

FAMILY LAW

Law guide – How to get a separation

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with **William J. Brennan & Co. Solicitors**

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Introduction

The purpose of this guide is to explain the steps involved in getting a separation.

In broad terms there are two possible situations:

1. Separation by agreement: if the parties are in full agreement regarding the terms of their separation they can document those terms in a Separation agreement (also called a deed of separation) which they both sign and are then contractually bound by.
2. Judicial separation: If the parties disagree a court hearing will be required to resolve the issues in which case one of the spouses must apply for a judicial separation, using the Family law civil bill document, to the Circuit Court¹ to start the process.

You can make the application yourself or get a solicitor to do it for you. In applying for a judicial separation you must cite one or more grounds for your application. The possible grounds which can be given by the applicant include one or more of the following:

1. The respondent has committed adultery.
2. The respondent has behaved in such a way that the applicant cannot reasonably be expected to live with him or her.
3. The respondent has deserted for a continuous period of at least one year prior to the application.
4. The spouses have lived apart for a continuous period of one year prior to the application and his or her spouse consents to the application.
5. The spouses have lived apart from one another for a continuous period of at least three years preceding the date of the application.
6. The marriage has broken down to the extent that no normal marital relationship has existed between the spouses for a period of in or about at least one year prior to the date of the application.

One of the main concerns of the court will be to ensure both spouses and any dependent children are financially looked after – what is referred to as proper provision. The term ‘proper provision’ is not defined anywhere in the legislation.

The spouse who applies for the judicial separation is referred to as the applicant and the other spouse then becomes the respondent.

¹ It is possible to apply to either the Circuit Court or the High Court. LawOnline’s documents are only suitable for the Circuit Court and the content of this guide therefore relates only to a Circuit Court application.

Mediation

Under the Mediation Act 2017 the parties to a dispute, including family-related matters, may engage in mediation as a means of attempting to resolve the dispute. Participation in mediation is voluntary at all times. The fact that proceedings may have been issued in relation to a dispute does not prevent the parties engaging in mediation at any time prior to the resolution of the dispute.

A party may:

- withdraw from the mediation at any time during the mediation,
- be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party, or
- obtain independent legal advice at any time during the mediation.

Agreement to mediate

Prior to the commencement of the mediation, the parties and the proposed mediator prepare and sign a document (referred to as an 'Agreement to mediate') appointing the mediator and containing the following information:

1. the manner in which the mediation is to be conducted;
2. the manner in which the fees and costs of the mediation will be paid;
3. the place and time at which the mediation is to be conducted;
4. the fact that the mediation is to be conducted in a confidential manner;
5. the right of each of the parties to seek legal advice;
6. the manner in which the mediation may be terminated;
7. such other terms (if any) as may be agreed between the parties and the mediator.

Confidentiality

All communications (including oral statements) and all records and notes relating to the mediation will normally be confidential and cannot be disclosed in any proceedings before a court or otherwise.

Exceptions to this include where disclosure:

- is necessary in order to implement or enforce a mediation settlement,
- is necessary to prevent physical or psychological injury to a party,

- is required by law, or
- is necessary in the interests of preventing or revealing the commission of a crime (including an attempt to commit a crime), the concealment of a crime or a threat to a party.

Enforceability of mediation settlements

A mediation settlement will have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.

A court may also, on the application of one or more parties to a mediation settlement, enforce its terms except where the court is satisfied that the mediation settlement:

1. does not adequately protect the rights and entitlements of the parties and their dependents (if any),
2. is not based on full and mutual disclosure of assets, or
3. is otherwise contrary to public policy, or
4. a party to the mediation settlement has been overborne or unduly influenced by any other party in reaching the mediation settlement.

Factors to be considered by court in awarding costs

In awarding costs in respect of situations where proceedings have already commenced a court may, where it considers it just, have regard to:

- any unreasonable refusal or failure by a party to the proceedings to consider using mediation, and
- any unreasonable refusal or failure by a party to the proceedings to attend mediation, following an invitation to do so.

The steps (separation by agreement)

Where both parties are in full agreement the following are the steps that the spouses must take to formalise their separation.

