



Divorce and Dissolution

ABOUT US

If you are experiencing or have experienced domestic abuse, our Centre can offer legal information and advice on civil measures such as: protective orders, divorce or separation from a partner, and child contact and residence. We can also advise you on your rights before, during and after reporting domestic abuse to the police, and when engaging with the criminal justice process.

If you need legal information or advice, or advocacy support, you can call our helplines. Please [see our website](#) for up-to-date opening hours and availability notices.



The Scottish Women's Rights Centre (SWRC) is a collaboration between Rape Crisis Scotland (Registered in Scotland, no. 258568; SCO25642), the University of Strathclyde Law Clinic (SCO15263) and JustRight Scotland (SCO47818). All legal advice and representation provided through the SWRC is by JustRight Scotland (SO305962), a firm authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).

GLOSSARY

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| Affidavit | A person's written evidence to the court which is given under oath. |
| Family home | The property in which you lived with your spouse or partner/ex-spouse or ex-partner during your relationship. This is sometimes called the matrimonial home or former matrimonial home (FMH). |
| Inheritance | An asset which is received by you from a deceased person through their estate. |
| Spousal maintenance | A regular (usually weekly or monthly) payment of money from your ex-partner. Before divorce/dissolution, if you married or were in a civil partnership, this will often be called 'aliment'. After divorce/dissolution, these payments are called 'periodical allowance'. This can be paid in addition to child maintenance if you share children with your ex-spouse/civil partner. |
| Justice of the Peace | A 'lay magistrate' appointed from within the local community who is trained in criminal law and procedure to deal with the less serious summary crimes (such as speeding offences or breach of the peace). Justices have access to legal advisers within the court for advice on the law and procedures. |
| Notary public | An individual who has the legal authority to notarise a document where the legal validity of a document requires the swearing of an oath such as an affidavit. |
| Commissioner for Oaths | A person (often but not always a solicitor) who is authorised to witness the signing of important legal documents including affidavits. |
| Extract Decree | A formal certified copy of a decree that is required for enforcement proceedings. |

ABOUT OUR GUIDE

Ending a relationship can be a difficult step. When the relationship has been abusive, you may be concerned about your safety and have additional worries and issues to deal with. You do not need to cope with this alone and you can find information about support services at the end of this guide.

Domestic abuse is a pattern of controlling, coercive, threatening, degrading and/or violent behaviour, including sexual violence, by a partner or ex-partner (Scottish Women's Aid). In Scotland, domestic abuse - including coercive and controlling behaviour and physical abuse - is a crime. Depending on your circumstances, legal options should be available to you. You can find more information by [viewing our legal guides](#).

This guide is for women who are leaving an abusive marriage or civil partnership. Please note that the rules are different for cohabiting couples (couples who live together but are not married or in a civil partnership). For information about separating when you are not married or in a civil partnership, please call our [helpline](#) or speak to a solicitor.

Remember that this is just a guide and not a replacement for legal advice specific to your situation. Please make sure that you get legal advice to help you decide what your options are.

If you are experiencing domestic abuse you may wish to report this to the Police. If you feel you are in immediate danger, call the Police on 999. If you are not in immediate danger but would like to report, call the Police on 101. Alternatively, you can fill out [Police Scotland's online form](#).

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WHAT IS MARRIAGE AND CIVIL PARTNERSHIP?

MARRIAGE

Marriage is a legal relationship which can be registered by two people who are not closely related to each other. When you register a marriage, the relationship receives legal recognition which comes with specific rights and responsibilities. Same sex marriage came into effect on 16th December 2014, with many civil partners converting their relationships into marriages.

Once a marriage is registered, it can only be ended if one of you dies or either of you applies to the court to bring it to an end, also known as a divorce. If your marriage was void (not valid or legally binding), applying to bring it to an end is known as a 'declarator of nullity' - the Scottish equivalent to an annulment.

CIVIL PARTNERSHIP

Civil partnership is a legal relationship which can be registered by two people who are not related to one another. Civil partnerships have been available to same sex couples since 5th December 2005 and to heterosexual couples since 30th June 2021. Civil partners share the same legal rights as spouses.

