V oblasti občanskoprávní budou podle práva EU pokračovat probíhající řízení a řízení zahájená před koncem přechodného období. Portál e-Justice bude na základě vzájemné dohody se Spojeným královstvím uchovávat příslušné informace týkající se Spojeného království do konce roku 2024.

Divorce and legal separation

Skotsko

1 What are the conditions for obtaining a divorce?

In Scotland a divorce must be obtained through the court. The court may grant divorce only if it established that either:
the marriage has broken down irretrievably, or
an interim gender recognition certificate under the Gender Recognition Act 2004 has, after the date of the marriage, been issued to either party to the marriage.
The irretrievable breakdown of the marriage can be established in one of the four ways listed in 2 below.

2 What are the grounds for divorce?

See the answer to 1 above. The irretrievable breakdown of the marriage can be established in the following ways:
the defender's adultery
the defender's unreasonable behaviour
the non-cohabitation of the parties for one year, with the consent of the other spouse
the non-cohabitation of the parties for two years.
A simplified procedure is available for certain cases that fall into the latter two categories.

3 What are the legal consequences of a divorce as regards:

3.1 the personal relations between the spouses (e.g. the surname)

The law does not make any special provisions for personal relations between former spouses. Regarding surnames, either spouse is able to preserve their own surname when they are married. Similarly, they are entitled to retain their spouses' surname after divorce.

3.2 the division of property of the spouses

The Family Law (Scotland) Act 1985 provides for the division of matrimonial property on divorce. Matrimonial property is generally all the property acquired by the spouses during the marriage, as well as property acquired for use as a matrimonial home - or furnishings for that home - before the marriage. Matrimonial property does not include other property acquired before the marriage, property acquired by a spouse after the spouses have ceased to cohabit, or property gifted or inherited from a third party during the marriage.
Either party to the marriage can apply to the court for an order under the 1985 Act. The court can make orders for the payment of a capital sum, the transfer of property, the payment of periodical allowances, orders relating to pensions and pension compensation, and other incidental orders.
When the court makes an order, it must be guided by the following principles:
The net value of the matrimonial property should be shared fairly.
The court will take account of economic advantage derived by either party from contributions by the other, and of economic disadvantage suffered by either party in the interests of the other party or of the family. Contributions can be non-financial, and specifically includes looking after the home or caring for the family as well as financial contributions.
The economic burden of caring for a child of the marriage under 16 years should be shared fairly between the parties.
A party who has been substantially financially dependent on the other party to the marriage should be awarded financial provision to enable him or her to adjust to the loss of the support that they received. This provision can last for up to three years.
If a party to the divorce is likely to suffer serious financial hardship as a result of the divorce, reasonable provision should be made to relieve him or her of that hardship, over a reasonable period of time.

3.3 the minor children of the spouses

As stated in the answer to question 3.2 above the economic burden of caring for a child of the marriage should be shared equally. See also the EJN factsheet for Scotland on parental responsibility.

3.4 the obligation to pay maintenance to the other spouse?

See the EJN factsheet for Scotland on maintenance claims.

4 What does the legal term “legal separation” mean in practical terms?

In Scotland, under the Divorce (Scotland) Act 1976, the court can award a decree of separation. This is referred to as judicial separation. It is available for spouses who oppose divorce but who wish to stop living together. The spouses will still be married, and must continue to aliment each other - that is, they must still financially provide for each other as any married couple must.

5 What are the conditions for legal separation?

The conditions for judicial separation are identical to those for divorce. See the answer to question 1 above.

6 What are the legal consequences of legal separation?

See the answer to question 4 above. Note that judicial separation does not prevent a separated spouse from applying for a divorce.

7 What does the term “marriage annulment” mean in practice?

Although marriage annulment is not a legal term used in Scotland, if a Scottish marriage is void, any interested party may apply to the court for a declarator of nullity. A declarator of nullity means that the marriage is considered for most purposes not to have existed. A marriage in Scotland is void if:
Either of the parties was under the age of 16 at the time of marriage.
The parties are related too closely - the forbidden degrees of relationship are stated in Schedule 1 to the Marriage (Scotland) Act 1977.
At least one of the parties was already married.
At least one of the parties was incapable of consenting to the marriage.

A party who was capable of consenting to the marriage did so only due to force or error.
A voidable marriage is one that subsists until one of the parties to the marriage applies for a declarator of nullity. The only ground for a voidable marriage is that one of the parties is permanently incurably impotent at the time the marriage was entered into.

8 What are the conditions for marriage annulment?

Any interested party can apply to the court for a declarator of nullity of a void marriage, and either spouse can apply to the court for a declarator of nullity of a voidable marriage. See 7 above for more on void and voidable marriages.

9 What are the legal consequences of marriage annulment?

A void marriage is treated as never having existed, so there may be no need to apply for a declarator. If the court makes a declarator of nullity, it may also make orders about financial provision between the parties to the void marriage. A voidable marriage is also treated as if it had never existed if the court makes a declarator of nullity.

