

Beck Fitzgerald
lawyers & consultants

The divorce process



*working for
accessible justice*

How does the process start?

Please note: the guidance below also relates to civil partnerships.

It doesn't matter where in the world you were married but you can only apply for a divorce in England and Wales if either you and/or your spouse meet certain resident conditions or are domiciled here. We will speak to you about this to ensure the necessary conditions are met.

The divorce process is generally administrative. This means that your divorce will usually be agreed by a Judge based on the paperwork. It is not possible to defend the decision to divorce or end a civil partnership and the ability to challenge an application is limited to jurisdictional grounds, the validity of the marriage or civil partnership (i.e. on the basis that it was never valid or the marriage/ civil partnership has already been legally ended), fraud or procedural compliance (i.e. the marriage/ civil partnership was not formed in accordance with relevant laws).

An application for a divorce can be made as an individual or jointly with the other spouse. If a sole application, the person applying is the applicant and the other party will be the respondent. If a joint application, the two parties are both referred to as applicants. Whilst the decision to apply jointly must be made at the beginning (a sole application cannot later become a joint one), it is possible for a joint application to be continued by only one of the applicants.

The divorce application is a form that provides the court with information about you and your spouse and the marriage. There is no need to provide a reason or evidence as to why the marriage has broken down, the applicant/s need simply provide a statement to confirm the irretrievable breakdown of the marriage.

The application can be made online or as a paper application. In either case the original marriage certificate is needed and there will be a court fee to pay - currently £593. If the applicant is not working, or is on a low income, they may qualify for fee exemption, the application for which should be made at the same time as the application for divorce.

For the purpose of any financial settlement or children arrangements it does not matter who applies for the divorce. You can ask the court to make orders about money and/or in relation to any children during or after the divorce. Whilst arrangements for any children and the finances tend to be addressed and run alongside divorce proceedings, they are completely separate legal processes to the divorce which simply ends the marriage.

It is advisable not to apply for a Final Order until all financial issues have been resolved as certain rights are lost on Final Order.

A Final Order can affect legal rights in respect of property and pensions if a party were to die financial settlement is reached. In light of this, it is often the case that the application for Final Order is postponed until after the financial settlement has been sorted

After submitting the application the court will check the paperwork, allocate a case number and will send out court sealed copies to the parties – this is known as “issuing” the application.

Serving the Divorce Application

Sole application

Unless the applicant requests otherwise, the application will be sent out to the respondent (or “served”) by the court, either by email (accompanied by a postal notification that service has taken place by email), or by post. If the applicant chooses to send the application to the respondent, this must be done within 28 days after the application has been issued by the court.

The respondent will be asked to acknowledge the application within 14 days of receiving the application. Depending on how the application was made this will be done online or by completing and returning a paper form to the court (depending on how the application was made). The acknowledgment identifies the respondent and verifies that there is no dispute as to the court's ability to deal with the application or the validity of the marriage.

Joint Application

There is no requirement to acknowledge the application where the divorce is jointly applied for.

Application for a Conditional Order

After 20 weeks have passed from the date the application was issued, the applicant or applicants can apply for the Conditional Order. The 20 week period is to allow for a period of reflection, to enable couples to decide whether they still want to divorce and/or the time to address other issues such as finances or arrangements for children.

In the case of a joint application where only one of the applicants applies for the Conditional Order, the applicant must at the same time send a copy of the application to the other party. At this point the applicant becomes the sole applicant and the other party becomes the respondent.

The application for a Conditional Order is a statement confirming that the contents of the application are true (or detailing where they have changed) and, in the case of a sole application, that the application has been acknowledged by the other party. The applicant/s are asked to sign the same as a statement of truth so it is vital that all of the facts are accurate.

After the court has received the application a Judge will review all of the papers to make sure the legal criteria for a divorce has been fulfilled. If satisfied the Judge will issue a certificate telling the parties when the Conditional Order will be granted (or “pronounced”). The Conditional Order is pronounced in open court with the Judge reading a list of the names of people who are entitled to a divorce. It is a formality only and so there is no need for either party to attend if they do not want to.

The Conditional Order is the second to last phase of the divorce. It means the court has agreed that the parties are entitled to a divorce but that it has not yet been made final. The parties accordingly remain married at this stage.

Finalising the Divorce

The Final Order is what formally ends the marriage.

