



An Expats Guide to Divorcing from Spain

If you are an English expat living in Spain you may be able to apply for a divorce in England, and there are often significant benefits in doing so.

This Guide has been prepared to outline what's involved in an English divorce from Spain and highlight important points you need to consider before deciding where to divorce.



Your choice on where to divorce

Many English expats living in Spain are entitled to divorce either in Spain, under Spanish law, or in England (or Wales) under English law. The first step is to establish whether you have this choice.

In the following circumstances you will normally be eligible to divorce through the English Courts:

- ✓ You have been married for more than 1 year
- ✓ You, your spouse or both of you have a legal connection with England or Wales, regardless of whether you have lived out of the country for many years.



Establishing a legal connection

In order to establish whether you have a legal connection and therefore the right to divorce through the English courts the main issues to be answered are in relation to where you and your spouse are 'domiciled' and where you are habitually resident (normally live).

Domicile is a legal concept used to link an individual with a particular legal system. It takes into account where you were born and brought up and your continuing connections with England/Wales as well as where you are living now and your intentions for the future. Having property, savings or pensions in England or Wales is one of the measures used to establish domicile.

Establishing which court system you will use is important and you should ideally take advice from both an English

and Spanish lawyer to understand which is the best option for you.

Sometimes there can be a 'race' to file for divorce because either England or Spain is viewed as more beneficial to one party over the other in a particular case. Spain (like most EU states) will generally give priority to the first proceedings issued (although there may be exceptions) whereas England will look at which country has the 'closest connection' with the family. If there is likely to be any dispute between you and your spouse it is important you take advice at an early stage and if you do decide to divorce in England you should file the paperwork swiftly".



Why divorce through the English Courts?

Using the English legal system is often much quicker, cheaper and more effective than attempting to use the local jurisdiction and in some instances expats are prevented from applying for divorce in the country to which they have moved.

In Spain the process of divorce is relatively straightforward compared to some parts of the world. However, the proceedings are conducted in Spanish and through the notoriously bureaucratic Spanish court system. If you need legal advice on any aspect of the process you would need to appoint a Spanish lawyer as English lawyers are not trained in the Spanish legal system.

There are some notable differences in process and procedure between the Spanish system and the English one, including differences of timing which might have a significant impact on any financial settlement. More

importantly there can be considerable variance between the approach of a Spanish court and an English court to the division of the assets of a marriage which could mean that there is a significant advantage to using one country's system over the other.

An English divorce is a fairly simple process provided there is not a dispute about where the divorce should take place. You do not need your partner's consent to divorce. The divorce itself is a paper exercise, with the obvious advantage that all paperwork is in English. Most divorces in England take between 7 – 10 months to complete. This time-frame may increase if the other party to the divorce is slow to respond or there are difficulties tracing them for example. But most divorce cases we handle for expats are fairly straight-forward and proceed without delays.

Children in divorce

Disputes about children are dealt with in the country where the children are 'habitually resident' which could be Spain or England depending on what happens on separation. The English court can make orders about when a child spends time with each parent as well as make decisions about specific issues or steps which a parent must not take in relation to the children. If agreement cannot be reached, a court order is required to relocate with a child to another country. The child's welfare is paramount and there is a checklist of factors the court must refer to when making decisions.



Divorce isn't the end

One very important point to understand is that under English law whilst the divorce is the legal ending of a marriage the divorce itself does not automatically sever any financial ties with your spouse.

