- b) Their date of birth or if over 18 say that they are over 18 years of age
- c) If they are over 16 but under 18, state if they are at school or college, or training for a trade or vocation or working full time.

**\* If you have children you will need to complete the supplemental form known as Statement of Arrangements for Children.**

**Note 6** - If you, as the Petitioner, are the husband and no child other than a child of the family has been born during your marriage, cross out the word Petitioner. If you are the wife and you are the Petitioner, cross out the word Respondent.

**Note 7** – If there have not been any proceedings relating to or your marriage, any child of the family, or any property belonging to either of you, cross out the word “except”. If there have been proceedings, you will need to provide the following details: -

- a) details of the Court in which such proceedings took place;
- b) details of any Order made;
- c) whether such proceedings were in relation to your marriage to the Respondent;
- d) whether you resumed cohabitation for any period thereafter.

**Note 8** – You will need to confirm whether there have been any proceedings in relation to the Child Support Agency regarding maintenance for any child of the family. If there has not, cross out the word “except”. If there have been, you will need to provide details of any application to the Child Support Agency and details of any calculation made.

**Note 9** – You will need to confirm whether there have been any proceedings in a Court outside England and Wales which could affect your marriage. If not you will need to cross out the word “except”. If there have been any proceedings you will need to provide the following: -

- a) the name of the country and Court in which the proceedings took place, or are taking place;
- b) details of any Order made;
- c) when the proceedings took place and whether they are still continuing;
- d) if they are still continuing, you will need to provide details of any further hearings that you are aware of at the time of filing the petition;

**Note 10** – Do not delete this paragraph

**Note 11**– Do not delete this paragraph

**Note 12** – If you have alleged two years separation you will need to state the dates of the separation, details of how the separation came about and confirm that since the original date of separation, you did not resume cohabitation. If you did resume cohabitation, it must have been for less than 6 months. If all short periods of cohabitation are added together they must not exceed 6 months otherwise you cannot utilise this ground.

Please also note that your spouse must consent to the divorce. The consent can be given at any stage usually indicated on the Acknowledgement of Service form. All the spouse has to do is answer “yes” to one of the standard questions and sign the form personally. Be aware that your spouse could inform the Court at any time before a Decree Nisi (the first part of the divorce) that he or she no longer consents or may wish to withdraw the consent: no reason is needed. Be absolutely sure that your spouse is in agreement with such consent before you proceed on the basis of this divorce.

**Note 13** - If you are going to ask the Respondent to contribute to your costs, you can do so within this paragraph. You may wish to avoid requesting a contribution to your costs if you are doing the divorce yourself under Tier One. If you do not wish to claim any costs from the Respondent delete the paragraph completely.

**Note 14** – If you are a man state “he”. If you are a woman state “she”. If you wish to apply for any of the Orders listed on behalf of yourself or on behalf of the children of the family, do not delete any of these Orders. If you are unsure as to what to delete you should seek legal advice. If you cross out any of the Orders and you later change your mind, you will not be able to apply for ancillary relief (full financial provision from your spouse) without the Court’s permission. Such permission cannot be granted if you as the Petitioner have remarried. An explanation will follow as to what each of these Orders mean.

**Note 15** – You will need to sign the petition

**Note 16** – You will need to place your spouse's name and address, where you believe they currently reside, in order for the Court to serve the petition upon them.

**Note 17** – You will need to place your address where the Court can serve you with confirmation that the divorce petition has been posted to the Respondent. Finally you will need to date the petition.

**Note 18** – you should date the divorce petition in the following format:  
Dated this *third* day of *September 2006*

**Note 19** – You need to enter the address of the Court in which you are going to issue the divorce petition.

There is a back page to the divorce petition, which should also be completed with details of the Court in which you are going to issue the petition and setting out your name confirming that it is your petition.

You will need to apply for exemption from the Court fee if you cannot afford to pay the Court fee.

## **Divorce Petition for five years separation without your spouse's consent**

You need to obtain the original or certified copy marriage certificate in order to complete this part of the divorce petition and you should be aware that you will not receive the return of the marriage certificate which will be sent to the Court and kept. You must explain any differences between the information given in your divorce petition and that contained on your marriage certificate. If either you or your spouse have changed your names since the marriage took place, you must explain how the name was changed, be it by deed poll or otherwise.

**Note 1** – You will need to provide the date upon which you were married, your full name (you as the Petitioner), the full name of your spouse (known as the Respondent), the exact details of where you were married. You should write the information exactly as it appears on your marriage certificate after the words "Marriage solemnised at". A copy of a marriage certificate has been reproduced for your assistance.

At paragraph 1(a) the Petitioner must show either that their name has remained unchanged since the date of the marriage or should show the change made and how it was made e.g. by retained maiden name.

