

## What is a post-nuptial agreement?

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People who are already married or in a civil partnership can decide to enter into an agreement that shows what they intend to happen to their money and property if the marriage or civil partnership were to end. This is colloquially called a post-nup or post-cip (we will refer to them as post-nups). People sometimes decide to enter into a post-nup if they did not think about having a pre-nup before getting married or if there has been a separation followed by a reconciliation. A separating couple may make an agreement on financial matters if they do not yet wish to divorce: this type of post-nup is called a separation agreement, but similar rules apply.

## Are post-nups binding on the court?

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Generally, post-nups are not strictly binding on the court in the event of a later divorce, but it is likely that a post-nup will be respected by the court unless the effect of the agreement would be unfair in the circumstances. It is not possible in this country to have a fully binding agreement about what will happen on divorce or dissolution. In other countries, agreements made during marriage are often binding.

In order to do the best job of ensuring the court will not consider the agreement to be unfair if it is necessary to rely on it, both of you will need to set out your financial circumstances in full and take independent legal advice on the agreement and its effects. You can negotiate an agreement using mediation or collaborative law, or more traditionally by using solicitors to talk to each other on your instructions. Your family lawyer will help you find the process most suitable for you.

Agreements are generally less likely to be considered to be unfair if they are recent or if circumstances have not changed since and if both people knew exactly what they were getting into when the agreement was made, both legally and financially, without undue pressure being applied. For this reason, properly negotiated separation agreements are most likely to be upheld by the court on divorce.

It is possible that the court might uphold part of an agreement while considering a different part to have an unfair effect.

## What sorts of things can a post-nup cover?

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A post-nup is a bespoke document drawn up for the two of you for your particular circumstances, so it can cover almost anything you want it to. There are certain things that couples usually think about when deciding how they would want to work things out if the marriage ends:

- what would happen to property either of you brought into the marriage?
- what would happen to the family home?
- what would happen to any property given to you or inherited during the marriage, or any income or assets derived from trusts?
- what would happen to money held in joint accounts and any property purchased jointly?
- what would happen to any saved money earned during the marriage?
- what would happen to your pensions?

- how would you deal with any debts?
- would either of you pay or receive any maintenance and, if so, for how long?
- what kinds of events might require the agreement to be reviewed?
- what kinds of arrangements would you like to make for any children you have or are likely to have, both in financial and in practical terms?

A separation agreement is likely to have a draft consent order attached, which enables it to easily be turned into a final court order when you decide to proceed with the divorce as long as circumstances have not changed from those envisaged when the agreement was made.

### What happens if we have children after the agreement?

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An agreement between adults cannot prejudice the interests of any children in your family. It is usual to build in provision for a review of the agreement if and when you have children, so that the children's needs can be considered and assessed at that time, with possible changes made to any expectations of the adults.

In the event of a divorce, if the court is asked to intervene in financial arrangements its first consideration is always the children involved. If the court considers that any agreement of the adults may adversely affect their children, eg by restricting any expectations of a lifestyle they would otherwise have had without the agreement, it is likely to consider that it is not fair to uphold the agreement in the circumstances.