Once a civil partnership is registered, it can only be ended if one of you dies or if either of you applies to the court to legally bring the partnership to an end, also known as dissolution.

'COMMON LAW MARRIAGE'

There is a common misconception that when a couple live together for several years the law will treat them as if they are married or as civil partners. This is sometimes referred to as a 'common law marriage'. However, since the introduction of the Family Law (Scotland) Act 2006, which came into force on 4th May 2006, it has not been possible to enter into a common law marriage in Scotland.

Only couples who have been living together as if they are married since before 4th May 2006 may be considered to be in a common law marriage, or 'marriage by cohabitation with habit and repute'. For those couples to be considered in a common law marriage, they must have been living together as if married and friends and family need to believe that they are living as if married.

MARRIAGES AND CIVIL PARTNERSHIPS ABROAD

If you are resident in Scotland and marry abroad, your marriage will only be legally recognised in Scotland if both persons had the capacity to marry under the law(s) of the place where they lived and if the wedding followed the rules and requirements of the country where it took place.

The marriage must also meet the minimum requirements of Scots law to be recognised as valid in Scotland. This means that if either party to the marriage was under the age of 16 or closely related to each other then the marriage will not be valid in Scotland.

You cannot get a Scottish marriage certificate for a foreign marriage. Until very recently, marriage certificates from other countries could be stored with the General Register Office for Scotland/National Records Scotland. This service has been discontinued. If you married in Scotland and require a copy of your marriage certificate this can be obtained [online](#) or through your local registry office.

FORCED MARRIAGE

A forced marriage is a marriage in which one or both people do not freely agree (consent) to the marriage and where some form of pressure (coercion) is involved. This pressure can take many forms and can be physical, emotional, psychological and financial. It can include deception, threats, blackmail or harassment.

There is often huge pressure to conform to the wishes of family and community. The pressure which forces a person into marriage does not have to be directed against that person and can include circumstances in which threats are made to others if they do not agree to the marriage.

A forced marriage can also occur where an individual is not able to freely agree on their own behalf; for example, children or adults with a mental disability.

A forced marriage is not the same as an arranged marriage. In an arranged marriage, both parties consent to the marriage. For more information, see our [factsheet on forced marriage](#).

Forcing someone into marriage is a criminal offence in Scotland. You can also seek civil protection through a Forced Marriage Protection Order (FMPO).

If you need advice or assistance with stopping a forced marriage or help leaving a forced marriage then you should take legal advice and you can reach out to the support detailed at the end of this guide.

ENDING A MARRIAGE OR CIVIL PARTNERSHIP

In Scotland there are two types of procedure that can be used to apply for divorce or dissolution of a civil partnership. These are:

- the simplified or “do-it-yourself” procedure
- the ordinary procedure (in the Sheriff Court) or divorce/dissolution procedure (in the Court of Session).

SIMPLIFIED DIVORCE OR DISSOLUTION

This is commonly known as a “do it yourself” procedure and it is a simple way of applying for a divorce or the dissolution of a civil partnership. It is available if at least one of the couple is domiciled in Scotland (which means you consider Scotland to be your home) or has been a resident in Scotland for at least a year immediately prior to the application being made.

This type of procedure can only be used when:

- You and your spouse/partner have been separated for one year and you both consent to the divorce/dissolution; or you have been separated for two years; or one of you has been issued with an interim gender recognition certificate after the marriage.
- There are no children of your relationship under the age of 16.
- There are no signs that you or your spouse/civil partner are unable to manage your affairs because of mental illness, a personality disorder or a learning disability.
- There are no other divorce/dissolution court proceedings which may result in the end of your marriage/civil partnership.
- There are no financial matters to resolve. This means either there are no assets or debts to be divided between you, or you have reached an agreement regarding division of your assets and any outstanding debts. We recommend you get legal advice on what financial settlement you may be entitled to. It’s important to think about this part of the separation carefully before making any decisions. This is a complex area of law and the financial settlement you may be entitled to can vary depending on your circumstances.

