

Home>Family matters & inheritance>Divorce and legal separation

Divorce and legal separation

Ireland

1 What are the conditions for obtaining a divorce?

Either of the spouses concerned was domiciled in Ireland on the date of the institution of the proceedings.

OR

Either of the spouses was ordinarily resident in Ireland throughout the period of one year ending on that date.

(Section 39 (1) (a) & (b) of the [Family Law \(Divorce\) Act, 1996](#))

2 What are the grounds for divorce?

The court (the Circuit Court concurrently with the High Court - Sec. 38 [1]) should be satisfied that:

At the date of the institution of the proceedings that the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,

AND

That there is no reasonable prospect of reconciliation between the spouses,

AND

That such provision as the court considers proper in the circumstances exists or will be made for the spouses and any dependent members of the family.

(Section 5 (1) of the Act.)

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

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

The marriage, the subject of the decree, is thereby dissolved and a party to that marriage may marry again - Section 10 (1).

3.2 the division of property of the spouses

On granting a decree of divorce the court may make a property adjustment order - Section 14 (1) of the Act -property can be sold, divided equally or individually or transferred to the sole name of either party.

3.3 the minor children of the spouses

Upon the grant of a decree of divorce, the court may give such directions as it considers proper regarding the welfare, custody of, or right of access to, any dependent member of the family concerned who is an infant - Section 5 (2) of the Act. The welfare of the child is paramount.

(For more details, please see Factsheet on "Parental responsibility - Ireland").

3.4 the obligation to pay maintenance to the other spouse?

On granting a decree of divorce the court may make a maintenance order in favour of either spouse which shall cease upon the remarriage of the receiving spouse - Sec. 13 of the Act

The Court may also make a pension adjustment order in favour of either spouse - Section 17 of the Act

(For more details, please see Factsheet on "Maintenance Claims - Ireland").

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

A Legal (judicial) separation facilitates estranged spouses to re-arrange their lives to live permanently apart from each other.

A decree of judicial separation enables the court granting it to make extensive ancillary orders relating to children, support payments, capital payments, pension rights, the family home and other property. A decree of judicial separation does not dissolve a marriage. Thus estranged spouses who obtain a decree of 'legal separation' who wish to remarry must first obtain a decree of divorce.

(Section 8 of the [Judicial Separation and Family Law Reform Act, 1989](#).)

5 What are the conditions for legal separation?

Any one or more of the following:

1. that the spouse has committed adultery.
2. Unreasonable behaviour and cruelty of the spouse.
3. desertion by the spouse or 1 year.
4. that the spouses have been living apart for 1 year and both spouses consent to the application.
5. that the spouses have been living apart for 3 years.
6. that the marriage has broken down to an extent where the court is satisfied that a normal marital relationship has not existed for at least 1 year.

(Sec. 2 of the [Judicial Separation and Family Law Reform Act, 1989](#).)

6 What are the legal consequences of legal separation?

Legal separation ends the duty of cohabitation without dissolving the marriage. The wife may continue to use her husband's name.

At a financial level, the duty to support the other spouse is maintained and maintenance support may be awarded, although any attribution of fault cannot be taken into account. However, as in the case of a divorce the judgement entails the dissolution and liquidation of the matrimonial relationship.

The inheritance rights are maintained, except in the event of a spouse separated from bed and board on the grounds of his/her exclusive fault.

The parties may apply to the court to have the decree rescinded. The court will rescind the decree where it is satisfied that a reconciliation has taken place and the parties intend to resume cohabitation.

Conversion of legal separation into divorce:

At the request of one of the spouses, a judgement handed down for legal separation can be converted ipso jure into a divorce if the legal separation has lasted three years. In this case, the judge grants the divorce and rules on its consequences.

If the legal separation was granted upon joint request, it can be converted into a divorce only by a further joint request.

7 What does the term "marriage annulment" mean in practice?

It means that each party to an annulled marriage is as though he/she was never married to the other.

8 What are the conditions for marriage annulment?

One of the following is required:

Either spouse was domiciled in Ireland on the date of the institution of the proceedings

Either spouse was ordinarily resident in Ireland for 1 year on that date

Either spouse died before that date

and

was domiciled in Ireland at the time of death or

had been ordinarily resident in Ireland for 1 year on that date.

9 What are the legal consequences of marriage annulment?

The marriage is considered never to have existed. Each party is free to remarry. The parties have no succession rights to one another nor do they have any obligations of maintenance or support to one another. Any children born to the couple during the marriage are regarded as non-marital.

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

Financial and property issues and issues regarding dependant offspring may be compromised by mediation without recourse to the Court but the Court alone may grant a Judicial Separation or a Divorce Decree.

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?

The Circuit Court, concurrently with the High Court, has jurisdiction to determine application for divorce/judicial separation/annulment.

Application for divorce/judicial separation in the Circuit Court is commenced by way of Civil Bill in the relevant Circuit Court office and the procedure is governed by Order 59 Rule 4 of the Circuit Court Rules 2001.

Application for divorce/judicial separation in the High Court is commenced by the way of Special Summons which is issued out of the Central Office. The procedure is governed by Order 70A of the Rules of the Superior Courts (S.1 No. 343 of 1997). Application for nullity in the High Court is commenced by filing a Petition in the Central Office. The procedure is governed by Order 70 of the Rules of the Superior Courts.

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

Yes - through the [Legal Aid Board](#), subject to means testing.

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

The decision of the High Court on an appeal from a decision of the Circuit Court in divorce/judicial separation/nullity proceedings is final and conclusive and not appealable - Sec. 39 of the [Courts of Justice Act, 1936](#).

An appeal lies from all decisions of the High Court to the Supreme Court in divorce/judicial separation/nullity proceedings which commence in the High Court.

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?

Apply to the Court (Circuit or High) in Ireland pursuant to Sec. 29 (1)(d)/(e) of the [Family Law Act 1995](#) for the particular declaration. The application in the Circuit Court is by way of Civil bill. The application in the High Court is by way of Special Summons.

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?

The Irish Courts because of the Constitutional Status of Divorce will determine whether or not a divorce granted abroad is capable of recognition in Ireland - i. e. The High Court or the Circuit 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?

The conditions for obtaining a divorce in Ireland are those set forth in Section 38 of the Family Law (Divorce) Act, 1996.

A spouse who does not live in Ireland or who is not Irish may apply for a Divorce in Ireland if he/she fits either of the conditions detailed in Sec. 39 (1) (a) & (b) of the Family Law (Divorce) Act, 1996. Irish Divorce Jurisdiction is based on residence and not nationality.

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