

**Form
49.73-A
(SPA)**

**Under the Divorce (Scotland) Act 1976, Section 1(2)(d)
Simplified Procedure**

Court of Session
General Department
Parliament House
Edinburgh EH1 1RQ
Tel: 0131 225 2595

**APPLICATION FOR DIVORCE (WITH CONSENT OF OTHER PARTY TO THE
MARRIAGE)
SPOUSES HAVING LIVED APART FOR AT LEAST ONE YEAR**

Before completing this form, you should have read the leaflet entitled "Do it yourself Divorce", which explains the circumstances in which divorce may be sought by that method. If simplified procedure appears to suit your circumstances, you may use this form to apply for divorce.

Below you will find directions designed to assist you with your application.

Please follow them carefully. In the event of difficulty, you may contact the Court's General Department at the above address or any Citizens Advice Bureau.

Directions for making Applications

WRITE IN INK, USING BLOCK CAPITALS

- | | |
|--|---|
| Application
(Part 1) | 1. Complete and sign Part 1 of the Form (pages 3-7), paying particular attention to the notes opposite each section. |
| Consent of
Spouse (Part 2) | 2. When you have filled in Part 1 of the form, send the form to your spouse for completion of the consent at Part 2 (page 9). |
| <p>NOTE: If your spouse does NOT complete and sign the form of consent, your application cannot proceed further under the simplified procedure. In that event, if you still wish to obtain a divorce, you should consult a solicitor.</p> | |
| Affidavit
(Part 3) | 3. When the application has been returned to you with the Consent (Part 2) duly completed and signed, you should then take the form to a Justice of the Peace, Notary Public, Commissioner for Oaths or other duly authorised person so that your affidavit in Part 3 (page 10) may be completed and sworn. |
| Returning
completed
Application
Form to Court | 4. When directions 1-3 above have all been carried out, your application is now ready to be sent to the court at the above address. With it you must enclose:

(i) Your marriage certificate (the document headed "Extract of an entry in a Register of Marriages"), which will be returned to you in due course, and

(ii) Either a cheque or postal order for the court fee, crossed and made payable to "Scottish Court and Tribunals Service" or a completed form SP15 claiming exemption from the Court fee.

5. Receipt of your application will be promptly acknowledged. Should you wish to withdraw the application for any reason, please contact the Court of Session immediately. |

**THE NOTES ON THIS AND THE FOLLOWING PAGES ARE DESIGNED TO ASSIST YOU.
PLEASE READ THEM CAREFULLY BEFORE COMPLETING EACH SECTION OF THE FORM.**

Notes on Sections 1 and 2 opposite

- (i) The names entered in Sections 1 and 2 opposite should be those shown on your marriage certificate. If you are known by another name which does not appear on that certificate, please write that name in brackets.
 - (ii) Home addresses should be given where these are known. The Court is required by law to serve a copy of this application on your spouse.
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Notes on Section 3 opposite

“Domiciled” means that the person concerned regards Scotland as his/her permanent home and intends to live permanently in Scotland in the foreseeable future.

PART I

WRITE IN INK USING BLOCK CAPITALS

1. NAME AND ADDRESS OF APPLICANT

Surname _____

Other name(s) in full _____

Present Address _____

Daytime telephone number (if any)

2. NAME AND ADDRESS OF HUSBAND/WIFE

Surname _____

Other name(s) in full _____

Present Address _____

Daytime telephone number (if any)

3. JURISDICTION

Please indicate with a tick in the appropriate box or boxes which of the following apply:

- (i) I am domiciled in Scotland on the date I signed this application
- (ii) My spouse is domiciled in Scotland on the date I signed this application
- (iii) I was habitually resident in Scotland throughout the period of one year ending with the date I signed this application
- (iv) My spouse was habitually resident in Scotland throughout the period of one year ending with the date I signed this application

Notes on Section 4 opposite

You will be able to obtain these details from your marriage certificate (extract entry in the register of marriages) which must accompany this application form, when you send it to the court.