Overview of the process

The following are the main steps to be taken in getting a separation by agreement, the main one being to draft and sign the agreement. There are also other optional steps that can be taken:

1. Both parties disclose their financial status (optional).
2. Both parties draft and sign a Separation agreement (deed of separation).
3. An application is made to the court for the agreement to be 'ruled on' (optional).

The steps

A. Disclosure of the financial position of the spouses

The parties have the option to decide if they wish the agreement to state that the separation terms were agreed in the context of full financial disclosure by both parties. Should the agreement ever be challenged in a court the fact that it was signed in the context of full financial disclosure makes it more likely that a court will uphold it.

To make a full financial disclosure both parties must complete an Affidavit of means.

Basically this document sets out one's financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of one's day-to-day living expenses.

Because this document is an affidavit it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

B. Separation agreement

A married couple who have decided to separate, but not to seek a judicial separation via the courts, can use a Separation agreement (Deed of separation) to set down the terms of their separation. Depending on their specific needs and circumstances this document process can include agreed terms in relation to custody, access to children, maintenance, health and education expenses, the family home, succession, pensions, other property and assets, income tax etc.

C. Motion to rule

A motion is simply a request to the court by the person submitting the motion. Where the parties have executed a Separation agreement (deed of separation) it is possible to apply to have that agreement made an order of the court, referred to as 'ruled on', provided it includes terms relating to the payment of maintenance and/or provisions governing the rights and liabilities of the spouses in relation to any property.

The main reasons and advantages of making a separation agreement an order of the court are that:

(a) where it includes terms for the payment of maintenance it gives the spouse receiving maintenance the right to be paid through the District Court clerk's office. The agreement is made a rule of court pursuant to the Family Law (Maintenance of Spouses and Children) Act, 1976 and is thus more secure in this specific respect.

(b) it allows either party to apply to the court for a contempt of court ruling should the other party fail to honour the agreement in any respect.

The document used to apply for a hearing date to have the agreement ruled on is the Motion for order in agreed terms.

The parties need to identify the appropriate court office to which this application is made. Either of the spouses must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court chosen. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties each.

The steps (judicial separation)

The following are the steps to be taken by each spouse where there is no agreement between them on the terms of their separation. An application, by one of the spouses, must be made to the court for a hearing to resolve the matter. This spouse becomes the applicant and the other spouse is then referred to as the respondent.

Choice of court venue

The applicant needs to identify the appropriate court venue to which he or she will make their application. The applicant or the respondent must reside, or work, within the jurisdiction, i.e. the geographic area, of the Circuit Court where this application is to be filed. There are eight court circuits – Dublin, Cork and six others which in turn cover a number of counties.

Overview of the process

The following are the main steps to be taken in applying for a judicial separation:

1. The applicant files the application with the court.
2. The applicant gives (serves) a copy of the application to the respondent.
3. The applicant confirms that a copy of the application was provided to the respondent.
4. The respondent confirms that he/she received the application.
5. The respondent files a defence and counterclaim with the court and gives a copy to the applicant.
6. If there are dependent children, a statement relating to their care etc. is prepared.
7. Both parties confirm that they have considered other alternatives to a judicial separation.
8. Both parties disclose their financial status.
9. Any queries in relation to the financial information provided are resolved.
10. The courts service attempts to resolve as many outstanding issues as possible.
11. If agreement is reached, terms of settlement are drafted and a date is set for the court to hear and rule on the agreement.
12. If there is no agreement a court date is set for a hearing and judgment.

Documents required from the applicant

A. The application form

The Family law civil bill is basically the application form. It contains two sections – the ‘Indorsement of claim’ and the ‘Applicants claim’.

The indorsement of claim is where the applicant sets out the details of the marriage as he or she knows them.

The applicant's claim section is used to list any orders, including 'ancillary reliefs', which the applicant wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. Where a divorce is contested the court will decide the specific details of each order it decides to grant.

B. Confirmation that the applicant has informed their spouse

The court will require formal confirmation that the applicant has informed their spouse of their application for judicial separation. This is done by completing an Endorsement and statutory declaration of service. This document must be signed in the presence of a commissioner for oaths or a practising solicitor. Most solicitors' firms offer this service and charge around €10.