At paragraph 1 (b) you will need to state if you believe your spouse has made any change to their name since the marriage.

**Note 2 –** You will need to state the last address at which you and your spouse lived together with each other.

**Note 3 –** You will need to say why the Court has jurisdiction to deal with your divorce, by saying one of the following: -

- 1) The Petitioner and the Respondent are both habitually resident in England and Wales
- 2) The Petitioner and the Respondent were last habitually resident in England and Wales and the (Petitioner) or (Respondent) still resides there (*delete as appropriate*)
- 3) The Respondent is habitually resident in England and Wales
- 4) The Petitioner is habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 5) The Petitioner is domiciled and habitually resident in England and Wales and has resided there for at least one year immediately prior to the presentation of the petition
- 6) The Petitioner and the Respondent are both domiciled in England and Wales

***\*If none of the above apply to you, you cannot use Tier One of the Breeze and Wyles Family Package and should consult a solicitor.***

**Note 4 -** You will need to provide details of yours and your spouse's occupation and yours and your spouse's current addresses of yourself

**Note 5** – If there are no children of the family cross out the word "except". In the event that there are children of the family you will need state the following: -

- a) Their full names
- b) Their date of birth or if over 18 say that they are over 18 years of age
- c) If they are over 16 but under 18, state if they are at school or college, or training for a trade or vocation or working full time.

***\* If you have children you will need to complete the supplemental form known as Statement of Arrangements for Children.***

**Note 6** - If you, as the Petitioner, are the husband and no child other than a child of the family has been born during your marriage, cross out the word Petitioner. If you are the wife and you are the Petitioner, cross out the word Respondent.

**Note 7** – If there have not been any proceedings relating to your marriage, or any child of the family, or any property belonging to either of you, cross out the word “except”. If there have been proceedings, you will need to provide the following details: -

- a) details of the Court in which such proceedings took place;
- b) details of any Order made;
- c) whether such proceedings were in relation to your marriage to the Respondent;
- d) whether you resumed cohabitation for any period thereafter.

**Note 8** – You will need to confirm whether there have been any proceedings in relation to the Child Support Agency regarding maintenance for any child of the family. If there has not, cross out the word “except”. If there have been, you will need to provide details of any application to the Child Support Agency and details of any calculation made.

**Note 9** – You will need to confirm whether there have been any proceedings in a Court outside England and Wales which could affect your marriage. If not you will need to cross out the word “except”. If there have been any proceedings you will need to provide the following: -

- a) the name of the country and Court in which the proceedings took place, or are taking place;
- b) details of any Order made;
- c) when the proceedings took place and whether they are still continuing;
- d) if they are still continuing, you will need to provide details of any further hearings that you are aware of at the time of filing the petition;

**Note 10** - If no agreement or arrangement has been made with respect to support for yourself or for any child of the family, do not complete this note. If an agreement or arrangement has been made with respect to the Respondent or the children, you will need to specify about maintenance either for them or any child of the family and about the family property.

**Note 11** – Do not delete this paragraph

**Note 12** – Do not delete this paragraph

**Note 13** – You will need to specify the dates of separation and provide brief details of how the separation came about.

Please note there is no defence to this divorce, except to deny when the separation took place. The period of separation must be continuing and if you resumed cohabitation for a total period of 6 months since the date of separation that you are relying on, then you cannot divorce on this fact.

**Note 14** - If you are going to ask the Respondent to contribute to your costs, you can do so within this paragraph. You may wish to avoid requesting a contribution to your costs if you are doing the divorce yourself under Tier One. If you do not wish to claim any costs from the Respondent delete the paragraph completely.

**Note 15** – If you are a man state “he”. If you are a woman state “she”. If you wish to apply for any of the Orders listed on behalf of yourself or on behalf of the children of the family, do not delete any of these Orders. If you are unsure as to what to delete you should seek legal advice. If you cross out any of the Orders and you later change your mind, you will not be able to apply for ancillary relief (full financial provision from your spouse) without the Court’s permission. Such permission cannot be granted if you as the Petitioner have remarried. An explanation will follow as to what each of these Orders mean.

**Note 16** – You will need to sign the petition

**Note 17** – You will need to place your spouse's name and address, where you believe they currently reside, in order for the Court to serve the petition upon them.

**Note 18** – You will need to place your address where the Court can serve you with confirmation that the divorce petition has been posted to the Respondent. Finally you will need to date the petition.

**Note 19** – you should date the divorce petition in the following format:  
Dated this *third* day of *September 2006*

**Note 20** – You need to enter the address of the Court in which you are going to issue the divorce petition.

There is a back page to the divorce petition, which should also be completed with details of the Court in which you are going to issue the petition and setting out your name confirming that it is your petition.

