



## Getting divorced in Scotland

If you have decided that your marriage is over, you will have a number of practical issues to sort out. You may need to deal with some of these issues, such as where you are both going to live, who is going to look after your children if you have any, and how you are going to manage your finances, before you think about formally ending your marriage. You can separate informally without going to court. You can also separate while still living in the same home if you are no longer living together as a married couple and are leading separate lives.

If you want to end your marriage formally, you will have to apply to court to get a divorce. It is a good idea to try to make some of the practical decisions before you go to court. This will hopefully make the process less stressful and less expensive.

### Separation agreements

You can write a separation agreement with your spouse to set out how arrangements will work in the future. For example, you could agree which one of you will stay in the family home or that one of you will make weekly payments to the other for the support of your children.

You could agree these things with your spouse verbally, without writing them down. However, it is a good idea to put it in writing as you could ask a court to uphold the terms of the agreement if there is any dispute between you and your spouse at a later date. You can write a separation agreement with or without the help of a solicitor. But it is a good idea to get legal advice from a solicitor about the terms of the agreement because it might have long-term consequences for your financial situation.

You may be able to get legal aid to help with the costs of drawing up a separation agreement.

### Mediation and collaboration

If you are finding it hard to make decisions with your spouse, you may want to use a mediation service or consult a solicitor who has been trained as a mediator or uses a collaborative approach. Mediation involves you and your spouse working with a trained, impartial mediator to reach agreement. Collaborative law involves you and your spouse meeting with your solicitors to discuss the issues and try to reach agreement. You can use a mediation service or consult a collaborative solicitor either before or during divorce proceedings.

Both mediation and collaborative law can help you and your spouse make decisions about the future that you can both accept, instead of waiting for the court to make decisions for you. At the end of mediation or collaboration, the decisions you have reached can be used as the basis for your divorce settlement or a legal separation agreement.



To find out more about mediation services in your area, visit:

- [www.relationships-scotland.org.uk](http://www.relationships-scotland.org.uk) - or phone 0345 119 2020

To find out about family solicitors who have been trained as mediators, visit:

- [www.calmScotland.co.uk](http://www.calmScotland.co.uk)

To find out more about collaborative practice, visit:

- [www.consensus-scotland.com](http://www.consensus-scotland.com)

## Reasons for divorce

In Scotland, there are two legal grounds for divorce:

- your marriage has broken down irretrievably; or
- you or your spouse have an interim gender recognition certificate. An interim gender recognition certificate is issued to a transsexual person who is starting the legal process of recognition of their acquired gender.

If you want to get a divorce because you believe that your marriage has broken down irretrievably, you will have to show to the court that this has happened. You can prove the irretrievable breakdown by showing that:

- your spouse has committed adultery; or
- your spouse has behaved unreasonably – unreasonable behaviour can include mental or physical cruelty, including violence or abuse, financial irresponsibility, and less obvious things like dominating a spouse, not letting the spouse leave the house or speak to neighbours and friends or refusing to pay for housekeeping; or
- you've lived apart (or lived separate lives in the same home) for at least one year and you both agree to the divorce; or
- you've lived apart (or lived separate lives in the same home) for at least two years but one of you doesn't agree to the divorce.

There is no minimum length of time that you need to be married before you can start divorce proceedings based on adultery or unreasonable behaviour.

## Children

Once your marriage has broken down, you will need to decide who is going to look after your children. In some cases, parents are able to make arrangements so that their children spend equal time with each parent. Often, however, the children live with one parent and have regular periods of time with the other parent, for example, staying over one or two nights a week.



The Scottish Government's guide 'Parenting Agreement for Scotland' is designed to help separating parents make decisions about the care of their children and is available at:

- [www.gov.scot](http://www.gov.scot)

If you and your spouse cannot agree about arrangements for your children, you can ask the court to decide. The court can make a residence order, setting out where the children should live. It can also make a contact order, setting out who the children should have contact with. The court can also make specific orders about other issues that parents cannot agree on, such as where the children will go to school. When the court is considering making these types of orders, its overriding concern will be the welfare of the children. It will take the children's views into account if they are old enough to be able to express them. Courts generally take the view that children should grow up knowing and maintaining contact with both parents, unless there are strong reasons why this should not be the case.