C. The financial position of the applicant

The applicant is required to an Affidavit of means.

Basically this document sets out their financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of your financial situation.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

D. Confirmation that alternatives to a judicial separation have been considered

Both parties must provide this certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that you are aware of the alternatives to applying for divorce, e.g. mediation, separation by agreement etc. See Certificate.

Possible other documents required from the applicant

E. The welfare of children

If there are children of the marriage the applicant needs to complete an Affidavit of welfare. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

F. Notice to trustees of pension scheme

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant is applying for a court order to change the manner in which future scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

G. Previous court orders

If either party previously applied to the courts for any orders relating to the marriage or family, including an application for a decree of judicial separation, then any orders previously made by the courts must also be attached to the Family law civil bill when it is filed at the relevant Circuit Court office.

Filing of documents by the applicant

Once the Family law civil bill is drafted and signed it must be 'issued' by the relevant Circuit Court office. To issue the bill the office stamps, dates and allocates a reference number (the record number) to it.

Any court orders previously granted must also be attached.

The applicant should bring three copies of the Family law civil bill to the Circuit Court office - one to be kept on file at the court, one for your records and one to be served on the respondent. Two stamped copies are returned to the applicant and the original signed versions is retained by the court office.

The applicant then serves the issued Family law civil bill on the respondent.

Documents required from the respondent

A. Entry of an appearance

This is a very short document confirming that the respondent has received the family law civil bill and is thus fully aware of the judicial separation application. See Entry of appearance.

B. Defence and counterclaim

The respondent replies to the family law civil bill by preparing a Defence and counterclaim. It essentially contains three sections – the 'Defence', the 'Counterclaim' and the 'Respondent's claim'.

In the first section, called the defence, the respondent, if he/she wishes, can challenge the claims made by the applicant in the indorsement of claim section of the applicant's Family law civil bill.

The counterclaim section is where the respondent sets out the details of the marriage as he or she knows them.

The respondent's claim section is used to list any orders, including 'ancillary reliefs', which the respondent wishes to apply for to the court. Ancillary reliefs are court orders relating to the financial affairs of the parties.

These orders typically relate to some or all of the following: maintenance, the family home, other property and assets, custody, succession rights, personal safety and the safety of children, and pensions. In a judicial separation the court will decide the specific details of each order it decides to grant.

C. The financial position of the respondent

The respondent is required to provide an Affidavit of means. Basically this document sets out the respondent's financial position, i.e. assets, liabilities, income and pensions, if any. It also asks for details of their day-to-day living expenses.

Given that a key role of the court is to ensure that all parties – the spouses and any dependent children – will be properly catered for financially this document is key to providing the court with a complete picture of the respondent's financial situation.

Because this document is an 'affidavit' it must be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

D. Confirmation that alternatives to a judicial separation have been considered

Both parties must provide this short certificate, signed by the parties or by their solicitor if legally represented. This short document essentially confirms that the respondent is aware of the alternatives to applying for judicial separation, e.g. mediation, separation by agreement etc. See Certificate.

Possible other documents required from the respondent

E. The welfare of children

If there are children of the marriage the respondent must complete an Affidavit of welfare. This document requires details about the care and health etc. of the children. Children, for this purpose, are defined as any born to or adopted by either spouse. It also includes children to whom either party is in loco parentis to.

If the respondent agrees with content of the applicant's affidavit then there is no need for the respondent to also provide the same detail – their affidavit can simply refer to the applicant's version and confirm their agreement with its contents.

Because this document is an 'affidavit' it needs to be signed in the presence of a commissioner for oaths or a practising solicitor. Most legal firms provide this service for c. €10.

F. Notice to trustees of pension scheme

This document is used to notify the trustees of the relevant pension scheme, or schemes, in respect of which the respondent is applying for a court order to change the manner in which the scheme benefits are to be paid out, that such an application is being made. See Notice to trustees.

Filing of documents by the respondent

The respondent must file their Entry of appearance with the relevant Circuit Court office within ten days of receiving the Family law civil bill. If respondent intends to defend the matter they must then file their Defence and counterclaim, ideally along with all of the other documents mentioned above, within a further ten days. Their Affidavit of means and defence and counterclaim can, however, be filed with their appearance if it is to-hand.

