

# Guide to Pre and Post-Nuptial Agreements in the UK



Pre and post nuptial agreements are becoming an increasingly popular option for UK couples. Family units have changed from how they were many years ago and modern relationships see couples marrying for a second, or third, time.

This brings blended families together including stepchildren and families living across different households. The financial implications of a possible breakdown of marriage in those circumstances can be complicated and many couples may look at pre or post nuptial agreements to protect assets and inheritance. The rise of pre and post nuptial agreements are not therefore exclusively for the very rich and famous.

## What is a pre/post-nuptial agreement?

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If in the UK a prenuptial agreement is a legal agreement that sets out how assets should be divided between a couple in the event of a divorce.

The legal contract is entered into before marriage. It sets out rights regarding property, income, debts, and any assets acquired individually (such as inheritance) or jointly (such as a joint family home). A prenuptial agreement must be signed before any marriage.

A post-nuptial agreement is signed after the marriage but has the same legal treatment as a prenuptial agreement - the only difference is the timing of it.

## Why have a pre/post-nuptial agreement and how do they work?

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The intention behind the agreement is to give you clarity and certainty around the arrangements in the event of a breakdown of a marriage. It can save time, uncertainty, stress and significant legal fees if you end up in a divorce situation at a later stage.

Most commonly these agreements are used to protect particular types of assets, so that they are not shared on divorce. It is important that parties appreciate that having a legal agreement does not mean that you will divorce, rather it gives some reassurance that in the unlikely event of that happening, you are both protected financially.

## Are pre/post-nuptial agreements legally binding in the UK?

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This is one of the most common questions we as divorce experts are asked. A pre/postnup in UK law is not automatically legally binding but, will be upheld by the Court so long as it meets qualifying criteria which have been set by the Supreme Court and reviewed by the Law Commission.

## Are pre/post-nuptial agreements legally binding *continued*

The criteria are:

- > The agreement must be entered into freely;
- > Both parties must understand the implications of the agreement;
- > The agreement must be fair;
- > The agreement must be contractually valid;
- > The agreement must have been agreed and signed at least 28 days before the wedding (if not then a postnup should be possible);
- > There should be disclosure about financial circumstances;
- > Both parties **MUST** have received legal advice; and
- > It should not prejudice any minor children.

## Can you make a pre/post nuptial agreement without a lawyer?

In short, no. The law is very clear on this matter and that to make the agreement binding both parties must have independent advice on the document. Importantly we cannot act for both of you - each party must be advised by separate lawyers.

## Reviewing a pre/post-nuptial agreement

The longer the duration of the marriage following the agreement, the greater the chance that it may not be fair to bind parties to the contract. There may be financial changes and parties may have children together. For this reason, it is vital that any agreement includes regular reviews of the agreement.

## What are the likely costs of an agreement?

This is something that we are often asked about. When we draft a simple and straightforward pre/post nuptial agreement which ring fences a particular asset such as an inheritance the costs will start from £1,500 plus VAT and will usually be a fixed fee. If the assets are more complicated, those costs will increase as there may be more negotiation required. As both parties require their own solicitors, the total costs will depend also on the fees of the other solicitor advising. There is no "one size fits" all pre or post nuptial agreement, these are bespoke agreements drafted for each individual client. What we can say however is that the costs of the agreement may, in the long run, mean spending very much less on legal fees if you were to divorce in the future.

**If you're looking for advice or to consider a pre or post nuptial agreement, please contact Sarah Watts:**

- > Email - Sarah.Watts@dpmlegal.co.uk
- > Direct dial - 01483 521 510
- > We cover all local areas in Godalming and beyond including Surrey and Hampshire.
- > We also offer a free initial appointment to discuss your options.

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