

LAWPACK



*Self-Help Kit*

# Separation & Divorce

Guidance Manual

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This is an excerpt from Lawpack's *Separation and DIY Divorce Kit*.

To find out how you can arrange your own DIY divorce quickly and inexpensively, [click here](#).

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## **Loose-leaf forms**

### **England & Wales and Scotland forms:**

Divorce Checklist

Household Budget Form

Guide to Simple Undefended Divorce in England & Wales

Guide to Simplified Divorce Procedure in Scotland

**Forms available as downloads:****England & Wales forms:**

D8 Divorce Petition  
D8 Divorce Petition Notes for Guidance  
D80A Affidavit by Petitioner in Support of Petition – Adultery  
D80B Affidavit by Petitioner in Support of Petition – Unreasonable behaviour  
D80C Affidavit by Petitioner in Support of Petition – Desertion  
D80D Affidavit by Petitioner in Support of Petition – Two-year separation  
D80E Affidavit by Petitioner in Support of Petition – Five-year separation  
D36 Application for Decree Nisi to be made Absolute  
D84 Application for Directions for Trial under the Special Procedure  
(undefended divorce)  
D8A Statement of Arrangements for Children  
D81 Statement of Information for a Consent Order  
Form A Notice of an Application for Ancillary Relief  
Form H Estimate of Costs (Ancillary Relief)  
Form H1 Statement of Costs (Ancillary Relief)  
Deed of Separation  
Form Ex160 - Application for a fee remission

**Scotland forms:**

Application for Exemption of Payment of Court Fee  
SPA Application for Divorce – Simplified Procedure  
SPB Application for Divorce – Simplified Procedure  
Deed of Separation

## Introduction

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The end of a marriage can be a traumatic, stressful and indeed expensive time, or it can be a sad but necessary stage on the path to new lives for you, your spouse and your children.

This Kit aims to help you help yourself. By being aware in advance of the problems you may encounter and the issues that need resolution, you can prepare to deal with them by constructive discussion and negotiated agreement, not acrimonious and hurtful dispute. You may also be able to save yourself money at a time when financial concerns may well be troubling you.

If you and your spouse agree that divorce is necessary, the procedure can be quite straightforward and it is often possible for you to avoid using a solicitor at this stage. Issues concerning the distribution of the property you both own, and questions of contact with children and where they will live, can also be resolved by agreement, which the court may endorse.

However, this Kit is not a substitute for specialist and expert legal advice. If you are at all unsure of your rights or what you could reasonably expect from divorce, you should consult a solicitor or Citizens Advice Bureau.

## Do you really want a divorce?

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Every marriage has occasional problems that work themselves out in time. Before you start divorce proceedings consider the following:

- **Do not act hastily.** Never rush into a decision. Make certain you have given your problems adequate time to work themselves out. Anger and other negative feelings can change over time and with patience you and your spouse may be able to resolve your difficulties.
- **Seek professional help.** Can a therapist or marriage counsellor help you and your spouse? Professionals may see the reasons for your conflict and suggest ways for overcoming your problems. Do not forget that these professionals have counselled many other couples who have shared similar problems.
- **Try separation.** Rather than go from marriage straight into divorce, you may prefer to try a trial separation. Living apart from your spouse allows you to assess realistically your spouse's importance in your life and may allow you to gain a new perspective on the problems that have arisen in your marriage.

## How does the divorce process work?

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If there is to be a divorce, one spouse starts the proceedings by sending a petition and some other documents to court. This person is the petitioner. The other spouse must respond to the petition which will state why the marriage should be ended, using one of five facts which show that the marriage has irretrievably broken down. This person is the respondent.