10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

Relationships Scotland, a voluntary organisation supported by funding from the Scottish Government, provides family mediation through a network of local services to couples who have decided to divorce or separate. Mediation is a voluntary process that can help couples come to agreed solutions to practical problems. Relationship counselling is also available for couples or individuals experiencing difficulties in their relationship. The provision of appropriate advice and support to families can help them avoid courses of action that may lead to litigation. Relationships Scotland's website can be found here: Relationships Scotland
Family mediation can also be accessed through Comprehensive Accredited Lawyer Mediators: Calm Scotland.
Other alternatives include collaborative law and arbitration: Flags Scotland
It is possible to register a legally binding minute of agreement in the Books of Council and Session held by Registers of Scotland: Registers of Scotland
The Scottish Government produces the Parenting Agreement for Scotland. This is a tool to help parents agree on what is best for their children when the relationship comes to an end: Scottish Government

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

Divorce/Legal Separation

i. An application for divorce or legal separation can be made to either the Court of Session in Edinburgh, or one of the local Sheriff Courts. The Scottish Courts and Tribunals Service contains a map showing court locations and lists addresses and contact details.
ii. Which court to use is a matter of personal choice. In order to use the Court of Session, jurisdiction must be able to be established within Scotland. In order to use one of the Sheriff Courts, jurisdiction must be capable of being established within the Sheriffdom in which that court is geographically situated. Jurisdiction is founded on place of residence or domicile. Domicile can be established where a person considers his/her home to be in a particular place in Scotland and that he/she intends to live there permanently in the foreseeable future.
iii. There are two different types of divorce application in Scotland.
iv. The **Simplified Application** can be used in circumstances where grounds for divorce can be established on the basis of parties "non-cohabitation for a period of one year" and the defender consents to the application or where there has been "non-cohabitation for a period of two years" and the defender's consent cannot be obtained. It can only be used if:
There are no other proceedings pending in any court which could have the effect of bringing the marriage to an end;
There are no children of the marriage under the age of 16 years;
There is no application by either party for an order for financial provisions on divorce; and,
Neither party to the marriage suffers from mental disorder.
v. Applications for divorce using this simplified procedure are generally made by parties without the assistance of a solicitor. This sort of application has come to be known as the "Do it yourself divorce". Guidance notes and the forms are located within the Scottish Courts and Tribunals Service website.
vi. Application for the other (ordinary) type of divorce or for separation requires to be made either in the form of a Summons in the Court of Session or by Initial Writ in the Sheriff Court. Each Court has its own set of rules which set out the form such application should take. under "Rules and Practice" on the Scottish Courts and Tribunals Service website. Chapter 49 of the Court of Session rules and Chapter 33 of the Ordinary Cause Rules for the Sheriff Court cover family cases.

Annulment

vii. An action for declarator of nullity (annulment) of a marriage must be made to the court.

Formalities and Documentation

viii. In each court you will require to pay a fee for the initial application and possibly at later stages in the procedure. If you are in receipt of legal aid or certain state benefits you may be entitled to claim exemption from payment of fees. An application form for exemption can be found in the divorce section of the Scottish Courts and Tribunals Service .
ix. With an application for divorce, separation or nullity you will require to present a marriage certificate.

12 Can I obtain legal aid to cover the costs of the procedure?

Advice and Assistance is available on divorce matters subject to the usual statutory financial tests. **Civil Legal Aid** is also available in divorce matters, except simplified divorces, subject to the three normal statutory tests of financial eligibility, reasonableness and probable cause. Contact the Scottish Legal Aid Board (SLAB) for further information about eligibility. Scottish Legal Aid Board

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

i. An order for divorce in a simplified application made in the Sheriff Court may be appealed against by letter within 14 days of the date of the order.
ii. An order for divorce in a simplified application made to the Court of Session may not be appealed, and to remove its force and effect, an action of reduction would need to be raised within that Court.
iii. An order for divorce in the other (ordinary) type of application or for separation made in the Sheriff Court may be appealed against within 14 days from the date of the order. Orders for divorce, separation or a declarator of nullity of marriage (annulment) made in the Court of Session may be reclaimed (appealed) within 21 days of the order.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

Recognition of divorces, annulments and legal separations generally comes within the scope of the Brussels IIa Regulation i.e. Council Regulation (EC) No 2201/2003 of 27 November 2003. Article 21 of this Regulation sets out the basis of recognition.
i. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

ii. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.
iii. Any interested party may apply to the Court of Session for a decision that the judgment be or not be recognised.
iv. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.
Scotland has now introduced same sex marriage. As there is uncertainty on whether Brussels IIa applies to same sex relationships, provision was made, similar to Brussels IIA, on the recognition of judgments from other Member States. This can be found in the Marriage (Same Sex Couples) (Jurisdiction and Recognition of Judgments) (Scotland) Regulations 2014 (SSI 2014 No. 362).
If the order does not fall to be recognised under 'Brussels IIa' or similar provisions then Part II of the Family Law Act 1986 and, in particular, section 46 applies. The grounds for recognition under this section are as follows:
The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if-

a. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
b. at the date of commencement of the proceedings either party to the marriage-
    i. was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
    ii. was domiciled in that country; or
    iii. was a national of that country.

The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if-

a. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained;
b. at the date on which the divorce was obtained -
    i. each party to the marriage was domiciled in that country; or
    ii. either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce, annulment or legal separation is recognised as valid; and
c. neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

Recognition of divorces, annulments and legal separations generally comes within the scope of the Brussels IIa Regulation i.e. Council Regulation (EC)) No 2201/2003 of 27 November 2003, for which see the answer to question 14 above.
A declarator of recognition or non-recognition may be sought from the Court of Session or the Sheriff Court.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

If the courts in Scotland decide they have jurisdiction then they will generally apply Scots Law.

Related links

Scottish Courts and Tribunals Service
Scottish Legal Aid Board
Scottish Government

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