



Ending a marriage

When your marriage comes to an end, you will probably have a number of things to sort out, which may include childcare, money, and housing. Both of you could decide to separate informally, without going to court. You could draw up a **separation agreement**, either with or without the help of a solicitor, setting out future arrangements. However, it is advisable to use a solicitor if you want to do this because of the possible long-term consequences for your financial situation.

If you want to end your marriage formally, you will have to go to court to get a **divorce**. It is advisable to try and sort out any disagreements about practical matters before going to court. This will reduce the legal costs and may also minimise conflict and the stress of the divorce proceedings.

Who to inform

If you and your partner are separating you may need to inform:

- your landlord
- your housing benefit office
- your council tax office
- your mortgage lender
- gas, electricity and phone companies
- insurance company
- doctor and dentist
- your benefits office
- your tax office
- your children's school
- your bank
- hire purchase and credit companies
- post office to redirect mail

Judicial separation

In special circumstances where one of you has a religious or moral objection to divorce the court may grant a judicial separation.

Decree of nullity

A marriage can be annulled if it doesn't meet certain legal conditions, for example one of you is under the age of 16 or is already married to someone else.

Divorce

There are two legal grounds for divorce. These grounds are that:

- the marriage has **broken down irretrievably** (see below)
- an **interim gender recognition certificate** has been issued to either spouse. An interim gender recognition certificate is issued to a transsexual person who has started the legal process of recognition of her/his acquired gender.



If you want to get a divorce because you believe that your marriage has irretrievably broken down, you have to be able to show to the court that this has happened. You can prove the irretrievable breakdown in one of the following ways:

- adultery
- unreasonable behaviour
- one year of separation with consent, where both of you consent to divorce
- two years of separation without consent.

There is no minimum period you must be married before you may apply for a divorce based on unreasonable behaviour or adultery.

A divorce can be brought to a local sheriff court or the Court of Session in Edinburgh. It may be easier and cheaper to use a local sheriff court than the Court of Session.

There are two different methods of applying for a divorce – a quick, less expensive **Do-It-Yourself method** which can only be used in certain circumstances and the **ordinary method** for which you will need a solicitor.

The Do-It-Yourself method

You can get divorced using the Do-It-Yourself (DIY) procedure if the reason for your divorce is irretrievable breakdown based on one year separation with consent or two years separation without consent, or the reason is the issue of an interim gender recognition certificate. You cannot use this method if you have children who are under 16. In addition, you cannot use this method if there are financial issues to be sorted out.

The DIY procedure will usually take about two months. However you may wish to see a solicitor before you apply for a DIY divorce to ensure that you will not lose out financially. If you do then decide to apply for a DIY divorce, you will need to fill in the necessary forms. You can get these from any sheriff court (or the Court of Session in Edinburgh) or from the Scottish Courts Service website at www.scotcourts.gov.uk. You can find the address of your local sheriff court on the Scottish Courts Service website or by looking up courts in the local telephone directory. You can get help to fill out the forms from a Citizens Advice Bureau – see under Further help.

Getting divorced using the ordinary method is more expensive – and it can take up to six months or longer in some cases.

Depending on your circumstances, you may be able to get financial help towards your divorce, including legal aid – see under Further help.

The ordinary method

If you are going to use the ordinary method to divorce you will have to consult a solicitor who will gather evidence about the grounds for divorce. An initial writ is served on your partner and to the court stating the grounds for divorce and any



arrangements to do with children, money or property. If your partner accepts the terms of the writ and decides not to defend the case the court will ask you both to submit sworn affidavits agreeing to all the terms before granting the decree of divorce. If your partner disagrees with any aspect of the writ and defends the action in court then the court will have to decide on the arrangements for children, property and money. Your partner may decide to raise their own action, called a cross action, to start divorce proceedings against you. This is a complex matter, is likely to be expensive and will require legal advice.

Family mediation

Before, or during, divorce proceedings, you may want to use a mediation service. Mediation can help you both to reach joint decisions about arrangements for the future. It is an alternative to having decisions made for you by the courts. However, mediation is not a substitute for legal advice. You will be encouraged to consult a solicitor during the mediation process to advise you on the personal consequences of your decisions. At the end of mediation, the decisions you have reached can be used as the basis for a divorce settlement, or a legal separation agreement.