For an illustration of how the various stages of the divorce process in England and Wales link up, see the loose-leaf 'Guide to a Simple Uncontested Divorce' included in this Kit. If the divorce is not defended by the respondent, the process is a great deal simpler and likely to be a lot quicker (although any disputes or question marks over the arrangements for finances or children are likely to hold up the divorce significantly). As it is generally preferable for divorce proceedings to be undefended, you might be well advised to attempt to agree with your spouse on the basis and wording of a divorce petition before it is sent to court (i.e. before stage 1 of the Guide).

## Scotland

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The divorce process differs in Scotland where there are two different divorce procedures. If:

- a)** the couple have no children under the age of 16;
- b)** the divorce is uncontested;
- c)** the couple do not seek any financial orders to be granted by the court; and
- d)** their grounds for a divorce are either on the basis that they have been separated for a period of one year and both agree to divorce or the couple have been separated for two years;

the divorce can proceed under the 'Simplified Divorce Procedure'. However, if the divorce is contested or there are children under 16 years or one or both of the parties are seeking financial orders, the divorce will proceed under the 'Ordinary Procedure'. This procedure is more complicated and, unlike the Simplified Divorce Procedure, there are no court forms to be completed, rather this involves the lodging of court 'pleadings' in the form of Initial Writ and Defences and it is therefore best conducted with the assistance of a solicitor. The procedures are discussed in more detail under the section 'How to obtain a divorce in Scotland'.

## Can you handle your own divorce?

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Going through a divorce can be one of the most stressful experiences in life. It can affect you emotionally, financially, and, of course, legally.

Your divorce will involve important legal decisions concerning (i) financial support, (ii) division of property, and (iii) arrangements for your children under 18. While these are vital issues, the law on these points may not be particularly complex, depending on your circumstances. It may be possible to deal with these issues yourself with the aid of this Kit.

## Advantages of representing yourself

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There are obvious benefits to handling your own divorce.

- You save legal fees. These can be considerable. A simple uncontested divorce can

cost £1,000 or more and legal fees can become unaffordable in complex cases. Solicitors can charge as much as £150 to £300 an hour for their time, so fees can quickly escalate.

- Your divorce may be less adversarial. If you and your spouse are able to communicate constructively then introducing solicitors may make that communication more difficult.
- Your case may move faster without a solicitor. Your solicitor may be too busy with other cases, causing you needless delays.

## Do you need a solicitor?

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To answer this question ask yourself the following:

- **Are you sure you have proper grounds for a divorce?**

Your rights to a divorce are not automatic. As we will see, you must show one of the five facts that prove the legal requirements to obtain a divorce. You may need a solicitor to tell you whether you have this.

- **Is your divorce contested or uncontested?**

If you and your spouse both agree that you should divorce, then your divorce will be uncontested. The vast majority of divorces are uncontested and this Kit is prepared on the basis that yours will be. If one spouse is unwilling to divorce, the divorce will be contested by that spouse. In this case, the services of a solicitor will be needed to determine whether there are grounds for divorce.

In an uncontested divorce you do not necessarily need a solicitor unless you disagree on other issues, such as the division of your property or the levels of maintenance (properly known as periodical payments in England and Wales and periodical allowance in Scotland) to be paid by one spouse to the other, either for the benefit of your children under 18 or for the receiving spouse in her right, or both.

Note that if you are a foreign national or are living abroad, it may be appropriate or more financially advantageous for you to be divorced abroad rather than in the UK. If this applies to you, contact a solicitor immediately as often any delay in issuing proceedings can be damaging to your claims

- **Do you have minor children?**

The most important issues in divorce are those involving the welfare of any child under 18 (under 16 in Scotland), known as minor children. These issues include child support, parental responsibility and orders for residence and contact (formerly known as custody and access). Because these issues are so important, the court will be concerned that what has been decided is in the best interests of the minor children. Because the welfare and proper care of your children are paramount, you should ask a solicitor to approve the agreements concerning your children that you and your spouse have made. An experienced solicitor can guide you to a settlement that the court will approve as being in the best interests of the children.

