

maintenance



flac

promoting access to justice

march 2009

Separated or divorced people are responsible for the maintenance of their dependent children and, depending on the terms of their separation/divorce, they may also have maintenance responsibilities in respect of each other.

- A **spouse** can apply for maintenance even if they are living with the other spouse.
- Unmarried parents are obliged to maintain their children but they have no financial obligations to each other.

(See also *Separation, Divorce and Cohabitation* leaflets.)

Maintenance Following Separation or Divorce

In Irish law the obligation to maintain a spouse and children cannot be set aside, even on divorce. In other words, it is not possible to achieve a 'clean break' on separation or divorce.

A clause in a separation agreement, which states that a spouse cannot seek maintenance or an increased amount of maintenance in the future, **cannot** be enforced.

A divorced spouse can apply for a maintenance order or a variation of an existing maintenance order **after** the decree of divorce has been granted. A spouse is only barred from doing this if she/he has remarried.

How to set up maintenance arrangements for children or for spouses

Maintenance arrangements can be made by way of a voluntary agreement between the parents, or through court proceedings.

Maintenance orders can be applied for at any time through the courts. It is not necessary to have legal representation to undertake these proceedings, but it is wise to obtain legal advice.

The nearest District Court office will be listed in the telephone directory under 'Court' or found online on the Courts Service website: www.courts.ie. The District Court clerk can issue a maintenance summons against the other spouse or parent.

If proceedings for judicial separation or divorce have already begun, or if the amount of maintenance sought exceeds the limit of the District Court, then the matter of maintenance will often be determined in the Circuit Court.

The spouse or parent can go to the District Court clerk and take out a **maintenance summons** in order to begin the process. The court staff will require details in order to start the case, e.g., your name, address, and that of the respondent (the other parent). A summons will be sent by registered post to the respondent, which directs him/her to attend the Court for a hearing on a certain date.

If parents are unmarried it may be necessary to establish the paternity of the child in the course of maintenance proceedings.

If circumstances change after a maintenance order has already been obtained, either parent can go back to Court at any time for a **Variation Order** to have the amount of maintenance increased/decreased.

Maintenance proceedings are always held in private. They can be brought at any time until the child turns 18 years old, or else up to age 23 if that child is in full-time education, or would be if maintenance was being paid. If the child has a disability that prevents him/her from leading a fully independent life, there is NO age limit.

Payment of maintenance **does not** give a parent any access or guardianship rights. These are seen as separate issues.

A Maintenance Order can run from the date upon which the order was applied for. From that point on, where maintenance is not paid or only partly or sometimes paid, the unpaid amount of it is known as 'arrear of maintenance'.

Voluntary Maintenance

It is possible for parents or spouses to make a written voluntary maintenance agreement between them about how much maintenance will be paid in the future and then, if they wish, they can apply to the District or Circuit Court (depending on the decided amount of maintenance) to have it made a rule of court.

Either parent can apply to have a voluntary agreement made a rule of court; by doing this the agreement is given legal force. This means that if any term of the agreement is breached, certain court-ordered remedies may be available to help enforce it.

The person who is to receive the maintenance is known as the maintenance creditor and the person who is to pay is known as the maintenance debtor.

The following matters should be taken into account when laying out a voluntary maintenance agreement:

- Estimate the cost of living if you are married. Estimate the cost of raising your child. It is important to remember that the District Court can only award a maximum of €150 per child per week and a maximum of €500 for a spouse.
- Determine the financial resources of both parents, including actual earnings, earning capacity and the assets held by each parent.

- Determine the financial duties of the maintenance debtor. If the maintenance debtor has children from another relationship to whom maintenance payments are made, then this must be taken into consideration.

Having considered the above matters, the parties agree on an amount and then sign the voluntary maintenance agreement. This may provide for a property transfer or a lump sum payment. The agreement **cannot** rule out the possibility of a court application for a maintenance order for regular payments being made at some time in the future. Provided that it meets certain legal requirements, a maintenance agreement will be legally binding on the parties.

Mediation

Mediation may help if there is difficulty coming to an arrangement which satisfies both parents. Mediation provides a service to help couples negotiate the terms of their own agreement in an atmosphere of co-operation. A professionally trained mediator will try to assist the couple in reaching their own agreement. The aim for the mediator is to help couples deal with emotional and difficult issues that can often prevent an agreement being reached.

Mediation in the Family Mediation Service is **free of charge**.

Contact:

Family Mediation Service
Floor 1
St Stephens Green House
Earlsfort Terrace
Dublin 2
Tel: 01-634 4320
Online info: www.fsa.ie

Where parents cannot reach a voluntary agreement, they can each engage a solicitor who may act as their negotiator in setting up the agreement. One solicitor can never act for both parties.

