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Dutch

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Divorce and legal separation

Netherlands

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1 What are the conditions for obtaining a divorce?

Divorce may be filed for by both spouses together (joint petition) or by one of the spouses (unilateral petition). In either case, proceedings have to be initiated by the filing of a petition (*verzoekschrift*) (see question 11).

In divorce proceedings, whether instituted jointly or unilaterally, the spouses must be represented by a lawyer. Divorce proceedings are heard by the district court (*rechtbank*) of the place where the petitioner or one of the petitioners is resident. A petition for divorce may be filed at any time following the marriage: there is no requirement for the spouses to have been married for a certain period of time. The divorce takes effect when the court decision is entered in the register of births, marriages and deaths. The divorce can be entered in the register only once the decision is no longer open to appeal (final decision). The divorce must be entered in the register within 6 months of the decision's becoming final, otherwise it ceases to have effect and the divorce can no longer be entered in the register. If the marriage took place abroad and the foreign marriage certificate was not recorded in the Dutch register of births, marriages and deaths, the divorce decision (by the Dutch court) is entered in the special register of births, marriages and deaths of the municipality of The Hague.

2 What are the grounds for divorce?

In Dutch law there is one ground for divorce: irretrievable breakdown of the marriage. A marriage is deemed to have broken down irretrievably if it has become intolerable for the spouses to continue living together and there is no prospect of proper marital relations being restored. Where a petition is filed by just one of the spouses, the petitioner must state that the marriage has broken down irretrievably, and if this is denied by the other spouse the petitioner must produce evidence. The court determines whether the marriage has broken down irretrievably. In the case of a joint petition, divorce is granted on the ground that both spouses believe that their marriage has irretrievably broken down.

3 What are the legal consequences of a divorce as regards:

3.1 the personal relations between the spouses (e.g. the surname)

A divorced person may remarry or enter into a civil partnership. Divorce can have implications for the use of an ex-spouse's surname. An ex-spouse can apply to the court to have the other ex-spouse's right to use their surname withdrawn. Such an application is conditional on there being sound reasons for it and on there being no children born of the marriage.

3.2 the division of property of the spouses

Statutory system

The statutory system applicable since 1 January 2018 is limited community of property (*beperkte gemeenschap van goederen*). This means that the community of property is restricted to the assets and debts that the spouses had in common before the marriage and all assets and debts that the spouses acquire during the marriage. All assets acquired in common before the marriage and assets acquired during the marriage together form the joint property (*boedelmenging*). Debts incurred in common before the marriage or arising during the marriage are held jointly by the spouses, irrespective of which spouse contracted the debt. A creditor can recover the debt from the assets that form part of the joint property. Assets and debts belonging to only one spouse before the marriage are not part of the statutory community of property. They remain the private property of that spouse. Inheritances and gifts likewise fall outside the statutory limited community of property, irrespective of when they were acquired. Inheritances and gifts acquired both before and during the marriage remain the private property of the spouse concerned.

Spouses who married before the introduction of the statutory limited community of property regime (that is, whose marriage date is before 1 January 2018) are subject to the statutory system of full community of property. In this case, in principle, all property acquired by the spouses before or during the marriage forms part of the joint property. All assets owned by either spouse form the joint property (*boedelmenging*). In principle, all debts incurred before or during the marriage are likewise joint liabilities, irrespective of which spouse contracted the debt. A creditor can recover the debt from the full joint property.

Both under the limited community of property regime and the full community of property regime applicable before 1 January 2018, the community of property is dissolved upon divorce, that is, on the recording of the court decision granting the divorce in the register of births, marriages and deaths. From that point on, the joint property ceases to exist. Upon divorce, the joint property has to be divided. It has to be established what each spouse is entitled to from the joint property. The general rule is that each of the spouses is entitled to half. The spouses may decide to depart from this rule and make other arrangements, in a divorce settlement (*echtscheidingsconvenant*) or at the time of division of the property.

