



Divorce:

Commencing proceedings

This leaflet has been produced by the Law Courts and Tribunals Service to assist those who wish to issue divorce proceedings. Should you have any questions arising out of its content please contact the court staff.

Should you question relate to legal issues please speak to an independent legal practitioner. The courts can only provide you with advice on practice and procedure.

Please see the leaflet “ Divorce: responding to a petition” if you have been served with divorce papers.

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How do I get a divorce?

You may apply for a divorce by completing a form called a “petition” and taking it to the court.

You cannot start a petition for divorce unless you have been married for one year or more.

Must I explain why I want a divorce?

Yes, you must be able to prove to the court that you have reasons (or “grounds”) for saying the marriage is at an end. The expression the court will use is that the marriage has “irretrievably broken down”.

The court will accept one or more of the following grounds as proof:

- that your husband or wife (the respondent) has committed adultery (which means any act of infidelity and is not restricted to sexual intercourse) and that you find it intolerable to live with them;
- that the respondent’s behaviour has been so bad that you cannot reasonably be expected to live with them;
- that the respondent deserted you at least one year ago;
- that you and the respondent have lived apart for at least one year and that he or she agrees to a divorce
- that you and the respondent have lived apart for at least three years.

Do I have to live in the Falkland Islands to get a divorce here?

You and the respondent must either both have your permanent homes (be domiciled) in the Falkland Islands on the date when you apply for the divorce or have been living in the Falkland Islands throughout the period of one year before the date you apply for the divorce.

Will I need a lawyer?

There is no requirement for you to have a lawyer when you apply for a divorce, but you might find it useful to have some legal advice before starting the petition, especially if:

- You do not know whether you have grounds for a divorce
- Your husband or wife is not likely to agree to a divorce
- You have not agreed with your husband or wife who the children should live

spondent a copy of the order. This is the first of two decrees that you will receive before you are divorced. Only the second decree (the Decree Absolute) will mean you are free to marry again.

Once you have been granted the Decree Nisi you must wait a period of six weeks before you may apply for your Decree Absolute.

I’ve got my Decree Nisi, how do I get my Decree Absolute?

The first date you can apply for your Decree Absolute is six weeks and one day from the date your Decree Nisi was pronounced.

If the application for the Decree Nisi to be made absolute is made more than twelve months after the Decree Nisi, an explanation in writing must be lodged with the application to make Decree Nisi absolute. The explanation must contain the following information:

- Why the application was not made earlier
- A statement as to whether the parties have lived together (including any dates) since the Decree Nisi was granted.

You will need to complete the form “application for Decree Absolute”, which is available from the court staff or on the court website (www.courts.gov.fk). There is a fee to be paid upon applying for a decree absolute and the court staff can advise you how much this will be.

If you do not apply for the Decree Absolute after three months six weeks and one day from the date your Decree Nisi was pronounced, the respondent can make an application to the court requesting that the Decree Nisi be made absolute. The matter will then be considered by a judge at a hearing.

What will the court do with my application for Decree Absolute?

Before granting the Decree Absolute the court will check that six weeks have passed since your Decree Nisi was pronounced and that there is no reason why your decree cannot be made Absolute.

Once the court is satisfied of the above then your decree will be made Absolute and you will and the respondent will be sent a copy of the order.

PLEASE NOTE—it is important that you keep your Decree Absolute safe. This is a legal document that shows that you are no longer in a marriage and are free to re-marry. You may require it at a later date.

Your affidavit must confirm if you wish to change anything in your petition and that everything in your petition is true. It will also need to state that you can identify the signature(s) on the reply form and any statement of arrangements for children (both of which must be exhibited). You can obtain help with drafting your affidavit from a legal practitioner. You will then need to swear your affidavit in front of a Commissioner for Oaths before submitting it to the court.

I have filled in my application for special procedure, what happens next?

Upon receipt of your application the court staff will place your original papers and your application before the judge, who will consider your petition and decide if you can have a divorce.

In making this decision the judge will consider any agreement you and your husband or wife have come to about financial arrangements and the arrangements you have put forward for any children of the family.

Once the judge has determined if a divorce may be granted, the court will send to you and the respondent a notice giving you the time and date when the judge will grant your divorce. This is called “pronouncing the Decree Nisi”. There is no need for you to attend the hearing.