You will need to apply for exemption from the Court fee if you cannot afford to pay the Court fee.

## Children

### **STATEMENT OF ARRANGEMENTS FOR CHILDREN FORM ATTACHED**

#### **Statement of Arrangements Form**

##### ***When the form needs to be completed***

You will need to complete this form if you and your spouse have any children who were treated as a [Child of the Family](#) who are:

- (i) under the age of 16, or
- (ii) over the age of 16 but under 18, if they are at school, college, or training for a trade, profession or vocation.

##### ***Agreeing arrangements for the children with your spouse***

You should endeavour to agree the contents of the Statement of Arrangements for Children with your spouse and if your spouse is in agreement, ask them to sign where stated on the back page (pg 8). The Court will send a copy of this form to your spouse in any event, along with the divorce petition and they will be asked to complete within the Acknowledgement of Service as to whether or not they agree with the proposals within the form. If they do not agree, they can make their own proposals and send it to the Court. If your spouse does this, the Court will send you a copy.

##### ***What will the Court do with the form?***

The Court will consider the proposals (and counter proposals if appropriate) in relation to to the children when considering your application for Directions for Trial made to the Court with a view to obtaining a Decree Nisi (the first part of the divorce).

If the Judge is satisfied with the arrangements for the children (it is usually on the basis that they have been agreed), you will be sent a form by the Court and this will tell you that the Court does not need to exercise its powers under the Children Act 1989 as it is happy with the arrangements.

If the Judge is not satisfied with the arrangements proposed for the children, he/she may, in some circumstances, suggest that you cannot obtain your Decree Absolute until satisfactory arrangements are made and may ask for further information about the children, or fix a short appointment for you both to attend before the Judge, normally in the Judge's room to discuss the arrangements. In some cases, the Court may wish for a welfare report will be prepared and if so the Court will contact you and your spouse to make an appointment to see you both and then provide a report in relation to the arrangements for the children.

##### ***I can't reach agreement with my spouse and I want the Court to make an order***

Finally, if you could not reach agreement and you believe the Court should make an Order in relation to the children, you can apply formally to the Court to make any of the following orders:-

- 1) **A Residence Order** to determine where the children should live;
- 2) **A Contact Order** to say who the children are allowed to see, directly or indirectly by way of letters, telephone calls and how such contact takes place;
- 3) **A Specific Issue Order** if you have a specific issue with respect to the children or want a specific question to be determined which may arise in connection with any aspect of your parental role for a child, for example deciding what surname the child should use;
- 4) **A Prohibited Steps Order** if you want to prevent your spouse or any other named person from taking certain steps, for example from removing a child out of the jurisdiction or seeking a matter about their schooling.

In order to make any of the above Orders you must apply for the Order on form C1 (or form C2 if there have been any previous court proceedings). You can obtain a blank form from the Court. The Court will only make an Order if it considers that an Order would be better for the children than no Order at all.



## **Ancillary Relief (Financial Support)**

You can apply to the Court for what is known as Ancillary Relief if you want to resolve financial issues between you and your spouse. In order to proceed you will need to complete a form A, which you can obtain from the Court. This form will ask you what Orders you wish to apply for.

### ***What financial orders can be applied for?***

Set out below there is a brief explanation in relation to the Orders listed on the second from last page of the Divorce Petition: -

#### ***Orders for a spouse***

##### Maintenance Pending Suit

This is an Order for regular payments designed to assist a spouse temporarily until the divorce is determined. This is an interim measure only.

##### Periodical Payments Order

This is a maintenance order for the benefit of a spouse which takes the form of weekly or monthly sums being paid from one spouse to the other.

##### Secured Provision Order

A party can request that the other party be ordered to secure maintenance. This is achieved by charging an asset that produces an income to ensure the maintenance is paid, e.g. shares that provide dividends or premises that have been let and have a rental income.

##### Lump Sum Order

You are only entitled to apply for one lump sum Order and this is to apply for a lump sum of money to be paid by one spouse to the other.

##### Property Adjustment Order

This is to re-distribute family property between the parties. The Court may do so by ordering that the property is transferred or held on trust

#### ***Orders for the Children***

The Orders are ultimately the same as that which a spouse can apply for, except that if you are wishing to apply for maintenance in relation to the children borne of you and your spouse, you would have to make an application for Child Maintenance through the Child Support Agency as the Court cannot make an Order for child maintenance in your case. If you have a stepchild or stepchildren or the following applies in relation to the children borne of you and your spouse; you can make an application to the Court for: -

- 1) maintenance where either the child or the person with care of the child or the absent parent of the child is not habitually resident in the UK;
- 2) maintenance in addition to Child Support payable under the Child Support Agency calculation;
- 3) maintenance to meet expenses arising from a child's disability
- 4) maintenance to meet expenses incurred by a child in educational training for work;

## **You have completed all your forms – what do you do now?**

### ***What Court?***

You can start your divorce petition at any County Court or the Principal Registry in Holborn, London. You can find your nearest court here:

<http://www.hmcourts-service.gov.uk/HMCSCourtFinder/>

The Courts are open Monday to Friday between 10.00am and 4.00pm.

