

# Top 10 FAQ about divorce

for expats living in the Netherlands



GMIW  
lawyers

# Table of Contents

Introduction & author biography

1. Can I get divorced in the Netherlands if I wasn't married here?
2. Will my Dutch divorce be recognised by other countries?
3. Can I go back to my native country with the children?
4. My ex-partner and I can't agree about contact arrangements. Help?
5. How is spousal maintenance decided in the Netherlands?
6. How is maintenance calculated in the Netherlands?
7. I was married abroad; which law applies to dividing the assets?
8. Will I have to share my foreign inheritances/gifts with my ex-spouse?
9. Will I have to share my pension with my ex-spouse?
10. Will I have to pay tax on what I receive from the divorce?

## Introduction

The world is global, and so are today's families. When it comes to getting divorced this can make it complicated – but for expats who wish to divorce in the Netherlands, it's possible to make it easier.

In this white paper, Susan Meijler of GMW lawyers answers the top 10 most frequently asked questions about divorce for expats living in the Netherlands.

## About the author



Susan Meijler is a family law expert who understands the specific needs of expats. She is an expert in contested financial disputes both in and outside court.

A member of the Association of Family Lawyers and Divorce Mediators, in particular Susan handles complex divorces with an international character. One of her key strengths is the ability to empower her clients so they can understand and take control of the process, and forward constructively, especially for the children's sake.

Contact Susan for help with both the financial aspects of divorce (financial settlement of the community property or prenuptial agreement, pension rights and alimony) and arrangements for children (parenting plans, contribution for care and education, relocation, international child abduction).

# 1. Can I get divorced in the Netherlands if I wasn't married here?

Yes, you can divorce in the Netherlands if you and your spouse have both acquired the Dutch nationality and/or you both live here. It is also possible to divorce in the Netherlands if only one of you is a resident and neither or only one of you has Dutch nationality. In this situation, you must meet certain conditions regarding the length of your stay in the Netherlands.

The international authority of a Dutch court to grant a divorce is not determined by where the marriage took place, but by the nationality of the spouses, the country where they live, and for how long they have lived there.

Sometimes divorce can be applied for in more than one country simultaneously, on a 'first come, first served' basis. If your future ex-spouse has filed for divorce in another country before you have filed for divorce in the Netherlands, it is too late for you. The Dutch court will refuse jurisdiction.

Family law is different in every country, so in case of an international divorce it is advisable to seek advice in the concerned countries from a lawyer specialised in international family law. Some countries, for example, impose a waiting time before an application for divorce can be lodged. This is not so in the Netherlands. Maintenance rules also vary considerably in every country, as do the rules regarding the distribution of assets.

**Tip:** Whether or not you can get divorced in the Netherlands does not depend on where you were married. It depends on your nationality, your spouse's nationality and where you live.

## 2. Will my Dutch divorce be recognised by other countries?

Under European rules, your Dutch divorce will be recognised throughout the European Union (EU). Outside the EU, the law of the country where you are seeking recognition will determine if your Dutch divorce is recognised there. In most countries, this will be the case.

Same-sex couples and so-called 'registered partners' should proceed with caution. In the Netherlands, a 'registered partnership' or a same-sex marriage gives you the same legal rights and obligations as a heterosexual marriage. You can therefore get your registered partnership dissolved or get a same-sex divorce in the Netherlands.

However, not all countries in the world allow same-sex couples to marry and many countries do not recognise 'registered partnerships'. In those countries, the Dutch dissolution of the marriage or partnership will not be recognised either.

**Tip:** Same-sex couples and registered partners – proceed with caution: your marital status may not be recognised in other countries.

### 3. Can I go back to my native country with the children?

Not without permission from your ex-partner, assuming that your ex-partner has shared parental authority of the children.

In principle, Dutch law applies if your children live in the Netherlands.

Under Dutch law, married couples automatically share parental authority of their children and therefore have the same rights and responsibilities.

For unmarried couples, Dutch law states that the father only has joint parental authority if he has completed the relevant paperwork or if he already has parental responsibility under the law of another country.

If your ex-partner does not consent to the relocation of the children, you can ask a Dutch court to issue an order granting you permission to relocate. The court will then consider the interests of all parties. Typical issues in the weighting of interests include the need to relocate, your children's roots in the Netherlands, the age of your children and the feasibility of maintaining contact with the parent who is staying behind.

If you relocate without your ex-partner's permission, it will be regarded as child abduction. Depending on which country you move to with the children, The Hague Abduction Convention of 1980 may apply. The basis of this treaty is that, unless there are very exceptional circumstances, the children must return to the Netherlands. A decision will then be taken in the Netherlands as to what care arrangements are in the children's best interests.

