

## Easy Guide to Marriage and Relationship Breakdown

So you have decided to separate. What are the essential legal things you need to know? The following is intended to be a brief guide. Please note that this is only a summary of the law, and that you should seek legal advice tailored to your own case.

### Divorce: The Basics

If you are married then you may wish to take divorce proceedings, although there are other options, such as entering into a separation agreement with your spouse.

There is only one ground for divorce: that the marriage has irretrievably broken down. However, you must prove irretrievable breakdown by showing one of five things:

1. That your spouse has committed adultery (usually proved by them admitting it).
2. That your spouse has behaved unreasonably.
3. That your spouse has deserted you for a period of two years.
4. That you and your spouse have been separated for two years and your spouse consents to the divorce.
5. That you and your spouse have been separated for five years.

Briefly, the procedure for a divorce is that one party will file a divorce petition with the court. The court will then send a copy to the other party, along with an acknowledgement form for them to complete and return to the court stating whether or not they intend to defend the divorce (defended divorces are extremely rare). If they do not defend, then the petitioner can apply for the divorce to proceed. If there are no problems, the court will fix a date for the pronouncement of the

decree nisi. Six weeks after the decree nisi the petitioner can apply for the decree absolute. Again, if there are no problems, the court will send a copy of the decree absolute to each party. It is normally possible for the divorce to go through without anyone having to attend the court.

### **Sorting out arrangements for children**

When a couple separate they will need to sort out arrangements as to with whom any dependent children will live, and what contact the children will have with the other parent. There are no hard and fast rules as to arrangements for children - the important thing is what is best for those particular children. They may, for example, spend most of their time with one parent, or they may share their time with both parents.

If arrangements cannot be agreed, then an application can be made to the court for the court to sort out the arrangements by making a child arrangements order. For further details relating to child arrangements orders and the factors that the court takes into account when deciding what type of order to make, see [this post](#).

### **Child maintenance**

When parents separate they should if possible try to sort out child maintenance arrangements between themselves by agreement. However, if they cannot reach an agreement then an application can be made to the Child Maintenance Service.

The Child Maintenance Service will calculate how much the non-resident parent should pay, by reference to a formula. It can then collect the maintenance from that parent and pay it to the parent with care of the child. The Service reviews the payment amount every year.

Generally, child maintenance payable through the Child Maintenance Service will last until the child reaches the age of 16, or while the child is aged under 20 and is in full-time secondary education.

However, child maintenance can be arranged through the courts for older children in tertiary education.

## **Sorting out finances on divorce**

When a married couple separate they will need to sort out a financial/property settlement, including what is to happen to the former matrimonial home, the division of any other money or property, whether one party should pay maintenance to the other and what should happen to any pensions.

If these things cannot be sorted out by agreement, either party may apply to the court for the court to sort them out. The court will then require both parties to disclose full details of their means, so that it can decide what type of orders would be appropriate.

For further information about the types of order that the court can make and for the factors that the court takes into account when coming to a decision, please see [this previous post](#).

## **Alternatives to court**

It is not always necessary to go to court to resolve a family law dispute. The matter can be resolved by agreement, by a variety of means, including:

Negotiation between the parties - Usually with the assistance of solicitors.

Mediation - Whereby a trained mediator will help the parties to reach an agreed settlement.

Collaborative law - Whereby each party appoints a collaboratively trained lawyer and then the parties and their lawyers meet face to face to try to agree a settlement.

Note that if an agreement is reached sorting out finances and property following a divorce, it will be necessary to request the court to incorporate the agreement into a court order.

## **Domestic violence**

No one should have to put up with domestic violence, which includes not just physical violence but also other forms of abuse, such as controlling behaviour.

If you are a victim of domestic violence, then you can apply to a court for an injunction order. The order can take one or both of two forms:

A non-molestation order - preventing the abuser from using or threatening violence against you. A breach of a non-molestation order is a criminal offence.

