

## **Divorce Petition: Notes for Guidance**

1. All documentation lodged with the court must be entitled with the name of the court to which the application is made. Only one of the two options shown should appear on the Petition.
2. If the Petitioner or Respondent did not take on the married name an explanation must be given on the face of the Petition that is, that the:
  - i) parties name was changed by deed poll;
  - ii) parties name was changed by common usage; or
  - iii) the party never took on the married name.
3. If either parties name is shortened or different on the marriage certificate an explanation must be included on the face of the Petition.
4. The jurisdiction of the court to hear the application must be detailed at paragraph 3 of the Petition. Courts in Northern Ireland have jurisdiction only under the grounds in Article 3 of the Council Regulation EC 2201/3003. There are six variations. Each Petition must contain at least one.
5. Should be deleted as appropriate.
6. If Article 3(1)(d) is relied upon as grounds for jurisdiction, the address(es) at which parties lived and the time at each address must be included.
7. If Article 3(1)(e) is relied upon as grounds for jurisdiction, the address(es) at which parties lived and the time at each address must be included.
8. If none of the 6 grounds of jurisdiction apply but the applicant still alleges that the court has jurisdiction, paragraph 3 of the Petition should be replaced with the following *"The court has jurisdiction other than under Council Regulation on the basis that no Contracting State has jurisdiction under the Council Regulation and the Petitioner/ Respondent is domiciled in Northern Ireland on the date when this Petition is issued."*
9. Should the applicant wish their current address to remain confidential an application to that effect must be made to the Master. A Petition which does not disclose the address of the Petitioner cannot otherwise proceed.
10. If the Respondents address is unknown to the Petitioner, this should be stated at paragraph 4. In such circumstances the applicant will have to make an application to the Master to dispense with service in order to proceed with the application.
11. Paragraph 5 should include the full names, as per long form birth certificates and dates of birth of:

- (i) children born to the Petitioner and Respondent;
- (ii) children adopted by the Petitioner and Respondent; or
- (iii) children born to either party who were treated as children of the family.

If the children concerned are aged 18 and over it is not necessary to include dates of birth, but it must be specified that they are aged over 18.

If there are no such children, the word “except” should be omitted from paragraph 5 so that it reads “*There are no children of the family now living.*”

12. Paragraph 6 is concerned only with children born to the **female** party of the marriage who were not treated as children of the family. The word Petitioner or Respondent should be deleted accordingly. Similarly the phrase “so far as is known to the Petitioner” should be deleted in circumstances where the Petitioner is the female party of the marriage. If there are no such children, the word “except” should be omitted and paragraph 6 should end with the word “marriage” if the female party is the Petitioner, or with the phrase “so far as is known to the Petitioner” if the male party of the marriage is the Petitioner.
13. Paragraph 7 should detail any financial settlement which the Petitioner requires the court to make on behalf of children of the family, that is, those included at paragraph 5 of the Petition. The name and date of birth of each child in relation to which a settlement is required must be specified together with the grounds on which the application is made, for example, a settlement in addition to maintenance already payable under a Child Support Agency calculation, an application to meet expenses arising from a child’s disability or an application to meet expenses in relation to a child’s education or training.

If no financial support for the children is required, the words from “except” onwards should be omitted so that paragraph 7 reads “No periodical payment order or secured payments order is sought for any child of the family. If there are no children of the family, this paragraph can be omitted.

14. Paragraph 8 should include details of any relevant court hearings in relation to the marriage, any children of the family and any property belonging to either or both parties to the marriage. Details of applications to file amended / second Petitions should also be included in this paragraph. In each case, there must be specific mention of the name of the court to which the application was made, details of the orders made thereat and, if proceedings related to the marriage, whether co-habitation was resumed after the court order was made.

If there are no related proceedings, the word “except”, should be omitted.

15. Paragraph 9 should include details of any applications made to the Child Support Agency in respect of any child of the family. If there have been proceedings, the child’s name, the date of the application and details of the calculation should be included.

If no such application has been made the word “except” should be omitted. If there are no children of the family, paragraph 9 may be omitted.

16. Paragraph 10 should detail any continuing court proceedings outside Northern Ireland relevant to the marriage. Details should include the name of the country and the court in which applications have been made, the date proceedings were begun, details of orders made, the expected date of any future orders or future hearings and any other relevant information.

If there are no such proceedings the word “except” should be omitted but the paragraph must always be included.

17. Paragraph 11 should include details of arrangements or proposed arrangements for the financial support of the Petitioner or Respondent and any child of the family. Particular attention should be paid to this paragraph in circumstances where the Petition is made on the grounds of five year separation, as it is unusual for support to be ordered in such circumstances. The words Petitioner, Respondent and children of the family should be omitted as necessary. If no such arrangements have been made or are proposed to be made the word “except” should be omitted.

18. Paragraph 12 is a declaration that the marriage has broken down irretrievably. In cases where a judicial separation is sought, the paragraph should be omitted.

19. The grounds on which an application is sought should be detailed at paragraph 13. Under Article 3(2) of the Matrimonial Causes (Northern Ireland) Order 1978 (SI 1978 No. 1045 (NI 15)), there are five facts on which an applicant can seek to demonstrate that a marriage has broken down irretrievably. They are:

- i. that, since the date of the marriage, the Respondent has committed adultery;
- ii. that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;
- iii. that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition;
- iv. that 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;
- v. that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

In cases of adultery third parties may be named as co-Respondents. Parties so named will be treated as party to proceedings and served with copy papers.

20. Paragraph 14 should detail the evidence which will be given in support of paragraph 13. Evidence should relate directly to the grounds. In relation to the two and five year grounds, for example, paragraph 14 should specify the date

on which co-habitation ended or the date on which parties began to live separate lives. Where parties assert that they live separate lives in the same accommodation, details of how they conduct their affairs separately should be included.

In cases of adultery or unreasonable behaviour, where the names of third parties, other than co-Respondents are mentioned, the file must be forwarded to the Master, together with a notice party slip, for a direction as to whether parties should be treated as party to proceedings and served with copy papers.

21. In the Prayer of the Petition, the Petitioner sets out the directions that they are requesting the court to make. In some cases this may simply be that the marriage be dissolved or judicially separated, in others requests for financial relief or orders regarding arrangements for children may be made.
22. In the case of a divorce the Petitioner will pray that "*The said marriage be dissolved*". In the case of a judicial separation, the Petitioner will pray that "*The said marriage be judicially separated*".
23. Omitted as appropriate.
24. Omitted as appropriate.
25. If the Petitioner is not requesting that the Respondent or co-Respondent be ordered to pay costs this paragraph should be omitted. It is important to note that this paragraph must correspond to the reference to costs in the Acknowledgement of Service. If the two do not correspond, all documents must be returned, as we cannot assume the intention of the Petitioner in relation to costs.
26. An order for maintenance pending suit is an order financial relief during the period prior to final settlement being reached.
27. If a property adjustment order is sought the full address of the property should be included.
28. In the case of a personal Petitioner, the Petition should be signed by the Petitioner. Otherwise the form should be signed by the solicitor or counsel (specifying which) representing the Petitioner or endorsed with the name of the relevant firm.
29. The Respondents name and address for service must be included.
30. The name and address of a Co-Respondent will only be included where a Petition is proceeding on grounds of adultery.

31. If the Petitioner is legally represented the name and address for service will be that of the relevant solicitor. If the application is that of a personal Petitioner, the address for service will be that of Petitioner.
32. The date must always be included at the end of the Petition.
33. The court address must be included at the end of the Petition. However, if this is the only omission, the address may be added using the office stamp.