To find out more about mediation services in your area, visit www.relationships-scotland.org.uk or telephone 0845 119 2020.

Financial arrangements at the end of a marriage

After separation but before divorce, you may be able to get money called maintenance (the legal term is aliment) from your husband or wife for yourself. This is because you and your spouse each have a legal obligation to provide financial support for the other until you are divorced.

During the divorce proceedings, both you and your partner can ask the court to make a number of orders about money. When you have no children, the court is likely to try and make orders that give you a 'clean break' from each other. To find out more you should seek legal advice.

If you have been financially dependent on your partner and you do not work, you may be able to claim benefits, or tax credit – see under Further help.

The family home and possessions

When a marriage breaks down, one of the important decisions is who gets the house and possessions. On separation, you may have agreed some decisions between you. If you and your partner cannot agree, you should check what rights you have to live in the home and use the possessions. A lawyer or your local Citizens Advice Bureau can help with this – see under Further help.

On divorce the court can make a wide variety of orders about the home and possessions. These orders will normally be made along with orders about money. If you decide to leave your home, depending on your circumstances you may be able to apply for long-term accommodation from your local authority as a homeless person – see under Further help.



Tenants

If you have a joint tenancy you may be able to agree between yourselves about which one of you should get the tenancy. You can ask your landlord to transfer the tenancy. If you cannot agree, the court can be asked to decide about a transfer. The court can transfer the tenancy to your name, even if your partner is the sole tenant, or you and your partner are joint tenants.

If your partner is the sole tenant they will still be responsible for paying the rent. If rent arrears are building up the landlord may seek to evict you.

If the tenancy is in your name you may be able to get help with your housing costs for example housing benefit and council tax benefit – see under Further help.

Owner-occupiers

The long-term right to ownership of your property can be decided during divorce proceedings. The court has the power to transfer property regardless of original ownership. If you decide to move out, you will usually have the right to move back in at a later date (although this is time limited), and to stop your partner selling the property without your knowledge. If there are children, the courts can include property as part of an overall settlement to protect the children.

You may be able to get help with your housing costs for example, council tax benefit and help with your mortgage – see under Further help.

Children

At the end of your marriage, both you and your partner will be responsible for supporting your children financially, regardless of which one of you the children live with. There is a useful guide called 'Parenting Agreement for Scotland – Guide' available to help separating parents make decisions about the care of their children available from the Scottish Government website at www.scotland.gov.uk

If it is not possible to come to a voluntary agreement for the care of your children, a court can be asked to intervene. The court can make orders about who the children should live with. The order will usually allow contact between the child and the parent with whom the child is not living, unless there are exceptional circumstances.

Claims for maintenance for children are either dealt with by voluntary agreement, or from a court order or the **Child Support Agency (CSA)** assesses, collects and enforces child maintenance payments. If your children live with you after your marriage ends, you can use the Child Support Agency (CSA) to get maintenance for the children, but you don't have to. If you want advice about anything to do with maintenance agreements you can phone the Child Maintenance Options (CMO) helpline on 0800 988 0988 or look at the CMO website at www.cmooptions.org.uk.

Nationality and immigration status

In some cases, the immigration status of a partner may be affected by separation or divorce, for example if someone separates or divorces within two years of applying for settled status. You will need specialist legal advice.



Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB, including those that give advice by e-mail, click on [nearest CAB](#), or look under C in your phone book.

Other information which might help

- [Help with legal costs](#)
- [Using a solicitor](#)
- [What benefits can I get?](#)
- [Finding accommodation](#)
- [Help with mortgage costs](#)
- [Getting Divorced in Scotland booklet](#)
- [Ending a marriage](#)
- [Help with your rent – Housing Benefit](#)
- [Help with your council tax – Council Tax Benefit](#)
- [Family FAQs](#)

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This fact sheet is reviewed on a monthly basis. The law changes frequently. To confirm you are looking at the most up-to-date version, download the fact sheet from www.adviceguide.org.uk or contact your local Citizens Advice Bureau.

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