What will happen if the judge says I cannot have a divorce?

The court will send you a notice of refusal of judge’s certificate which will tell you why the judge has decided your case is not in order. In most cases the court will request further information from you. You will be told what information it is that the court wants.

If the judge feels that your case cannot be decided from the written information supplied, there may have to be a court hearing. You will have to come to the hearing and you will be advised what date and time you need to attend.

When will I find out if the judge has granted my Decree Nisi?

After the judge pronounces the Decree Nisi the court will send to you and the re-

with

- You have not agreed about any financial support for the children or yourself, or about any property.

The court can provide you with the forms that you need but cannot answer questions like

- Should I claim financial support?
- Do I have proper reasons for a divorce?
- What will happen to the house I own with my husband or wife.

If you have any questions like these then you are advised to seek independent legal advice.

Will I have to attend a court hearing?

If you can agree with your husband or wife about financial support, property and arrangements for any children, you may not have to attend a court hearing at all.

You may have to attend a court hearing if you ask the court to make an order for financial support or if you cannot agree about the arrangements for children.

How much will a divorce cost?

There is a fee to be paid upon starting your petition and the court staff can advise you how much this will be.

You may also have to pay a fee if you subsequently apply for any financial support.

I’d like to start my petition, what information and documents do I need?

You will need to give a copy of your marriage certificate to the court when you start your petition. It will be kept on the court file. The copy must not be a photocopy.

If you were married in the Falkland Islands and require a copy of your marriage certificate then you may apply to the Registrar General for a copy. There will be a fee and they will tell you how much it is.

If you were married abroad and require a copy of your marriage certificate you will

need to apply to the Registrar in the country in which you got married.

In addition to this you will need:

- Your own name and address;
- Your husband's or wife's name and address;
- The names and dates of birth of any living children you have, no matter how old they are;
- The names and addresses of any person with whom your husband or wife has committed adultery, if you wish to name that person in your petition.
- The grounds upon which you wish to apply for divorce

Will the court be concerned with all the children of the marriage?

No, only those who still need your care and financial support because of their age and circumstances.

The court will be concerned with any child who was born to you and your husband or wife, or who has been treated by you as though they had been born to you who is under 16 or between 16 and 18 and still at school or college full time. These children are referred to as "children of the family". This includes children you have both adopted. It does not include foster children.

The court must consider the arrangements for the children after the divorce and in exceptional circumstances it can hold up the final decree (the "decree absolute") until satisfactory arrangements are made for them.

What will the court want to know about the children?

The court will want to know:

- Where they live
- Who they live with;
- Whether the other parent will see them and how often
- About their day to day care
- About their health
- Where they go to school
- What financial support they will receive

provide the court with an affidavit. This is a legal document that is sworn in front of Commissioner for Oaths. A legal practitioner can help you with this.

Once the court has received the affidavit the judge will consider whether the matter can continue or if some other way of serving the documents upon your husband or wife needs to take place.

The respondent has replied to my petition, what do I do?

Upon receipt of the copy of the acknowledgment of service from the court check to see what answer the respondent has given to the question "do you intend to defend the case?".

If the answer is "no" you can ask the court to consider whether you have grounds for a divorce. This is called applying for a Decree Nisi. A Decree Nisi is a document that says that the court cannot see any reason why you can't divorce.

What do I do if the respondent says they intend to defend the case?

Where the respondent indicates he or she intends to defend the divorce you must wait for the "defence" to be filed. A defence gives the reasons why they are contesting the divorce. This must be provided to the court within 21 days after the date for filing the acknowledgment of service has expired. You should therefore wait 35 days from the date of service of the petition upon the respondent to see if they file their defence.

If you do not receive a copy of the defence within that period then you can apply for your Decree Nisi.

If you do receive a copy of the respondent's defence then you may want to ask a legal practitioner to help you.

How do I apply for a Decree Nisi?

You will need to complete the form "application for special procedure" which is available from the court staff or on the court website (www.judiciary.gov.fk). This form must be accompanied by an affidavit, (sworn statement).

Filing the divorce petition

You must bring an original marriage certificate plus 3 copies of your completed divorce petition and the statement of arrangements for children (if necessary) to the court, along with the court fee.

The court staff will take your forms from you and issue you with a receipt for the fee paid.

