

Many Air Force members and their spouses incorrectly believe they cannot obtain a divorce in England. The following information lists the basic requirements of eligibility for filing for divorce in England. You must have a marriage that is legally recognized in the UK – this includes same sex marriage. A petition for divorce may only be filed after the couple has been married for at least one year.

### **Residency Requirements**

At the time a person (“petitioner”) files for divorce in English Court, he or she must be:

- a. “Legally domiciled” in England.  
Essentially, this means that England is the petitioner’s permanent home country, and he or she intends that it will remain so in the future; OR
- b. A resident in England for a period of at least one year. (Short periods of absences such as TDYs and leave are disregarded in computing the one-year period.)

Citizenship, nationality or the fact that neither the husband nor the wife were born in England are irrelevant. Therefore, nearly all Air Force personnel or dependent spouses would fall under category “b” above after they have been in England for one year. Under NATO Status of Forces Agreement, the U.K. will not grant domicile, based on U.S. military residence.

### **Grounds for Divorce in the United Kingdom**

You must be able to prove to the court that you have reasons for ending the marriage. The expression the court will use is that the marriage has “irretrievably broken down.” The court will accept one or more of the following grounds as proof:

- a. The spouse (respondent) has committed adultery, and the petitioner finds it intolerable to live with the respondent. You must convince the court that it is intolerable to continue the marriage. If the adultery is forgiven and the parties continue to live together for over six months as husband and wife, this adultery cannot be grounds for divorce.
- b. The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- c. Respondent has left you – also known as desertion- this includes if you have lived with your ex-partner for 6 months in the last two years. Desertion can be found when one spouse makes life so difficult that the other spouse is forced out.
- d. The parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition, and the respondent consents to the divorce. The separations must be voluntary, not involuntary absences.
- e. The respondent and petitioner have lived apart for at least five years – this can be used when the spouses do not consent to the divorce.

It is important to note that the petitioner must be prepared to prove, by competent evidence, the facts which support at least one of the five circumstances that the marriage has irretrievably broken down.

### **Specific United Kingdom Divorce Rules**

A divorce petition cannot be filed within one year of the date of marriage.

An uncontested divorce can take four to six months. Contested cases, especially those involving children, can take much longer.

Separate from filing for a divorce you need to work out Arrangements for looking after any children, Child maintenance payments. How you money and property will be divided.

English courts do not award “custody” as we think of it – they award “care and control” of the children. The parent who is awarded “care and control” will actually have physical custody of the children. English courts generally favor the mother in custody disputes. A father may be given custody if the mother consents or the mother abandons the family and makes no move to return to the children. If you and your partner can not agree on these issues, mediation will be required.

A solicitor’s assistance is *not required* for filing a divorce. However, for a list of family law solicitors, see your local Citizen’s Advice Bureau. The divorce is filed where you live and not where you were married.

The cost to lodge the petition at the court is a one off fee of £550. Prices for hiring a solicitor vary.

### **Dual Divorce Decrees**

The English courts decide questions such as these on a test which is best described as the “balance of convenience.” The court would be influenced by how long the couple had lived in England, where the bulk of their property was, whether there were any children and, if so, where they were. All of these factors and others would come into play. After weighing all the factors, the court would decide whether it was better for the divorce to proceed in the U.K. or the U.S. These are the sort of factors that are taken into account when there is a conflict of jurisdiction. There is no mechanical answer – each case depends on its own facts.

This handout is for basic information on topic covered as it relates to military personnel stationed in the United Kingdom. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the Legal Office for questions and further information. You may view more information on various legal topics at the Air Force Legal Assistance website found at <https://aflegalassistance.law.af.mil>. Additionally, complete legal worksheets for Wills, Living Wills, Powers of Attorney (General, Special, and for Health Care), and access to the Online Survey are found on the Air Force Legal Assistance website.

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## Legal Assistance Information Series OBTAINING A DIVORCE IN THE UNITED KINGDOM



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