

Marriage or Relationship Breakdown

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Introduction

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- The divorce or separation itself
- The care and maintenance of children
- Financial, tax and property matters

Divorce or Separation

To apply for a divorce you must have been married for a year. The only ground for divorce is that the marriage has "irretrievably broken down". We can explain what needs to be proved and how the divorce is progressed.

Sometimes a divorce is inappropriate, and as an alternative you may petition for judicial separation. A decree of judicial separation does not bring the marriage to an end. It does however give legal formality to separation and enables the court to make orders about children, money and property.

There is often no need to go to court, unless there is a dispute between your partner and yourself which cannot be resolved regarding children and the financial aspects.

Many couples may also wish to be advised on the opportunities that exist for mediation or conciliation procedures.

Living Together

Increasingly couples do not marry but live together. There are many misunderstandings about "common law" rights that are widely thought to exist. Many people believe that after they have lived together for a certain length of time they acquire some special status that gives them rights similar to those of a married couple. This is not so.

If an unmarried relationship breaks down, legal advice is important to protect one's rights concerning property and any children. The making of Wills and arranging one's affairs at an early stage can avoid uncertainty and unnecessary disputes in the future. (For further information see our separate "Living Together" leaflet)

Children Act 1989

Effective since October 1991, this statute abolished previous concepts of custody and access, replacing them by more flexible residence and contact orders (for which grandparents and other relatives can also now apply).

Courts have a duty not to make orders unless they are in a child's best interests.

We can also advise unmarried fathers on the importance of acquiring parental responsibility.

Child Support Act 1991

Since April 1993 there has been a radical change in family financial provision, by removing issues relating to child maintenance from the jurisdiction of the courts, and passing it to the Child Support Agency. The intention of the Act was to ensure that absent parents contributed to the maintenance of their children. For calculations made after 3rd March 2003, the absent parent will pay a fixed percentage of their net monthly income to the parent with care of the children. The exact percentage will depend upon how many children there are in the family. Allowances can be made if the absent parent has the children overnight a certain number of times a year or if the absent parent has had children within a new relationship.

We can advise what you might expect to receive or may have to pay in any given case, so please consult us at the first opportunity to consider these and the effect the Act may have on your situation.

Financial Provision

The division of property and financial arrangements are invariably of prime

concern. There are many questions to be addressed, for example:

- If you are entitled to benefits under a spouse's pension scheme, what is your position on divorce?
- Does your spouse own the house that you live in? If so, how do you protect your rights of occupation and what are you entitled to?

When advising you we consider the long term view including guidance on the ensuing tax considerations and on setting up your own pension. This is made easier by the introduction of pension sharing and is available to those who petition for divorce on or after 1st December 2000. For the first time, pension rights can be split on divorce. This enables a former spouse to set up their own independent pension scheme.

To assist us in negotiating to your best advantage, we will need as much information as possible on the available financial resources. Through our professional contacts we can then provide totally independent advice on the investment of any cash settlement you may receive.

Making a Will

Where there has been a divorce or judicial separation a former spouse will no longer have an automatic right to inherit under an existing Will. Any person involved in the breakdown of a relationship should consider making a new Will or revising an existing one.

How can Warners Help You?

Very often, clients simply want to know what the ground rules are and how they would stand legally when personal relationships and family matters have reached a stage which they cannot resolve themselves. In times of emotional stress, we aim to provide objective but sympathetic advice to help you resolve your problems. We will also explain to you at the outset exactly how our fees are calculated so that you will know what cost to expect. Please contact one of our specialist lawyers for further advice.