

SPA

**Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
Simplified Procedure**

Address of Court Sheriff Clerk
 Sheriff Court House

Tel:

APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO THE MARRIAGE) HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST 1 YEAR

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which a divorce may be sought by this method. If simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application.

Please follow them carefully. In the event of difficulty, you may contact any Sheriff Clerk's Office or Citizens Advice Bureau

Directions for making Application

WRITE IN INK, USING BLOCK CAPITALS

Application (Part 1) 1. Complete and sign Part 1 of the form (pages 3-7), paying particular attention to the notes opposite each section

Consent of Husband/Wife (Part 2) 2. When you have completed Part 1 of the form, send the form to your spouse for completion of the consent at Part 2 (page 9).

NOTE: If your spouse does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor.

Affidavit (Part 3) 3. When the application has been returned to you with the Consent (Part 2) duly completed and signed, you should then take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 3 (page 10) may be completed and sworn.

Returning Completed Application Form to Court 4. When directions 1-3 above have all been complied with, your application is now ready to be sent to the Sheriff Clerk at the above address. With it you must enclose:
(i) Your marriage certificate (the document headed "Extract of an entry in a register of Marriages"), which will be returned to you in due course, and
(ii) Either a cheque or postal order for the Court fee, crossed and made payable to "Scottish Court Service" or a completed fee exemption form.

5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the Sheriff Clerk immediately.

**THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU.
PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.**

Notes on Sections 1 and 2 opposite

- (i) The names entered in Sections 1 and 2 opposite should be those shown on your marriage certificate. If you are known by another name which does not appear on that certificate, please write that name in brackets.
 - (ii) If the surname given for a wife is not her present married name an explanation should be included with the application. Her maiden name and any names from previous marriages should be entered in the space for other names.
 - (iii) Home addresses should be given where these are known. The Court is required by law to serve a copy of this application on your spouse.
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Note on Section 3 opposite

- (i) 'Domiciled' means that the person concerned at Item (i) or (iii) opposite regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.
 - (ii) You must be able to tick at least one box in each of Parts **A and C** or in Parts **B and C**. If your circumstances do not allow you to do that you may still be able to make an application but you should consult the Sheriff Clerk at the address shown on the front of the form before going any further.
 - (iii) 'Habitual residence' means that the person has his/her main residence in Scotland, it is not enough for a person to make his occasional residence within the territory.
 - (iv) For information on which countries are a "contracting state" contact your local Sheriff Clerks Office
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PART 1

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WRITE, IN INK USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname	Other names(s)
Present Address	in full
	Daytime telephone number (if any)

2. NAME AND ADDRESS OF SPOUSE

Surname	Other names(s)
Present Address	in full
	Daytime telephone number (if any)

3. JURISDICTION

Please indicate with a tick (✓) in the appropriate box or boxes which of the following apply:

PART A

- (i) My spouse and I are habitually resident in Scotland
- (ii) My spouse and I were last habitually resident in Scotland, and one of us still resides there
- (iii) My spouse is habitually resident in Scotland
- (iv) I am habitually resident in Scotland having resided there for at least a year immediately before this application was made
- (v) I am habitually resident in Scotland having resided there for at least six months immediately before this application was made and am domiciled in Scotland
- (vi) My spouse and I are domiciled in Scotland

If you have ticked one or more of the boxes in Part A, you should go direct to Part C. You should only complete Part B if you have not ticked any of the boxes in Part A.

PART B

- (i) I am domiciled in Scotland
 - (ii) My spouse is domiciled in Scotland
- AND _____

Notes on Section 4 opposite

You will be able to obtain these details from your marriage certificate (Extract entry in the register of marriages) which must accompany this application form, when you send it to the Court.

A photocopy of the marriage certificate will NOT be accepted. If you cannot find the original, you should apply for an official copy to:

General Register Office (Scotland), Registration Section, New Register House,
Edinburgh EH1 3YT, in writing, or by e-mailing the form at
<http://www.gro-scotland.gov.uk/contacts/contact-form.html>, or
the office where the marriage was registered,

stating both husband's and wife's full names, and date and place of marriage.

