

Scottish
Court Service



**A GUIDE TO THE
SIMPLIFIED DIVORCE /
DISSOLUTION OF CIVIL PARTNERSHIP
PROCEDURE IN SCOTLAND**

January 2007

WHAT IS THE SIMPLIFIED DIVORCE / DISSOLUTION OF CIVIL PARTNERSHIP PROCEDURE?

You may be able to obtain a divorce or the dissolution of a civil partnership in Scotland using a simplified procedure – a “do-it-yourself” method – if the divorce / dissolution of civil partnership is not contested. It is a cheap and simple method. You can do what is necessary yourself or with free assistance from a Citizen’s Advice Bureau (CAB) or Sheriff Clerk’s Office. You don’t need a solicitor although you may consult one if you wish. First, check whether you qualify. If you think you do and you want to use the simplified divorce / dissolution of civil partnership procedure please complete the tear-off portion on the last page of this leaflet and send it to your local Sheriff Court (the address is available in the local telephone directory), or the Court of Session, Extracts Department, Parliament House, Edinburgh, EH1 1RQ. (The address of your local Sheriff Court and the Court of Session are also available on the Scottish Courts Website at <http://www.scotcourts.gov.uk>)

If you think you don’t qualify, you may need to apply for a divorce / dissolution of civil partnership in the ordinary way and you should consult a solicitor. If you have any questions about what is involved, or whether you qualify, ask your nearest Citizen’s Advice Bureau, Sheriff Clerk’s Office (at the Sheriff Court) or the Court of Session, in Edinburgh at the address above. (Telephone 0131-240-6748).

DO I QUALIFY?

You may qualify for a “do-it-yourself” divorce / dissolution of civil partnership if the conditions below are met:

★ **Residence:**

- You and your spouse / civil partner are habitually resident in Scotland,
- You and your spouse / civil partner were both last habitually resident together in Scotland and one of you still resides there,
- Your spouse/ civil partner is habitually resident in Scotland,
- You are habitually resident in Scotland having resided there for at least one year immediately before this application is made.
- You are habitually resident in Scotland and have resided there for at least six months immediately before this application is made and you are domiciled in Scotland,

and/or

- (*For Divorce applications only*) You and your spouse are domiciled in Scotland.

Which failing

- either you or your spouse / civil partner are domiciled in Scotland, and
- additional provisions apply which enable nationals of other member states of the European Union to qualify. For further details on this ask your nearest CAB, or Sheriff Clerk's Office.

and

(For Sheriff Court applications only)

- you have lived at your current address for at least 40 days before the date of signing the application,
- your spouse / civil partner has lived at his/her current address for at least 40 days before the date of you signing the application, or
- either you or your spouse / civil partner have no known residence in Scotland, but did live at the address shown for at least 40 days, ending not more than 40 days before the date of you signing the application

★ Reason for divorce/ dissolution of civil partnership:

Your marriage / civil partnership must have broken down irretrievably because you and your spouse / civil partner have lived apart

either for at least one year and your spouse / civil partner will consent to the divorce / dissolution of civil partnership in writing

or for at least two years

OR You or your spouse/civil partner has been issued with an interim gender recognition certificate.

If you wish to apply for a divorce / dissolution of civil partnership for any other reason you should consult a solicitor or ask for advice from your nearest Citizen's Advice Bureau (CAB).

★ No children under 16:

There must be no children of the marriage/ civil partnership under the age of 16. This includes adopted children or children accepted into the family.

★ No money problems:

Neither you nor your spouse / civil partner may claim any lump sum or maintenance payment. Think this over carefully and read the section overleaf headed "Money"

before you decide. Divorce / dissolution of a civil partnership may result in the loss of certain property rights. You should seek advice about this if you are in any doubt.

★ **No mental disorder:**

There must be no sign that your spouse / civil partner is unable to manage his or her affairs because of mental illness, personality disorder or learning disability.

★ **No other court proceedings:**

There must be no other court proceedings under way which might result in the end of your marriage / civil partnership.

★ **Declaration and request for divorce:** Section 3A of the Divorce (Scotland) Act 1976 allows people of the Jewish faith to ask the court (if they wish) to postpone the granting of decree of divorce until the question of a Jewish divorce has been settled. This is to remedy the difficulty caused by the refusal to grant a religious bill of divorce known in Jewish law as a "get". The "do-it-yourself" procedure cannot be used if you wish to make a request for a postponement, and if your spouse makes such a request, the simplified procedure will stop.

Important Note: The "do-it-yourself" procedure is only for uncontested divorces / dissolutions of civil partnerships. Your spouse / civil partner must not object to the divorce / dissolution of civil partnership for any reason. If there is an objection at any stage the simplified procedure will stop.

Court staff will send a copy of your application to your spouse / civil partner so that they are aware of the application and have the opportunity to object.

Information is also available on the Scottish Courts Website at <http://www.scotcourts.gov.uk>

OTHER POINTS YOU SHOULD CONSIDER BEFORE APPLYING

Money:

You can only apply if money is not an issue at the time of the divorce / dissolution of civil partnership. This means that neither you nor your spouse / civil partner wishes to ask for:

Maintenance (called periodical allowance) - a regular weekly or monthly payment of money,

and / or

A lump sum (called a capital sum).

This could be either because you have reached a voluntary agreement between yourselves regarding money or because you have both agreed on a clean financial break. Think it over carefully and if necessary seek advice on this question from a solicitor or CAB.

Your decision about a *lump sum* will be final once the divorce / dissolution of civil partnership is granted. However, if your financial circumstances change after the divorce / dissolution of civil partnership, you may be able to get *maintenance* with the help of a solicitor.