### ***Do I need to pay a fee?***

There is a fee upon filing of the divorce proceedings currently £300.00 but this changes and up to date information with respect to court fees can be found here:

<http://www.hmcourts-service.gov.uk/infoabout/fees/county.htm>

You make payments by cash, postal orders or cheque, cheque to made payable to HMCS.

If you are unable to pay the Court fee because you are on benefits or you have a limited disposal income, you should complete form EX160A which is included within this guide and available for downloading with all tiers. The form will need to be completed together with evidence provided of your income and the Court will make a decision as to whether or not you should be exempt from paying the Court fee. There are GUIDANCE NOTES to completing the form.

You will need to provide the Court with the following: -

1. Two copies of your divorce petition
2. Two copies of the Statement of Arrangements for Children form, if you have children.
3. The court fee or application to exempt you from the Court fee.
4. Original marriage certificate

### **What happens now?**

1. The Court will confirm to you when they have issued the divorce petition and the date upon which they have sent it to your spouse. This document will also act as a receipt for a fee if you have paid one and will confirm the Court's details, i.e. case number in relation to your case. The Respondent has a period of 8 days to return the Acknowledgement of Service to the Court and the 8 days starts from the date that the Respondent received the divorce paperwork.

2. On the basis that the Respondent acknowledges receipt of the petition, they will complete the Acknowledgement of Service confirming whether they consent to a divorce proceeding on the grounds that have been alleged or whether they consent to the divorce, and agree the Court's jurisdiction. It may also be the case that no response has been received at all and this may be because the address of your spouse is wrong or it has changed, and if this is the case the post office will usually return the petition and the other forms to the Court. If this happens the Court will send you a notice confirming that the petition has not been served and you will need to locate the Respondent's up-to-date address and confirm this position to the Court. The Court can then re-serve the divorce paperwork upon the Respondent. If the Respondent contests the divorce, you should seek legal advice as to how to proceed.

3. On the basis that the Respondent completes the Acknowledgement of Service by confirming that he/she agrees with the divorce petition proceeding and forwards the Acknowledgement of Service to the Court, your matter can then proceed to making the Application for Directions for Trial.

#### **4. Bailiff Service**

If a period of 14 days has passed since the petition was sent, you can complete form D89 (Request for Bailiff Service) to serve your spouse as listed in this guide and available for downloading upon purchase of any of the packages. Complete a copy of the form and return it to the Court with a photograph and a written

description of your spouse. There is a fee for each person being served or you can download the application for exemption from the Court fee, if your circumstances are of such that you may be eligible to have that fee exempted. The Court Bailiff will attempt to deliver the petition and other documents to your spouse personally.

If this is successfully completed you may now proceed to make an application for Directions for Trial.

### **5. Acknowledgment of Service**

Remember your spouse may have instructed his own solicitor to reply to you and complete the Acknowledgement. The Acknowledgement of Service will reveal the following:

- 1) that the Respondent has been served
- 2) whether they intend to defend the divorce
- 3) whether they are satisfied with the proposed arrangements for children
- 4) if the divorce is relying on the allegation of adultery or requesting the spouse's consent to the divorce, such as a divorce based on two years separation, this will be proof of the admittance of the adultery or the consent to a divorce upon 2 years separation.

### **6. Directions for Trial**

Provided that the Respondent has not given notice that they wish to defend the divorce in a period of 7 days after the service of the divorce petition has expired, it will now be necessary to request directions from the Court called "Directions for Trial". This asks the Court to put the case on the Special Procedure list which is the list for all un-defended divorces and will be accompanied by an Affidavit in support of your Petition. If the Respondent has indicated an intention to defend (if they have consulted solicitors), you will need to wait 28 days from service of the divorce petition before you can make this application.

7. The Affidavit in support of the petition is a standard affidavit, detailed within this guide, and it can be downloaded with the purchase of any of the tiers, there is a separate Affidavit for each type of divorce. The Affidavit is in a question and answer format and deals with the following: -

- 1) You must confirm that the contents of your petition were true and that there are no amendments or alterations required – if there are alterations or amendments required, you must specify what they are.
- 2) If you have cohabited since the date of the last incident you have relied upon, the Affidavit requires you to give details of the period of cohabitation to ensure that such cohabitation has not exceeded 6 months and therefore does not stop you from proceeding with a divorce.
- 3) Any evidence in support of your divorce – by way of example the Acknowledgement of Service can be exhibited confirming that your spouse has signed the same admitting to the adultery or consenting to the fact of divorce, if it is a divorce based upon 2 years separation.
- 4) You will confirm again that the contents of the Statement of Arrangements for the children are still correct and you can identify the signature of the Respondent.

