

SWEDISH LEGISLATION

The Marriage Code (Äktenskapsbalken) SFS 1987:230, with subsequent amendments up to and including SFS 2000:173¹

Chapter 5. Divorce

Section 1

If the spouses are agreed that their marriage should be dissolved, they shall be entitled to divorce. Divorce shall be preceded by a reconsideration period if both spouses request one or if either of them is living on a permanent basis with a child of his or her own who is under 16 years of age and of whom that spouse has custody.

Section 2

If only one of the spouses wishes the marriage to be dissolved, that spouse shall only be entitled to divorce following a reconsideration period.

Section 3

The reconsideration period shall begin when the spouses make a joint application for divorce or when notice of one spouse's application for divorce is served on the other spouse. If the reconsideration period has run for at least six months, a decree of divorce shall be granted if either of the spouses then submits a separate application for such a decree. If such an application is not submitted within one year from the start of the reconsideration period, the question of divorce shall lapse. If the proceedings for divorce are disallowed or the case is dismissed, the reconsideration period shall cease to run.

¹ The translation of the Swedish Marriage Code cited here is an official translation by the Swedish Government. Amendments made since 1994 have not yet been officially translated, and have been unofficially translated of Professor Jänträ-Jareborg.

Section 4

If the spouses have lived apart for at least two years, either of them shall be entitled to divorce without a preceding reconsideration period.

Section 5

If a marriage has been entered into despite the fact that the spouses are related to one another in the direct ascending or descending line or are sister and brother of the whole blood, either of the spouses shall be entitled to divorce without a preceding reconsideration period. The same shall apply if the marriage was entered into despite the fact that one of the spouses was already married or a partner in a registered partnership and the earlier marriage or partnership has not been dissolved.

In the event of bigamy, either of the parties to the earlier marriage shall be entitled to have it dissolved by divorce without a preceding reconsideration period.

The same shall apply if a partnership has been registered despite the fact that one of the partners was married at the time.

In case referred to in the first paragraph, proceedings for divorce may also be commenced by a public prosecutor.

Section 6

When a decree of divorce becomes non-appealable, the marriage is dissolved.

Chapter 6. Maintenance

Section 1

Spouses shall, each according to his or her ability, contribute to the maintenance needed to meet their joint and personal needs.

Provisions on maintenance for children are set out in the Children and Parents Code.

Section 2

If the contribution which one spouse is to make is not sufficient for that spouse's personal needs or for the payments which that spouse otherwise attends to for the maintenance of the family, the other spouse shall contribute the money that is needed.

Section 3

Property received by one spouse from the other spouse for his or her personal needs under the provisions of Sections 1 and 2 shall be the property of the first-mentioned spouse.

Section 4

If, due to illness or absence, one spouse cannot personally manage his or her affairs and if insufficient funds to maintain the family are available, the other spouse may, to the extent necessary, draw the earnings of the spouse who is ill or absent and income deriving from that spouse's property and withdraw sums credited to a bank account and other money. However, this shall not apply if cohabitation between the spouses has ceased or if there is an authorized agent, guardian, appointed representative or administrator who is entitled to represent the ill or absent spouse in these matters.

A juristic act such as is referred to in the first paragraph shall be binding on the ill or absent spouse even if the funds were not needed to maintain the family, provided that the third party concerned neither realized nor should have realized that the need did not exist.

Section 5

If one spouse neglects his or her duty to maintain, the court may order that spouse to make payments of maintenance to the other spouse.

Section 6

If the spouses are not living together on a permanent basis, one spouse shall discharge his or her duty to maintain by making maintenance payments to the other spouse.

If the spouses are not living together on a permanent basis, the court may order either of the spouses to surrender household goods to the other spouse for use by the latter. However this obligation shall only encompass household goods that belonged to the spouses or one of them when they ceased to cohabit. Any agreement entered into with a third party after the court's decision shall not restrict the right to use these household goods.

Section 7

Following a divorce, each spouse shall be responsible for his or her own support.

If a contribution towards the maintenance of either spouse is needed for a transitional period, that spouse shall be entitled to receive maintenance payments from the other spouse on the basis of what is reasonable in view of the latter's ability and other circumstances.

If either spouse has difficulty in supporting himself or herself after a marriage of long duration has been dissolved or if there are other extraordinary reasons, that spouse shall be entitled to maintenance payments from the other spouse for a longer period than stated in the second paragraph. When assessing such a right regard is to be had to the spouse's need of contribution to acquire pension insurance. (Act 1998: 619).

Section 8

Maintenance payments following divorce shall be made periodically. If there are special reasons to do so, such as the spouse entitled to maintenance needing a contribution to acquire pension insurance, the court may, however, decide that payment is to be made as a lump sum. (Act 1998: 619)

Section 9

An application for maintenance payments to be determined may not be granted for a retroactive period of more than three years prior to the date on which proceedings were commenced, unless the person liable to pay maintenance agrees.