An occupation order - requiring the abuser to leave the house, or preventing them from returning there. Occupation orders usually have a 'power of arrest' attached to them, which means that the police may arrest anyone breaching the order.

## **Issues for unmarried couples**

When they separate, the law treats unmarried couples differently from married couples. There are two things in particular to note:

Firstly, if he was not married to the mother a father of a child does not automatically acquire parental responsibility for the child. He can, however, acquire it in various ways, for example if his name is on the child's birth certificate, if the mother agrees to him having it or if a court grants it to him.

Secondly, the rules relating to sorting out finances on divorce do not apply to unmarried couples. One party cannot claim maintenance for themselves from the other, and any property will generally remain with the person who owns it. It is possible in certain circumstances for one party to make a claim against the other's property, but the rules relating to such claims are complex, and legal advice should definitely be sought before making a claim.

## **Glossary of common legal terms**

*Affidavit* - A written statement, sworn by the writer to be true.

*Child arrangements order* - An order regulating arrangements relating to with whom a child is to live, spend time or otherwise have contact, and/or when a child is to live, spend time or otherwise have contact with any person.

*Clean break* - A financial/property order on divorce that ends all financial ties between the parties.

*Consent order* - An order made with the agreement of both parties. Usually refers to an order setting out an agreed financial/property settlement on divorce.

*Contact* - Refers to contact between a child and the parent with whom the child does not usually live. Includes visits, overnight stays and other types of contact such as via telephone, letters, texts and internet.

*Decree absolute* - The order finalising a divorce.

*Decree Nisi* - The order stating that the parties are entitled to a divorce.

*MIAM* - Abbreviation for 'Mediation Information and Assessment Meeting', used to see whether mediation could be used to resolve a dispute, rather than going to court. Anyone wishing to make an application to the court is required to attend a MIAM.

*Parental responsibility* - Defined as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'.

*Pension attachment* - An order following divorce, stating that one party will receive part of the other party's pension, when the other party receives it.

*Pension sharing* - An order following divorce, transferring a percentage of one party's pension to a pension in the name of the other party.

*Periodical payments* - Another term for maintenance.

*Petitioner* - The party who issues the divorce proceedings.

*Property adjustment order* - An order following divorce, adjusting the ownership of matrimonial property.

*Respondent* - Refers to the party who did not issue the court proceedings.

*Separation agreement* - A document setting out an agreement between spouses, relating to finances and/or arrangements for their children. Used where they have decided to separate but do not yet intend to commence divorce proceedings.

*Without prejudice* - Words used in an offer of settlement to ensure that the court cannot be informed of the offer.

## Useful organisations and websites

[Citizens Advice](#) - Provide advice online, by phone and in person.

[Cafcass](#) - The Children and Family Court Advisory and Support Service. Cafcass looks after the interests of children involved in family proceedings, including providing reports to help the courts decide what orders to make.

[Child Maintenance Options](#) - Provides information and support to help separated parents make decisions about their child maintenance arrangements.

[Child Maintenance Service](#) - Sorts out child maintenance when the parents can't agree. Part of the GOV.UK website (see below).

[Family Mediation Council](#) - Provides information on mediation and details of local mediators.

[Gingerbread](#) - Charity providing expert advice and support for single parents.

[GOV.UK](#) - Government services and information website. Includes many useful resources related to family breakdown including, in particular, a [section](#) on marriage, civil partnership and divorce.

[Relate](#) - Provides counselling, support and information for all relationships.

[Women's Aid](#) - Helps women and children who suffer domestic abuse.

To speak with a solicitor today call Selachii LLP on 020 7792 5649 or email [info@selachii.co.uk](mailto:info@selachii.co.uk)

Selachii LLP Solicitors

131C Kensington Church Street, London, W8 7LP

020 7792 5649

[www.selachii.co.uk](http://www.selachii.co.uk)