**Tip:** If your ex-partner has given you permission to relocate, make sure that you have this permission confirmed in writing. This also applies to holidays. There are special forms for this.

## 4. My ex-partner and I can't agree about contact arrangements. Help?

Contact arrangements can be one of the most challenging points to agree at the end of a relationship.

What will the access ruling be? If the parents live in different locations, who will pay for the flight tickets? Will the children fly with the accompanied minor service? These are just a few of the many considerations that must be taken into account and agreed by the parents.

If you can't agree on contact arrangements, you can try mediation or enlisting the help of other forms of assistance to reach a settlement.

If this (mediation) fails and the courts become involved, the basic rule is that only the courts of the country where the children live have jurisdiction, even if your children have Dutch nationality.

Therefore, if the children stay in the Netherlands, you can ask the Dutch court to determine contact arrangements and grant permission to travel or relocate. However, if your ex-partner and children have moved abroad (with your permission), then the court of that country will have jurisdiction, barring exceptions.

**Tip:** Bear in mind that if your family's circumstances change (for example the country you live in), you will need to update your parenting plan to reflect the new situation.

## 5. How is spousal maintenance decided in the Netherlands?

If maintenance is dealt with in the Netherlands then The Hague Protocol on Maintenance of 2007 will decide which law applies. In principle, this will be the law of the country where the recipient lives. In exceptional circumstances, when a marriage is more closely associated with another country, the law of that country may apply to the determination of spousal maintenance. In that case, maintenance will be set in accordance with the other country's rules.

So, if the recipient lives in the Netherlands, maintenance will be determined according to Dutch law. Dutch law is then not only applicable to the method of calculating the amount of maintenance, but also to the duration of the maintenance and the possibilities to change it in the future.

If the petition for divorce is filed after 1 January 2020, under Dutch law spousal maintenance will last half of the duration of the marriage, with a maximum of five years. There are a number of exceptions to this rule:

1. If the spousal maintenance recipient takes care of the children, the spousal support does not end before the date on which the youngest child reaches the age of 12.
2. If the marriage has lasted longer than 15 years and the maintenance recipient reaches the state pension age within 10 years, the spousal support does not end before the date on which the maintenance recipient reaches the state pension age.
3. If the marriage lasted longer than 15 years and the maintenance recipient was born before 1 January 1970, spousal support will end after 10 years.

If you live together with someone (with or without a cohabitation agreement), but you are not married or in a 'registered partnership', then there is no maintenance obligation towards your ex-partner.



**Tip:** If you are living with someone but you are not married, or in a registered partnership, then under Dutch law there is no legal obligation to pay maintenance after the relationship ends.

## 6. How is maintenance calculated in the Netherlands?

Dutch law provides calculation rules for both spousal and child maintenance, but these are determined as separate issues.

If you have children then either you or your ex-partner will probably need to pay maintenance for your children. The amount depends on your and your ex-partner's respective financial capacity, as well as the terms of the access arrangement.

Depending on you or your ex-spouse's financial situation, you may also need to pay spousal maintenance.

If the child and spousal maintenance is determined under Dutch law because your children and ex-spouse live in the Netherlands, the fact that you are an expat will be taken into consideration.

For example, the normal Dutch maintenance calculation cannot be applied straightforwardly if you are not a standard Dutch tax resident. Additional factors relating to the costs of an expat lifestyle will also be included in calculating maintenance.

Do the children attend an international school, and if so, who pays for the fees? Do they travel a lot to visit their family abroad? What extra expenses do you incur as an expat? What special allowances do you receive? Are you a diplomat, with all the privileges that implies?

All these questions are relevant for the purpose of calculating maintenance for expats.

**Tip:** Do not underestimate the tax implications of getting divorced. Take this into account in your maintenance calculations.

## 7. I was married abroad; which law applies to dividing the assets?

You may think that the law of the country in which you were married will apply to your matrimonial regime – but that is not necessarily true.

If you are married before 29 January 2019 and if the question of the division of assets and property is settled in the Netherlands, the Hague Convention of 1978 on the Law Applicable to Matrimonial Property Regimes will decide which law applies on the division of the assets and property. In the absence of a choice of law, this will depend on your and your partner's nationality and your first common matrimonial domicile. This (common matrimonial domicile) generally means the country where you and your spouse lived for the first six months after the day of the marriage.

Additionally, under certain conditions, the applicable law may change over time. This means that Dutch law and another country's law may apply to different time periods. For example, once you have lived in the Netherlands for 10 years, Dutch law may apply automatically. The fact that you were married abroad is seldom relevant to the question of which rules of matrimonial property apply.

The above named treaty does not apply to couples who were married before 1 September 1992; other rules then apply.

