

In Scotland, in order to obtain a divorce or dissolution of a civil partnership there are two options available:

1. The simplified procedure; or
2. The ordinary procedure.

In order to apply using either of those procedures, you first of all must establish grounds for divorce or dissolution.

## 1 Grounds for Divorce

### Irretrievable Breakdown

The first ground is that the marriage/civil partnership has broken down irretrievably for one of the following reasons:

#### Adultery

Defined as “voluntary sexual intercourse between a spouse and person of the opposite sex, out with the marriage.” By definition then, adultery is not a ground for dissolution of a civil partnership. It can still be used as a ground for divorce in same sex marriage, provided the spouse has intercourse with a member of the opposite sex; it cannot apply to an affair between members of the same sex.

#### Behaviour

Where one spouse has behaved in such a way that the other cannot reasonably be expected to cohabit with them.

#### Separation, with consent to divorce

Separation for a continuous period of one year, with the other party's consent.

#### Separation, without consent to divorce

Separation for a continuous period of two years (consent is not required).

### Issuing of an Interim Gender Recognition Certificate

The second ground for divorce/dissolution is where an Interim Gender Recognition Certificate has been issued to one of the parties, after the date of marriage, under the Gender Recognition Act 2004.

## 2 Jurisdiction for Divorce

Once you have overcome the hurdle of establishing a ground for divorce/dissolution the next hurdle to overcome is jurisdiction. The rules in respect of jurisdiction are fairly complex and if you are unsure about whether you have jurisdiction or not then you should seek legal advice. First of all you have to establish that you have jurisdiction to apply for a divorce under Scots Law

as opposed to the law of another country and that will generally depend upon where you or your spouse are currently resident and/or domiciled. Assuming however the law of Scotland does have jurisdiction then the next hurdle to overcome is which Court you will require to apply to for your divorce or dissolution.

Most divorce/dissolution actions now proceed through the local Sheriff Court and generally speaking, it will be the Sheriff Court in the area that you or your spouse resides that will have jurisdiction.

It is however possible to establish jurisdiction in more than one country. In that case, legal advice from a solicitor in each jurisdiction should be obtained in advance, as a spouse may be financially better off applying in one jurisdiction compared to the other.

## 3 Procedure

The next step is to decide whether to apply using the simplified procedure or the ordinary procedure.

### **Simplified Procedure**

This is often referred to as the “DIY divorce.” This procedure can only be used where there are no children of the marriage under the age of 16 and also where there are no outstanding financial matters to resolve. If there are, then you will need to apply using the Ordinary Procedure.

As the name would suggest, a Solicitor is not required to complete papers, although a Solicitor will be needed to notarise the application form before it can be lodged with the Court.

The papers can be obtained from either your Local Sheriff Court or from the Scottish Courts Website [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk). The forms are very straightforward to complete. You simply fill them in and sign the form in the presence of a Notary Public. You can then lodge the application with the Sheriff Clerk at your local Sheriff Court together with the original Marriage or Civil Partnership Certificate and the Court fee ( from 25th April 2018, the fee is £123 however this will vary each year). The Sheriff Clerk will then assist in serving the papers upon your spouse or civil partner. From start to finish the process takes approximately 8 weeks to complete. The formal document confirming that you are divorced or that your civil partnership has been dissolved is referred to as the Extract Decree of Divorce/Dissolution and that will be sent directly to you by the Sheriff Clerk. From the date that the papers are served on your ex spouse/civil partner they will have a 21 day period to object to the divorce/dissolution. Assuming they do not object, after that 21 day period has passed, then your divorce/dissolution will be granted.

If they do object at any stage (for example, on the basis that they wish to make a financial claim against you) then the application will be dismissed and you would need to apply again using the ordinary procedure.

### **Ordinary Procedure**

If it is not possible for you to apply using the simplified procedure above then you can apply using the ordinary procedure but it is recommended that you consult a Solicitor to assist you in the process.

The ordinary procedure is much more involved and is a more “legal” process.

Under an ordinary divorce/dissolution action you can seek a number of orders:

For orders in respect of the care of the children;

For the transfer or sale of house;  
For division of the matrimonial assets; and

For the monthly payment of aliment from your spouse or civil partner.

Your Solicitor will draft a document called an Initial Writ and lodge that with your local Sheriff Court. Your Solicitor will then serve that upon your spouse/civil partner who again will have 21 days from the date of service to tell the Court whether they wish to defend the action.

If the action is not defended then after 21 days your Solicitor can ask the Court to grant your divorce/dissolution, together with any of the other orders which you have sought. At that stage Affidavits (sworn statements) will be needed from you and a witness to be passed to the Sheriff to support your case. Assuming the Sheriff is satisfied with the arrangements for any children of the marriage and the information contained in the Affidavit, then Decree of Divorce/ Dissolution will be granted.

If however your spouse/civil partner intends to defend the action then the Court will be notified of that and the Court will issue a standard timetable. That will set out a number of important dates which will determine how the case is to proceed. Your spouse or civil partner may seek orders of their own as part of their defence to the action. That can then allow negotiations to commence in the hope that the Court case will be settled without the Court having to make any orders.

If negotiations are not successful then ultimately a Hearing (called a Proof) will be assigned, where each party will lead evidence from witnesses before the Court will make a final decision on matters. If there are technical matters of law to be addressed then those will be dealt with at a Hearing called a Debate.

## 4 Negotiated Settlement

If you do not have sufficient grounds then you cannot apply to be divorced or have your partnership dissolved at this time. However, that would not prevent you from negotiating the terms of a Separation Agreement in respect of any child care arrangements and/or finances in the meantime. Then you can apply for a divorce/dissolution at a later date, based on one of the separation grounds outlined above.

For our expert advice, or to speak with a Family Lawyer, call us on **03330 430150** for a chat, or contact us to book an appointment and we will be more than happy to help you.

Alternatively, visit our website for more information, or to submit an online enquiry form:  
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