

## Divorce: The basics

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### Basic requirements

All divorce proceedings in Guernsey are dealt with in the Royal Court. Divorce proceedings can be issued in Guernsey if either party to the marriage is:

- Domiciled in the Bailiwick of Guernsey on the date the proceedings are commenced; or
- Habitually resident in the Bailiwick for at least one year ending with the date the petition is filed at Court. Habitual residence has a technical definition but usually means ordinarily resident.

It does not matter where in the world the parties were married, as long as they were validly married in accordance with local law and the original marriage certificate or a certified copy can be produced.

If the marriage certificate is in a foreign language, then a translation will be required.

Unlike the UK, there is no minimum period that the parties have to be married before a petition can be issued.

The spouse who files the petition is known as the petitioner. The other spouse is the respondent.

### Grounds for divorce

There is one ground for divorce, namely irretrievable breakdown of marriage. This has to be proved in one of five ways, namely:

1. **Adultery** - The respondent has committed adultery and the petitioner finds it intolerable to live with the respondent.
2. **Unreasonable Behaviour** - The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
3. **Desertion** - The respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition.
4. **Two Years' Separation with Consent** - The parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted.
5. **Five Years' Separation** - The parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

For more information, [see Grounds for divorce](#).

## Procedure for an undefended divorce

An average divorce takes about 3½ months from beginning to end, assuming full co-operation from the other party. An undefended divorce is sometimes referred to as a 'quickie divorce'. Most divorces are undefended.

The divorce procedure for an undefended divorce is purely administrative. Neither party is required to attend Court as long as the spouse being divorced does not defend the proceedings. If a divorce petition is defended, [see Defended Divorce](#). In practice, defended divorces are rare.

The divorce procedure for an undefended divorce is started by the petitioner filing a petition of divorce at the Greffe. The petition is in a standard form containing the information required by the 'Guernsey Matrimonial Causes Rules, 1952'. In summary, the petition provides details of the marriage, the parties, the children and the grounds for divorce. At the end, the petition will include a 'Prayer' which is a statement setting out the claims brought by the petitioner. This will include dissolution of marriage and possibly costs.

The documents filed at the Greffe are as follows:

- Marriage certificate (original or certified copy)
- Signed petition of divorce
- Statement of arrangements (if there are children)
- Reconciliation certificate signed by advocate
- Affidavit of the petitioner to confirm the contents of the petition

At the same time as the petition is filed at Court, a copy is sent to the respondent together with other specified documentation. In the event that the petition is on the grounds of adultery, then the co-respondent also receives a copy of the petition.

If the petition is undefended, the respondent and any co-respondent (adultery cases only) are required, within 14 days, to return the Acknowledgment of Service confirming receipt of the divorce papers. The respondent is also required to file an affidavit confirming the adultery.

The Prayer in the petition, apart from seeking dissolution of marriage, may also include claims in respect of the children and/or finances. In the event that the respondent wishes to make representations about these matters and to prevent an order being made by default, it is important that the respondent completes the Memorandum of Appearance, stating that he wishes to be heard. This needs to be signed and lodged at the Greffe, in duplicate, within 14 days of receipt. The Greffe will then seal the Memorandum of Appearance to confirm receipt and return a copy for the respondent to serve on the petitioner's advocate.

Upon the expiry of 60 days after the petition has been filed at the Greffe, the petitioner can apply for a Provisional Order of divorce. This application will be listed before the Matrimonial Interlocutory Court, which usually sits every two weeks on a Tuesday morning at 10.15am.

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At the hearing of the Provisional Order, only the petitioner's advocate is required to attend. The Court will scrutinise the documentation filed and will consider the evidence. If satisfied that the grounds for divorce have been made out, then a Provisional Order will be granted. The Judge will also state whether the arrangements for the children are satisfactory. This is usually a formality but, in the event that the arrangements are not satisfactory, then a Provisional Order cannot be granted.

Once a Provisional Order has been granted, the Final Order of divorce will be issued 32 days later. A formal signed application for the Final Order is required.

A Final Order of divorce terminates the marriage. The petitioner receives an original Final Order certificate. The respondent receives a letter from the Greffe confirming that a Final Order has been granted and that an original Final Order certificate can be obtained from the Greffe for a small fee.

A simplified timeline for an undefended divorce:



For a more detailed illustration of what happens in an undefended divorce, [see Flow chart of an undefended divorce](#).

The other point to bear in mind about the issuing of divorce proceedings is that no application for financial provision (aka ancillary relief, ie lump sum or Vesting Order, etc) can be issued until and unless a divorce petition has been filed at Court. The application for financial provision is said to be ancillary to the divorce, although in practice the financial proceedings are often far larger than the divorce itself.

In practical terms, this rule can sometimes mean that a party will be driven to issue divorce proceedings in the absence of co-operation from the other party regarding finances. If one party refuses to provide disclosure and/or negotiate the terms of settlement, then often the only remedy open to the other party is to issue a petition followed by an application for ancillary relief.

The only exceptions to this are financial orders available in the Magistrate's Court for spousal and/or child maintenance. These proceedings stand alone and are separate from divorce proceedings.

Further, any application can be issued in relation to children irrespective of whether divorce proceedings have been issued.

**For more information please contact:**



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