

LAWPACK



Do-it-yourself eKit

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](#).

Important Facts about this Lawpack eKit

This eKit is only for people separating or seeking a divorce in England and Wales or Scotland. It is not suitable for Northern Ireland.

The information it contains has been carefully compiled from professional sources but its accuracy is not guaranteed as laws and regulations may change or be subject to differing interpretations. The law is stated as at 6 April 2012.

This eKit is sold with the understanding that the publisher, author and retailer are not engaged in rendering legal services. This eKit is intended as a guide to the procedures and mechanisms for obtaining a divorce, not as a source of legal advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought. As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this eKit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money are involved;
- you do not understand the instructions or are uncertain how to complete and use a form correctly;
- what you want to do is not precisely covered by the forms provided; or
- you are unsure as to how the procedures outlined in this eKit should apply in your own particular situation.

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Forms available as downloads:

England & Wales forms:

- D8 Divorce/dissolution/(judicial) separation or nullity Petition
- D8 Supporting notes for guidance on completing a divorce/dissolution/(judicial) separation Petition
- D80A Statement in support of divorce/(judicial) separation – Adultery
- D80B Statement in support of divorce/dissolution (judicial) separation – Unreasonable behaviour
- D80C Statement in support of divorce/dissolution (judicial) separation – Desertion
- D80D Statement in support of divorce/dissolution (judicial) separation – Two-year separation
- D80E Statement in support of divorce/dissolution (judicial) separation – Five-year separation
- D36 Notice of Application for Decree Nisi/conditional order or (judicial) separation decree/order
- D84 Application for a Decree Nisi/Conditional Order
- D8A Statement of Arrangements for Children
- D11 Application notice
- D13B Statement in support of a request to dispense with service of the divorce/dissolution/nullity/(judicial) separation petition on the Respondent
- D81 Statement of Information for a Consent Order in relation to a financial remedy
- Form A Notice of an Application for a financial order
- Form H Estimate of Costs (financial remedy)
- Form H1 Statement of Costs (financial remedy)
- Deed of Separation
- Form Ex160A - Application for a fee remission
- Form FM1 – Family Mediation Information and Assessment Form

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

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 eKit 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 eKit 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.

For England & Wales, all references to rules in this eKit relate to the new Family Proceedings Rules 2010, which came into force on 6 April 2011. These Rules do not apply in Scotland.

Do you really want a divorce?

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.

Before issuing divorce proceedings – England & Wales

The Family Proceedings Rules 2010 came into force on 6 April 2011 and introduce a requirement for anyone wishing to apply for a matrimonial order (usually Children Act or financial proceedings connected to a divorce) to either attend a 'mediation information and assessment meeting' or:

- obtain the signature of a mediator in Form FM1 explaining they are satisfied this is not necessary; or

- in the event of there having been an allegation of domestic violence which the Police have investigated or issued proceedings for within the last 12 months or there being another good reason, your own signature on Form FM1 confirming this.

Mediation Information and Assessment Meetings

The aim of these meetings is to encourage couples who are separating to do so without unnecessary hostility and expense. They are usually conducted by a trained mediator. They are obligatory for those people who wish to issue an application for a matrimonial order. The object of the meeting is for the mediation process to be fully explained so that any person who embarks upon divorce proceedings is aware that there is a process available which is generally amicable and cost effective and does not require expensive or lengthy court proceedings.

How does the divorce process work?

England and Wales

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 'Guide to a Simple Undefended Divorce' included in this eKit. 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). It is generally preferable for divorce proceedings to be undefended as they can then be speedy and incur little in the way of expense. *The Family Law Protocol* (3rd Edition) published by the Law Society sets out the manner in which solicitors are expected to behave in divorce suits and this includes recommending to their clients that they should send a draft of any fault-based petition (i.e. adultery or unreasonable behaviour) to the other side in an attempt to agree the contents before the Petition is issued. Although the protocol does not apply to litigants in person (i.e. those representing themselves) the manner of proceeding with the divorce which it recommends is practical and is approved of by the court. The latest edition was published in December 2010 and can be found on the Law Society's website at www.lawsociety.org.uk.

If you are the Respondent to divorce proceedings and you are served with a fault-based Petition by a solicitor who has not complied with the protocol without good reason, then you can bring this to the attention of the Court when completing your Acknowledgement of Service (see below) since it may assist you in avoiding an order for costs against you.

Scotland

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?

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 eKit.

Advantages of representing yourself

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 £400 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.

