



maintenance

What is maintenance?

Maintenance means financial support – money – you provide to a dependent child and/or to your spouse, civil partner or cohabitant.

Maintenance Act 1994

The person who receives the maintenance payment is known as a 'maintenance creditor' and the person who has to make maintenance payments is known as a 'maintenance debtor'.

In this document, the expression 'dependent child' means a child born of or adopted into married and non-married relationships. This is explained in more depth below.

Who is considered a 'dependent child'?

To be considered a dependent child, the child must be born to or adopted by either both spouses/cohabitants/civil partners or one of the spouses/cohabitants/civil partners. In addition, he or she must be under the age of 18 (or under 23 if they are in full-time education).

Note that there is no age limit when the child has a mental or physical disability to the extent that it is not 'reasonably possible' for that child to maintain himself or herself. Note also that an adult child in full-time education between the ages of 18 and under 23 can apply for maintenance on his or her own behalf.

Who is a cohabitant?

A cohabitant is one of 2 adults (whether of the same or opposite sex) who live together as a couple in an intimate and committed relationship. To be a cohabitant, these people must not be related to each other within the degrees of relationship prohibited by law, or be married to each other, or be civil partners of each other.

Child and Family Relationships Act 2015

A cohabitant who is the parent of a dependent child can apply for maintenance in respect of this child from their partner so long as the partner is a guardian of that child.

Remember: No matter what the relationship of the parents to one another, each of the parents is legally responsible for maintaining his or her children. The obligation to maintain a child only disappears when the child turns 18 (or 23 if in full-time education). The obligation to maintain a dependent child with a mental or physical disability continues throughout the lifetime of the child where deemed necessary.

What about maintenance for couples?

Couples have a responsibility towards each other to pay maintenance, depending on the means available to them and on the individual situation.

- **Married couples:** The obligation to pay maintenance to a spouse arises

automatically from the marriage regardless of whether they ever acted in the role of parent. It applies both during and after the end of the relationship. Both spouses have an obligation to maintain one another. The obligation to maintain a spouse will only disappear definitively on the death or remarriage of the spouse. This means that in certain circumstances a person may be obliged to pay maintenance to a spouse even after obtaining a divorce from him or her.

- **Civil partners:** The obligation to pay maintenance to a civil partner arises automatically from the registration of a civil partnership and applies both during and after the end of the relationship. Both civil partners have the obligation to maintain one another. The obligation to maintain a civil partner continues even after the civil partnership is dissolved and will only disappear definitively on the death, marriage or registration of a new civil partnership.
- **Cohabitants:** The obligation to pay maintenance to a cohabitant can arise only in very limited circumstances. Note that maintenance can only be paid to a cohabitant where the relationship is over or one of the cohabitants dies. The cohabitants cannot be related to each

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

other, married to each other or be in a civil partnership. There are some further criteria:

- ▼ Firstly, the couple (whether same-sex or opposite-sex) must be qualified cohabitants, which means they must be living together as a couple in an intimate and committed relationship for five years where there are no children of the relationship, or for two years where they have children together.
- ▼ Secondly, the partner seeking maintenance must meet the criteria for the Redress Scheme for Cohabiting Couples and establish that he or she was financially dependent on the other person.
- ▼ Thirdly, note that you cannot qualify as a cohabitant if you are married until you have been living apart from your estranged spouse for at least four of the previous five years.
- ▼ Fourthly, applications for maintenance against living cohabitants must be taken within 2 years of the end of the relationship. Applications for part of the estate of a deceased cohabitant must be taken within 6 months of the grant of representation being extracted from the probate office. A 'Grant of Representation' is

Redress Scheme 172, Civil Partnership and Certain Rights and Obligations of Cohabitants Act

the general term used to cover all types of grant in relation to probate.

The obligation to maintain a cohabitant will only disappear definitively on the death, marriage or registration of a civil partnership of the dependent cohabitant.

How do I go about obtaining maintenance?

You can make maintenance arrangements either by way of a voluntary agreement between the parties or by means of a court order. You can get help in reaching an agreement through mediation or collaborative law.

Mediation

Family Mediation is a process in which an impartial third person (the mediator) assists those involved in family breakdown to reach agreement regarding their children, finances and property. Mediation is particularly useful where the parties have agreed to separate or divorce or where they have any issues relating to maintenance, custody, access or guardianship.

The courts favour mediation and judges will adjourn cases in some instances and suggest mediation before proceeding with the case in court.

The mediator should be accredited and professionally trained – his / her job is to manage negotiations in an impartial way.

Generally speaking mediation takes place over 3 to 6 sessions. The parties should obtain their own separate legal advice throughout the mediation process.

When agreement is reached, the mediator will draw up a written document usually referred to as a memorandum of understanding that sets out what the parties have agreed. The parties will each be advised by the mediator to get independent legal advice and the mediated agreement can then form the basis of a legally binding document.

Note: A mediated agreement is not legally binding until it is formalised by a Deed of Separation or Court Order.