(Note that the Registrar will charge a fee for this service.)

Notes on Section 5 opposite

You and your spouse must have lived apart from each other for a continuous period of at least 1 year after the date of your marriage and immediately before the date of this application.

This minimum period of 1 year separation is extended if you and your spouse have lived together again for **not more than 6 months in all** during that 1 year period. For example, if you lived together for 3 months in total during the 1 year period, then you should not complete this application until 1 years and 3 months has elapsed from the date of your original separation.

For information on which countries are a "contracting state" contact your local Sheriff Clerks Office

Notes on Section 6 opposite

Is there a reasonable chance that you can still settle the differences with your spouse and resume normal married life?

Are you satisfied that there is now no possibility of the marriage succeeding?

Note on Section 7 opposite

If your spouse is not prepared to sign the form of consent at Part 2 of this application, you will not obtain a divorce by this method.

PART 1(continued)

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- (iii) No court of a Contracting state has jurisdiction under the Council Regulation (E.C.) No. 2201/2003 of 27th November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (O.J. No. L. 338, 23.12.2003, p.1.)

PART C

- (i) I have lived at the address shown above for at least 40 days immediately before the date I signed this application
- (ii) My spouse has lived at the address shown above for at least 40 days immediately before the date I signed this application
- (iii) I have lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and have no known residence in Scotland at that date
- (iv) My spouse lived at the address shown above for a period of at least 40 days ending not more than 40 days before the date I signed this application and has no known residence in Scotland at that date

4. DETAILS OF PRESENT MARRIAGE

Place of marriage _____ (Registration District)
Date of marriage: Day _____ Month _____ Year _____

5. PERIOD OF SEPARATION

- (i) Please state the date on which you ceased to live with your spouse. (If more than 1 year, just give the month and year) Day _____ Month _____ Year _____
- (ii) Have you lived with your spouse since that date? *(Tick box which applies)* YES NO
- (iii) If yes, for how long in total did you live together before finally separating again? _____ months

6. RECONCILIATION

Is there any reasonable prospect of reconciliation with your spouse? *(Tick box which applies)* YES NO

Do you consider that the marriage has broken down irretrievably? *(Tick box which applies)* YES NO

7. CONSENT

Does your spouse consent to a divorce being granted? *(Tick box which applies)* YES NO

Note on Section 9 opposite

'Children of the marriage' includes any adopted children and/or children accepted into the family.

Notes on Section 10A opposite

If there is a religious impediment to the remarriage of either party the simplified procedure is not available, and you should contact a solicitor. This is likely only to apply to people who belong to the Jewish faith.

Notes on Section 11 opposite

Disclaimer of financial provisions means

No claim can be made in this form of divorce application for payment to you of a periodical allowance (i.e. regular payment of money weekly, monthly etc for your maintenance) or a capital sum (i.e. lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

PART 1(continued)

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8. MENTAL DISORDER

Does your spouse have a mental disorder?
(whether illness, personality disorder or learning disability)
(Tick box which applies)

YES

NO

(If yes, give details)

9. CHILDREN

Are there any children of the marriage under the age of 16?
(Tick box which applies)

YES

NO

10. OTHER COURT ACTIONS

Are you aware of any Court actions currently proceeding in any country (including Scotland) which may affect your marriage? *(Tick box which applies)*

YES

NO

(If yes, give details)

10A. REMARRIAGE

Is there any religious impediment to the remarriage of you or your spouse? *(Tick box which applies)*

YES

NO

(If yes, give details)

11. REQUEST FOR DIVORCE AND DISCLAIMER OF FINANCIAL PROVISION

I confirm that the facts stated in Sections 1 - 10 above apply to my marriage.

I do NOT ask the Court to make any financial provision in connection with this application.

I request the Court to grant decree of divorce from my spouse.

(Date) _____ (Signature of applicant) _____

IMPORTANT – Part 1 MUST be completed, signed and dated before sending the application form to your spouse.

