Fil-qasam tal-ġustizzja ċivili, il-proċeduri u l-proċedimenti pendenti mibdija fi tmiem il-perjodu ta' tranżizzjoni se jkomplu skont il-liġi tal-UE. Il-Portal tal-e-Ġustizzja, abbażi tal-ftehim reċiproku mar-Renju Unit, se jżomm l-informazzjoni rilevanti marbuta mar-Renju Unit sa tmiem l-2024.

Divorce and legal separation

L-Ingilterra u Wales

1 What are the conditions for obtaining a divorce?

A written application (called a petition) must be made to the court by one of the spouses. Applications for divorce are dealt with by the Family Court and spouses have to apply to that court for their divorce. The applicant has to prove that the marriage has broken down irretrievably and has to provide evidence of one of the five facts listed below.

No application for divorce can be made until at least one year after the date of the marriage, although an application for annulment can be made at any time after the marriage. However, evidence from the period within one year of the date of the marriage can be used to prove that the marriage has broken down irretrievably.

Since March 2014 same sex couples have been able to marry in England and Wales. The same conditions apply to divorce whether the married couple are opposite sex or same sex.

An applicant for divorce can apply online.

Since 2005 it has been possible for same–sex couples in the UK to legally formalise their relationship by entering into a civil partnership. This has been extended to opposite sex couples since 31 December 2019. It is open to parties to such a partnership to seek to dissolve it or to apply for a separation order when their relationship breaks down. The process is analogous to divorce, judicial separation and annulment of marriages as described below. An applicant who wants to end a civil partnership cannot apply online. More information can be found on the Government website.

In a same sex marriage the couple are, if two men, husband and husband, or if two women, wife and wife.

2 What are the grounds for divorce?

The sole ground for divorce is the irretrievable breakdown of the marriage. In order to show that the marriage has broken down irretrievably it is necessary to produce evidence of one or more marital 'facts'.

that the other spouse has committed adultery with a person of the opposite sex and that the applicant finds it intolerable to live with him or her;

unreasonable behaviour, which means that the other spouse has behaved in such a way that the applicant cannot reasonably be expected to continue to live with him or her;

desertion, which means that the other spouse has left the applicant for a period of two years before the time of the application for divorce;

separation of the parties for a period of two years before the application for divorce (with the consent of the other spouse);

separation for a period of five years before the application for divorce (without the consent of the other spouse).

The court is required to inquire as far as is possible into the facts alleged by the applicant (petitioner) and into any facts alleged by the other spouse (respondent). If the court is satisfied on the evidence that the marriage has broken down irretrievably, a decree of divorce will be granted by the Judge of the Family Court.

The fact of adultery cannot be used as evidence for civil partnership dissolution.

If the court is satisfied that the marriage has broken down irretrievably, it will first issue a 'decree nisi' (interim divorce order). After a period of six weeks an application can be made by the party that applied to the court for the divorce, to obtain the 'decree absolute' (final divorce order). Other than in exceptional circumstances, there is no time limit on an application for a decree to be made absolute (final).

However, if the application for the decree absolute is lodged more than 12 months after the decree nisi, the applicant will be required to lodge with it a written explanation:

giving reasons for the delay;

stating whether they and their spouse have lived with each other since the decree nisi and, if so, between what dates; and

stating whether a wife, which for same sex married couples will include either female spouse, has, or is believed to have, given birth to any child since the decree nisi and, if so, whether or not it is alleged that the child is or may be a child of the family.

The Judge of the Family Court can require the applicant to file a sworn statement verifying the explanation the applicant has given and can make such order on the application as the Judge of the Family Court thinks appropriate.

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

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

The parties are free to remarry (or enter into a civil partnership) should they wish to do so. They may choose to keep their married surname or revert to a pre-marriage or partnership name as they wish.

3.2 the division of property of the spouses

The court, on granting a decree of divorce, nullity or judicial separation, or afterwards, can order that property should be transferred from one spouse to the other, or to a child of the family, or to another person for the benefit of a child of the family.

Courts also have the power to order the making of periodical payments, to order the sale of property, to make orders in respect of pensions, to order single lump sum payments and other orders. They have discretion as to what orders they make in any particular case, to meet the demands of that case according to its particular circumstances.