Being the Respondent – England and Wales

The majority of this eKit is written as though you are the Petitioner in the divorce (i.e. the person who issues the Petition). However, if you are the Respondent who has received an issued Divorce Petition then you may also wish to represent yourself and use this eKit. The matters that you should be aware of include:

- Whether any solicitor instructed by the Petitioner has followed *The Family Law Protocol* (currently in its 3rd Edition) and available on the Law Society website at www.lawsociety.org.uk. If they have not and they cannot show good reason for not doing so you may be able to avoid any order for costs that might otherwise be made against you. The protocol encourages practitioners (solicitors) to achieve the resolution of disputes between couples in a non-confrontational way which includes sending out draft Divorce Petitions based upon fault (e.g. adultery or unreasonable behaviour) before they are issued in the hope that the contents of those Petitions will be agreed before issue.

Do you need a solicitor?

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 eKit 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 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. Maintenance is officially referred to as ‘periodical payments’ in England and Wales; and ‘periodical allowance’ for adults and ‘aliment’ for under 18 children, in Scotland.

- **Are you a foreign national or living abroad?**

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. There are also different rules of service for those living abroad including those serving in the forces.

- **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, it can be a good idea to 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 50). 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 advise you so you can 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. Page 50 deals with this. In Scotland, if the financial agreement is in a registered separation agreement (see page 55 and 56) 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.

- **Do you need expert advice to value a complex or substantial asset (e.g. a pension or property)?**

A solicitor can advise you about this and help you obtain all the correct information you need in these circumstances.

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.

Having a solicitor on the other side

It is a sad fact of life that occasionally you will have a solicitor who is acting for your spouse who is behaving in a manner which you instinctively feel is inappropriate for a professional. In these circumstances, you may wish to consider the following:

- Are they a member of Resolution? Resolution is the organisation formerly known as the Solicitors Family Law Association. It has over 5,000 members who subscribe to a code of practice (available on www.resolution.org.uk). If you believe that a solicitor or legal executive who is a member of Resolution may have breached this code then a complaint can be made to Resolution. Although disciplinary proceedings are rare, a complaint can provide an ideal opportunity for the legal practitioner to reconsider their actions and their manner of practising family law.
- In England and Wales, have they breached *The Family Law Protocol*? (see above for details). After considering the latest edition of *The Family Law Protocol* (available on

www.lawsociety.org.uk) then you may make a complaint to the Solicitors Regulation Authority (www.sra.org.uk) who can deal with breaches of *The Family Law Protocol* or any other matters which you consider require further investigation. You can also draw this to the attention of the court with a request that the other side be sanctioned in costs.

- Generally, any complaint about a solicitor should be made to the Solicitors Regulation Authority (see above) in England or Wales and to the Scottish Legal Complaints Commission in Scotland. These bodies have the power to consider the evidence and to reach a decision based on the application of guidelines and to ensure that those guidelines are complied with.

Finding a solicitor

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 of England or the Law Society of Scotland, as appropriate, or Resolution; these 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?

- 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 (formerly known as legal aid)?

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. Most solicitors charge in six minute units so try not to go over six minutes where possible!

- 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 eKit.

Divorce and Public Funding (formerly known as legal aid)

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. The Legal Services Commission at www.legalservices.gov.uk has a useful eligibility calculator. Public Funding for initial advice and an undefended divorce is covered by the Legal Help scheme which has a lower threshold of entitlement than Public Funding to legal representation which covers proceedings such as financial and children issues or injunctions. If you are not eligible for Legal Help therefore, do not despair as you may be eligible for Public Funding to issue proceedings.

Mediation and Public Funding

If you are financially eligible for Public Funding you can attend a mediator for free although your spouse may have to pay if they are not eligible. Often sliding scales of fees are available so that those on low incomes pay relatively less for the mediator's time. Check with your chosen mediator that they are able to offer these services.

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

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

You must prove that either through actual admission or through sufficient circumstantial evidence, your spouse had 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.

In England and Wales, 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. In Scotland, you must name the other person involved.

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

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.

In England and Wales, under the Family Law Protocol, a solicitor acting for a spouse must, unless there is good reason, send a draft of the Divorce Petition to the proposed Respondent at least seven days before it is issued with a view to agreeing the contents. If they do not do this you may be entitled to claim costs. If you are acting in person you are not required to follow the Protocol, but it can be a good idea. This does not apply in Scotland.

C Desertion

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

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

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

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

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 marriage certificate either by phone, post (form needed) or online from:

Certificate Services Section
 General Register Office
 PO Box 2
 SOUTHPORT
 PR8 2JD
 Telephone: 0300 123 1837
 Website: www.gro.gov.uk

The current fee is £9.25.

If you were married outside of England and Wales, it will be necessary to get a certified copy of your marriage certificate from the country where you were married.

2 Start your Divorce Petition in court

You can start your divorce either in:

- the Principal Registry in London, or
- any divorce County court.