- **Do you have property which can be easily divided?**

If your divorce consists of nothing more than deciding who gets the dog and the furniture, then you and your spouse can easily resolve these questions on your own without a solicitor. In order to ensure that you have no further financial claims on each other in the future, it will be necessary for you to obtain a court order to this effect (see page 47). In Scotland, if no financial order is made on divorce or in a registered separation agreement there can be no further financial claims on each other in the future once the divorce decree has been granted and the appeal period has passed.

If you own substantial property, you will want a solicitor to make certain you receive your full entitlement and that the division of property is tax efficient. Even if the division of your property is likely to be straightforward, you may wish to seek the assistance of a solicitor to ensure that the agreement reached between you and your spouse is recognised by the court as final and not something to be revisited in the future. This is done by setting the terms of your agreement down in a court order which the court will then seal. Pages 46 to 47 deal with this. In Scotland, if the financial agreement is in a registered separation agreement (see page 54) it does not need to be recognised by the court or sealed by the court.

- **Do you need or expect future support from your spouse?**

If you expect to be financially dependent upon your spouse after the divorce, you may need a solicitor to help you negotiate periodical payments and to make the obligation binding by means of a court order.

You do not necessarily need a solicitor if:

- you and your spouse both want the divorce and agree on the division of property (if there are pension assets that you have agreed to divide, you should consult a solicitor, as they can only be divided after specific court orders have been made – this is a complex area);
- you have no minor children;
- your assets are not substantial;
- you are not disputing maintenance or child support;
- you are certain you have proper grounds for divorce.

Even if you need a solicitor for financial matters, you could still save yourself money by conducting the divorce yourself, seeking advice from a solicitor only as and when necessary and by seeking to agree on matters with your spouse as much as possible.

## Finding a solicitor

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Many solicitors handle divorce cases and some specialise in family law. It should not be difficult to find one to advise you on your divorce and to answer your queries efficiently and economically. You can find a solicitor by:

- seeking referrals from friends or family members who have gone through a divorce;
- calling the Law Society or Resolution (formerly known as The Solicitors Family Law Association); both are listed under ‘Useful contacts’ at the end of this Manual;

- asking your family solicitor for a referral if your solicitor does not routinely handle divorce cases;
- asking at your local divorce court for the names of the more active divorce solicitors in your area. Similarly, the Citizens Advice Bureau may be an excellent referral source.

## What should you ask a solicitor?

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- How long have they been in practice?
- What percentage of their cases are divorce?
- Do they belong to Resolution? This is important, as this association is for family lawyers and has a code of conduct that emphasises practicality and a constructive approach, rather than unnecessary and expensive dispute.
- Who within the office will actually handle the case? How much delegation will be involved and to what extent?
- What will be the general approach to the case and how long will it take?
- What approximate outcome might be expected?
- Approximately how much will it cost, what is the hourly rate, and how is the fee to be paid?
- Are you eligible for Public Funding?

Since an important objective is to save money on your legal fees, here are a few ways to keep your legal fees to an absolute minimum:

- Do not hire a solicitor solely on the basis of reputation. A lesser-known solicitor may be equally effective for a far lower fee.
- Use your time with the solicitor efficiently. Be concise on the telephone and limit your telephone calls. The same rule applies to office visits.
- Give information to your solicitor's secretary whenever possible. It will save your solicitor's time and your costs.
- Use the information and advice in this Lawpack Kit.

## Divorce and Public Funding

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### Do you qualify?

If you do, the Legal Services Commission may pay your solicitor's fees in the form of a loan which may be taken out of the proceeds of the financial settlement that you reach with your spouse.

A solicitor has a duty to advise you as to whether you are entitled to Public Funding for your divorce and related matters, such as periodical payments, any issue relating to your children or division of property. While many solicitors do accept Publicly Funded work, many others do not but will nevertheless refer you to solicitors who do. Be certain to find out if you are eligible for Public Funding from a solicitor, the Legal Services Commission or your local Citizens Advice Bureau.

