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FAMILY LAW DEPARTMENT

# DIVORCE FACT SHEET

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## PART 1

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### Grounds for Divorce

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There is only one ground for divorce namely that the marriage has broken down irretrievably. A year has to have elapsed since the date of the marriage before a Petition can be presented to the Court. The person who takes the divorce becomes known as the Petitioner and his/her husband/wife becomes known as the Respondent.

To prove that irretrievable breakdown you have to satisfy the Court on one of the following facts namely:-

- (a) Adultery - The Respondent has committed adultery and that the Petitioner finds it intolerable to live with the Respondent.
- (b) Unreasonable Behaviour - The Respondent has behaved in such a way that the Petitioner cannot be reasonably expected to live with the Respondent.
- (c) Desertion - That the Respondent left the Petitioner at least two years before the Petition is presented.
- (d) Two Years Separation - That the parties have lived apart for at least two years before the presentation of the Petition and the Respondent consents to a divorce.
- (e) Five Years Separation - That the husband and wife have lived apart for at least five years (no consent from Respondent required).

## PART 2

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### 1. Divorce Procedure

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- Presentation of the Petition – the Petition for divorce sets out the background to the marriage and sets out why the Petitioner says that the marriage has broken down irretrievably.
- The Petition needs to be accompanied by the original marriage certificate or a certified copy of the same, and a Court fee of £410.

### 2. Acknowledgment of Service

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The Court will issue the Divorce Petition and send out the Divorce Petition to the Respondent with an Acknowledgment of Service. This is a form of receipt which the Respondent must complete and send back to the Court within seven days of receipt. Ordinarily the Respondent will confirm the content of the Divorce Petition and allow the divorce proceedings to proceed undefended.

Divorce proceedings are very rarely defended – the scope of this Fact Sheet is limited to undefended Divorce Petition.

If the Respondent does not send the Acknowledgment of Service back to the Court, measures for enforcement can be taken which will enable the Divorce Petition to continue, which will be explained in correspondence with you if the situation arises.

### **3. Application for Decree Nisi**

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Upon receipt of the Respondent's Acknowledgment of Service, the Petitioner's solicitors will draw up a Statement which must be signed by the Petitioner, and filed with the Court.

The Application and Statement will be considered by a District Judge as a paper exercise. If the Divorce Petition is approved the Judge will fix the date for the pronouncement of the Decree Nisi.

### **4. Decree Nisi**

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This is a Court hearing where the District Judge will make a pronouncement of the Decree Nisi and consider any application for costs against the other party. However, it is not normal for the parties to attend or be represented at this hearing.

The Decree Nisi is a provisional Decree which does not affect the status of the marriage. It gives the Court power to make decisions as to the financial and property aspects of the breakdown of the marriage..

### **5. Decree Absolute**

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Six weeks and one day after the grant of a Decree Nisi the Petitioner can apply to the Court for the grant of the Decree Absolute.

If the Petitioner does not make Application for the Decree Absolute then the Respondent can make the Application three months from the date stated above.

The Decree Absolute dissolves the marriage.

## **PART 3**

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The consequences of the Decree Absolute are:-

- (a) The parties are free to remarry.
- (b) Any reference to the spouse in a Will is deleted. A new Will should be made.

- (c) Pension - the party will lose their rights under many of the Pension Schemes of their former spouse.

The consequences of remarriage are:-

- (a) Any maintenance Order (save child maintenance) ceases on the remarriage of the party who receives the maintenance.
- (b) The party who remarries is not entitled to apply thereafter for any form of financial provision or property adjustment against their ex-spouse