Court of the Seneschal

General Guidance — Divorce

This note gives a brief outline of the divorce procedure for people resident in Sark. Divorce proceedings are dealt with by the **Matrimonial Causes Division of the Royal Court of Guernsey**, under the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022.

It is intended only as general guidance. Individual circumstances may require legal advice.

1. Can I apply for a divorce in the Bailiwick?

The Royal Court will normally have jurisdiction where either spouse:

- has been habitually resident in the Bailiwick for at least one year; or
- is domiciled in the Bailiwick.

There are some additional jurisdictional provisions for particular circumstances. Anyone unsure whether the Royal Court has jurisdiction should seek advice before applying.

2. Do I need to give a reason for the divorce?

No.

Divorce in the Bailiwick is now on a **no-fault basis**. The only ground is that the marriage has broken down irretrievably.

It is no longer necessary to establish adultery, unreasonable behaviour, desertion or a particular period of separation. A statement that the marriage has broken down irretrievably is sufficient for this purpose.

An application can be made either:

- by **one spouse alone**; or
- **jointly by both spouses**.

Where both parties agree to divorce, a joint application is generally procedurally simpler because there is no need to prove formal service of the application upon the other spouse.

3. Do I need an advocate?

Not necessarily.

The divorce forms are designed so that an application can be made without employing an advocate. They are available from the Royal Court Greffe.

However, obtaining legal advice may be sensible where there are questions concerning property, pensions, businesses, maintenance, children or other financial matters.

4. Starting the divorce

A sole application is made using **Form 1** and a joint application using **Form 4**.

The application normally needs to be accompanied by documents including:

- a certified copy of the marriage certificate;
- details of any previous Court orders concerning the marriage or children;
- evidence of any relevant changes of name; and
- where there are children, a **Statement of Arrangements for Children (Form 9)**.

The applicant or applicants must swear or affirm that the information in the application is true before an authorised person.

For a person in Sark, this may be done before the **Sénéchal of Sark**, as well as before an advocate, notary public or Jurat.

5. What happens if only one spouse applies?

The application does not require the agreement of the other spouse.

Where only one spouse applies, copies of the appropriate documents must be formally served upon the other spouse. The other spouse is then required to acknowledge receipt.

The divorce itself cannot normally be opposed simply because the other spouse does not wish to divorce. Challenges are essentially limited to matters such as whether the marriage is legally valid or whether the Royal Court has jurisdiction.

A **joint application** avoids much of this additional procedure.

6. The provisional divorce order

The divorce takes place in two stages.

The first is the **provisional order**.

An application for the provisional order is made using **Form 10**. Ordinarily, the Court cannot make that order until at least **60 days after the original divorce application was filed**.

Neither the parties nor their advocates would normally need to attend Court unless the Court specifically requires attendance.

7. The final divorce order

After the provisional order has been made, at least a further **28 days** must normally pass before an application can be made for the final order.

The marriage legally ends when the **final order** is made.

The theoretical minimum time for an uncomplicated divorce is therefore approximately **three months from the original application**, although administrative time and any unresolved questions concerning finances or children may make the actual period longer.

8. What if there are children?

Having children does not prevent the parents from making a joint or otherwise straightforward divorce application.

A **Statement of Arrangements for Children (Form 9)** must be provided, giving the Court information about the arrangements being made for them.

The Royal Court must be satisfied about the arrangements for the children before granting the final divorce order.

For children in Sark, questions concerning parental responsibility, residence, contact and their general welfare are governed by the **Children (Sark) Law, 2016**. That Law provides the statutory framework for private family proceedings concerning Sark children and places the child's welfare at the centre of such decisions.

Where both parents agree upon the arrangements and those arrangements are working satisfactorily, this does **not automatically mean that a separate Court order concerning the children is required**. The arrangements should nevertheless be fully disclosed as part of the divorce application.

If there is a disagreement about residence, contact, parental responsibility or another significant matter affecting a child, separate legal advice may be appropriate.

9. Property and finances

The divorce itself ends the marriage, but it does not necessarily resolve every financial issue between the parties.

Possible financial matters include:

- the family home or other property;
- savings and investments;
- pensions;
- debts;
- maintenance;
- business interests; and
- other matrimonial assets.

Even where the parties have agreed between themselves how everything will be divided, it may be sensible to obtain advice about whether that agreement should be recorded in a **formal consent order**.

This can be particularly important because simply obtaining the final divorce order does not necessarily amount to a complete and final settlement of every financial claim between former spouses. The Royal Court has separate powers to make financial and property orders in connection with divorce proceedings.

10. Costs

There are Court fees payable during the divorce process.

Court fees are revised periodically, so the **current fee should be confirmed with the Royal Court Greffe when the application forms are obtained**.

An advocate is not compulsory for an ordinary divorce application.

If an advocate is instructed, their charges will depend substantially upon the amount of work required. A straightforward agreed divorce requiring only advice or checking of paperwork is likely to involve considerably less legal work than a case involving negotiations over property, pensions, maintenance or children.

Legal cost assistance may be available in some circumstances and should be discussed directly with an advocate.

In brief

For a straightforward divorce where both spouses agree, the usual course is:

Joint application (Form 4)

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Statement concerning any children (Form 9)

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Wait at least 60 days

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Apply for provisional order (Form 10)

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Wait at least 28 days

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Apply for final order

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Marriage legally dissolved

Where the parties agree about the divorce, arrangements for their children and their finances, the process can therefore be relatively straightforward and it is possible to complete the divorce without an advocate.

Where there is disagreement, substantial property or financial interests, an international element, uncertainty about jurisdiction, or difficulty concerning the arrangements for children, independent legal advice should be obtained.