In exercising their discretion courts must consider the welfare of any child of the family under the age of 18 plus the following issues:

the income, earning capacity, property and other financial resources which each of the spouses has or is likely to have in the foreseeable future;

the contribution, both financial and other, made by each of the spouses to looking after the home and children is also considered

the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future;

the standard of living enjoyed by the family before the breakdown of the marriage;

the age of each party and the duration of the marriage;
any physical or mental disability suffered by either party;
the contributions which each party has made, or is likely to make in the future to the welfare of the family;
the conduct of the spouses, if it is such that it would be unfair to disregard it when considering how property should be divided;
the value to each of the spouses of any benefit which that party will lose the chance of acquiring because of the divorce or annulment.

3.3 the minor children of the spouses

Following divorce, both parents will continue to have parental responsibility for the children of the marriage. Each parent will continue to have parental responsibility for any children of other relationships for whom they have parental responsibility at the time of the divorce. Both parents will have a continuing duty to maintain minor children who have lived as children of the family.

3.4 the obligation to pay maintenance to the other spouse?

The duty to maintain the other spouse will in most cases cease on the divorce being finalised (upon the granting of the decree absolute), except in cases where there has been an order for spousal maintenance as part of the divorce proceedings. Moreover, any duty that relates to an existing court order (for instance on spousal maintenance) will remain active, and it may be possible to vary an existing order at a future date should there be significant changes to the grounds upon which the original court order is based.

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

In England and Wales, 'legal separation' is known as 'Judicial Separation'. Where the court gives such an order there will no longer be any expectation on the spouse who asked for the order to continue to live with their husband or wife. However, he or she will not be able to remarry. Effectively judicial separation is an option for spouses whose marriage has broken down but who do not wish to remarry. An applicant for judicial separation is not required to prove that their marriage has irretrievably broken down. It is possible to apply for an order for divorce after an order for judicial separation has been given. Civil partners are able to apply for a separation order, which has exactly the same effect.

5 What are the conditions for legal separation?

The applicant has to provide evidence of one or more of the facts required to prove the breakdown of the marriage, and, unlike those who seek a divorce, does not need to wait for a year to commence from the date of the marriage.

6 What are the legal consequences of legal separation?

If a party to a judicial separation dies without having made a will his or her property will be distributed under the intestacy rules and a decree for judicial separation has the same effect as a divorce. Therefore neither spouse has thereafter any right to the property of the intestate party. If a party to a judicial separation dies having made a will, judicial separation has no effect on entitlement under that will where, for instance, the surviving judicially separated party is nominated as a beneficiary under that will.

The same provisions for the division of property as are available on divorce are also available to the court with a judicial separation.

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

There are two forms of marriage annulment. The marriage can either be declared "void", which means that the marriage was never valid and never existed. Under different circumstances the marriage can be "voidable", which means that one of the spouses can apply for the marriage to be declared invalid. It is possible for the marriage to continue if both spouses are content.

8 What are the conditions for marriage annulment?

A marriage is void and invalid if:
It does not fulfil the terms of the Marriage Acts 1949 to 1986 in that:
The parties are related too closely.
Either of the parties is under the age of sixteen.
The proper formalities for marriage have not been completed.
At the time of the marriage one of the parties was already legally married or was a civil partner.
In the case of a polygamous marriage completed outside England and Wales, where one of the spouses was domiciled in England and Wales at the time of the marriage.
A marriage is voidable in the following circumstances:
That the marriage has not been consummated because of the incapacity of one of the spouses to be able to consummate it. This applies to opposite sex marriages only.
That the marriage has not been consummated because of the wilful refusal of the respondent to consummate it. This applies to opposite sex marriages only.
That one of the spouses did not consent to the marriage properly, because they were under pressure and were forced to agree, were mistaken as to the legal effects of the marriage, or were mentally incapable of appreciating the effects of the decision to marry.
That at the time of the marriage one of the spouses was suffering from a mental illness of such a type as to make them unfit for marriage or from venereal disease in a communicable form and the petitioner was unaware of this fact at the time.
That at the time of the marriage the respondent was pregnant by someone other than the petitioner and the petitioner was unaware of this fact at the time.
That an interim Gender Recognition Certificate has, after the time of marriage, been issued to either party.
That the respondent is a person whose gender at the time of marriage had become the acquired gender under the Gender Recognition Act 2004 and the petitioner was unaware of this fact at the time.

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. This does not affect the status of any children.
If a marriage is voidable it is treated as being invalid from the date the order of annulment of the marriage is made absolute. The marriage is treated as being in existence up until that time.
With both void and voidable marriages the court can make arrangements for the division of property in the same way as in the case of a divorce.