Matrimonial property agreements

Spouses may choose a regime other than the statutory arrangement by entering into a matrimonial property agreement before or (rarely) during the marriage. Such agreements *then* lay down the rules for the division of property in the event of divorce.

3.3 the minor children of the spouses

Custody

After divorce, both parents continue to have joint custody of any children, as they did during the marriage. Only in exceptional cases can the court be asked to grant custody to one parent. A petition for sole custody may be filed by either parent or by both. A parent who is not granted custody has a right of access to the child. Either parent or both may ask the court to lay down visiting arrangements.

Child maintenance

If the parents retain joint custody following the divorce, they should make financial arrangements for childcare. They may also ask the court to lay down such arrangements. If they are unable to reach agreement, the court may determine a sum to be paid as maintenance. If one of the parents is granted sole custody, the court will, on request, assess how much the other parent should contribute towards the childcare costs. In principle, the parents should make payment arrangements themselves. For further information in this regard, please see the website of the

National Agency for the Collection of Maintenance Payments (Landelijk Bureau Inning Onderhoudsbijdragen).

3.4 the obligation to pay maintenance to the other spouse?

The maintenance obligation between spouses continues after the dissolution of the marriage. In the divorce decision or in a subsequent decision, the court can award to an ex-spouse whose income is not sufficient to meet their living costs and who cannot reasonably be expected to earn such income, on their request, a maintenance allowance payable by the other ex-spouse. The allowance can be set by the court in the divorce decision or in a subsequent decision. When calculating the allowance, the court considers the needs of the ex-spouse who will be receiving the payment and the financial means of the other ex-spouse. Non-financial factors may also be taken into account, such as the duration of the marriage, or for how long the spouses lived together. If the court sets no time limit on the maintenance obligation, it will cease after 12 years. The court can extend this period at the request of the ex-spouse requiring maintenance in cases of financial hardship. In principle, if a marriage was short (less than 5 years) and produced no children, the period over which maintenance payments must be made will not exceed the duration of the marriage. If the spouses or former spouses are in agreement regarding maintenance payments, they can record the arrangements in a divorce settlement.

4 What does the legal term "legal separation" mean in practical terms?

Legal separation (*scheiding van tafel en bed*) is the means by which spouses cease living with one another without actually ending the marriage between them. Legal separation is of interest to spouses who wish to separate and address the legal consequences of doing so, but who wish to remain married, for example for religious or financial reasons. Legal separation offers the possibility of a reconciliation. It can also be an intermediate stage prior to dissolving the marriage. A legal separation takes effect when the court decision is entered in the matrimonial property register. As with divorce, this must be done within 6 months.

5 What are the conditions for legal separation?

The sole ground for legal separation is the irretrievable breakdown of the marriage.

6 What are the legal consequences of legal separation?

The consequences of legal separation for matrimonial property, child custody (visiting rights), maintenance payments and pensions are the same as those for divorce. The marriage continues to exist. By law, a legally separated spouse does not inherit in the event of death. If, following a legal separation, the spouses decide that they do wish to part ways entirely, they can apply for dissolution of the marriage after legal separation. A legally separated spouse may live with a new partner and build a new life, but they cannot remarry or enter into a civil partnership.

A unilateral petition for dissolution of the marriage after legal separation cannot be brought at any time. Unilateral petitions are subject to a 3-year waiting period, which may be reduced to 1 year by the court in certain cases. The 3-year period commences on the date that the legal separation is entered in the register. In the event of a joint petition for dissolution of the marriage after legal separation, there is no waiting period. The dissolution of the marriage takes effect when the decision is entered in the register of births, marriages and deaths.

7 What does the term "marriage annulment" mean in practice?

A marriage may be annulled only by a court decision, following the filing of a petition. A marriage that has been contracted cannot be annulled by the operation of law (automatically). As long as a marriage has not been annulled, it remains valid. The law specifies on what grounds a marriage may be annulled and who may file a petition.