## GUIDE TO COMPLETING AFFIDAVIT IN SUPPORT OF PETITION

*\*only for inclusion in tier 1 – tiers 2 & 3 will have questions to answer instead*

### **Affidavit in support of Petition based upon Adultery**

- Note (a) This is the case number that would have been provided when the divorce petition was issued and will appear on your Acknowledgement and on the Notice from the Court that the divorce petition has been issued.
- Note (b) County Court – this is the Court in which the divorce has been issued
- Note (c) Petitioner – your name
- Note (d) Respondent – your spouse’s name
- Note (e) Co-Respondent – should be not applicable in most cases
- Question 1 Complete this question
- Question 2 Complete this question
- Question 3 Complete this question
- Question 4 Confirm to the Court the reason how you came to know that the Respondent had committed adultery, for example did the Respondent tell you, did you see the adultery for yourself etc
- Question 5 Confirm the date upon which it became known to you that the Respondent had committed adultery, that is the date that you were told, or you witnessed it
- Question 6 You need to confirm to the Court that you find it intolerable to live with the Respondent. Any periods of six months or more where you have continued to live with the Respondent after the last known act of adultery could render your divorce petition unable to proceed, as it would suggest that you do not find it intolerable to live with the Respondent and the grounds for divorcing on adultery are that the adultery has taken place and it is intolerable for you to live with the Respondent
- Question 7 Since the answer you gave in paragraph 5, as to whether you have lived with the Respondent: this is to confirm the dates and periods in which you have cohabited. The court can ascertain whether or not your divorce can proceed.
- Question 8 Confirm that you have read the Statement of Arrangements for children
- Question 9 Say whether you wish to alter or amend any matter of that statement
- Question 10 On the basis of these alterations and additions, if any have taken place – you need to confirm that the contents of the statement of arrangements for children is true: If any statement you have made not within your own knowledge, you need to say this and say whether it is true to the best of your knowledge and belief.
- Note (f) State your full name
- Note (g) State your full address
- Note (h) State your occupation
- Note (j) you must identify the signature of the Respondent on the Acknowledgement of Service exactly as it is signed. For example, if your spouse signs his name “J Bloggs”, state “J Bloggs” rather than “Joseph Bloggs” or “Joe Bloggs”.
- Note (k) If the Respondent has signed a separate document admitting adultery, you should refer to it here.
- Note (m) This does not need to be completed but is evidence of the Respondent’s agreement to the children arrangements.

- Note (n) Exhibit any other document that you wish to rely upon
- Note (p) Please delete as appropriate. Please refer to your divorce petition where you would have stated whether or not you were claiming costs against the Respondent. If you have claimed costs against the Respondent, do not delete this paragraph; if you did not claim costs then simply delete the parts that refer to the costs in the square brackets.
- Note (q) At the bottom of the Affidavit on page 3, please insert the Court's full address where stated.
- Note (r) On the back page please complete the details

**Affidavit in support of petition based upon Unreasonable Behaviour**

*(This document is within this guide and downloadable)*

- Note (a) This is the case number that would have been provided when the divorce petition was issued and will appear on your Acknowledgement and on the Notice from the Court that the divorce petition has been issued.
- Note (b) County Court – this is the Court in which the divorce has been issued
- Note (c) Petitioner – your name
- Note (d) Respondent – your spouse's name
- Question 1 Complete this question
- Question 2 Complete this question
- Question 3 Complete this question
- Question 4 You must state how the Respondent's behaviour has affected your health.
- Question 5 If the Respondent's behaviour is not continued state the date of the last incident that you have relied upon in your divorce petition
- Question 6 State any period of time that you have lived with the Respondent since the date given in your answer to question 5. If you have lived with the Respondent for a period which together amounts to or is more than 6 months, give the dates of such cohabitation and specify the arrangements for sharing the accommodation. Include details concerning sharing a bedroom, eating meals together, arrangements for domestic chores and finances. What the Court is trying to establish is that you have lived separately albeit under the same roof, maybe because you have been unable to resolve the finances between you or it is not possible for you financially to separate in this nature. The Court must be convinced that you and the Respondent are generally living separate lives but under the same roof.
- Question 7 Confirm that you have read the Statement of Arrangements for children
- Question 8 Say whether you wish to alter or amend any matter of that statement
- Question 9 On the basis of these alterations and additions, if any have taken place – you need to confirm that the contents of the statement of arrangements for children is true. If any statement you have made not within your own knowledge, you need to say this and say whether it is true to the best of your knowledge and belief.
- Note (e) State your full name
- Note (f) State your full address
- Note (g) State your occupation
- Note (h) you must identify the signature of the Respondent on the Acknowledgement of Service exactly as it is signed. For example, if your spouse signs his name "J Bloggs", state "J Bloggs" rather than "Joseph Bloggs" or "Joe Bloggs".