If time is an issue it is possible for the respondent to be given more time if this is agreed with the other spouse or else allowed by the court.

Case progression

Once the respondent has filed all of their documents a process called ‘case progression’ begins. This is an arrangement whereby the courts service attempts to resolve as much of the outstanding issues as possible before the matter goes to a hearing (or is possibly resolved in its entirety).

The case will be listed, not later than 70 days after the date the Defence and counterclaim is filed, for a case progression hearing before the County Registrar.

The purpose of case progression is to reduce delay and cost and ensure that the time and other resources of the court are employed most effectively. Once this process is complete, the matter will be listed for hearing, or ruling in the event of eventual agreement, before a judge.

Discovery

The court rules allow either party to ask the other to ‘vouch’, i.e. prove the accuracy of, any or all items listed in their Affidavit of means. In a contested case, where there may not be a high degree of trust, it is not unusual for either side to make such requests of each other. Further progress in resolving the case must generally wait until both sides are satisfied with the responses they have received – however, the degree and depth of investigation embarked upon must also be ‘reasonable’ relative to the requirements of the case.

Final steps

A contested case, such as a judicial separation, is finally resolved either through agreement, i.e. it is settled out of court, or a contested court hearing. These two possible scenarios are explained below:

Settlement out of court

Where both parties were in disagreement at the outset of proceedings but eventually come to an agreement a Consent orders and settlement terms document can be used to

document the terms agreed and specifically the orders that both parties agree to apply for to the court – referred to as asking the court to rule on the agreement.

In doing so the agreement is made a rule of court which means that either party can seek a contempt of court ruling should the other fail to honour it thus making it more likely that the agreement will be executed as agreed. This remedy would not be available to the parties otherwise.

Where the parties are in such agreement, and thus an application for divorce is being made by consent, the applicant can apply for a date to be set for the court to so rule on their agreement. The document used to make this application is the Notice of motion.

If the court is satisfied that the relevant conditions have been met, including provision for any dependents and the respective spouses in the agreement, it should grant the decree and also make the agreement a rule of court.

Contested hearing

If the parties remain in disagreement with no prospective of a resolution, the applicant can apply for a trial date to be set so that the court can consider and judge on the matter.

The document used to make this application is the Notice of, or to fix, a date for trial (the process for arranging this date differs in Dublin versus the rest of the country).

This document is normally prepared and issued by the applicant. However, if the applicant fails to do so within ten days of receiving the respondent's Defence and counterclaim document, the respondent then has the option of making the trial arrangements instead, also using this document.

Separation documents on LawOnline

This section outlines brief details of the documents that may have to be prepared in the course of a divorce application. Not every document listed here is required in every case, depending on whether or not the case is contested, and whether there are dependent children, property, pension adjustments etc.

If you want to get more details on any of these you should click on the links which will bring you to the document itself on LawOnline. Each document contains extensive 'Guidance notes' and most questions also include an 'Explanation' box. You can try any of these documents for free – click on 'Try for free'.

All of these documents are also available as packs (see below) enabling you to purchase all of the required documents at a reduced price.

Separation agreement (FL003)

A married couple who have decided to separate, but not to seek a judicial separation via the courts, can use this document to set down the terms of their separation. Depending on their specific needs and circumstances this document process can include agreed terms in relation to custody, access to children, maintenance, health and education expenses, the family home, succession, pensions, other property and assets, income tax etc.

Family law civil bill (contested) (FL004)

This is essentially the application form which the applicant uses to apply for a divorce and any related court orders. The divorce process is begun when this document is filed at the Circuit Court office and a copy is given to the respondent spouse. This version is suitable for a divorce application where there is disagreement between the parties and the divorce is contested.

Consent orders and terms of agreement (FL006)

Where both parties were in disagreement at the outset of proceedings but have since come to an agreement this document can be used to specify the details of that agreement and, in particular, the court orders which both parties have agreed to apply for. In this circumstance the latter are referred to as consent orders. This document must be signed by both parties and is provided to the court for the hearing.