A photocopy of the marriage certificate will NOT be accepted. If you cannot find the original, you should apply for an official copy to:

National Records of Scotland, Registration Section, New Register House, Edinburgh EH1 3YT, or the office where the marriage was registered,

stating both spouses' full names, and the date and place of the marriage.

(Note that the Registrar will charge a fee for this service.)

Notes of Section 5 opposite

You and your spouse must have lived apart from each other for a continuous period of at least one year after the date of your marriage and immediately before the date of this application.

This minimum period of one year's separation is extended if you and your spouse have lived together again for **not more than six months in all** during that one year period. For example, if you lived together for three months in total during the one year period, then you should not complete this application until one year and three months have elapsed from the date of your original separation.

Notes on Section 6 opposite

Is there a reasonable chance that you can still settle the differences with your spouse and resume normal married life?

Are you satisfied that there is now no possibility of the marriage succeeding?

Notes on Section 7 opposite

If your spouse is not prepared to sign the form of consent at Part 2 of this application, you will not obtain a divorce by this method.

Note on Section 9 opposite

“Children of the marriage” includes any adopted children and/or children accepted into the family.

Notes on Section 11 opposite

No claim can be made in this form of divorce application for payment to you of a periodical allowance (*i.e.* regular payment of money weekly, monthly etc for your maintenance) or a capital sum (*i.e.* lump sum). If you wish to make such a claim, you should consult a solicitor.

NOTE: While it may be possible to obtain an order for periodical allowance after divorce, the right to payment of a capital sum is lost once decree of divorce is granted.

No application can be made in this form of divorce application for postponement of decree under section 3A of the Divorce (Scotland) Act 1976. On an application under that section, the court may postpone the grant of decree of divorce if it is satisfied that:

- (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of that religion of that marriage; and
- (b) the other party can act so as to remove or enable or contribute to the removal of, the impediment which prevents that marriage.

As at 26th February 2007 “religious marriage” for the purposes of section 3A of the Divorce (Scotland) Act 1976 means a marriage solemnised by a celebrant of any Hebrew congregation (*i.e.* a Jewish marriage) (S.S.I. 2006/253).

If you wish to make such an application you should consult a solicitor or Citizens’ Advice Bureau.

9. CHILDREN

Are there any children of the marriage under the age of 16? *(Tick box which applies)*

YES

NO

10. OTHER COURT ACTIONS

Are you aware of any court actions currently proceeding in any country (including Scotland) which may affect your marriage? *(Tick box which applies)*

YES

NO

(If yes, give details)

11. DECLARATION AND REQUEST FOR DIVORCE

I confirm that the facts stated in Sections 1 – 10 above apply to my marriage.

I do NOT ask the Court to make any financial awards in connection with this application.

I do NOT ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976.

I request the Court to grant decree of divorce from my spouse.

(Date) _____ (Signature of applicant) _____

IMPORTANT – Part 1 MUST be completed, signed and dated before sending the application form to your spouse.

NOTES ON COMPLETING PART 2 OPPOSITE (PAGE 9)

1. Read over carefully PART 1 (pages 3-7) of this application, which has already been completed by your spouse.

2. Financial Provisions

Please note that in Section 11 of Part 1, the Applicant states that he/she does NOT claim any financial awards by way of periodical allowance or capital sum. You also are required to state (items (c) and (d) opposite) that you make no claim upon the Applicant for payment of a periodical allowance or capital sum.

Note: While it may be possible to obtain an order for **periodical allowance** after divorce, the right to payment of a **capital sum** is lost once decree of divorce is granted.

2A. Postponement of decree

Please note that no application can be made in this form of divorce application for postponement of decree under section 3A of the Divorce (Scotland) Act 1976. On an application under that section, the court may postpone the grant of decree of divorce if it is satisfied that:

- (a) the applicant is prevented from entering into a religious marriage by virtue of a requirement of the religion of that marriage; and
- (b) the other party can act so as to remove or enable or contribute to the removal of, the impediment which prevents that marriage.

As at 26th February 2007 “religious marriage” for the purposes of section 3A of the Divorce (Scotland) Act 1976 means a marriage solemnised by a celebrant of any Hebrew congregation (i.e. a Jewish marriage) (S.S.I. 2006/253).