## Scotland

In Scotland, the Legal Advice and Assistance Scheme still operates; if someone qualifies on financial grounds they can get assistance under this scheme with either proceeding under the Simplified Divorce Procedure or with preliminary work in connection with separation, including the drawing up of a separation agreement.

## The grounds for divorce

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You or your spouse may want to divorce, but before you can obtain a divorce you must satisfy these legal requirements:

- In England and Wales: you can only divorce if you have been married for at least one year. There are rules on jurisdiction which govern whether or not the courts of England and Wales can grant you or your spouse a divorce. If you have both lived in England or Wales for the year prior to the divorce, then there should be no difficulty. If this is not the case, then you may well still be entitled to a divorce in the courts of England and Wales but it may be wise to consult a solicitor on this point.
- In Scotland: you or your spouse must have resided in Scotland for the year preceding the divorce, or consider Scotland your principal place of residence.
- There is only one basic ground for divorce: the irretrievable breakdown of the marriage. Irretrievable breakdown is proven by establishing one or more of the following ‘facts’:
  - Fact A.** Adultery
  - Fact B.** Unreasonable behaviour
  - Fact C.** Desertion (this ground can no longer be used in Scotland)
  - Fact D.** Two-year separation in England and Wales or one-year in Scotland, when the other party consents to a divorce
  - Fact E.** Five-year separation in England and Wales or two-year in Scotland, in which case no consent is needed

### A. Adultery

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You must prove that either through actual admission or through sufficient circumstantial evidence, your spouse had a sexual intercourse with another person of the opposite sex and that you find it intolerable to live with your spouse. If a sexual liaison short of sexual intercourse has taken place, it is suggested that the unreasonable behaviour ground is used.

You can name the other person involved as a co-respondent but this is not essential and can have serious consequences. Doing so can make the proceedings more acrimonious, more complicated and more drawn out. It is usually best to avoid naming a co-respondent. If you wish to name the other person you are best advised to discuss this first with a solicitor.

Adultery can be used as the basis for a divorce petition whether you and your spouse are still living together or have separated, but in either case not more than six months

must have elapsed since you became aware of the adultery before the petition is sent to the court.

## **B. Unreasonable behaviour**

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You must show that your spouse has behaved in such a way that you cannot reasonably be expected to live with him or her.

Unreasonable behaviour is now the most common fact on which to prove the ground for divorce in England and Wales. In an unreasonable behaviour petition, the petitioner sets out a number of allegations against the respondent. These allegations might include references to excessive drinking or financial extravagance, for example; but it is worth bearing in mind that the court does not insist on really severe allegations of unreasonable behaviour in order to grant a divorce. Relatively mild allegations such as devoting too much time to a career, having no common interests or pursuing a separate social life may well suffice. Using mild allegations may also make it easier to agree a petition in advance with your spouse.

## **C. Desertion**

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Where your spouse deserted you without your consent for a continuous period of at least two years; this fact is almost never used. This ground of divorce has recently been abolished in Scotland.

## **D. Two-year separation in England & Wales/one-year in Scotland**

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By consent you and your spouse have been living apart for at least two years in England and Wales, or one year in Scotland, immediately preceding the presentation of the petition (or 'Initial Writ' in Scotland) and you both agree to a divorce.

## **E. Five-year separation in England & Wales/two-year in Scotland**

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You and your spouse have been living apart for at least five years in England and Wales, or two years in Scotland, immediately preceding the presentation of the petition (or 'Initial Writ' in Scotland). In this instance, your spouse need not consent to the divorce.

# **How to obtain a divorce in England or Wales**

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Obtaining your own divorce is not a complicated procedure. All that is required is that you follow several simple steps.

## **1. Find your marriage certificate**

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This is necessary because you will have to file it at court when you start your divorce petition. If the certificate has been lost, you can easily obtain a certified copy of your