- Note (j) Exhibit any medical documentation on which you wish to rely
- Note (k) This does not need to be completed but is evidence of the Respondent's agreement to the children arrangements.
- Note (m) Please delete as appropriate. Please refer to your divorce petition where you would have stated whether or not you were claiming costs against the Respondent. If you have claimed costs against the Respondent, do not delete this paragraph; if you did not claim costs then simply delete the parts that refer to the costs in the square brackets.
- Note (n) At the bottom of the Affidavit on page 3, please insert the Court's full address where stated.
- Note (p) On the back page please complete the details

**Affidavit in support of petition based upon Desertion –**

*(This document is within this guide and downloadable)*

- Note (a) This is the case number that would have been provided when the divorce petition was issued and will appear on your Acknowledgement and on the Notice from the Court that the divorce petition has been issued.
- Note (b) County Court – this is the Court in which the divorce has been issued
- Note (c) Petitioner – your name
- Note (d) Respondent – your spouse's name
- Question 1 Complete this question
- Question 2 Complete this question
- Question 3 Complete this question
- Question 4 Please place the details of the date when you separated from the Respondent, if this is different to the date upon which you were deserted please state this also. Please confirm that you did not agree to the separation.
- Question 5 Please state why you believe the Respondent has deserted you and why such desertion continues
- Question 6 Confirm whether you have resumed cohabitation at any time.
- Question 7 State, since the date of separation, where you and the Respondent have respectively lived and at what date, You should account for all period of time since you and the Respondent separated, and if you do not know the address of the Respondent for a period of time, state "unknown".
- Question 8 Please confirm if you have ever lived with the Respondent in the same household since you separated; if "yes" you will need to provide the dates and addresses of where such cohabitation took place.
- Question 9 Confirm that you have read the Statement of Arrangements for children
- Question 10 Say whether you wish to alter or amend any matter of that statement
- Question 11 On the basis of these alterations and additions, if any have taken place – you need to confirm that the contents of the statement of arrangements for children is true. If any statement you have made not within your own knowledge, you need to say this and say whether it is true to the best of your knowledge and belief.
- Note (e) State your full name
- Note (f) State your full address
- Note (g) State your occupation

- Note (h) you must identify the signature of the Respondent on the Acknowledgement of Service exactly as it is signed. For example, if your spouse signs his name "J Bloggs", state "J Bloggs" rather than "Joseph Bloggs" or "Joe Bloggs".
- Note (j) this does not need to be completed but is evidence of the Respondent's agreement to the children arrangements.
- Note (k) exhibit any other document that you wish to reply upon
- Note (m) Please delete as appropriate. Please refer to your divorce petition where you would have stated whether or not you were claiming costs against the Respondent. If you have claimed costs against the Respondent, do not delete this paragraph; if you did not claim costs then simply delete the parts that refer to the costs in the square brackets.
- Note (n) At the bottom of the Affidavit on page 3, please insert the Court's full address where stated.
- Note (p) On the back page please complete the details

**Affidavit in support of petition based upon two years separation with Respondent's consent - (this document is within this guide and downloadable)**

- Note (a) This is the case number that would have been provided when the divorce petition was issued and will appear on your Acknowledgement and on the Notice from the Court that the divorce petition has been issued.
- Note (b) County Court – this is the Court in which the divorce has been issued
- Note (c) Petitioner – your name
- Note (d) Respondent – your spouse's name
- Question 1 Complete this question
- Question 2 Complete this question
- Question 3 Complete this question
- Question 4 Please state the date upon which you and the Respondent separated.
- Question 5 Please state the reasons why the separation occurred
- Question 6 State how you concluded that the marriage was at an end. This is usually the the date that you and your spouse separated but it may have been beforehand, and if this is the case please confirm what event made you conclude that the marriage was at an end.
- Question 7 State, since the date of separation, where you and the Respondent have respectively lived and at what date, You should account for all period of time since you and the Respondent separated, and if you do not know the address of the Respondent for a period of time, state "unknown".
- Question 8 Please confirm if you have ever lived with the Respondent in the same household since you separated. If "yes" you will need to provide the dates and addresses of where such cohabitation took place.
- Question 9 Confirm that you have read the Statement of Arrangements for children
- Question 10 Say whether you wish to alter or amend any matter of that statement
- Question 11 On the basis of these alterations and additions, if any have taken place – you need to confirm that the contents of the statement of arrangements for children is true. If any statement you have made not within your own knowledge, you need to say this and say whether it is true to the best of your knowledge and belief.
- Note (e) State your full name
- Note (f) State your full address
- Note (g) State your occupation

