

## 'Fairer' Scots divorce laws see wives worse off than in England



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WIVES may be worse off under Scots divorce laws, compared with those in place in England, according to legal experts.

Consensus Collaboration **Scotland** (CCS) a network of lawyers, family consultants and financial experts that specialises in out of court divorce settlements claim wives may be financially worse off under Scots divorce law, despite the Scottish system overall being deemed fairer.

With divorce rates remaining high, 42 per cent of marriages end in divorce and 34 per cent of married couples divorce before their 20th anniversary the division of assets following a divorce can have far-reaching consequences for both parties.

Denise Laverty, of BTO Solicitors LLP, a member of CCS, said: “One of the main differences between English and Scots divorce law, is the size of the pot of assets available for division in a divorce. Under Scots law, only the assets accrued between the date of marriage and the date of separation are taken to be matrimonial property.

“In England all assets, including property, pensions or investments, are added to the mix, even if they have been accrued before the marriage or after separation.

“This can benefit wives in England in several ways. For example, if the family home was bought by the husband prior to marriage and is in his sole name, under English law, a court could order that this be transferred to the wife.

“In Scotland, unless that house was purchased prior to marriage for use as the family home, then it would not be considered as matrimonial property.”

Mrs Laverty, an accredited specialist in Scots and English family law, said another key difference is that in Scotland, the “pot” of assets is usually shared equally unless there are special circumstances.

In England, she says, the first thing a court will consider is the welfare of any child of the family under the age of 18, which can mean that the lion’s share will go to the wife as the primary care giver.

She added: “There are also disparities in the law surrounding maintenance which often favours wives in England.

“In Scotland, aliment, the Scottish term for maintenance, is unlikely to be awarded for a period of more than three years, whereas in England, it is possible to obtain a lifetime maintenance award.

“The way pensions are divided also differs. Under Scottish law, pensions are treated as a capital asset and, usually, the husband and wife will either offset the capital value of the pension against another asset, or a pension share will be agreed or ordered by the court.

“Under English law, whilst both of these options are also available, there is also the possibility to divide the pensions in a way that equalises the income they will produce.

“As the husband often has the larger pension pot, this additional option in England can help to provide better financial security for the wife.”

Despite greater provision for the wife and children under English divorce law, many Scottish family lawyers feel that the system north of the border is fairer, particularly for people who have accrued wealth before marriage or through an inheritance.

Mrs Laverty added: “The Scottish system is more prescriptive with a clearly defined framework both for how matrimonial property is identified and valued and how it should be divided.

“In England, the system for dividing assets is far more complex, with more discretion available to the court. This makes it more difficult to provide English clients with advice on the likely outcome if they put matters in the hands of the court.

“Naturally, the best way to avoid the uncertainty, expense and acrimony of a court action, is to try to reach an agreement out of court.”