8 What are the conditions for marriage annulment?

The following grounds exist in law for a petition for annulment:

marriage of the parties notwithstanding impediments to marriage (minimum age requirements, lack of consent to the marriage of a minor, bigamy, prohibited degree of kinship);

duress or error;

sham marriage;

mental disorder of one of the spouses;

lack of authority of the registrar; or

insufficient witnesses.

9 What are the legal consequences of marriage annulment?

An annulment has retroactive effect from the time the marriage was contracted. This means that, following annulment by the court, the marriage will be considered never to have existed. In certain circumstances, an exception to this principle may be made. In that case, the annulment has the same consequences as a divorce. For instance, the children born of an annulled marriage remain related to both parents. Another exception relates to a putative spouse, i.e. a spouse who was unaware that the marriage was invalid. See in this respect the conditions for marriage annulment, as listed under question 8. A putative spouse may, for example, request that the other spouse pay maintenance.

10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

Mediation is quite common in divorce cases in the Netherlands. With the help of a mediator and, where necessary, the spouses' lawyers, the spouses can try to come to an agreement regarding the divorce and its consequences. These arrangements are laid down in a divorce settlement, which is a written document. The settlement may cover issues such as the division of property, maintenance obligations and childcare. The court may incorporate the settlement drawn up during the mediation process into its decision.

There is an Association of Family Lawyers and Divorce Mediators (Vereniging van Familierechtadvocaten en Scheidingsbemiddelaars) whose members specialise in fields such as divorce and maintenance payments. They also specialise in divorce mediation and everything that that entails. For further information, please refer to: https://www.verenigingfas.nl/.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

Petition

Divorce proceedings always commence with a petition to the court (*verzoekschrift*). This petition must specify the surname, first names and habitual or permanent residence of the spouses. If there are minor children, the same details must be provided in respect of those children. The petitioner can also apply for ancillary relief (*nevenvoorzieningen*), in relation to the divorce. The court can grant ancillary relief for, among other things:

custody and visiting rights in relation to minor children;

maintenance of children or an ex-spouse;

division of the matrimonial property or liquidation of the regime laid down in a matrimonial property agreement;

use of the marital home; and
pension equalisation.
The petitioner's lawyer must file the petition with the district court (*rechtbank*). If the petitioner lives in the Netherlands, the petition can be filed with the court in the judicial district where the petitioner lives. If the petitioner does not live in the Netherlands, but the other spouse does, the petition must be sent to the court in the judicial district where the other spouse lives. If both spouses live outside the Netherlands, the petition must be filed with the District Court of The Hague.
Which documents need to be submitted?
original extracts (issued within the last 3 months) from the population register, for both spouses, indicating nationality, civil status and, in the case of non-Dutch nationals, the date of entry into the Netherlands; in cases where one of the spouses is a Dutch national and the other is not, the date of settlement in the Netherlands;
original extracts from the register of births (issued within the last 3 months) for any minor children;
an original extract from the marriage register (to be obtained from the town hall in the place of marriage, and to be issued within the last 3 months); in the case of marriages that took place abroad, the original marriage certificate or an older extract will suffice; and
if minor children are involved, a parenting plan; a parenting plan lays down arrangements agreed between the parents with regard to their children, and may make provision for the day-to-day care of the children, their education, sports activities, medical care, arrangements for special days such as holidays and public holidays, finances, and practical arrangements (picking up and dropping off the children).