Section 10

The right to enforce a maintenance payment that has been determined shall lapse three years after the date on which the payment originally became due.

If property is taken in execution in relation to the maintenance payment before the point in time referred to in the first paragraph or if the person liable to pay maintenance is adjudged bankrupt on the basis of a petition filed before that pay maintenance is adjudged bankrupt on the basis of a petition filed before that point in time, payment for the claim may be collected out of the property taken in execution or be received from the bankrupt's estate after that point in time.

In an application for enterprise reconstruction under the Act (1996:764) on Enterprise Reconstruction is submitted before the point in time referred to in the first paragraph, the maintenance payment may be enforced within three months of a decision terminating the enterprise reconstruction. If composition is brought about, the claim may be enforced within three months of the date set for completion of the composition. If property is taken in execution in relation to the maintenance payment or if a bankruptcy petition is filed within a period referred to here, the second paragraph shall apply.

Agreements contrary to this section are void. (Act 1996:765)

Section 11

A judgment or agreement concerning maintenance may be adjusted by the court if there are reasons to do so in view of the circumstances having changed. For the period prior to the commencement of proceedings, however, an adjustment contested by either party may only take the form of a reduction or

cancellation of payments not yet made. Only if there are extraordinary reasons to do so may maintenance payments following divorce be raised above the highest amount previously determined for such payments. A maintenance payment in the form of a lump sum may not be adjusted if the adjustment is contested by either party.

A maintenance agreement may also be adjusted by the court if the agreement is unreasonable in view of the circumstances which existed when it came into being and the overall circumstances. However, repayment of maintenance already received may only be ordered if there are special reasons for making such an order.

Chapter 14. Matrimonial cases and maintenance cases

Matrimonial cases

Section 1

Matrimonial cases are cases concerning divorce and cases involving proceedings for a declaration that a marriage subsists or does not subsist.

Section 2

Proceedings for a declaration that a marriage subsists or does not subsist may only be commenced in a dispute between the woman and the man.

The question of whether a marriage subsists may in addition be considered in disputes in which a person's rights are dependent on it.

Section 3

A matrimonial case shall be considered by the district court in the place in which the woman or the man habitually resides. If neither of them is habitually resident in this country, the case shall be considered by the Stockholm District Court.

Section 4

If both spouses want a divorce, they may make a joint application for this relief. Otherwise proceedings in a matrimonial case shall be commenced by an application for a summons.

Section 5

In a divorce case, the court may consider questions concerning maintenance payments, custody of children, children's residence and rights of access with children, the right to continue to reside in the spouses' joint dwelling until property division takes place, and the prohibition of mutual visits between the spouses. Claims relating to such matters shall be put forward in the application by which the proceedings for divorce are commenced. If such proceedings have already been commenced, these claims may be put forward orally before the court or in writing without a separate summons.

The question of the appointment of a property division executor may also be considered as part of the case. (Act 1998:320).

Section 6

When proceedings for divorce have been commenced, the court shall consider whether a decree of divorce can be granted immediately. If a reconsideration period is required, the court shall notify the parties that the reconsideration period has begun and inform them how the case will subsequently be handled.

Section 7

In a divorce case, the court may, with respect to the period prior to the determination of the question by a judgment that has become non appealable, on the application of either spouse,

- (1) determine which of the spouse is entitled to continue to reside on the spouses' joint dwelling; however, this shall be for no longer than until such time as property division has taken place;
- (2) Order that one spouse be obliged to contribute towards the maintenance of the other spouse.

In such a case the court may also, with respect to the period prior to the determination of the question of divorce by a decree that has become non-appealable, on the application of either spouse, prohibit the spouses from visiting one another.

A decision under the first paragraph may be enforced in the same way as a decree or judgment that has become non-appealable. A decision under the second paragraph shall be apply in the same way as a decree or judgment that has become non-appealable. A decision under the first or second paragraph may however, be varied by the court at any time.

If anyone contravenes a prohibition issued under the second paragraph, Section 24 of the Prohibition of Visits Act (1988:688) shall apply.

In a divorce case a court may moreover, applying the provisions of the Children and Parents Code, make orders concerning custody, residence, assess rights and contributions towards the maintenance of a child or children with respect to the period prior to the determination of such questions by a decree or judgment that has become non-appealable, or until the parents have agreed on the matter and, where required for the validity of the agreement, their agreement has been approved of by the social welfare committee. (Act 1998:320)

Section 8

The spouse whom the court has determined is to be entitled to continue to reside in the spouses' joint dwelling shall also be entitled to use household goods of the other spouse which are in the dwelling. However, the court may order otherwise regarding certain property. Any agreement which the last-mentioned spouse subsequently enters into with a third party shall not restrict the right to use the dwelling or the household goods.