- Note (h) you must identify the signature of the Respondent on the Acknowledgement of Service exactly as it is signed. For example, if your spouse signs his name "J Bloggs", state "J Bloggs" rather than "Joseph Bloggs" or "Joe Bloggs".
- Note (j) this does not need to be completed but is evidence of the Respondent's agreement to the children arrangements.
- Note (k) Exhibit any other document that you wish to reply upon
- Note (m) Please delete as appropriate. Please refer to your divorce petition where you would have stated whether or not you were claiming costs against the Respondent. If you have claimed costs against the Respondent, do not delete this paragraph; if you did not claim costs then simply delete the parts that refer to the costs in the square brackets.
- Note (n) At the bottom of the Affidavit on page 3, please insert the Court's full address where stated.
- Note (p) On the back page please complete the details

***Affidavit in support of petition based upon five years separation with no consent required –***  
*(This document is within this guide and downloadable)*

- Note (a) This is the case number that would have been provided when the divorce petition was issued and will appear on your Acknowledgement and on the Notice from the Court that the divorce petition has been issued.
- Note (b) County Court – this is the Court in which the divorce has been issued
- Note (c) Petitioner – your name
- Note (d) Respondent – your spouse's name
- Question 1 Complete this question
- Question 2 Complete this question
- Question 3 Complete this question
- Question 4 Please state the date upon which you and the Respondent separated.
- Question 5 Please state the reasons why the separation occurred
- Question 6 State how you concluded that the marriage was at an end. This is usually the date that you and your spouse separated but it may have been beforehand, and if this is the case please confirm what event made you conclude that the marriage was at an end.
- Question 7 State, since the date of separation, where you and the Respondent have respectively lived and at what date, You should account for all period of time since you and the Respondent separated, and if you do not know the address of the Respondent for a period of time, state "unknown".
- Question 8 Please confirm if you have ever lived with the Respondent in the same household since you separated, if "yes" you will need to provide the dates and addresses of where such cohabitation took place.
- Question 9 Confirm that you have read the Statement of Arrangements for children
- Question 10 Say whether you wish to alter or amend any matter of that statement
- Question 11 On the basis of these alterations and additions, if any have taken place – you need to confirm that the contents of the statement of arrangements for children is true. If any statement you have made not within your own knowledge, you need to say this and say whether it is true to the best of your knowledge and belief.
- Note (e) State your full name
- Note (f) State your full address

- Note (g) State your occupation
- Note (h) you must identify the signature of the Respondent on the Acknowledgement of Service exactly as it is signed. For example, if your spouse signs his name "J Bloggs", state "J Bloggs" rather than "Joseph Bloggs" or "Joe Bloggs".
- Note (j) This does not need to be completed but is evidence of the Respondent's agreement to the children arrangements.
- Note (k) Exhibit any other document that you wish to reply upon
- Note (m) Please delete as appropriate. Please refer to your divorce petition where you would have stated whether or not you were claiming costs against the Respondent. If you have claimed costs against the Respondent, do not delete this paragraph; if you did not claim costs then simply delete the parts that refer to the costs in the square brackets
- Note (n) At the bottom of the Affidavit on page 3, please insert the Court's full address where stated.
- Note (p) On the back page please complete the details

## **I have completed my Affidavit and my Directions for Trial – what do I do next?**

### ***Swearing that the contents of your affidavit are true***

You should take the following documents to either your local County Court or any solicitor's office to be "sworn":

1. Your Affidavit in support of the petition
2. the Acknowledgement of service as filed by the Respondent or certificate of bailiff service
3. if applicable, the statement of arrangements for children signed by the Respondent

You can take these documents to your local county court office (which will be open between 10am and 4pm) without an appointment. You may need to make an appointment if you take the documents to a solicitor's office. Swearing documents at a County Court office is free, but a solicitor will charge a standard fee of there is a standard fee of £5.00 for the affidavit and £2.00 for each supplemental document, i.e. acknowledgement, statement of arrangement for children or supplemental report or other evidence.

The Court or the solicitor will ask you to swear that the contents of the Affidavit are true. You will be asked if you have a religion and if you wish to make an oath on the appropriate religious book that the contents of the Affidavit are true, or if you do not have a religion you will affirm that the contents of the Affidavit are true.

