

Information Sheet: Seeking a Divorce

If a marriage breaks down, then at some point divorce proceedings usually follow on. For some, there's no rush. For others, they want to get started as soon as they can.

This information sheet has information on the basics of divorce procedure. It will explain the grounds of divorce and walk you through the different kinds of procedure which may be available to you. It is designed to be accompanied by a set of downloadable resources available at www.inksters.com/familylawresources which should help you to understand the information that Inksters needs from you to allow us to begin.

This sheet is only concerned with the process of getting your divorce and assumes that all other issues to do with your children, financial support or the division of matrimonial property have been dealt with. If you do have issues which need to be resolved, we will need to look at these first and you may wish to look at the appropriate sections of the Inksters website for more information.

It should be noted that, though this leaflet tends to refer to married couples, the procedure for the dissolution of a civil partnership is similar in many ways. If you are seeking the dissolution of a civil partnership, Inksters will be happy to advise you.

The "Grounds" of Divorce

Although people often talk about the "grounds" of divorce, there is strictly only one ground: the irretrievable breakdown of a marriage. There are various ways in which this can be established, which are as follows and these are often called the "grounds" for divorce:-

- (a) The other party's adultery.
- (b) The other party's unreasonable behaviour.
- (c) Separation for one year or more, with the other party's consent.
- (d) Separation for two years or more, whether or not the other party consents.

Unless one of the above grounds can be established, a divorce cannot be granted.

The Simplified Divorce Procedure

If there are no financial issues and there are no children of the marriage under the age of 16 years, then there is the possibility of proceeding with a "simplified divorce". This has sometimes been referred to in the press as a "quickie divorce" or a "do-it-yourself divorce". The simplified divorce procedure means that, if you get in touch with the Sheriff Clerk at your local Sheriff Court to obtain the right form and pay the relevant fee, there is a possibility of doing all the paperwork yourself without any need to instruct a solicitor. Of course, we can assist if you wish, and often clients ask us to make sure everything is in order.

The simplified divorce forms cover the situation where the parties have been separated for one year (in this case the other party will have to consent), or for two years (in which case the other party's consent is irrelevant).

If this process sounds right for you, the Scottish Courts website contains an outline of the process and allows you to download the relevant forms and guidance notes. It also tells you how to go about applying for an exemption from Court fees if you are eligible for this.

<http://www.scotcourts.gov.uk/library/civil/divorce/index.asp>

Once you given the Sheriff Clerk the paperwork, including an extract of the marriage certificate, then the Sheriff Clerk will process the application. You will also be required to sign an affidavit on the application form (a fancy name for a sworn statement) in the presence of a notary public. Many solicitors in Scotland are also a notary public and may charge a small fee for you signing the paperwork in their presence. It is worth phoning around for a quote.

Assuming all of the paperwork is in order and either the other party has consented or not responded to the action served on them (depending on what ground you have used), then the Sheriff Clerk will then progress the matter towards a divorce being granted. If it is granted, then after a few weeks you will be issued with an extract of the decree (judgement) granting the divorce.

From beginning to end, we would ordinarily expect the process to take about eight weeks or so.

Sometimes, a simplified divorce is not possible. For example, even if all of the finances have been sorted out, there may be children under the age of 16 years. If so, a divorce action has to be raised and you will require a solicitor for that.

A Divorce Action

If a divorce action is necessary, then you will need a solicitor, and we can guide you through the process and take you from beginning to end as painlessly as possible. We raise these actions regularly all through the year.

We can discuss with you whether or not you would be eligible for legal aid and if you qualify for an exemption from any of the court dues chargeable by the Sheriff Clerk (which not everyone knows about). We will also discuss if any issues require to be sorted out in relation to the children or finances, and any other matters to be addressed.

As mentioned earlier, we will assume here that there are no issues about the children and that any financial matters have been sorted out.

The “ground” of divorce would be one of the following:-

- (a) The other party’s adultery.
- (b) The other party’s unreasonable behaviour.
- (c) Separation for one year or more, with the other party’s consent.
- (d) Separation for two years or more, whether or not the other party consents.

In our experience, it is preferable to proceed on the grounds of separation after either one year (with the other party’s consent) or two years (without their consent). Certainly, we have lots of experience in raising actions based on either adultery or unreasonable behaviour if they need to be raised before then (and remember we can also raise urgent actions seeking interdict and protective measures, but here, we’re assuming that you just want a straightforward divorce without anything else being needed.)

We sometimes recommend that actions are based on separation after one or two years. This is because the grounds of adultery and unreasonable behaviour are more expensive to argue and more difficult to prove given that you have to establish the fault of the other party based on their conduct. (And you do have to prove it.)

So, the procedure is as follows:-

Stage 1 - Raising the Action

Presuming that you are to proceed with a straightforward action of divorce, we would first raise an Initial Writ at your local Sheriff Court on one of the above “grounds”.

We would require the extract marriage certificate from you and also extracts (full, not abbreviated, extracts) of the birth certificates of any of the children under the age of 16.

Stage 2 – Serving the Action

Once an Initial Writ is lodged with the Sheriff Clerk, the papers are then returned to us with authority to serve the action on the other party. ‘Serving’ the action means that the papers are sent to them so that they know that an action is being raised and have the chance to have their say. This is required by the Court before your action for divorce can proceed further. We serve the action first by recorded delivery and, if that fails, by sheriff officers.

The procedure might be interrupted if the other party decides to make an application to the Court, for example, for a contact order in relation to the children, or if the other party decides to defend the Court action. Thankfully, this is quite rare and we will presume here that the action for a straightforward divorce is not defended and that no application is made by the other party in relation to the children.

Presuming the other party either lodges the consent form (if the action is based on separation after one year) or if there is no response within three weeks after service of the action (if based on separation after two years), then we can proceed to the next stage.

Stage 3 – Signing the Affidavits

Assuming the other party has consented or there has been no response, then after three weeks from serving the papers on him or her, we then proceed to the next stage of having affidavits signed.

An affidavit is a sworn statement. The Court requires one by you and one by a supporting witness (for example, a family member or friend). This other person will be aware of the separation and the general circumstances of the children from their own knowledge to support your information. Neither of you have to give evidence in Court, as the action is all paper-based. We can take a statement from you and from your supporting witness either in person in our offices in Glasgow, or over the telephone. We then use those statements to prepare the affidavits to be signed.

We then arrange for those affidavits to be signed by you and your supporting witness in the presence of a notary public (either ourselves or a local solicitor). The affidavits will include all of the relevant information which the Sheriff needs to satisfy himself that you have indeed been separated for the required amount of time and that there are no issues regarding the children. Once we have the signed affidavits, we can move on to the next stage.

Stage 4 – Minuting for Decree

Once we have the signed affidavits back with us, we then compile a bundle of papers to be lodged with the Court to request that a divorce is now granted. This is called ‘minuting for decree’. Unless the Sheriff wishes some more information for clarification (which is rare), then a divorce is ordinarily granted within one or two weeks and the decree of divorce is sent to us within the following three weeks after that. We then send you the extract decree of divorce for you to keep.

If done the right way, the whole process can be relatively painless and straightforward. We can take a lot of the stress out of the whole matter for you and deal with all the paperwork required.

Should you wish to discuss the raising of an action of divorce, please feel free to contact our Gus Macaulay on 0141 229 0880 or e-mail gus@inksters.com.