

Alternatives to divorce

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On separation, there are a number of alternatives to issuing divorce proceedings. These are some examples:

Do nothing

One of the many myths about divorce is that you have to do something legal upon separation. The truth is that when you separate there are usually many options available, but you do not have to do anything unless you choose to do so.

If you are contemplating separation or divorce or are separated, then we would recommend that you take expert legal advice from a family law specialist as soon as possible. The advocate will set out all the options available to you so that you can make an informed decision about whether to take action.

Judicial separation by consent

In Guernsey law, there are two very different types of proceedings each called Judicial Separation.

The first kind of Judicial Separation proceedings is usually referred to as a Decree of Judicial Separation. This is dealt with in the paragraph below.

The second kind of Judicial Separation is sometimes called Judicial Separation by Consent. Some refer to it as a legal separation.

Judicial Separations by Consent are very common in Guernsey. They are unique to the island and present a quick and cost effective way of securing an agreement in relation to children and finances. Clearly, a Judicial Separation can only be made where everything is agreed. If not, then you cannot have a Judicial Separation.

If there is a good way to separate then Judicial Separation by Consent is the best way, followed two years later by a divorce on the grounds of two years' separation with consent. Judicial Separations are relatively quick and straightforward and are particularly useful in cases where the parties wish to separate on entirely amicable terms.

See Judicial Separation.

Decree of Judicial Separation

A petition for a Decree of Judicial Separation is similar to divorce proceedings, in that a formal petition is presented to the Court. The grounds for a Judicial Separation are the same as divorce, see Grounds for divorce. The petition itself is identical, save that the Prayer in the petition is amended to seek a Decree of Judicial Separation rather than dissolution of marriage.

The main procedural difference between divorce and Judicial Separation is that there is no Provisional hearing of a Decree of Judicial Separation. After 60 days, the Court will grant a Decree of Judicial Separation as long as it is satisfied that the grounds of the petition are made out. This requires a short hearing attended only by the petitioner's advocate.

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The legal effect of a Decree of Judicial Separation is that it relieves the parties of the duty to cohabit but, unlike divorce, you are still married at the conclusion of the proceedings.

Petitions for Judicial Separation are relatively rare in practice and are usually reserved for individuals who have religious objections to obtaining a divorce.

Further, petitions for a Decree of Judicial Separation are sometimes issued in preference to a divorce petition by a party seeking to preserve their rights under their spouse's pension. At the conclusion of Judicial Separation proceedings, the parties are not divorced and may retain rights to their spouse's pension such as death in service. Pensions on divorce are complex and if you have any doubt as to your position, you must seek appropriate legal advice.

Another aspect of Judicial Separation proceedings is that applications for financial provision (ie, lump sum, maintenance or vesting of property) can be issued once a petition of Judicial Separation has been filed.

Applications to the Magistrate's Court

It is possible for a spouse to issue an application for spousal and/or child maintenance before the Magistrate's Court. These are stand alone proceedings which do not require the issue of a divorce petition. Such proceedings can be useful in circumstances where the party is seeking maintenance, but where there are no immediate grounds for divorce.