Interim gender recognition certificate:

Please note the paragraphs below relating to Separation, Reconciliation and Consent, do not apply if the ground for applying for a divorce/ dissolution of civil partnership is the issue of an interim gender recognition certificate.

Separation: You and your spouse / civil partner must have lived apart

either for at least one year and your spouse / civil partner consents to the divorce / dissolution of civil partnership in writing

or for at least two years

This period must be completed before the application is made and must be without a break. There is only one exception. If during the separation period you have lived together temporarily for not more than six months in all, in a final attempt to make the marriage / civil partnership work, you may still be

eligible to apply for a divorce / dissolution of civil partnership under the simplified procedure.

For example, if during the separation period you have attempted a reconciliation for five months then you must wait

either for at least one year and five months from the date of the original separation (and obtain the consent of your spouse / civil partner)

or for at least two years and five months from the date of the original separation

before applying for a divorce / dissolution of civil partnership.

Reconciliation:

Is there a reasonable chance that you and your spouse / civil partner can settle your differences and resume married life / your civil partnership? If you are satisfied that there is now no possibility of your marriage / civil partnership succeeding, you must state on the application that there is no prospect of reconciliation and that you consider that your marriage / civil partnership has broken down irretrievably.

Consent: (One year cases only)

If you are applying for a divorce /dissolution of civil partnership because you and your spouse / civil partner have lived apart for at least one year, your spouse / civil partner must also consent to the divorce / dissolution of civil partnership – IN WRITING.

Change of Mind:

The proceedings can be stopped at any point before the divorce / dissolution of civil partnership is granted if you change your mind, but you must tell the Court without delay.

Refund of Court Fee:

Once the application has been registered the court fee cannot be refunded.

Expenses:

You cannot claim from your spouse / civil partner any out of pocket expenses you may incur under the simplified procedure.

Legal Advice and Assistance:

You may be entitled to receive Advice and Assistance from a solicitor under the Legal Advice and Assistance Scheme.

Witness:

In certain circumstances the Court may require a witness (not your spouse / civil partner) to confirm the facts stated in your application. Should the need arise, the witness must be prepared to sign a form (called an affidavit) before a justice of the peace, notary public or commissioner for oaths.

WHAT WILL IT COST?

The Sheriff Clerk / Principal Clerk will advise you of the current fee. You may not need to pay this fee – for example if you are on income support or receiving advice and assistance from a solicitor under the Legal Advice and Assistance Scheme. (Check the fee exemption form which comes with this leaflet to see if you are exempt)

An additional payment may be asked for if there are difficulties in serving the forms by post upon your spouse / civil partner. **This does not apply if fee exemption is claimed.**

(Note: You may also have to pay a fee if you go to a notary public or commissioner for oaths to sign your affidavit. This service is free if you go to a justice of the peace.)

WHAT WILL I HAVE TO DO?

If you qualify and wish to apply for a divorce / dissolution of civil partnership:

- ◆ send for an application form using the tear-off part of this leaflet, but keep the remainder of the leaflet - it may help you later; alternatively you can download a form at the Scottish Courts Website at <http://www.scotcourts.gov.uk>
- ◆ complete the application form (and in cases where the grounds of divorce/ dissolution are one year's separation, ask your spouse / civil partner to sign the consent form included and return it to you).
- ◆ fill out the affidavit and sign it before a justice of the peace, (your nearest CAB, District Council or District Court will help you to find one) or before a notary public or a commissioner for oaths.
- ◆ return to the court which sent you the form
 1. the completed form and affidavit, and
 2. either the court fee or a completed form claiming exemption from the court fee (this form comes with the application),
along with:

For divorce applications:

3. your marriage certificate

For dissolution of civil partnership applications:

3. your extract or certified copy of the civil partnership certificate

For applications in which you do not know the address of your spouse / civil partner

4. Where the 2 year non cohabitation applies, or an interim gender recognition certificate has been issued, and the marriage/ civil partnership was registered in Scotland, you must obtain a letter from the General Register Office stating that there is no record that your spouse / civil partner has had your marriage /civil partnership dissolved.

Such a letter may be obtained by writing to the General Register Office (Scotland), Registration Branch, New Register House, 3 West Register Street, Edinburgh, EH1 3YT, or e-mailing the form at <http://www.gro-scotland.gov.uk/contacts/contact-form.html>

providing details of both your and your spouse's / civil partner's full names, the date and the place of the marriage / registration of civil partnership. The letter must be no more than 1 month old

at the time the application is made to the court. A fee will be charged for this service.

For applications where an interim gender recognition certificate has been issued:

5. Where the grounds for divorce / dissolution of civil partnership are that an interim gender certificate has been issued, in addition to the above, the principal interim gender recognition certificate or a copy certified by the Gender Recognition Panel should be lodged. The Gender Recognition Panel may be contacted at PO Box 6987, Leicester, LE1 6ZX, or at <http://www.grp.gov.uk>

If your application for divorce / dissolution of civil partnership is granted, the court will issue a full gender recognition certificate to the party with acquired gender, at the same time as the extract decree of divorce / dissolution of civil partnership is issued.

WHAT HELP CAN I GET?

Fuller instructions come with the application form. However, if you want advice, more information or help with the forms, contact your nearest CAB, Sheriff Clerk's Office or the Court of Session.

HOW LONG WILL IT TAKE?

You should know in about two months whether your application has been successful.

N.B Where your spouse / civil partner resides abroad and there is a need to translate documentation, your application may take longer to process.

