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Divorce and Separation

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Your guide to Divorce and Separation

Family and relationship breakdowns are inevitably stressful and upsetting. Our dedicated Family Team will support you through the process and we have considerable expertise to assist in connection with all circumstances.

Divorce and dissolution of civil partnership

Since April 2022, dissolution of a marriage or civil partnership in England and Wales has been based on no-fault. This means that if is no longer neessary to prove that either spouse/ civil parnter is responsible for the breakdown of the marriage/ civil partnership. Instead, the application for dissolution simply confirms that the marriage or civil partnership has **irretrievably broken down**.

An application for dissolution can generally be made after you have been married/in your civil partnership for one year and can be made by one or both partners.

The Process

The first stage is the **divorce/ dissolution appilcation**, which is submitted to the Court providing details about the marriage/ civil partnership and the individuals involved. There is a fee for this application which is set by the Courts and changes from time to time. The current fee can be found on GOV.uk and we will of course advise you of the current fee when you reach out to us. There may be a reduction or exemption available to you in certain circumstances and we will advise if this is available to you.

If the application is made by one spouse/ partner, they will be referred to as **the Applicant**. The other is then referred to as **the Respondent** and they will be sent a copy of the Application. The Respondent will normally need to confirm that they have received the Application within the period specified in the court documents. This is known as an **acknowledgement of service**.

The next stage begins with a waiting period which commences once the application has been issued. This is a minimum period of 20 weeks before the applicant can apply for a **conditional order**. This period provides an opportunity to consider the arrangements that need to be made following separation and includes financial matters and arrangements for children. It is imperative that you seek legal advice to make sure your best insterests and the interests of any children are fully protected.

Once issued, the conditional order confirms that the court is satisfied that the divorce/ dissolution can proceed. It does not, however, bring the marriage/ civil partnership to an end.

The final stage is the **final order** which legally ends the marriage/ civil partnership. You must normally wait at least 6 weeks and 1 day after the conditional order before applying for the final order.

The periods mentioned above are minimum periods and the overall process may take longer depending on the circumstances and the time take by the court to deal with the application.

The terms "conditional order" and 'final order' replace the former terms 'decree nisi' and 'decree absolute' respectively.

Children

When parents separate, arrangements need to be made for their children. These arrangements may include where the children live, when they spend time with each parent, holidays and other important occasions, education and day-to-day care.

Parents are often able to agree these arrangements between themselves. Where reaching an agreement is more difficult, mediation or other forms of dispute resolution may be available. You will find more information about arrangements for children in our Guide to Children.

If parents cannot agree, it may be necessary to apply to the court for a **child arrangements order**. The court places the child's welfare above all other considerations.

Before making an application to the court about arrangements for a child, you will usually need to attend a Mediation Information and Assessment Meeting (MIAM), unless an exemption applies.

Every family is different. If you have concerns about arrangements for your children, or are unable to reach an agreement, we can advise you on the options available in your circumstances.

Financial Arrangements

Separation can raise important questions about your home, savings, investments, pensions, debts and other financial assets. You will find more information about financial arrangements in our Guide to Financial Remedies.

It is important to understand that obtaining a final order does not, by itself, resolve financial matters between spouses/ civil partners. Even if you and your spouse/ partner have agreed how to divide your finances, it may be appropriate to have that agreement recorded in a formal **financial order.**

We can advise on your financial position and the options available, whether you are seeking to reach an agreement with your spouse/ partner or require advice in relation to court proceedings.

Nullity

Unlike dissolution, which ends a legally valid marriage or civil partnership, nullity concerns whether a marriage or civil partnership was legally valid or whether there is a specific reason why it should be treated as void or voidable. The circumstances in which a marriage or civil partnership may be void or voidable are specific and can be legally complex.

Judicial Separation

Judicial separation allows a couple to formalise their separation without bringing their marriage or civil partnership to an end. It is less commonly used than dissolution and may be appropriate in particular circumstances. If you are considering judicial separation, we can explain how it differs from dissolution and advise you on whether it may be appropriate for you.

Cohabitees

There is no legal status of 'common law marriage' in England and Wales. Simply living together does not acquire the same legal rights as a couple who are in a marriage or civil partnership. However, legal rights and responsibilities may arise in relation to property, children and financial contributions, depending on the circumstances.

Taking legal advice at an early stage can help you understand your position and avoid making decisions that may have unintended consequences. If you are considering separation or dissolution or have already separated and are unsure about your next steps, our Family Team can advise you on your options and what you need to consider. Contact us to discuss your circumstances and find out how we can help.

We hope that this short guide has helped you. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Family team.

Please visit **www.pengillys.co.uk** where full details of our Family team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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We can also advise on:

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