If you have experienced economic abuse, you may wish to seek specific legal advice about this. Economic abuse is a harmful form of coercive control that controls and isolates victims financially, making it harder to leave the abusive situation and to be financially independent after separation. For more information on your legal options please see our [Economic Abuse Factsheet](#) and [Legal Guide](#).

Remember that in most cases you lose the right to make any financial claims after a divorce has been granted. Scots law is very different from the law in England and Wales in this respect. So you should only use this procedure if you are sure that you don't want to make any financial claims against your spouse/partner.

Similarly, if you receive papers asking for divorce and you want to make financial claims, seek legal advice immediately. If you do not object to the application within 21 days, the divorce or dissolution will be processed and you may lose the ability to make any claims.

The simplified procedure is only for uncontested divorces or dissolutions of civil partnerships. If you or your partner disagrees with the divorce or dissolution at any stage, the simplified procedure will stop.

To apply for the simplified procedure in the Sheriff Court, there are additional residence requirements that must be met. You can view these residence requirements on the [Scottish Courts and Tribunal Service Website](#). We would recommend that you find a solicitor or get legal advice to understand whether you meet these requirements. You may also need legal advice to know if you should submit your application to the Sheriff Court or the Court of Session. The SWRC has a guide on [Getting Representation](#) and a [solicitor signposting network](#).

THE SIMPLIFIED DIVORCE OR DISSOLUTION PROCEDURE EXPLAINED

If you qualify and wish to apply for a divorce or dissolution of civil partnership through the simplified procedure, you will need to:

1. Download and complete an application form from the [Scottish Courts and Tribunals Service website](#). You can also contact your local Sheriff Court or the Court of Session to have a form sent to you.
2. Complete the application form. If your grounds for the divorce/dissolution are one year's separation, ask your partner to sign the consent form included and to return it to you.
3. Fill out the affidavit and sign it before a justice of the peace, a notary public, or a commissioner for oaths. You can arrange an appointment with a justice of the peace through your [local court](#), and you can search for a Notary Public on the [Law Society of Scotland's website](#).
4. Return the following documents to the court:
 - The completed application form which includes the affidavit
 - The court fee or a completed form to ask for an exemption from the court fee
 - Your principal marriage certificate or your extract/certified copy of the civil partnership certificate
 - Any other documents that are relevant to your application. For example, when the grounds for divorce/dissolution are that an interim gender certificate has been issued, this certificate or a certified copy of it should be included with the application.

Your application is sent to your spouse/civil partner and they have 21 days to decide if they want to oppose the application. If they don't oppose the application, then the divorce/dissolution is granted and two weeks later an extract decree is sent out to both of you. If your partner lives in another country and/or if they need to translate the document, your application may take longer to process.

ORDINARY PROCEDURE

If you're not eligible to use the simplified procedure then you, or a solicitor on your behalf, will need to raise a court action under the "ordinary procedure" for a divorce/dissolution through the Sheriff Court or the Court of Session.

You will need to use the ordinary procedure if:

- you have children under the age of 16;
- or you have been separated for less than two years and your spouse/partner does not consent to the divorce/dissolution;
- or you cannot agree on how your finances should be divided.

A solicitor can advise you on which court your application should be submitted to depending on your circumstances.

You will have to prove that there has been an irretrievable breakdown of your marriage or civil partnership, or that an interim gender recognition certificate has been issued to one of you since you married or established a civil relationship.

An Irretrievable breakdown of your marriage can be proved if:

- There has been unreasonable behaviour on the part of your spouse. This can include behaviour which is such that it is not reasonable to expect you to continue to live with them. This can cover a range of behaviours including, but not limited to, physical or emotional abuse; alcohol or drug abuse; verbal or psychological abuse; refusal to communicate; or financial irresponsibility.
- Your spouse has been unfaithful to you
- You both agree to the divorce and have been separated for at least one year
- Or you have been separated for at least two years

It is important to know that domestic abuse can fall into the category of 'unreasonable behaviour'. If your spouse/civil partner has a conviction for domestic abuse against you, this will be enough to request a divorce or dissolution. However, a conviction is not necessary if another person such as a friend or family member can corroborate (confirm or support) that there was abuse or any other unreasonable behaviour and/or that you were distressed as a result of the behaviour. If this applies to you, we would recommend that you seek legal advice from a solicitor who specialises in cases involving domestic abuse.

