

### 1 What are the conditions for obtaining a divorce?

In Northern Ireland the law relating to divorce is set out in the Matrimonial Causes (Northern Ireland) Order 1978 (“the 1978 Order”).

A husband or wife can obtain a divorce by presenting a written application (called a petition) to the court. The person applying for the divorce is called the petitioner and the other party is called the respondent. The petitioner must prove that the marriage has broken down irretrievably and provide evidence of one of five facts (see question 2 below). A divorce petition cannot be presented within the first two years of the marriage. However, evidence from that two year period can be used to prove that the marriage has broken down irretrievably.

### 2 What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage. In general, in order to show that the marriage has broken down irretrievably the petitioner must establish one or more of the following facts:

that the respondent has committed adultery. This fact cannot be relied on if, after the petitioner became aware of the adultery, s/he continues to live with the respondent for a period exceeding, or periods together exceeding, 6 months;

that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to continue to live with him or her. This fact cannot be relied on if the parties have continued to live together for 6 months or more after the date of the last incident of unreasonable behaviour;

that the respondent has deserted the applicant for a continuous period of two years immediately before the presentation of the petition;

that the parties have lived apart for a continuous period of two years immediately before the presentation of the petition and the respondent consents to a divorce being granted;

that the parties have lived apart for a continuous period of five years immediately before the presentation of the petition. The respondent's consent is not required and s/he may oppose the divorce on the ground that it will result in grave financial or other hardship.

In considering whether the respondent has deserted the petitioner or whether the parties have lived apart for a continuous period, no account will be taken of any periods (not exceeding 6 months in total) in which the parties have resumed living together. However, any such periods will not count as part of the period of desertion or separation.

If the court is satisfied on the evidence that the marriage has broken down irretrievably, it will grant a decree nisi (the court order leading to a divorce).

The divorce process is completed when the decree nisi is made absolute. An application to make the decree nisi absolute can be made six weeks and one day after the date of the decree nisi. If an application has not been made within 12 months of the decree nisi, the petitioner may be asked to file a sworn statement (an affidavit) accounting for the delay. In certain circumstances, the respondent may apply for the decree to be made absolute. The parties cannot re-marry until the decree absolute has been granted.

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

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

There are no particular rules regulating post-divorce relations. However, the parties will no longer be expected to live together and, if the wife has adopted her husband's surname, she may decide to revert to her maiden name.

#### 3.2 the division of property of the spouses

The 1978 Order contains far-reaching provisions which allow the court to deal with the parties' property and regulate their financial arrangements, both in relation to each other or the children of the family.

The court may, on granting a decree of divorce, or afterwards, make one or more of the following:

a periodical payments order;

a lump sum order;

a property adjustment order;

a pension sharing order or an order earmarking pension funds.

Before making an order the court will have regard to all the circumstances of the case. However, its first consideration will be the welfare of any child of the family who has not attained the age of 18.

#### 3.3 the minor children of the spouses

Following divorce, both parents will continue to have parental responsibility for the children of the marriage and will have a continuing duty to maintain minor children who have lived as children of the family.

If there is a minor child (under 16) or a child over 16 who is in continuing education or undergoing training for a trade, profession or vocation, the petitioner must complete a form (Form M4) setting out the arrangements for that child. The form encourages each party to try and reach agreement on the proposals for the child's future. However, if agreement cannot be reached, the respondent will have an opportunity to comment on the proposed arrangements and the court may exercise its powers under the Children (Northern Ireland) Order 1995 (for example to direct where the child should live).

#### 3.4 the obligation to pay maintenance to the other spouse?

The duty to maintain the other spouse will cease on divorce, except to the extent that the court has made an order for payment or division of property.

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

A petition for judicial separation may be presented if a marriage has broken down, but, for one reason or another, the petitioner does not want to obtain a divorce. If the petitioner obtains a decree of judicial separation s/he is no longer required to live with his/her spouse. However, s/he will not be able to remarry. It is possible to apply for a divorce after a decree of judicial separation has been granted.

### 5 What are the conditions for legal separation?

On presenting a decree for judicial separation, there is no need to show that the marriage has broken down irretrievably.

### 6 What are the legal consequences of legal separation?

The spouses will no longer be expected to live together. If a decree of judicial separation is in force and one of the spouses dies without having made a will (intestate), his/her property will be distributed as if the other spouse had already died and any benefits s/he would have received will be lost. The court's

powers in relation to the division of property are generally the same on judicial separation as they are on divorce. However, the court cannot make a pension sharing order.

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

A decree of nullity is granted where the petitioner proves that the marriage is either void or voidable. A void marriage is one which should never have been celebrated and which is regarded as never having any legal status. A voidable marriage is recognised and continues until it is set aside.

#### **8 What are the conditions for marriage annulment?**

A marriage is void and invalid if one of the following facts is proved:

the parties are too closely related;

either of the parties is under the age of sixteen;

the proper formalities for marriage have not been observed;

at the time of the marriage one of the parties was already legally married;

the parties are not of different sexes (one must be male and the other female);

in the case of a polygamous marriage entered into outside Northern Ireland, one of the spouses was domiciled in Northern Ireland at the time of the marriage.

