

The Grounds for Divorce Explained

To obtain a divorce in the UK you need to have been married for one year and you must be able to show that the marriage has broken down irretrievably. The partner who files for the divorce is known as the petitioner and they must be able to prove that the marriage has broken down by establishing one of the 5 grounds for divorce. In this guide we explain the grounds for divorce allowing you to make an informed decision during the divorce process.



The 5 Grounds for Divorce

In order to file for a divorce you must have been legally married for at least a year. Establishing the grounds for divorce is decided early on in the divorce process. One partner must file a petition to the court on the basis of 5 facts. The quicker you and your partner can decide the grounds for divorce the sooner the divorce proceedings will happen. The 5 facts include:

- **Adultery**
- **Desertion**
- **Unreasonable Behaviour**
- **2 years separation with consent**
- **5 years separation no consent required**

Adultery

To petition to the court on the basis of adultery you should prove that your spouse has committed adultery and that you now find it intolerable to live with your partner. If you cannot prove that adultery has taken place we would advise that you petition on the grounds of unreasonable behaviour. This should prevent any difficulties further on in the divorce proceedings.

You can if you wish, name the other partner (this is the other person involved in the adultery) as a co-respondent, however it is not necessary. If you choose to name a co-respondent it is likely to increase tension between you and your partner. It can also lead

to delays further along in the process should the co-respondent choose to not sign the papers admitting that they have committed adultery. You are able to use adultery as the basis for divorce regardless of whether you and your partner are still living together or you are currently living separately. You should ensure that if you are to petition to court on the basis of adultery you do so within six months of you becoming aware of the adultery, unless the adultery continues. The partner who has committed the adultery is not able to petition for the divorce. Only the partner that has been made aware of the adultery should petition for the divorce otherwise you will be required to use another of the 5 grounds.

Unreasonable Behaviour

Unreasonable behaviour is one of the most common grounds for divorce in England.

The petitioner must demonstrate that their partner has behaved in a way that makes it intolerable for you to continue living together. A partner petitioning using the basis of unreasonable behaviour should set out a number of allegations against the respondent. Depending on the seriousness of the allegations, for example violence, you may only be required to provide 2 allegations. If the allegations are less

serious, for example irresponsible with money then you may be required to provide up to six allegations.

We would advise that if you were to petition on the grounds of unreasonable behaviour you discuss the reasons before issuing proceedings. This should be achieved through a discussion between both partners or via solicitors. Establishing the contents of the divorce petition can save time and avoid any difficulties later on.

Desertion

Desertion is less commonly used and is where your partner has deserted you against your will for a continuous period of at least 2 years where you have been living apart.

Two Years Separation with Consent

You or your partner are able to issue divorce proceedings if you have been separated for at least two years and you both agree to the divorce. You and your partner can have lived together for up to six months during the period of separation however this time will not be classified towards the two years separated.

Five Years Separation without Consent

If you and your partner have been living apart for at least 5 years either partner is able to petition to the court without the other parties consent.

Cooperation

It is important that both parties are cooperative throughout the divorce process. Generally the choice of who petitions and on what basis makes very little difference to any financial agreements. It also will not affect any agreement on who should look after any children involved unless violent behaviour for example may be relevant. Once your solicitor has drafted the petition we would advise that you show this to your spouse before it gets sent to the court. This can help keep things more amicable between both parties. If the petition includes any allegations which may cause offence to your partner

they can request to remove these from the draft petition if this ensures they consent to the divorce.

If you or your partner are unclear on any of the grounds for divorce we would advise that you contact a solicitor who will be able to offer you guidance and potential examples of any of the 5 grounds for divorce. At Banner Jones we have a team of family law solicitors that are highly experienced in dealing with divorce and separation cases.

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If you are considering getting a divorce contact one of our expert solicitors who will give you specialist advice on the divorce process:

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