Endorsement and statutory declaration of service on spouse (FL007)

This document is used to confirm to the court that the respondent has been given the family law civil bill and is thus fully aware that the divorce application has been made. It must be signed, i.e. sworn, in the presence of a commissioner for oaths or a practising solicitor.

Entry of appearance for divorce or judicial separation (FL008)

The purpose of this document is to inform the court that the respondent is acknowledging receipt of the family law civil bill. Where relevant, it is also used to inform the court that the respondent intends to defend the proceedings.

Defence and counterclaim for divorce or judicial separation (FL009)

When a divorce is contested this document is used by the respondent to reply to the applicant's family law civil bill. The respondent can challenge any of the claims made by the applicant and can also apply for any related court orders that they require.

Affidavit of means (FL010)

The document is used to disclose the financial position of each spouse who are both required to provide details of their assets, liabilities, income and pensions as applicable. They must also provide details of their living expenses.

Affidavit of welfare (FL011)

This document is only required if there are dependent children of the marriage. It sets out details of the children, their day-to-day care and living arrangements and any health issues etc.

Agreement to mediate on a family matter (FL012)

Under the Mediation Act 2017 the parties to a dispute, including family-related matters, may engage in mediation as a means of attempting to resolve the dispute. Participation in mediation is voluntary at all times. The fact that proceedings may have been issued in relation to a dispute does not prevent the parties engaging in mediation at any time prior to the resolution of the dispute. Prior to the commencement of the mediation, the parties and the proposed mediator prepare and sign a document (referred to as an 'agreement to mediate') appointing the mediator and containing specific information such as how the process is to be conducted, terminated and paid for amongst a range of other matters.

Deed of waiver for divorce or separation (FL013)

Protection is provided for the family home of a married couple under the Family Home Protection Act 1976. The effect of this legislation is to prevent one spouse from acting in relation to the family home without the consent of the other spouse. The purpose of this deed of waiver is to remove any doubt that this 'veto' by one spouse over the other is actually removed in relation to any future dealings in any property following a divorce, judicial separation or the execution of a deed of separation, i.e. a separation agreement.

Notice to trustees of pension scheme (FL014)

This document is used to notify the trustees of any relevant pension scheme, or schemes, in respect of which the applicant or respondent is applying for a court order to change the manner in which the scheme benefits are to be paid out, that such an application is being made.

Pension adjustment order (FL015)

This document, called a pension adjustment order (PAO), is used to notify the trustees of a pension scheme of the details of an adjustment to the payment of the scheme benefits as ordered by a court in the context of divorce and judicial separation proceedings. It is prepared by the intended beneficiary, either the applicant or respondent as the case may be, or their legal representatives for signing by the County Registrar.

Motion for order in agreed terms for divorce or separation (FL016)

Where the parties are in agreement and an application for divorce is being made by consent the applicant can use this document to request a court hearing time and date for the court to 'rule' on their agreement. Also where the parties have agreed to separate and have executed a separation agreement which includes terms relating to the payment of maintenance and/or property it is also possible to apply to have the agreement ruled on by the court and to use this document to request a court hearing time and date for that purpose.

Notice of or to fix a date for trial (FL017)

This document is used to arrange the trial date on which the court will hear a divorce application in a contested situation. The process differs depending on whether or not the relevant Circuit Court circuit is Dublin or elsewhere.

This document is normally prepared and issued by the applicant. However, if the applicant fails to do so within ten days of receiving the respondent's defence and counterclaim document, the respondent then has the option of making the trial arrangements instead using this document.

Certificate for divorce or judicial separation (FL018)

This document is required to be completed by both the applicant and respondent, or their respective solicitors if they are legally represented. This certificate essentially confirms that you are fully aware of the various alternatives available such as mediation or a separation agreement versus applying for a judicial separation or divorce, as the case may be.

Separation agreement pack

This pack contains all of the documents required to conclude a separation by agreement including making the agreement a rule of court if the parties wish.

Divorce or judicial separation pack (applicant)

This pack contains all of the documents required by the applicant in a judicial separation application.

Divorce or judicial separation pack (respondent)

This pack contains all of the documents required by the respondent in a judicial separation application.

Other resources

Circuit Court Rules

The rules and procedures to be followed in making a judicial separation application are laid down in the Circuit Court Rules and specifically Order 59.