Swearing a document in this manner means the contents are true. If the contents are not true then Court will take a very dim view and this would be tantamount to perjury, which is the criminal offence of lying to the Court.

### ***Filing your affidavit and application for directions for trial with the Court***

Once the above documentation has been sworn, you need to send all of it *together with* the completed Application for Directions for Trial to the Court and the Judge will then consider whether he/she is satisfied that you have proved your petition for a divorce.

### ***If the Judge is satisfied that you have proved your petition for divorce***

The Judge will do the following:

- a) complete a certificate stating that you are entitled to a Decree Nisi, and the Court will send you a copy
- b) fix the date for the Decree Nisi to be read out in open Court
- c) if you have asked for costs in the petition and confirmed this within your affidavit, the Judge will make an order for costs if he/she considers that you are entitled to them.
- d) if the Judge considers that he cannot make an Order without further information, he/she can require from the Respondent to set out his written reasons why a costs order should not be made, or refer the matter to the Judge when pronouncing Decree Nisi. If this occurs then the Respondent will be notified that he/she must attend court on the date of the pronouncement of the Decree Nisi to make his/her case. If the Respondent fails to attend at that hearing, ultimately the Court will make a costs order in favour of the person who requested it, i.e. the Petitioner
- e) Consider whether he/she needs to intervene with respect to arrangements of the children

You will receive a document known as Certificate of Entitlement to a Decree Nisi from the Court. This will inform both you and the Respondent of the date upon which the Decree Nisi will be pronounced and whether or not the Judge is considering making a costs order on that occasion.

### ***If the Judge is not satisfied that you have proved your petition for divorce***

If the Judge is not satisfied that you have proved your case, he/she can ask you to provide further evidence which would clarify any queries he/she has in relation to the divorce petition or the affidavit in support. Common problems are often in relation to the issue of confirmed cohabitation in a period of claimed separation or the continued cohabitation between the Petitioner and the Respondent after the last incident of unreasonable behaviour or allegations of adultery.

If there is a problem that cannot be resolved by the Judge requesting further information, you will need to receive advice from a solicitor as to how to proceed.

### ***Decree Nisi***

The Decree Nisi will be read out on the appointed day by the Judge in open Court and a copy of the Decree Nisi will be sent to both parties. This Decree does not dissolve the marriage.

### **Obtaining Decree Absolute**

The final step to completing the undefended divorce is to obtain a Decree Absolute, thus dissolving your marriage to the Respondent.

### ***When can I or the Respondent apply for Decree Absolute?***

You can only apply for a Decree Absolute once six weeks and one day has passed since the date of Decree Nisi.

Your spouse can apply for the Decree Absolute three months after you can apply for it.

In some rare cases the Court has the power to reduce the six week period for the Petitioner but you will have to apply to the Court.

If you have assets that are joint assets then you must be aware of the implication of the dissolution of your marriage upon those assets, or if you have Matrimonial Right of Occupation this will be terminated upon the Decree Absolute being received. If you are in any doubt as to whether or not to apply for your Decree Absolute you must seek legal advice.

### **Application for Decree Absolute**

*(This document is within this guide and downloadable)*

To apply for Decree Absolute you simply need to complete this form: -

- |         |   |
|---------|---|
| Note 1  | Please state the Court in which your divorce has been filed                                       |
| Note 2  | Please insert the case number   |
| Note 3  | Please state your name  |
| Note 4  | Please state your spouse's name   |
| Note 5  | If this is not applicable, delete   |
| Note 6  | Delete the word Respondent  |
| Note 7  | Delete the word his or her and state the date that the Decree Nisi was pronounced                 |
| Note 8  | Delete this if no Conditional Order has been made – you would be aware of this on the Decree Nisi |
| Note 9  | Please insert the date on this form   |
| Note 10 | Please sign the form and delete the words "Solicitor for the" and "Respondent"                    |
| Note 11 | Insert your address   |
| Note 12 | Please complete the address of the Court  |
| Note 13 | Complete the back page, case number, court details, yours and your spouse's details               |

Once you have completed the form send the same, together with a fee, currently £40.00 to the Court where the divorce petition was issued, asking them to make the Decree Nisi, Absolute. If you are on a low income please complete the Application for Exemption from the Court fee

Depending on the Court's timetable you should receive your Decree Absolute within a few weeks and you are now officially divorced. If you or your spouse has applied too soon, you should apply again after the necessary time has passed. If the Court has refused your application for Decree Absolute for some other reason, you will need to seek legal advice.

### ***Important consequences of Decree Absolute***

Divorce affects who your legal next of kin is, the appointment of a Guardian and may affect or invalidate insurance policies. It also invalidates any will you have previously made and may invalidate any will where you are a spouse and beneficiary.