At the end of a marriage, both parents have a legal duty to support their children financially, regardless of where the children live. In most cases, if you and your spouse cannot come to a voluntary agreement about how you are both going to pay for the care of your children, you can ask the **Child Maintenance Service (CMS)** to assess, collect and enforce child maintenance payments.

If you want advice about maintenance agreements you can contact Child Maintenance Options (CMO) on:

- [www.cmoptions.org.uk](http://www.cmoptions.org.uk) - or phone 0800 988 0988

## Money and possessions

In many cases, getting separated or divorced can lead to difficult decisions about money as the same income needs to be stretched to support two households. Until you are divorced, you and your spouse have a legal obligation to provide financial support for the other. This means that you may be able to get money called maintenance (the legal term is 'aliment') from your spouse for yourself when you are separated but before you are divorced.

As part of your divorce proceedings, you can ask the court to make a number of orders about money, whether or not you started the divorce action. As far as possible, the court will try to make orders that give you a 'clean break' from each other. For example, the court may make an order for your spouse to pay you a one-off lump sum, rather than a regular payment. If you are able to agree about how to divide up your money and assets, as well as any debts, you can present your joint agreement to the court. If you are unable to agree, then the court will decide what orders to make.

If you have been financially dependent on your spouse and you do not work or you have a low income, you may be able to claim benefits or tax credits.



## **Joint bank accounts**

If you and your spouse have a joint bank account, you may want to close the account and open separate, individual accounts. This is because either account holder can withdraw some or all of the money in the account without the other account holder's permission. If you are worried about this happening, you can ask your bank to freeze the joint account to prevent your spouse from withdrawing any money.

## **Possessions**

Decisions about dividing up possessions can be complicated but there are a number of general principles that may help. For example, it is generally the case that any goods you owned before you started living with your spouse will remain yours, as will any gifts given to you. However any household goods which were bought while you were living together as a married couple are presumed to be owned equally.

## **Pensions**

The treatment of pensions on divorce is very complicated. You will need to get specialist advice from a solicitor.

## **The family home**

Once your marriage has broken down, you will need to decide what to do with the family home. You may be able to agree with your spouse about what to do. You have a right to stay in the home unless a court orders you to leave. If you can't agree what to do with the family home or aren't sure what rights you have to live there, you can get help from a solicitor or your local Citizens Advice Bureau. There is also a lot of helpful information on the Shelter Scotland website at:

- [www.scotland.shelter.org.uk](http://www.scotland.shelter.org.uk)

In divorce proceedings, the court can make a number of different orders about the family home. 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.

## **Tenants**

If you live in rented accommodation and you have a joint tenancy, you may be able to agree about which one of you should stay in the accommodation. You could then ask your landlord to transfer the tenancy into the name of the person who is staying there. 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 spouse is the sole tenant, or if you are joint tenants. The court can also be asked to sort out any rent arrears on divorce.



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 Reduction.

### Owner-occupiers

If you and your spouse own your house, you may be able to agree about what to do with it. You may decide that one of you will stay in the house or that it needs to be sold. If you decide to move out, you will usually have the right to move back in at a later date (although only for a certain period of time). Your spouse cannot sell the property without your knowledge.

If you cannot agree what to do about the family home, you can ask the court to decide. The court can make a number of orders about a family home, for example:

- for the house to be sold and the proceeds divided between you and your spouse
- for the house to be sold at some point in the future; or
- for the transfer of one spouse's interest to the other.

If you have children, the court will consider what is in their best interests when deciding what to do about the family home.

If you do stay in the family home and have a low income, you may be able to get help with your housing costs, for example, Council Tax Reduction and help with your mortgage.