Divorce/dissolution has significant consequences, so we recommend that you seek legal advice and ideally also representation. You can find more information on getting legal representation in [SWRC's guide](#) and you can use the [SWRC signposting network](#) to find solicitors in your area.

DIVIDING FINANCES AND ASSETS

MINUTE OF AGREEMENT

If you are able to reach an agreement with your former spouse or civil partner regarding the financial consequences of your separation, you can enter into a contract, usually called a Minute of Agreement or separation agreement. You can do this yourself or through your solicitors.

A Minute of Agreement is a legally binding contract that outlines the agreement between you and your former spouse or civil partner. If you sign this agreement before divorce/dissolution, there will likely be no need for either of you to make a financial claim when applying for a divorce/dissolution of your civil partnership. Each person should sign the agreement and their signature should be witnessed by an independent witness who is over the age of 16. The signed agreement can then be registered with the [Registers of Scotland](#), who are responsible for keeping public registers. Once a Minute of Agreement is registered with the Registers of Scotland, it becomes available to the public.

Remember, an agreement will usually stop you from making further claims against your spouse or civil partner in the future. For this reason, you should always seek independent legal advice before entering into any agreement.

If you cannot reach an agreement with your spouse/civil partner about how to divide your assets and liabilities, then you may need to apply to the court for financial provision on divorce/dissolution.

CLAIMS FOR FINANCIAL PROVISION

If you need to make a claim for financial provision on divorce or dissolution of your civil partnership then you should seek the advice of a solicitor. The court will not grant divorce until a determination on the financial orders has been made. The court will hear evidence from both sides before deciding how your assets and liabilities should be divided.

The general principle is that the net value of the matrimonial property at the date of your separation should be shared 'fairly' between you upon divorce/dissolution. 'Fairly' usually means equally, but there are a number of reasons which justify you or your ex-spouse/civil partner asking the court to divide your matrimonial property unequally. In some cases, the court might decide that there is a need to make additional arrangements depending on the needs and resources of the couple.

MATRIMONIAL PROPERTY

Matrimonial property means the assets built up during your marriage and owned by you, your spouse or the two of you jointly on the date you separate. It does not include inheritance or gifts from other people. Matrimonial property can include property such as your cars, pensions, savings and investments, among other things.

If you bought a house before getting married or entering a civil partnership and you used it as a family home, the house and its contents may also be matrimonial property. It does not matter that you got the house before marriage/civil partnership if you intended to use the property as your matrimonial home when you purchased it.

Sometimes it's not obvious what is matrimonial property, and you should seek specific advice from a solicitor about your particular circumstances.

When considering how the net value of the matrimonial property should be divided, the court will consider certain principles. You can find them in section 9(1) of the [Family Law \(Scotland\) Act 1985](#):

- **Fair sharing**

The net value of the matrimonial property should be shared fairly between the two people. There are situations in which it could be considered fair for the matrimonial property to be shared unequally, where there are 'special circumstances'. There is no specific definition of 'special circumstances' but the Act gives some examples of situations which might be considered as such - for example where one person deliberately destroyed, reduced the value of, or gave assets away. In this case, the court might decide to give the other person more than they would otherwise have received as a result of the behaviour. Another common example of a special circumstance is where one party used non-matrimonial property and converted it into matrimonial property. This commonly occurs when one person uses pre-marital savings or inheritance for the purchase of the matrimonial home.

- **Economic advantage and disadvantage**

Fair account should be taken of any economic advantage or disadvantage suffered by either person in the interests of the other person or the family. An example of this would be if one person gave up their career to care for the children or to support their spouse/civil partner's career.

- **Fair sharing of the economic burden of caring for children under 16**

The court may take into account that one person will have primary care of the parties' children following separation.