What will happen when I have left the forms with the court?

Once the court has issued the petition you will be sent a sealed copy of the paperwork with a letter telling you the date on which the petition was sent to the respondent. On your letter there will be a reference number (this will start SC/CIV/) please ensure you keep this safe and use it in all correspondence with the court concerning your divorce.

The court will post a copy of your petition to the respondent along with a copy of the statement of arrangements for children and an “acknowledgement of service” form. This has to be completed and returned to the court by the respondent within 14 days of the date of the petition being sent to them. Once they have returned this, the court will send you a copy.

What will the respondent do when they get the petition?

They may do one of three things:

- Ignore the petition and not return the acknowledgement of service
- Fill in the acknowledgment of service indicating that they wish to contest your petition and return it to the court
- Fill in the acknowledgment of service saying that they agree with the petition and return it to the court.

If they do not return the acknowledgment of service within the 14 days you may apply to the court for the document to be classed as served. To do this you need to

The court will ask you and your husband or wife to try and agree these things together without the court having to make an order. The court will only make an order about the children when you cannot agree the arrangements for them and where it would be better for the children than making no order at all.

When you start your divorce you have to fill in a “statement of arrangements for children” form which gives the court all of the information listed above. A copy of that completed form will be sent by the court to your husband and wife with your petition. This is so that he or she can sign it to say they agree the arrangements you have put forward. If they will not sign to say they agree the arrangements then they can make their own proposals. If this happens the court will send you a copy.

Filling in the divorce petition

Below is an example of a completed divorce petition, copies of which are available from court staff or via the court's website at www.courts.gov.fk

The details of your marriage should be as per your marriage certificate

BETWEEN

Joanna Anybody Petitioner

And

Robert Somebody Respondent

DIVORCE PETITION

THE PETITION of *Joanna Anybody* shows that:-

1. On the *12th December 1970* the Petitioner, was lawfully married to *Robert Somebody* (herein after called "the Respondent"), at *Christ Church Cathedral, Ross Road, Stanley, Falkland Islands*

Delete if not applicable:

2. There is not to the knowledge of the Petitioner any other living spouse of the Respondent additional to the Petitioner.

3. The Petitioner and the Respondent have lived together as husband and wife at *12 Davys Road*

4. The Petitioner and the Respondent are domiciled in the Falkland Islands

5. The Petitioner is a *Nurse* and resides at *12 Davys Road, Argatoun, Falkland Islands* and the Respondent who is a *doctor* resides at *15 Meale Street, Argatoun, Falkland Islands*

6. There are *2* children of the family now living, namely

Lucy Somebody DOB 12.12.1975
Johany Somebody DOB 12.12.1987

7. No other child now living has been born to the Petitioner during the marriage

There is no dispute between the parties concerning the status of the above children as children of the family.

Provide details of all the children of the family (see guidance on page 4)

Set out the basis why the court can deal with your divorce. (see guidance on page 2)

If there have been other proceedings involving the marriage or children of the family then you would need to detail them here

8. There are and have been no other proceedings in any Court in the Falkland Islands or elsewhere with reference to the marriage or to any children of the family or between the Petitioner and the Respondent with reference to any of the property of either of them.
9. There are no proceedings continuing in any country outside the Falkland Islands which are in respect of the marriage or are capable of affecting its validity or subsistence
10. No agreement or arrangement has been made or is proposed to be made between the parties for the support of the parties or the children
11. The marriage has broken down irretrievably.
12. *The Petitioner and Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of this Petition, namely from and since on or about 12.12.2010 and the Respondent consents to a Decree being granted.*

THE PETITIONER THEREFORE PRAYS:-

1. That the said marriage be dissolved.
2. That the Petitioner may be granted the following ancillary relief:
 - a. *A periodical payments order*
 - b. *A periodical payments order for the children of the family*

The names and addresses of the person who are to be served with this petition are:-

The Respondent:
Mr Robert Somebody
15 Meale Street,
Argatoun
Falkland Islands

Dated this *15th day of January 2015*

Signed _____ [Petitioner]

The Petitioner's Address for service is:
12 Davys Road,
Argatoun
Falkland Islands

The prayer tells the court what you are asking for, for example, a divorce and financial support

Set out the grounds for your divorce. The words to use are in the paragraph "must I explain why I want a divorce?" on page 2