Maintenance Orders

Where an agreement cannot be reached, either parent may apply to the Court for a maintenance order against the other parent in respect of a dependent child and for a maintenance order for him or herself if they are married.

The maximum amount the District Court can order each parent to pay is €150 per week per child and €500 per week for a spouse. There is no such limit in the Circuit Court or High Court. Having regard to these ceilings, the spouse or parent can decide to apply for the order in the District or Circuit Court depending on the level of family income.

Records of Maintenance: For the purposes of certainty it is useful to have the maintenance debtor pay through the District Court clerk.

Non-Payment

Non-payment of a maintenance order is an offence and may result in a prison sentence or a fine because the person who breaches the order is also in contempt of court.

If a parent or spouse defaults on their maintenance payments, it is possible to apply to the court for an **Attachment of Earnings Summons**, which would mean that maintenance payments are deducted directly by that person's employer. An Attachment of Earnings Order can be sought if the person is in employment, on social welfare or on a private pension, resulting in the maintenance being deducted at the source, whether that means the person's employer or the Department of Social and Family Affairs.

Under the Family Law Act 1995, it is also possible to apply for this attachment at the initial maintenance hearing, if the person applying to court fears that there will be a default.

If the parent or spouse who has to pay maintenance is self-employed, then you can apply for an **Enforcement Summons** against them.

The Circuit Court or District Court, in making a maintenance order, can direct that the payment under the order shall be made to the District Court Clerk and passed on to the maintenance creditor, if the court considers it appropriate in the situation.

All payments received are immediately dispatched to the receiving spouse or parent on the date received.

Non-Payment by a person living abroad

There are two ways to recover maintenance depending on where the maintenance debtor lives.

- 1 The first is where the maintenance debtor resides in the UK. In this case a person seeking recovery of maintenance under an order can apply to their local District Court. Court officials will guide an applicant through this process.
- 2 The second is when the maintenance debtor resides in one of the 60 countries that have signed up to the UN Convention on the Recovery Abroad of Maintenance Payments, in the USA or in a EU Member State. In this case an Irish resident seeking payment can apply to:
The Central Authority for Maintenance Recovery
The Department of Justice
Bishops Square
Redmond Hill
Dublin 2
Tel: 01-479 0200

The Central Authority will assist in any of the following matters:

- Applying for a Maintenance Order in one of the above countries.
- Enforcing a Maintenance Order that already exists in one of the above countries.
- Seeking an increase in payments under an existing Maintenance Order in one of the above countries.

The Central Authority works by transmitting your application to the Central Authority in the country where the maintenance debtor lives. No fees are charged for these services.

If the maintenance debtor does not pay after being contacted by the Central Authority then, if they live in a EU country (except for Denmark), the rules of Council Regulation (EC) 44/2001 (the Brussels I Convention) come into play. This means that a judgment in respect of arrears of maintenance (the lump sum owed) can be obtained and registered in the country where they reside.

The Central Authority in that EU country then goes through their national courts seeking payment as if seeking to collect a debt under the national law.

However as of October 2005, Regulation 805/2004 means that uncontested maintenance orders can be directly enforced in another EU Member State without having to go through another court process there. This means if you have got a maintenance order from the Irish courts against someone living in Spain, for example, you can apply to the Master of the High Court in Dublin to have this order enforced as a European Enforcement Order directly in Spain, without the order having to pass through the court of that country all over again.

Legal Aid: you may be eligible for legal aid if you are a person of moderate means. To qualify for legal aid in civil cases your disposable income and assets must be below

a certain limit, there must be merit to the case and there must be no more satisfactory way of resolving the problem. After approval, the Legal Aid Board provides you with the services of a solicitor and, where necessary, a barrister. You can apply for legal aid for more than one matter at a time. The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, Locall 1890 615 200.

All those who are granted legal advice and/or legal aid must pay a fee called a contribution to the Board. The minimum contribution is €10 for legal advice and €50 for legal aid. The law centre staff will advise a person of the actual contribution in each individual case.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The maximum allowance (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local Law Centre.

FLAC Mission Statement:

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

While every effort has been made to ensure the accuracy of this leaflet, it is provided for general legal information only and is not intended as a substitute for legal advice. FLAC does not accept any legal liability for the contents of this leaflet. Persons with specific legal problems should consult a solicitor.

Funded and supported by

Citizens **Information** Board



Free Legal Advice Centres

13 Lower Dorset Street

Dublin 1

LoCall: 1890 350 250

Tel: 01 874 5690

Email: info@flac.ie

Website: www.flac.ie