

Divorce may not mean a meal ticket....

✖ Women who are considering divorce proceedings need to be aware of the financial risks from a “clean break” separation, according to a Scottish family law firm.

Edinburgh-based Gibson Kerr says that many women who are splitting up with their spouses should be aware that they may be left with no future maintenance payments, as the Scottish “clean break” method of divorce does not provide for these.

Unlike in England – where partners can be awarded maintenance if one party (commonly the wife) cannot adequately support themselves without maintenance from the other – Scots law prefers to give both partners a fresh start, or “clean break”, when they separate.

However, Gibson Kerr says that this scenario can have serious financial consequences for people who are divorcing in Scotland – and the firm has urged women in particular to fully consider how their separation could cost them in the future.

Fiona Rasmusen, partner at Gibson Kerr, said: “In England, there have been a number of high profile cases where people have made a claim for future maintenance against their partners. It is often the case that one partner, (often the wife) will sacrifice her career in the interests of the other partner’s career or in the interests of the children of the marriage.

“When the couple divorce, this can leave one party much worse off and with much less earning power than the other. In England the court can award maintenance if one party cannot adequately support themselves and this normally runs until remarriage or death.

“However, in Scotland this is not the case. Under the clean break system, which is intended to give both partners immediate closure in the case of a marital breakdown, the courts are not likely to award any future maintenance to a spouse, even if it can be shown that earning power is much less.

“If the couple have children, then both parents have an obligation to support the children until they have left full time education.

“The problem is that, for example, in the case of a wife who has given up a promising career in order to look after the home, support her husband and raise a family, she can be left in a relatively poor financial position at the end of the divorce. Alternatively, her husband – who is likely to have kept his higher paying job, possibly forging ahead with a career with the support of his wife – may be in a stronger position than she is following the divorce.

If it can be shown that one party has lost out economically (for example by sacrificing a promising career) that person might be awarded a greater share of the property when it is divided up. But it will not necessarily mean that they would get ongoing maintenance after the divorce. The most they are likely to get is maintenance for up to three years after divorce to help them adjust to their new circumstances.

“Unfortunately, many people do not consider this eventuality when they separate and start divorce proceedings. They sometimes want to get their union terminated as soon as possible and don’t consider the financial impact that a divorce may have further down the line.

“It may be tempting to try and get everything completed quickly – or to take the cheap option of a DIY divorce – but this can have serious ramifications in the future. Therefore it is vitally important for these people to seek legal

guidance from an experienced family law solicitor in order to get the best possible settlement they can and secure themselves against future financial woe.”

Gibson Kerr is a family-run law firm that has been established in Edinburgh for more than 100 years. It has an excellent reputation for providing a comprehensive service encompassing both property and personal law, including powers of attorney, executries and wills.