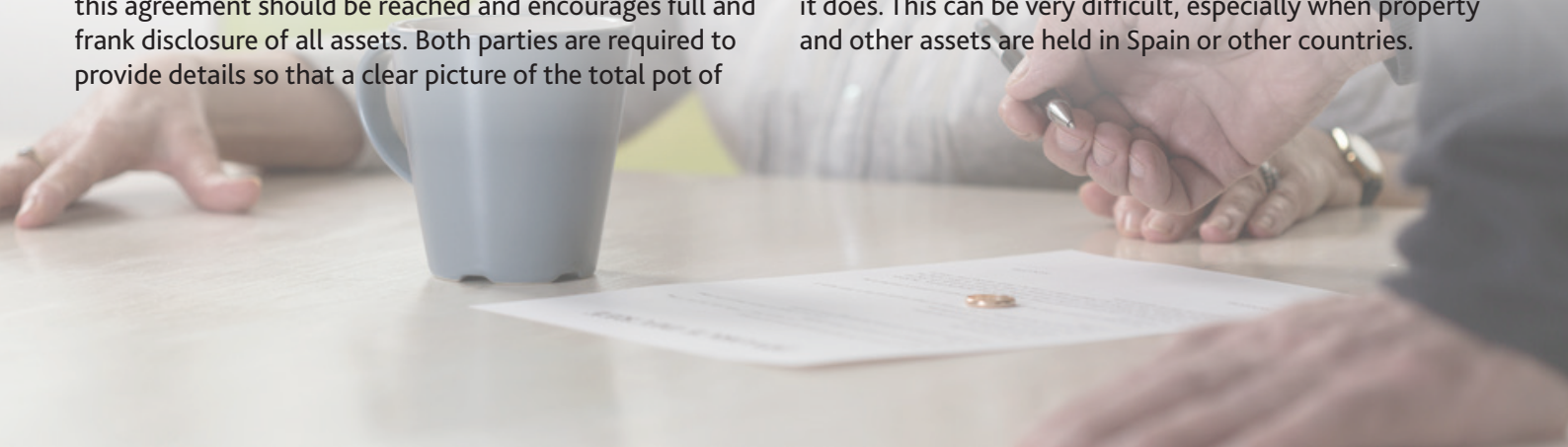
All expat divorce clients that we advise are encouraged to come to an agreement about their joint finances, either by themselves or with our help, and have this agreement drawn up into a legally binding document. This is the only sure way to ensure that in the future your ex can't make a financial claim.

Under English law the Family Procedure Rules set out how this agreement should be reached and encourages full and frank disclosure of all assets. Both parties are required to provide details so that a clear picture of the total pot of

matrimonial assets can be established. If your spouse is reluctant to provide that information for any reason, the court has the power to order them to do so.

Under English law there is the possibility of applying for spousal maintenance in circumstances where you can show that you are unable to support yourself or can show significant disparity in future lifestyle between yourself and your spouse based on your future income earning potential.

The system in Spain is quite different. The onus is placed on the party who says a particular asset exists, to prove that it does. This can be very difficult, especially when property and other assets are held in Spain or other countries.



Limitations of the English Courts

There are few limitations on what can be ordered through the English court system but it can be difficult to enforce such orders in relation to foreign owned property and other assets. This is a highly complex and procedural area of the law and advice should be sought from the outset to determine other ways in which such property can be dealt with, such as offsetting a party's interest in other assets of

the marriage in order that such property can be retained. It is also possible to register orders made in the English courts in the local Spanish court for enforcement against assets held in Spain. That said if an agreement can be reached between the parties as to a sale or transfer of that foreign property, the Court here will approve it.

Getting legal advice

A number of our lawyers at Woolley & Co have trained to offer divorce advice to British expats.

You can book a free telephone appointment with an English lawyer by calling **(+44) 1789 330310** or visiting **costadivorce.com**.

We're happy to speak via Zoom, Skype or Microsoft Teams.

Watch our videos on **[You Tube](#)** Read our **[Blog Posts](#)**

A note about Scottish Law

If you and / or spouse consider yourself to be Scottish citizens, lived in Scotland during your marriage or have a stronger connection with Scotland than England or Wales you may need to consider divorce in Scotland and take

appropriate advice from a suitably qualified Scottish solicitor.

If one of you is Scottish and the other from overseas however you may still be able to divorce in England. Call us to discuss your particular circumstances.



This guide does not provide legal advice. Do not take action based on the information you have read without first taking advice from a family law specialist.

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