NOTES ON COMPLETING PART 2 OPPOSITE (Page 9)

1. Read over carefully PART 1 (pages 3 - 7) of this application, which has already been completed by your spouse.

2. Financial Provisions

Please note that in Section 11 of Part 1, the Applicant states that he/she does NOT claim any financial awards by way of periodical allowance or capital sum. You also are required to state (item c. opposite) that you make no claim upon the Applicant for payment of a periodical allowance or capital sum.

Note: While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

3. Warning

Divorce may result in the loss to you of property rights (e.g. the right to inherit from the Applicant's estate on his/her death) or the right, in some cases, to a widow's pension. (If you are in doubt about signing this form of consent, you should consult a solicitor.)

NOTICE TO CONSENTING SPOUSE PART 2

Name

Address (*of consenting spouse*)

.....
.....

CONSENT TO APPLICATION FOR DIVORCE (HUSBAND AND WIFE HAVING LIVED APART FOR AT LEAST ONE YEAR)

In Part 1 of the enclosed application form your spouse is applying for divorce on the ground that the marriage has broken down irretrievably because you and he (*or she*) have lived apart for at least one year and you consent to the divorce being granted.

Such consent must be given formally in writing at Part 2 of the application form. BEFORE completing that part, you are requested to read it over carefully so that you understand the effect of consenting to divorce.

Thereafter if you wish to consent-

- (a) check the details given by the Applicant at Part 1 of the form to ensure that they are correct to the best of your knowledge;
- (b) complete Part 2 (Consent by Applicant's spouse to divorce) by entering your name and address at the appropriate place and adding your signature and the date; and
- (c) return the whole application form to your spouse at the address given in Part 1.

Once your husband or wife has completed the remainder of the form and has submitted it to the court, a copy of the whole application (including your consent) will later be served upon you formally by the Sheriff Clerk.

In the event of the divorce being granted, you will automatically be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the Sheriff Clerk immediately.)

If you do NOT wish to consent please return the application form, with Part 2 uncompleted, to your spouse and advise him or her of your decision.

The Sheriff will NOT grant a divorce on this application if Part 2 of the form is not completed by you.

Sheriff Clerk (depute)

Sheriff Court (insert address)

CONSENT BY APPLICANT'S SPOUSE TO DIVORCE

NOTE: Before completing this Part of the form, please read Part 1 and the notes opposite (page 8).

1

.....
(Insert Full names, in **BLOCK** letters, of Applicant's spouse)

residing at

.....
(Insert Address, also in **BLOCK** letters)

HEREBY STATE THAT

- a. I have read Part 1 of this application;
- b. The Applicant has lived apart from me for a continuous period of 1 year immediately preceding the date of the application (Paragraph 11 of Part 1);
- c. I do not ask the Sheriff to make any financial provision for me including –
 - (i) The payment by the Applicant of a periodical allowance (i.e. a regular payment of money weekly or monthly, etc for maintenance),
 - (ii) The payment by the Applicant of a capital sum (i.e. a lump sum payment);
- d. I understand that divorce may result in the loss to me of property rights;

And

e. I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.

(Date)

(Signature)

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the Sheriff.

Should you wish to do so, you must immediately contact the Sheriff Clerk at:

Sheriff Court (insert address)

Tel:

APPLICANT’S AFFIDAVIT

To be completed only after Parts 1 and 2 have been signed and dated.

1. (insert Applicant’s full name)

residing at (insert Applicant’s present home address)

SWEAR that to the best of my knowledge and belief:

(1) that the facts stated in Part 1 of this Application are true; and

(2) the signature in Part 2 of this Application is that of my spouse.

Signature of applicant

To be completed by Justice of the Peace, Notary Public, or Commissioner for Oaths

SWORN at (Place)

this _____ day of _____ 20 _____

before me (full name) _____

(full address) _____

Signature

*Delete as appropriate

*Justice of the Peace/*Notary Public/*Commissioner for Oaths