In Section 11 of Part I, the Applicant states that he/she does not apply for postponement of decree under section 3A of the Divorce (Scotland) Act 1976. You are also required to state (item (f) opposite) that you make no such application.

3. Warning

Divorce may result in the loss to you of property rights (e.g. the right to succeed to the Applicant’s estate on his/her death) or the right, where appropriate, to a widow’s pension.

(If you are in doubt about signing this form of consent, you should consult a solicitor.)

NOTICE TO CONSENTING SPOUSE PART 2

CONSENT TO APPLICATION FOR DIVORCE (SPOUSE HAVING LIVED APART FOR AT LEAST ONE YEAR)

In Part 1 of the enclosed application form your spouse is applying for divorce on the ground that the marriage has broken down irretrievably because you and he (or she) have lived apart for at least one year and you consent to the divorce being granted.

Such consent must be given formally in writing at Part 2 of the application form. BEFORE completing that part, you are requested to read it over carefully so that you understand the effect of consenting to divorce. Thereafter if you wish to consent:

- (a) check the details given by the Applicant at Part 1 of the form to ensure that they are correct to the best of your knowledge;
- (b) complete Part 2 (Consent by Applicant’s spouse to divorce) by entering your name and address at the appropriate place and adding your signature and the date; and
- (c) return the whole application form to your spouse at the address given in Part 1.

Once your spouse has completed the remainder of the form and has submitted it to the court, a copy of the whole application (including your consent) will later be served upon you formally by the court.

In the event of the divorce being granted, you will automatically be sent a copy of the extract decree. (Should you change your address before receiving the copy extract decree, please notify the court immediately.)

If you do NOT wish to consent, please return the application form, with Part 2 uncompleted, to your spouse and advise him or her of your decision.

The court will NOT grant a divorce on this application if Part 2 of the form is not completed by you.

Court of Session
General Department
Parliament House
Edinburgh EH1 1RQ

Tel: 0131 240 6741

PART 2

CONSENT BY APPLICANT'S SPOUSE TO DIVORCE

NOTE:

Before completing this Part of the form, please read Part 1 and the notes opposite (page 8).

I _____
(Full names, in **BLOCK** letters, of Applicant's spouse)

residing at

(Address, also in **BLOCK** letters)

HEREBY STATE THAT

- a. I have read Part 1 of this application;
- b. The Applicant has lived apart from me for a continuous period of 1 year immediately preceding the date of the application (Section 11 of Part 1);
- c. I do not ask the court to make any order for payment to me by the Applicant of a periodical allowance (*i.e.* a regular payment of money weekly or monthly, etc for maintenance),
- d. I do not ask the court to make any order for payment to me by the Applicant of a capital sum (*i.e.* a lump sum payment);
- e. I understand that divorce may result in the loss to me of property rights;
- f. I do not ask the court to postpone the grant of decree under section 3A of the Divorce (Scotland) Act 1976; and
- g. **I CONSENT TO DECREE OF DIVORCE BEING GRANTED IN RESPECT OF THIS APPLICATION.**

(Date) _____ (Signature) _____

NOTE: You may withdraw your consent, even after giving it, at any time before divorce is granted by the court. Should you wish to do so, you must immediately advise:

Court of Session
General Department
Parliament House
Edinburgh EH1 1RQ

Tel: 0131 225 2595

PART 3

APPLICANT'S AFFIDAVIT

To be completed only after Parts 1 and 2 have been signed and dated.

I, *(insert Applicant's full name)* _____
residing at *(insert Applicant's present home address)* _____
Town _____
Country _____

SWEAR that to the best of my knowledge and belief:

- (1) the facts stated in Part 1 of this Application are true; and
- (2) the signature in Part 2 of this Application is that of my husband/wife.

Signature of applicant _____

To be completed by Justice of the Peace, Notary Public, or Commissioner for Oaths

SWORN at *(place)* _____
this _____ day off _____ 20____
before me *(full name)* _____
(full address) _____

Signature _____
*Justice of the Peace/*Notary Public/*Commissioner for Oaths

* Delete where not applicable