The Acts

The legislation under which a judicial separation application is made is The Judicial Separation and Family Law Reform Act, 1989 and the Family Law Act, 1995.

Glossary of terms

The following are some of the legal and other terms you may come across in the course of a divorce application with a brief explanation of each:

Affidavit: A sworn document setting out facts. It is used to give information to the court where oral evidence is not required.

Ancillary reliefs: Orders that a court can make in relation to the financial resources of the parties in addition to granting an application for judicial separation or divorce.

Appearance: A formal document served by the respondent on the applicant stating that he or she has received the family law civil bill. It can also indicate an intention to defend the case. A copy must be filed in the relevant court office. If no appearance is filed, the plaintiff can apply for judgment in default of appearance.

Applicant: The person who brings an application before the court. It is also used as an alternative to 'plaintiff'.

Call-over: A court hearing to decide the dates on which cases will be heard by the court.

Case progression hearing: The pre-trial hearing of a family law case before the county registrar to prepare the case for trial.

Circuit Court office: Circuit Court offices deal with the administration of the Circuit Court. They are open between 10.00 a.m. and 4.30 p.m. on normal working days. Many of the documents that pass between the parties in a Circuit Court case must be filed or issued in the Circuit Court office. Offices are usually in the principal courthouse in the county.

Court Rules: These are the general procedural rules used in the courts. They set out the way cases are dealt with. There are separate rules for the District Court, the Circuit Court and the Superior Courts (that is the High Court and the Supreme Court).

Decree or order: The written order of the court setting out its decision

Dependent child: Any child of both spouses (or adopted by both spouses or in relation to whom both spouses are in loco parentis) or any child of either spouse (or adopted by either spouse or in relation to whom either spouse is in loco parentis) who is:

- under the age of 18
- under the age of 23 and receiving full time education or
- over 18 but has a mental or physical disability to such extent that it is not reasonably possible for the child to maintain himself or herself fully.

Deponent: This the person who swears an affidavit.

Exhibit: An exhibit is a document referred to in, and attached to, an affidavit. The deponent must sign the exhibit in the presence of a practising solicitor or commissioner for oaths.

Ex parte application: An application to court in the absence of, and without notice to, your spouse or other party.

In loco parentis: In the place of a parent. A person who is not the parent but assumes the responsibilities of a parent in respect of a particular child.

Issue: When the Circuit Court office stamps, dates and assigns a record number to a document this is referred to as issuing the document.

Judgment in default: A formal decision in favour of the applicant where the respondent has failed to do something within the proper time limit. It may, for example, be a failure to enter an appearance or file a defence.

Judicial separation: A judicial separation is a decree of separation given by a court following the hearing of an application for separation.

Motion: An application to court for an order that something be done in favour of the party making the application. The other side is usually informed of the application but sometimes this is not necessary.

Oral evidence: What is said by witnesses to the court in response to questions put on behalf of the parties or by the judge. Generally, all divorce cases must be proved by oral evidence.

Pension adjustment order: This is the form used to apply to the court to change the manner in which future pension fund benefits are paid out. If the court agrees it becomes an order which the pension scheme trustees must implement.

Proper provision: This is term in the divorce legislation to describe the process of ensuring that all of the parties, i.e. both spouses and any dependent children, are properly looked after in any settlement or judgment. There is, however, no definition of what qualifies as proper provision.

Record number: The number assigned to the case by the court office. It is shown on the top right hand side of all documents filed in the office and should be quoted in all dealings with the office.

Respondent: The person against whom a motion is brought and is sometimes called the defendant.

Serve and service: When a case or a document is brought to the attention of the person named in it, e.g. the respondent, this is called serving the document and the process is referred to as service.

Spouse: Husband or wife, or former husband or wife.

Stay of execution: The suspension of the operation of a court order or judgment. When making an order or giving a judgment the court can stay the execution until such time as it thinks fit.

Swear: To swear an affidavit, you must bring it to a practising solicitor or commissioner for oaths and sign it in their presence and they must also sign to witness your signature. There will usually be a charge for this service.

Trustees: These are the individuals or entities who have responsibility for overseeing the administration and management of a pension fund.