If one spouse has been granted the right to continue to reside in the dwelling, the other spouse must move from it immediately.

Section 9

Before making its decision on an issue in accordance with Section 7, the court shall give the other spouse the opportunity to respond to the claim. (Act 2000:173)

Section 10

A separate application for a decree of divorce following a reconsideration period shall be submitted orally before the court or in writing. If this application is submitted by one of the spouses only, the court shall give the other spouse the opportunity to respond to it.

Section 11

If one spouse withdraws his or her claim for divorce after a joint application for divorce has been submitted to the court or after notice of that spouse's application for divorce has been served on the other spouse, the claim shall nevertheless be considered if the other spouse so requests. The other spouse shall be informed of this when notice of the withdrawal is sent to him or her.

If a spouse who has applied for divorce fails to attend a hearing in the case, the claim for divorce shall nevertheless be considered if the other spouse so requests. A spouse who has applied for divorce shall be informed of this by the court in the summons to attend a hearing. (Act 2000:173)

Section 12

When the spouses or one of them applies for divorce, the application may be considered without a main hearing. The provisions in the Code of Judicial Procedure are applicable in respect of whether other issues of the case may be considered without a main hearing. (Act 2000:173)

Section 13

If the court grants a decree of divorce, it shall at the same time review any decision made under Section 7, first paragraph,

subsection (1), or Section 7, second paragraph. When the court gives judgment regarding an obligation for one spouse to contribute towards the maintenance of the other spouse, it shall review any decision made under Section 7, first paragraph, subsection (2).

Section 14

If, under Chapter 5, Section 3, the question of divorce has lapsed, the case shall be dismissed. The parties shall then be responsible for their own legal costs.

Maintenance cases

Section 15

The provisions of Sections 7,9 and 13 regarding orders for maintenance payments with respect to the period prior to the determination of the question by a decree or judgment that has become non-appealable shall also apply when

- (1) one spouse has, without any connection with a divorce case, applied for an order requiring the other spouse to make payments of maintenance under Chapter 6, Section 5 or Section 6, first paragraph,
- (2) questions concerning maintenance under Chapter 6, Section 7, are considered after a decree of divorce has been granted, or
- (3) proceedings for the adjustment of a judgment or agreement concerning maintenance have been commenced under Chapter 6, Section 11.

Section 16

In cases provided for in Chapter 6, section 6, second paragraph, the court may, on the application of either spouse, decide on the question of the right to use household goods with respect to the period prior to the determination of the question by a judgment that has become non-appealable. Before making its decision, the court shall give the other spouse the opportunity to respond to the claim. The decision may be enforced in the same way as a judgment that has become non-appealable, but may be varied by the court at any time. (Act 2000:173)

Section 17

In the main hearing in matrimonial cases and maintenance cases, the district court shall be composed of a legally qualified judge and three lay assessors, unless otherwise provided in Chapter 1, Section 3a, second and third paragraphs, of the Code of Judicial Procedure. This rule shall also apply to other cases considered during the same court proceedings.

If any of the law assessors is prevented from attending after a main hearing has begun, the court shall be competent when composed of a legally qualified judge and two lay assessors.

If there are reasons for doing so, the number of legally qualified judges may be increased by one over and above the number provided for in the first paragraph. The same shall apply to the number of lay assessors. If one or more of the members of the court is prevented from attending after a main hearing has begun, the second paragraph shall apply.

When a district court includes lay assessors, during the court's deliberations the chairman shall give an account of the circumstances of the case and the content of the law. When voting occurs, the chairman shall first state his or her opinion, followed by the lay assessors. In other respects the provisions of the Code of Judicial Procedure concerning deliberations and voting in civil cases shall apply. (Act 1997:390)

Section 18

In matrimonial cases and maintenance cases, a court of appeal shall be competent when composed of three legally qualified judges and two lay assessors. If one of the legally qualified judges or one of the law assessors is prevented from attending after the main hearing has begun, the court shall still be competent. No more than four legally qualified judges and three lay assessors may participate. However, when a case is considered without a main hearing, and also when the case was decided without lay assessors in the district court, the court of appeal shall also be competent when composed only of legally qualified judges, as provided for in Chapter 2, Section 4, first paragraph of the Code of Judicial Procedure. In other respects, the court of appeal shall be

competent as provided in Chapter 2, Section 4, fourth and fifth paragraphs, of the Code of Judicial Procedure.

If lay assessors participate in deciding a case, during the court's deliberations the chairman or, if the case has been prepared by another legally qualified judge, the latter shall give an account of the circumstances of the case and the content of the law. When voting occurs, the lay assessors shall state their opinion last. In other respects the provisions of the Code of Judicial Procedure concerning deliberations and voting in civil cases shall apply. (Act 2000:390)