- **Economic dependency**

This is when one person has largely depended financially on their spouse/civil partner and are going to need time to adjust to the loss of support.

- **Serious financial hardship**

When it is likely that one person will face serious financial hardship as a result of the divorce or dissolution of the civil partnership.

Every couple's circumstances are different and there can be many reasons why the court may justify an unequal division of the net value of the matrimonial property and/or additional claims.

When dealing with finances, in some circumstances the court can take into account the behaviour during the marriage, for example, economic abuse. However, this is not straightforward, so you should get advice from a solicitor who specialises in this area of law. Economic abuse is a crime that can be reported to the police. Please see our guides on [reporting domestic abuse](#) and [economic abuse](#) for more information.

Depending on the situation, the family home may need to be sold and the value divided between you. It may also be possible to reach an agreement or for the court to make orders to allow one person to continue to live in the family home and for the other person to transfer their interest in the house to them. This can be a complex matter (particularly if the house is rented out or owned with a mortgage). Legal advice from a solicitor can help you to have clarity on the possibilities and options you may have.

When seeking financial provision on divorce/dissolution of a civil partnership, you can ask the court to make various orders including:

- Ordering your spouse/civil partner to pay you a capital sum. A capital sum is an amount of money paid to one party from the other.
- Transfer of property from one party to another – for example, transfer of one person's interest in a house to the other person.
- Pension sharing - an order that some or all of a pension is transferred into a pension in the other person's name.
- Periodical allowance/maintenance – an order that one person should pay money regularly to another, usually for a limited period of time. These orders are unusual as the court generally seeks to provide the parties with a "clean break" on divorce/dissolution.

The court has power to make other 'incidental orders' if needed. For example, orders for the sale of a property, to regulate the occupancy of a family home and use of the furniture, and to regulate liability for mortgage payments or rent. These are only a few examples.

GETTING LEGAL ADVICE

If you don't have a solicitor already and you are thinking of ending a marriage or civil partnership with an abusive partner, call our [helpline](#) or book an appointment for one of our [advice surgeries](#). We can discuss your circumstances and help you understand your options.

You can also visit our website to [find a list of solicitors](#) who have completed our domestic abuse training and to read our guide on [Getting Representation](#).

The [Law Society of Scotland](#) also suggest solicitors in Scotland who may be able to assist you, whether the relationship was abusive or not, and the Scottish Legal Aid Board has a [Solicitor Finder tool](#) you can use.

It is important to know that if you or your spouse/partner have connections with a place that is not Scotland, the laws of other regions might apply to your circumstances. This means you may need to get advice from a lawyer in that other place. For example, if you or your spouse/partner are from England or Wales, you might be able to divorce there rather than in Scotland and this might be better for you financially. This is a specialist area of law and you should get advice from a solicitor who has experience of dealing with divorce/dissolution in multiple locations.

SUPPORT AGENCIES AND CONTACT DETAILS

Scottish Women's Aid

Website: womensaid.scot

Local specialist groups: womensaid.scot/find-nearest-swa-group

Scotland's Domestic Abuse and Forced Marriage Helpline

Helpline: 0800 027 1234 (open 24/7)

Website: sdafmh.org.uk

Rape Crisis Scotland

Helpline: 08088 01 03 02 (open every day 6pm-midnight)

Website: rapecrisisScotland.org.uk

National Stalking Helpline

Helpline: 0808 802 0300 (open daily 9.30am-4pm, except Wednesday 1pm-4pm)

Shelter

Helpline: 0808 800 444 (open Monday-Friday, 9am-5pm)

Website: scotland.shelter.org.uk (webchat open Monday to Friday, 9am-5pm)

Citizens Advice

Helpline: 0800 028 1456 (Monday-Friday, 9am-5pm)

Website: cas.org.uk

Surviving Economic Abuse

Website: survivingeconomicabuse.org/resources

The Forced Marriage Unit

Email: fmufco.gov.uk

Helpline: 020 7008 0151 (Monday to Friday, 9am to 5pm)

From overseas: +44 (0)20 7008 0151

Out of hours: 020 7008 1500 (ask for the Global Response Centre)