If you are married after 29 January 2019 and if the division of assets and property is settled in the Netherlands, the European Regulation on Matrimonial Property Rights will determine which law applies to the division of your assets. In the absence of a choice of law, this also depends under this regulation on the nationality(ies) of you and your spouse and your 'first common matrimonial domicile', but the regulation differs considerably from that of the Hague Matrimonial Property Law 1978.

**Tip:** If you've lived in the Netherlands for 10 years, Dutch law may automatically apply to the division of your assets... Even if you were married abroad.

## 8. Will I have to share my foreign inheritances/ gifts with my ex-spouse?

Whether you have to share an inheritance or gift with your ex-spouse depends on whether or not the Dutch law of matrimonial property is applicable.

If Dutch law applies and you are married before 1 January 2018 (irrespective of country) and have not set down any marital conditions in a pre-nuptial or post-nuptial agreement, then the general rule is that all your assets, including inheritances and gifts, will form part of the community of matrimonial property.

The legal system does however - occasionally - make exceptions for special situations where the benefactor lived abroad and could not have been aware that his inheritance or gift might have been included in a Dutch community of property. In most cases, namely where the estate is divided in another country, you will not have to share your inheritance or gift if you divorce.

Under Dutch law, the only way that you can exclude an inheritance or gift from becoming part of a matrimonial community of property is by making a pre-nuptial or post-nuptial agreement.

Your benefactors can avoid future gifts or inheritances from falling into a Dutch community of property by adding an exclusion clause to their will or gift. An exclusion clause is a clause that stipulates that an inheritance or gift is for the sole use of the beneficiary. If Dutch law applies and you are married after 1 January 2018 (irrespective of country) and you have not set down any marital conditions in a pre-nuptial or post-nuptial agreement, you automatically marry into a restricted community of matrimonial property. Assets or debts that belonged to you personally before the marriage remain yours. Assets and debts acquired during the marriage will form part of the community of matrimonial property. An inheritance or gift is not part of the community of property, not even if you received it during the marriage.

**Tip:** Ask your benefactors to add an exclusion clause to their will or future gift to you. This will prevent your inheritance or gift from falling into a Dutch community of property.

## 9. Will I have to share my pension with my ex-spouse?

If the division of your pension is decided in the Netherlands, the answer to this question depends on what kind of pension arrangement you have.

If you have accrued your pension with a Dutch insurer, the Equalisation of Pension Rights Divorce Act applies. This gives your ex-spouse the right to 50% of the old age pension that you built up during your marriage. If you signed and submitted the official document within 2 years after your divorce then the insurer will pay your ex-spouse automatically when you reach retirement age. Otherwise, you will have to arrange this payment yourself.

If Dutch law applies (this depends on various circumstances), but you hold a pension with a foreign insurer or with an insurer of one of the many international organisations in the Netherlands, then the Equalisation of Pension Rights Act will also apply. Your ex-spouse will then have the right to half of the old-age pension you built up during your marriage. However, foreign insurance companies are not governed by the Dutch Equalisation law and will not make payments to your ex-spouse on their own initiative when you come to draw your pension. You will therefore have to make special arrangements to pay your ex-spouse the amount to which he or she is entitled.

If another country's law is applicable to the division of your pension, then the Equalisation of Pension Rights Act does not apply. The law of the foreign jurisdiction will then decide whether you have to share your pension.

**Tip:** While making arrangements for your old age pension, remember to include the survivor's pension in your considerations.

## 10. Will I have to pay tax on what I receive from the divorce?

Child maintenance is paid net of tax when you live in the Netherlands, while maintenance for ex-spouses is paid before tax. That means you are liable to pay tax even if your ex-spouse is unable to deduct her/his maintenance payments.

Any transfer of property that takes place in the context of settling the matrimonial estate is net of tax. However, if you are married in the Dutch community of property and wish to deviate from a 50/50 division, you will risk tax being levied. So, be cautious here.

**Tip:** Dutch tax law could profoundly affect the choices you have to settle your finances after a divorce. Always get legal advice on your options from someone with experience in the complexity of international divorces.



# When the going gets tough...

## GMW lawyers can help you work it out.

Our team of international divorce lawyers focus on ensuring that your divorce provides a lasting solution. This includes reaching settlements and litigation in family law matters concerning children, maintenance payments, the division of property, pensions, and dealing with changes to your situation over time.

Contact us for further information and advice about your legal options.



**GMW**  
lawyers

Scheveningseweg 52, 2517 KW Den Haag

E-mail: [info@gmw.nl](mailto:info@gmw.nl)

Phone: +31 (0)70 3615048

[www.gmw.nl/en](http://www.gmw.nl/en)