12 Can I obtain legal aid to cover the costs of the procedure?

If the applicant is unable to bear the costs in full or in part of a lawyer or mediator, they may be eligible for subsidised legal aid, subject to certain conditions. The Legal Aid Board (Raad voor Rechtsbijstand) subsidises legal aid only through mediators that are registered with it. For further information regarding the eligibility conditions, please refer to https://www.rvr.org/.
Entitlement to subsidised legal aid also applies to cross-border disputes if the applicant lives outside the Netherlands but within the EU, in accordance with the European Directive on legal aid in cross-border disputes (OJ L 26, 31.1.2003). A request for subsidised legal aid can be submitted to the Legal Aid Board in The Hague using the standard form established under the Directive, which is identical in all Member States. If necessary, the Legal Aid Board can help applicants to choose a lawyer. For further information, please refer to: https://www.rvr.org/.
Applicants living outside the EU can obtain legal aid in the Netherlands in certain circumstances covered by treaty or convention. The following treaties are relevant in this respect: the Hague Convention on Civil Procedure (1954), the European Agreement on the Transmission of Applications for Legal Aid (1977) and the Hague Convention on International Access to Justice (1980). These treaties include a provision that essentially stipulates that nationals of the contracting states are eligible for free legal aid in all other contracting states, under the same conditions as nationals of those other states. Where such cases arise in the Netherlands, a declaration of lack of sufficient means (*verklaring van onvermogen*) must be requested from the competent authority in the applicant's habitual place of residence. The application for legal aid and the declaration of insufficient means will be sent by this authority to the competent authority in the country where legal aid is to be granted. That country will then assess whether the applicant is entitled to free legal aid.

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

Yes, an appeal can be lodged with the registry of the court of appeal (*gerechtshof*) within 3 months of the date of the divorce decision. The ruling of the court of appeal can usually be challenged on a point of law in the Supreme Court (*Hoge Raad der Nederlanden*). Here too, applicants must be represented by a lawyer.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

Since 1 August 2022, Council Regulation (EU) No 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (the 'Brussels IIb Regulation') has been applicable in the EU Member States. It repeals the 'Brussels IIa Regulation', Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. The Brussels IIa Regulation continues to apply only to proceedings instigated before 1 August 2022 and to authentic instruments and agreements which were formally drawn up or registered, or became enforceable, before 1 August 2022. The Brussels IIb Regulation applies to divorce, legal separation and marriage annulment. Under its terms, divorce decisions issued in the other Member States (with the exception of Denmark) are recognised in the Netherlands without any special procedure being required (Article 30(1)). Similarly, no special procedure is required for updating civil-status records, e.g. when a marginal note recording a divorce has to be entered on a marriage certificate.
Any interested party may institute legal proceedings to determine whether or not a divorce decision from another country should be recognised. The Brussels IIb Regulation gives a number of grounds on which recognition of divorce may be refused. For instance, recognition must not be contrary to public policy. Consideration will also be given to whether the defendant (the party that did not file a divorce petition) was duly informed of the proceedings. The decision itself, however, cannot be reviewed on the merits. Under the Regulation, the court of the Member State that has given a decision must, upon application by a party, issue a certificate in respect of that decision (using a standard form). This certificate includes information regarding the country of origin of the decision, the details of the parties, whether the decision was given in default of appearance, the type of decision, e.g. divorce or legal separation, the date of the decision, and which court delivered the decision.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

If an interested party wishes to oppose the recognition of a foreign divorce decision in the Netherlands, they may file a petition for non-recognition with the court hearing interim relief proceedings (*voorzieningenrechter*) in the judicial district where they are habitually resident.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

On 1 January 2012, Book 10 of the Dutch Civil Code (*Burgerlijk Wetboek*) entered in force. Book 10 of the Civil Code includes conflict-of-law rules that determine the applicable law.
The main rule is that the courts will always apply the divorce law of the Netherlands, irrespective of the nationality and habitual residence of the spouses. If, for example, a petition for divorce is filed in the Netherlands by a married couple both of whom are Belgian nationals living in the Netherlands, the divorce law of the Netherlands is applied automatically. The only instance in which this is not the case is when the spouses choose which law is to be applied to the divorce. Spouses of the same nationality can opt for the law of their country of origin to be applied during the divorce proceedings, rather than Dutch law. So a Belgian couple can opt for Belgian divorce law to be applied, for example.

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