



/guide



Your
questions
answered

ISLAMIC MARRIAGE AND DIVORCE

At Stowe Family Law we have specialist Islamic law solicitors who are well versed in representing and assisting Muslims seeking a Sharia divorce in the UK. Both the husband and the wife are entitled to obtain an Islamic divorce, as in English law, and lawyers at Stowe are instructed by both men and women.

How can Stowe Family Law help?

Our lawyers can assist with:

- Mahr – the marriage gift given from the man to the woman both the giving and any disputes in the divorce proceedings
- Civil ceremonies to make an Islamic marriage legally recognised in the UK

- Islamic marriage guidance and mediation
- Idaat/Idaah (waiting) period
- Annulment of an Islamic marriage
- Advice and assistance with preparing a Talaq Deed for couples
- Preparation of a Cohabitation Agreement
- Preparation of a marriage contract
- Interaction of Sharia Divorce with Civil Divorce
- Non-marriages/Void marriages

We also work with Muslim counsellors, religious scholars and Sharia Councils to ensure you have a Sharia-compliant divorce.

Islamic Marriages

Many Muslims in the UK only have an Islamic religious marriage ceremony, called a Nikah. A Nikah is the Islamic marriage contract, formally binding, that outlines the rights and responsibilities of the bride and groom.

However, this marriage is not legally recognised under UK law and the Nikah contract is not a valid marriage contract – the parties will be regarded as cohabitants unless they also have a civil ceremony. In order to be recognised, an Islamic marriage must be registered separately under Civil law.

Within the Nikah contract, one of the most essential elements is that the husband agrees to pay the wife a Mahr.

Islamic Divorce

Before divorce is initiated, Islamic law encourages the husband and wife to appoint arbitrators to aid reconciliation (similar to marriage counselling). If this is unsuccessful, the husband and wife are guaranteed the right to divorce, as established in the Quran.

Should the couple also be married under English law, in addition to Islamic law, they will need to get obtain a divorce both under Civil law and Islamic law.

If the marriage is not legally recognised, the religious divorce will be the only divorce available to the couple. Islamic divorce can be initiated by the man (Talaq) or the woman (Khula). The divorce process differs depending on which party initiates the divorce.

Talaq Divorce – Divorce Initiated by the Husband

The husband can end a Nikah marriage by using the Talaq procedure, which is not court based. Only the husband can use this procedure.

The husband's pronouncement can be verbal or written and must be followed by a waiting period, called Iddah/Iddat, of three months where no sexual relations can take place. As the husband is the 'contract breaker', he must pay the Mahr in full where all or some of it was deferred. If it has already been paid in full, the wife must be allowed to keep the Mahr in its entirety.

The husband can divorce his wife unilaterally, but either party may apply for an Islamic Talaq certificate which can be used as evidence that the couple are divorced.

Divorce Initiated by the Wife

The wife must seek divorce from a Sharia Council. There are three types of Sharia divorce:

- Khula – divorce is initiated by the wife and the parties agree or the husband is persuaded to consent. If the husband is not at fault, he can require the wife to return the Mahr as she is the 'contract breaker'.
- Faskh – where the husband is at fault, the wife can petition for divorce with cause. She must provide proof that the husband has not fulfilled his marital responsibilities, for example if he has not provided support, a separate home and conjugal rights. The jurist can grant the divorce even if the husband is unwilling to consent to it.
- Tafreeq – the wife separates and seeks the services of an Islamic court, or the Islamic Sharia Council (ISC). Due to oppression on part of her husband, the relevant authority can dissolve the marriage contract through annulment.

Sharia Divorce Process

Before a divorce can be pronounced, there are some factors that must be satisfied:

- The woman must not be on her monthly cycle
- Only one divorce can be given
- Two witnesses must be present
- When the divorce is pronounced, the woman must pass her waiting period (Iddah/Iddat), which is three menstrual cycles. This is also a way of determining whether the wife is expecting a baby. If she is pregnant, the waiting period lasts until the baby is born.
- During the waiting period, the wife has the right to remain in the family home and the husband is responsible for her financially.
- The husband and wife are free to resume their relationship should they wish during the waiting period, without the need for a new Nikah.

Unregistered Marriages/Non-Marriages

Should a religious marriage go unregistered, it is regarded as a non-marriage and the parties are considered cohabitants. This means that they have no legal status.

Should the relationship break down, the couple cannot petition an English court for divorce, even if they have been married via a religious marriage as it is unregistered. If the one party dies without leaving a will, the surviving party has no automatic rights to inheritance.

Void Marriages

A marriage can be considered void (different to a 'non-marriage') if the parties have 'knowingly and wilfully' disregarded certain requirements as to the formation of marriage.

At Stowe Family Law, our experts are experienced in Islamic divorce. They are:

- Specialist Muslim lawyers with experience of Sharia law in the context of marriage and divorce
- Affiliated with Sharia councils, as well as other professionals like religious scholars and Muslim counsellors.
- Sensitive to the cultural and religious difficulties that face clients who are having to deal with civil divorces and Islamic divorces
- Our lawyers can also assist you with choosing with Sharia Council should be instructed to help with your case.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk



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