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

The Government encourages the use of family mediation to resolve disputes in appropriate cases. Mediation can be appropriate for disputes relating to children and also for disputes concerning property and finance. In some areas Children and Family Court Advisory and Support Service CAFCASS (England) or CAFCASS Cymru (Wales) officers provide facilities for resolution of disputes regarding children at court. The court may adjourn a case for an attempt to be made to solve the dispute in this way.

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 petition application may be made at any location of the Family Court and must reflect whether the application is for a divorce, judicial separation or annulment. Details of the courts and the necessary forms can be found on the websites: Ministry of Justice, Court and Tribunal finder and the government " Get a divorce" page.

A fee will usually be payable when making an application, but there are exemptions for those receiving certain state benefits or who can show that paying the fee would cause undue hardship. Further details of Court and Tribunal fees can be found here.
A party should use petition form (D8) and must send in:
3 copies of the petition form
An extra copy for any named person involved in adultery
A marriage certificate (not a photocopy) accompanied with a certified translation if appropriate.
A fee exemption form.

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

Legal aid is not normally available for divorce or disputes relating to children and disputes relating to property unless there is domestic violence, There will also be a means and merits test. More information can be found on the Government website.

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

Where an interim order has been given, it is possible for one of the spouses to apply to the court to show evidence why it should not be made final. The court may either set it aside, order that it should be made final, order further enquiries to be made or deal with the case in another way as it thinks best.
Following a final order, save in exceptional circumstances, no further appeal is possible.
It is not possible to appeal against an order for judicial separation but it may be possible to override it where both parties agree to do so.

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?

European Union Regulation EC No 2201/2003 states that a decision leading to divorce, legal separation (judicial separation) or marriage annulment given in one Member State can be recognised in other Member States. The documents required can be obtained from the court which made the order and should be submitted to the High Court.
This Regulation does not affect issues of fault, property consequences of the marriage, maintenance or any other ancillary matters. There must be a real link between the party concerned and the Member State exercising jurisdiction.
Recognition may be refused if the decision is contrary to public policy, if given in default of appearance, if the respondent was not served with relevant documents in sufficient time, or if it is irreconcilable with a judgment in proceedings between the same parties in England and Wales, or if it is irreconcilable with an earlier judgment in another country, provided the earlier judgment can be recognised in England and Wales.
Any interested party may apply for a decision that the judgment be or not be recognised. The High Court may stay the proceedings if an appeal has been lodged against the judgment for which recognition is sought.
The EU Regulation EC No 2201/2003 will continue to apply until 31 December 2020.
If the decision cannot be recognised under this Regulation the arrangements for the recognition of divorces obtained overseas are in the Family Law Act 1986. Section 46 of which says:
• The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if:
o the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
o at the relevant date (that is at the date when the proceedings to obtain the divorce began) either party to the marriage
was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
was domiciled in that country; or
was a national of that country.
• The validity of an overseas divorce, annulment or judicial separation obtained otherwise than by means of proceedings shall be recognised if -
o the divorce, annulment or judicial separation is effective under the law of the country in which it was obtained;
o at the relevant date (that is the date when the divorce was obtained) -
each party to the marriage was domiciled in that country; or
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
• Neither party to the marriage was habitually resident in the United Kingdom throughout the period of one year immediately preceding that date.
Any person can apply to the court for a declaration that a divorce, annulment or judicial separation obtained outside England and Wales should be recognised in England and Wales. The court can deal with the application provided that the applicant
• is domiciled in England and Wales on the date when the proceedings are begun; or
• was habitually resident in England and Wales throughout the period of one year ending with 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?

Subject to the conditions outlined above any person can apply to the Family Court for a declaration that a divorce, annulment or judicial separation should not be recognised in England and Wales.
Applications for recognition under the EU Regulation must be made to the High 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, unless the court decides that the respondent has accepted the judgment unequivocally.
The Regulation states that any interested party may apply for a decision that the judgment be or not be recognised. 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.
The EU Regulation will continue to apply until 31 December 2020.

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 courts in England and Wales will always apply the law of England and Wales to cases brought before them. The courts have jurisdiction to deal with a divorce, even if the marriage took place abroad, if either of the parties to the marriage:
is domiciled in England and Wales on the date when the proceedings are begun; or
was habitually resident in England and Wales throughout the period of one year ending with that date.

Related links

Divorce, separation and relationship breakdown
Legal Aid

We welcome your feedback on the usefulness of the provided information.

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