Wills and Divorce

Until your divorce is finalised the existing Will is still valid. Your spouse is probably still named as an executor and main beneficiary. You are unlikely to want this now.

When your divorce is finalised your former spouse is treated as if having "died" on the day the decree absolute is granted by the Court, so will not inherit even if he or she is still named as a beneficiary. However it is still advisable to make a new Will because your existing Will is unlikely to be appropriate to your new circumstances.

Do you still own your property jointly?
There are two ways you can own your property: it can either be held as 'Joint Tenants' or 'Tenants in Common'. In a Joint Tenancy when one of you dies the survivor automatically becomes the owner. This means that property held as Joint Tenants cannot be left in a Will. It is common for married couples to buy property as Joint Tenants. If you are going through a divorce you may wish to sever the Joint Tenancy and own your property as 'Tenants in Common'.

Tenants in Common own the property jointly but you each own a distinct share. This is normally split half and half but it doesn't have to be. You are able to leave your distinct share of the property to whoever you choose in your Will.

It is very easy to sever a Joint Tenancy and can be done by just one party.

What happens if you don't have a Will?
If you die without having written a will you are "intestate". The intestacy rules state that until divorce your spouse will receive a substantial sum. The amount will depend on whether or not you have children. After divorce the main beneficiaries will be your children, but if you don't have children your assets will pass to your parents. If your parents are already dead your siblings will inherit, then more remote relatives.

You should always have a Will because:
1. You decide who will receive the benefits from your estate – the intestacy rules may not always be appropriate;
2. If you have a new partner but are not married he or she will receive nothing unless you make a will;
3. You can make the best use of allowances to reduce the amount of Inheritance Tax to be paid;
4. If you have children, you can nominate who you choose to care for them – though your former spouse will have rights before any guardian you nominate;
5. If you have no surviving relatives, everything could automatically pass to the government;
6. You can decide to leave a donation to charity.

What if you are an ex-pat?
You still need a Will to cover your UK assets. It may also cover the assets you own in your adopted country, but this will depend on the succession laws of that country.

Conclusion
If you have a Will, it should be reviewed on separation. If you don't have a Will, you should make one now. To arrange an appointment please call Graham Jones of Tudor Wills and Trusts Ltd on 07450 702297