Sole Application (or Joint that became Sole)

Six weeks after the Conditional Order was made either the applicant or the respondent can apply for the Final Order.

In cases where the Conditional Order is made on a sole application and the applicant does not apply, the other party can apply three months after the applicant was first able to apply. If they do not, the other party can apply three months after the applicant was first able to apply.

In the case of a joint application where only one applicant applies, the applicant must give the other party notice of their intention to ask the court to make the Conditional Order final.

Joint Application

The application can be made by both parties. Not everyone should apply for the Final Order as soon as it is available. Much depends on your individual circumstances and we will discuss with you whether or not you would be advised to do so. If, for example, financial arrangements have not yet been settled, it may not be sensible for you to do so as divorce does have financial implications and can impact rights you may have as a spouse in relation to inheritance and pension benefits in the event of the other party’s death. The Final Order can also prevent certain types of application being made.

How long will my Divorce take?

From the application to the Final Order the minimum period is 26 weeks however if a couple need more time to complete their divorce the law can allow for this.

Other arrangements in relation to finances and children may take longer to resolve and this may in turn result in a delay in finalising the divorce.

Financial Arrangements

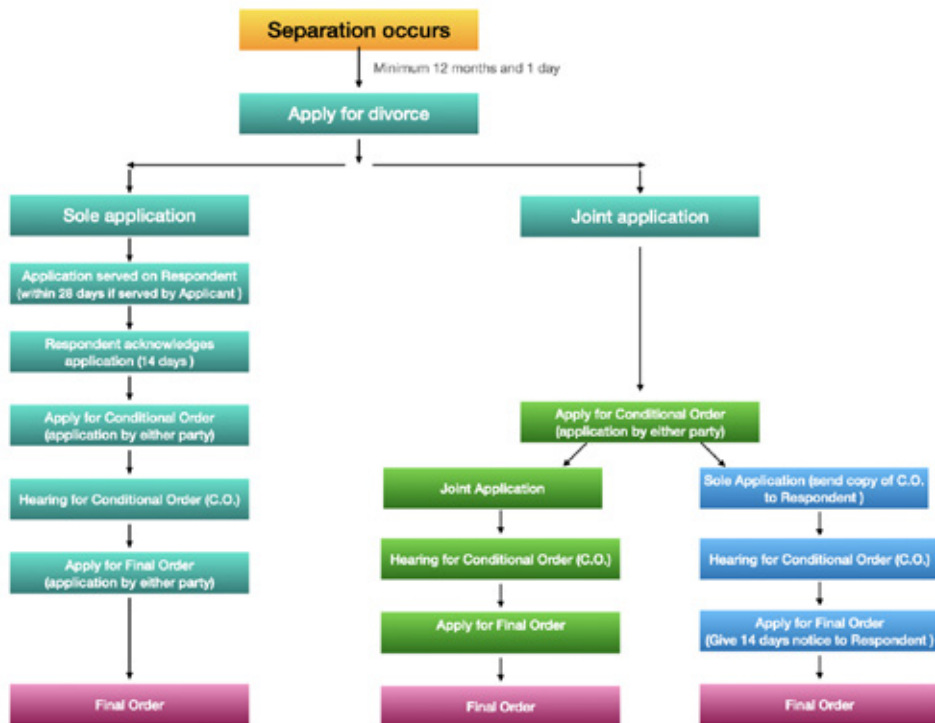
At any time after the Conditional Order is made the court is able to make a binding financial order setting out the arrangements for finances and property on divorce. This will either be by consent (when the parties agree the arrangements between them) or as a result of separate court proceedings. The court will not make a financial order unless asked to (by the parties submitting a draft order recording the terms of agreement reached or financial proceedings are concluded). It is important that finances are considered before the divorce is finalised.

As mentioned, it is important that finances are considered before the divorce is finalised. Please speak to us about them if you have not already done so.

Implications of the Divorce in relation to your Will

It is important to note that divorce may mean certain provisions in your Will do not work out as you might have intended them to. You may need to make a new Will after the Final Order is made (or in contemplation of it) to ensure that your wishes are carried out in the event of your death. Please ask for further details if you need help or would like further information in this regard.

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For more information please contact us on: contact@beckfitzgerald.co.uk or call us on 020 7101 3090

www.beckfitzgerald.co.uk