

**OFFICE OF THE STAFF JUDGE ADVOCATE
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DIVORCE IN THE U.K.

Jurisdiction

The jurisdiction to grant a divorce in England or Wales depends upon whether at least one of the parties to the marriage has sufficient connection with the country. England and Wales form one legal jurisdiction within the United Kingdom. (Note that this is stated "England or Wales" because Scotland is a separate legal jurisdiction; therefore, the question is whether one of the parties to the marriage has sufficient connection with the country of Scotland.)

Generally, English courts have jurisdiction to grant a divorce if either spouse:

- (a) is domiciled in England or Wales when the proceedings begun; or
- (b) is habitually resident in England or Wales throughout the period of one year ending with the date on which proceedings are begun.

The second condition can suit anyone from any nationality, regardless of where the marriage occurred to obtain a divorce in England so long as they have been a resident for the qualifying period.

The difference for paragraph (a) surrounds "domiciled" which is not the same as "resident" and is *much* broader of a term. This is what enables many who reside overseas to obtain a divorce in England although they do not actually live here at the moment. Naturally, one must have sufficient connection with the country to establish the necessary domicile, but it is important to understand that one does not have to physically be in England in order to obtain a divorce.

Filing for divorce in the U.K. may have consequences on military retirement benefits. It is also important to remember that the Defense Financial Accounting Services (DFAS) will not recognize a foreign divorce or court order. It is therefore the responsibility of the parties to file their foreign order(s) in the United States to be effective, however, only if, either party is entitled DFAS benefits.

What happens when both the U.S. and U.K. issue a divorce decree?

This situation typically arises when one party, for example the active duty member, files for divorce in the UK. They may do this because he or she has been a resident in the U.K. for at least one year immediately preceding the filing of the divorce petition. It will not matter if both parties are American or whether they were married in the United States or anywhere outside the U.K.

The spouse will likely return to the U.S. before the divorce proceedings have been concluded. The spouse may file a divorce petition in the U.S. and is most likely entitled to benefits based on their American domicile. However, specifics will depend on the law of the particular filing state. If this is the case, there are now two divorce petitions legitimately pending and the English court will have to decide which should proceed.

There are rules about how cases such as this should be decided. If the wife in the above example wanted the proceedings to be heard and determined in the U.S. (for example, because she wanted a pre-marital agreement enforced), then she would be required to apply to the English divorce court to “stay” the husband's divorce petition. If she were successful in the application the husband would then be prevented from proceeding with the divorce in England and the US court decision would proceed.

The English courts decide questions such as these depending on the "balance of convenience." In the above example, one of the factors that would be weighed is whether both parties are American. However, there may be a difference if one spouse were English and the other American as might easily be the case.

Another consideration is how long the couple lived in England, where the bulk of their property remains, whether there were any children and, if so, where they are. After weighing the factors, the court would decide whether it was better for the divorce to proceed in England or the US. These are some of the factors that are taken into account when there is a conflict of jurisdiction. There are no definitive answers, since each case depends on independent facts.

Grounds

Divorce in England & Wales is based on "irretrievable breakdown" of the marriage but this breakdown must be proved by evidence of one of five "facts":

- (a) Adultery;
- (b) Unreasonable behavior;
- (c) Desertion;
- (d) Two years' separation with consent; or
- (e) Five years' separation without consent.

"Unreasonable behavior" is the most frequent ground for divorce in English divorce law. This is behavior that covers extreme types of behavior such as habitual drunkenness or violence but it by no means is necessary to allege anything as serious in a divorce petition. A few paragraphs of the behavior are usually sufficient and instances of unreasonable behavior which will suffice for the purposes of obtaining a divorce are obtainable. Moreover, it is important to understand that the courts are not demanding about the particulars where the parties have agreed to a divorce. Three of these grounds – desertion, two and five years' separation – involve considerable periods of delay before obtaining a divorce is possible. At least two years in the case of the first two and five years in the case of the last. Similarly, the parties cannot use adultery if there has been none. This means that "unreasonable behavior" is the chosen route for couples that want an "instant" divorce in cases where no adultery has occurred.

People often approach a solicitor/lawyer and state the desire for a divorce based on "irreconcilable differences." This is often because one or both parties are unhappy in their marriage and want to bring it to an end. To obtain a divorce on this ground, English law insists that (a) the marriage has broken down irretrievably and (b) one of the parties to the marriage have behaved in an unreasonable manner that the other finds it intolerable to live as their spouse. Although this sounds difficult to prove, in reality, courts do not set a very demanding standard and it is not normally difficult to find examples of "unreasonable behavior" sufficient to satisfy a court that the marriage has broken down.

If the parties have *not* agreed to a divorce the requirements of the courts are stricter. Here, the allegations will be subject to scrutiny, but in the overwhelming majority of cases the allegations are unchallenged because very few divorces are defended.

Time Limits

Generally, when the parties reside together, one must present a divorce petition within six months from the last incident of unreasonable behavior relied upon. There are two reasons for this- first, because it is easy to accept unreasonable behavior (as this is often the case of many people). The second reason is rather more important, because it is a rule of law. In the case where one of the complaining party leaves the issue undealt with for too long, the parties may be required to wait two years from the date of the separation before a petition for divorce can be issued, which is dependent on *consent*. However, if the consent is not forthcoming, the person who wants the divorce may be required to wait until the separation has lasted five years or his/her spouse relents. Therefore it is important to keep the time limits in mind.

People often think they can get a divorce based simply upon "irreconcilable differences." The truth of the matter is that this usually means "unreasonable behavior." In order to obtain a divorce on the ground of unreasonable behavior, one has to comply with the rules applicable to that particular ground to include time limits.

Process

Divorce procedures in the U.S. are substantially different than those in the U.K. In the United States, the division of assets, liability and child custody is handled as part of the same divorce case. Usually, the divorce is not final until all of the above issues have been ruled on by a judge and in the divorce decree. In the United Kingdom, these are two separate actions. There is an action for divorce (dissolution of the union) and a separate action for the division of marital property and child custody/visitation. You can have the marriage dissolved without a decision regarding liability and asset distribution. If you are considering a divorce in the United Kingdom, it is important to seek advice from a local solicitor.

Representation

Air Force attorneys are not authorized to represent individuals eligible for legal assistance in civil court, whether back in the U.S. or in the U.K. Additionally, most legal assistance attorneys are not licensed to practice law in the U.K., and therefore can only offer limited services in advising on rights and obligations. However, the legal office maintains a current list of local solicitors willing to assist in this process should you consider filing for divorce in the U.K.

RAF Lakenheath Legal Assistance App

For a copy of this pamphlet, as well as other helpful pamphlets, please go to the 48 FW Phone App, click on “J.A.G.” at the bottom, and then click on “forms and documents.”

RAF Lakenheath Legal Office Hours

Legal Assistance/Wills (**By appointment only**)

Tuesday 0900-1100 and Thursday 1300-1500

Call **0163852-3553 (226-3553)** or email 48fw.ja@us.af.mil

Powers of Attorney/Notary Service (No appointment necessary).

Monday-Wednesday & Friday 0830 – 1530; Thursday 0930-1530