### Divorce procedure

You can start divorce proceedings in your local sheriff court or in the Court of Session in Edinburgh. It is easier and cheaper to use your local sheriff court than the Court of Session. You can find the address of your local sheriff court on the Scottish Courts and Tribunals Service website at:

- [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

There are two different methods of applying for a divorce – the **ordinary method** which means that you will need to see a solicitor and the quicker, less expensive **do-it-yourself method** which can only be used in certain circumstances.

#### Do-it-yourself divorce (also known as the simplified procedure)

You can get divorced using the do-it-yourself (DIY) method if the reason for your divorce is irretrievable breakdown based on one year's separation with consent or two years' separation without consent. You can also use this method if the reason for the divorce is the issue of an interim gender recognition certificate. You cannot use the DIY method if you have children under 16 or you have financial issues that you want the court to sort out.



The DIY method will usually take about two months. However you may wish to see a solicitor before you apply for a DIY divorce to make sure that you will not lose out financially. If you do then decide to go ahead with the DIY divorce, you will need to fill out the court forms. You can get these from any sheriff court (or at the Court of Session in Edinburgh) or from the Scottish Courts and Tribunals Service website. You can get help to fill out the forms from a Citizens Advice Bureau.

### **Ordinary divorce**

The first step in an ordinary divorce is to consult a solicitor who will collect evidence to support the grounds for your divorce. The solicitor then draws up a document called an initial writ which is lodged in court and a copy is sent to your spouse. It sets out the grounds for the divorce and any orders you want the court to make in relation to your children, money or property. Your spouse may accept the terms of the writ and decide not to defend the case. The court will then ask you and a supporting witness to submit sworn statements, known as affidavits, containing evidence of the information in the initial writ. The supporting witness will usually be a friend or family member who is aware of your circumstances. Once the affidavits have been submitted, the court will grant the decree of divorce. This means that it is unlikely that either you or your spouse will need to appear in court.

If your spouse disagrees with any aspect of the writ and defends the action in court then the court will have to decide on the arrangements for your children, property and money. Your spouse may decide to raise their own action, called a cross action, to start divorce proceedings against you at the same time as you are pursuing your action. This will make your divorce more complicated and will increase the costs. You will need to get advice from your solicitor.

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

### **Legal costs**

You will have to pay a court fee when you lodge either type of application with the court, although you will be exempt from paying the fee if you get certain benefits. There is more information about fee exemption on the Scottish Courts and Tribunals Service website at:

- [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

If you are eligible, you may be able to get legal aid to cover the cost of a solicitor helping you with your divorce. Even if you are eligible for legal aid, you may have to pay a contribution towards your costs. You can get more information about legal aid from the Scottish Legal Aid Board at:

- [www.slab.org.uk](http://www.slab.org.uk) or phone 0845 122 8686



## Nationality and immigration status

In some cases, your immigration status may be affected by separation or divorce, for example, if you separate or divorce within two years of applying for settled status. You will need to get specialist legal advice about this.

## Who to tell

If you are separating from your spouse, you may need to tell a number of different people or agencies, such as your landlord or mortgage lender, your council tax office, any benefits office, gas, electricity and phone companies, insurance companies, your doctor, your dentist, your children's school, and your bank.

## Other information on our website which might help

- [Getting divorced](#)
- [Using a solicitor](#)
- [Help with legal costs](#)
- [Benefits](#)
- [Finding accommodation](#)
- [Child maintenance – where to start](#)
- [Help with your rent – Housing Benefit](#)
- [Council Tax Reduction – what is Council Tax Reduction](#)
- [Help with mortgage costs if you are not working](#)
- [Domestic abuse](#)

## Further help

### Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. Find your nearest CAB at [www.cas.org.uk](http://www.cas.org.uk) or check in your phone book.

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The law changes frequently. To confirm you are looking at the most up-to-date version, download the fact sheet from [www.citizensadvice.org.uk/scotland](http://www.citizensadvice.org.uk/scotland) or contact your local Citizens Advice Bureau.

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