A marriage is voidable if one of the following facts is proved:

it has not been consummated due to the incapacity of one of the spouses;

one of the spouses has refused to consummate it;

one of the spouses did not validly consent to the marriage (for example because s/he was under pressure and was forced to agree or was mistaken about the nature of the ceremony);

that, at the time of the marriage, one of the spouses was suffering from a mental illness;

that, at the time of the marriage, one of the spouses was suffering from venereal disease in a communicable form;

that, at the time of the marriage the wife was pregnant by someone other than the husband.

If an application for a decree of nullity is grounded on one of the last four facts, it should be brought within three years of the marriage. However, the court may, in certain circumstances, grant leave to apply outside that period.

If the application is grounded on the last two facts, the petitioner will have to prove that, at the time of the marriage, s/he was unaware of the disease or pregnancy.

The court will not annul a voidable marriage if the respondent shows:

that the petitioner knew that the marriage could be annulled, but behaved in such a way that the s/he reasonably believed that an annulment would not be sought; and

it would be unjust.

#### **9 What are the legal consequences of marriage annulment?**

If a marriage is void it is completely invalid and is treated as if it had never existed. If a marriage is voidable it is treated as being invalid from the date on which the decree of nullity is made absolute.

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

There are a number of agencies within Northern Ireland that provide mediation services (for example Relate). Mediation can help you deal with the practicalities of divorce, including the financial arrangements and parenting issues.

#### **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?**

Petitions for divorce, judicial separation or nullity of marriage may be presented in either the High Court or a divorce county court. However, if a respondent files an answer to a petition presented in a county court, the matter will be transferred to the High Court.

The addresses and telephone numbers of the courts are available on the [Northern Ireland Courts and Tribunals Service's](#) website.

In order to commence proceedings, you must send a set of forms to the relevant court along with:

your original marriage certificate (not a photocopy), accompanied with a certified translation and an affidavit of law if the marriage took place outside Northern Ireland;

the original birth certificate of any child of the family under the age of 18 (this must be in long form, setting out all the details of the parents and child);

a copy of any court order referred to in the petition;

an original, plus two copies of any agreement (e.g. regarding finances) that is to be made an order of court; and

the court fee (the court office will be able to advise on the current fee).

The court office will be able to provide copies of the Forms and explain how to complete them. However, court staff cannot give legal advice or tell you what to say.

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

You are entitled to apply for legal aid. However, the level of assistance provided (if any) is subject to a financial means assessment. Even if you are assessed as being financially eligible, you may have to make a financial contribution towards the costs. By agreement this contribution may be repaid to the Legal Services Agency over a period of time. In addition to the financial eligibility criteria you must also satisfy the merits test i.e. that there must be reasonable grounds for bringing, or defending, the proceedings and it must be reasonable in all the circumstances to do so.

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

A decree absolute for the dissolution or nullity of marriage cannot be appealed if the aggrieved party had the opportunity to appeal against the decree nisi, but did not do so. Also, orders made with the consent of the parties can only be appealed with leave of the court. The appeal court has a range of powers at its disposal and may confirm, reverse or vary the original decision.

#### **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?**

Council Regulation (EC) No 2201/2003 (“the Regulation”) provides that a decision on divorce, legal separation or marriage annulment given in one Member State shall be recognised in other Member States without any special procedure (other than that set out in the Regulation itself) being required.

Any interested party can apply for the decision to be recognised and the grounds for non-recognition are strictly confined (for example, recognition may be refused if the decision is contrary to public policy).

An application for recognition must be made to the High Court in Northern Ireland.

If the Regulation does not apply, the decision may be covered by section 46 of the Family Law Act 1986, which sets out the general conditions for the recognition of an overseas divorce, legal separation or annulment.

An application for recognition of an overseas divorce, separation or annulment must be made to the High Court. The application is made by way of petition, to which a copy of the decree of divorce, separation or annulment is annexed.

**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?**

As the High Court deals with recognition of a divorce, separation or annulment (under both the Regulation and the Family Law Act 1986), any objection to the proposed recognition would also be dealt with in that Court. The applicant must tell the respondent about the application giving him/her the opportunity to oppose the recognition of the decision by sending the papers to him/her, unless the court decides that the respondent has accepted the judgment unequivocally. The High Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought in the Member State where the judgment was made.

**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 court in Northern Ireland decides it has jurisdiction to deal with the divorce, separation or annulment, it will apply the law in Northern Ireland.

**Related links**

**[Northern Ireland Courts and Tribunals Service](#)**

More information on legal aid is available from the [Legal Services Agency Northern Ireland](#) website.

More information on mediation is available from the ["Relate NI"](#) website and ["UK College of Family Mediators"](#) website.

Last update: 08/01/2019

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