

5 Legal Considerations when Separating or Divorcing



This factsheet covers grounds of divorce, division of matrimonial property and new legislation introduced for cohabitants.

There are four ways that a marriage can break down irretrievably:

- Unreasonable behaviour
- Adultery
- Separation for at least one year where both parties consent to the divorce
- Separation for at least two years where there is no consent.

Date of Separation

This is usually defined as the date at which the couple start to live in different accommodation, although it is possible to live separately under the same roof. It is important because it is the date at which matrimonial assets are valued. It is also the date used to determine one or two years separation if this is being used as grounds for divorce.

Aliment

Aliment is maintenance paid by one partner to, and for the other, on separation. It is not an automatic entitlement but a court can instruct this payment if financial need is established. It is awarded until the circumstances of the person receiving it change but not normally for more than three years.

Division of Matrimonial Property

Any goods or property acquired during the marriage are presumed to be owned jointly. Gifts or inherited goods belong to the person who received them as do goods acquired prior to the marriage. (See Factsheet 6 Housing: Options for Lone Parents)

Debts

Neither partner is liable for the other's debts unless one acted as guarantor for the other or agreed to a joint liability. However, a partner can be liable for certain debts (Council Tax, Social Fund Loan).

Although no bank or finance company can

pursue a debt that is not in your name when a relationship breaks down, one spouse can hold the other responsible for a share of a debt not in their name if it was incurred for matrimonial purposes. If in doubt, seek legal advice.

Cohabitation

Prior to the introduction of the Family Law Reform in Scotland on 4th May 2006, cohabiting couples had no right to claim against each other. Now cohabiting couples can make a claim, even if they began living together prior to the Act.

Cohabitation may end in one of two ways (separation or death) and the legislation is different for each of these. Where cohabitants separate, they are not automatically liable to maintain an ex-partner financially unless they have an agreement to do so.

However, a former cohabitee may apply to the court for a limited financial settlement. This could be because the partner was financially disadvantaged by the separation or to take into account the costs of caring for child/ren under 16 years. This claim must be lodged within one year of the relationship ending.

When considering a claim, the court will take into account the length of time a couple have lived together. The house will not be taken into account. Claims should be for a capital sum but this may be paid by instalments. There is a presumption that each cohabitant has an equal share of any household goods acquired during the cohabitation.

Where one cohabitee dies and leaves a will, the other has no claim unless something has been left to them in the will. Any children of the person who has died will have inheritance rights but step-children have no rights, unless this is specifically mentioned in the will. The surviving partner does, however, have a

April 2008

All factsheets are available free to lone parents.

Ring 0808 801 0323 for copies or see www.opfs.org.uk

claim on the home up to £300,000 in line with widow(er)s. Any claim must be lodged within 6 months. After 6 months the claim totally vanishes.

The pursuer must be cohabiting at the time of death. Any award made by the court is discretionary and comes out of the net estate.

How will the courts determine if a couple have cohabited?

The courts will consider the following when determining whether a couple have cohabited:

- If they have lived in the same household.
- If they have had a sexual relationship.
- Their financial arrangements.
- How stable their relationship has been.
- If they have children or have accepted children into the household.

Taking Out a Life Assurance Policy

If a lone parent wants to take out life assurance purely on their ex-partner they can only do so if there is an 'insurable interest'. In other words the person wanting to take out the policy must show that they would suffer financial difficulties if the insured person dies.