The Family Mediation Service is a state-run, non-means tested and free service forming part of the Legal Aid Board. There can be a waiting time of a number of weeks/months. Each party must contact the mediation service separately to book themselves in. There are currently 17 offices located around Ireland, some part-time and some full-time. For more information, check the website at www.legalaidboard.ie

Apart from the Family Mediation Service, you can avail of mediation on a private basis where you pay by the hour. Private mediators can be sourced through the Mediators' Institute of Ireland at www.themii.ie. It is important to establish the family mediator's credentials and experience before proceeding.

Community Law & Mediation

Tel: 01 847 7804

Web:

<http://www.communitylawandmediation.ie/> (serving Dublin 5/17 and in Limerick) and

Ballymun Community Law Centre (BCLC)

– (based in Dublin 9/11)

Tel: 01 862 5805

Web: www.bclc.ie

Both independent law centres provide a free family mediation service.

Collaborative law

What is collaborative law?

Collaborative law is an alternative way of resolving family law matters including separation, divorce, custody, access, guardianship and maintenance. It encourages people to try and resolve their disputes in a non-confrontational manner, with the help of specially trained collaborative lawyers, and avoid going to court.

How does it work?

Both parties work with their collaborative lawyers to try and resolve the issues through face to face meetings. If the process breaks down, neither of the lawyers can act for their clients in any contested court proceedings. If the process is successful the parties will have an agreement.

The Legal Aid Board can provide lawyers trained in collaborative law for those eligible for legal aid. In the event that the process breaks down, the Legal Aid Board will arrange for alternative legal representation to represent the parties in court.

Further information about collaborative law can be obtained from the Legal Aid Board www.legalaidboard.ie and the Association of Collaborative Practitioners – www.acp.ie

1. Voluntary Maintenance

Spouses, civil partners or cohabitants may make a written Voluntary Maintenance Agreement on how much maintenance will be paid, with or without a solicitor's involvement. You should note that such a voluntary agreement cannot impose limits on the obligation to pay maintenance, as any agreement which prevents parties from later on seeking a court Maintenance Order or seeking to change ('vary') the amount to be paid is not enforceable before the courts.

The following matters should be taken into account when laying out a Voluntary Maintenance Agreement:

- ▼ Estimate the living costs of the person seeking maintenance and the costs of raising a child, if any.
- ▼ Determine the financial resources of each of the spouses / civil partners / cohabitants, including actual earnings, earning capacity and the assets held by each party.

- ▼ Determine the financial obligations of the maintenance debtor (person who pays the maintenance). If, for example, the maintenance debtor has dependants and/or children from another relationship to whom maintenance payments are made, then this must be taken into consideration.

The parties should agree on the amount to be paid and then sign the Voluntary Maintenance Agreement. This agreement may also provide for a property transfer or a lump sum payment but cannot rule out the possibility of a future court application for a maintenance order. Provided that it meets certain legal requirements, which differ depending on whether they refer to a marriage, a civil partnership or cohabitation, such maintenance agreements will be legally binding on the parties.

Once a Voluntary Maintenance Agreement is in place, any of the parties can make an application to the District or Circuit Court (depending on the decided amount of maintenance) to have it made a 'rule of court' so that if any term of the agreement is breached, certain court-ordered remedies may be available to help enforce it.

Usually you would first attempt to make a voluntary arrangement, with or without the help of a mediator or solicitor acting as negotiator. If that fails, you would then seek

to put in place an arrangement through court proceedings called a **Maintenance Order**, for which you may seek legal assistance. In practice, the obligation to pay maintenance will fall to the person with the greater financial capacity and income, but taking into account the needs and expenses of both parties.

2. Maintenance Orders

Where an agreement cannot be reached voluntarily, either party may apply to the Court for a Maintenance Order against the other party in respect of a dependent child and/or for him or herself if they are spouses or civil partners or if they are qualified cohabitants (remember the relationship must have ended before the qualified cohabitant can seek maintenance).

A court application for a maintenance order can be made at any time and it is not necessary to have legal representation, but it is advisable to get legal advice. You can apply in the District Court area where either party resides or works. You will find details of your nearest District Court office in the telephone directory under 'Court' or on the Courts Service website: www.courts.ie.

Note that maintenance applications before the District Court can be for up to €500 per week for a spouse and €150 per week per child. In cases where a maintenance application is made, the Court can also make a lump sum maintenance payment in addition

Section 42 of
Family Law
Act 1995

to or in substitution to a periodic payment. The highest lump sum that can be awarded in the District Court is €15,000. The Circuit Court jurisdiction is €75,000. The Circuit Court deals with maintenance applications for larger sums and it is highly advisable to seek legal advice and representation in this case.

To make a maintenance application, you go to the respective District Court and ask for a Maintenance Summons to be issued against your spouse, civil partner or cohabitant. Such summonses are issued by the District Court Clerk. You will need to provide details such as your name and address as well as the name and address of the respondent (this is the other parent/party). 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. Maintenance proceedings are always held in private (*in camera*).

The summons must be served on the maintenance debtor at least 14 days or, where service is by registered post, at least 21 days before the court hearing date. After service, you have to lodge the original summons, together with a statutory declaration as to service (this is either on a portion of the summons or can be printed out from the court forms section of the Courts website (www.courts.ie) and proof of postage, with the District Court clerk. You must do this at least two days before the date of the court hearing. You must also attend in court on the day to make your application.

In the event that judicial separation or divorce proceedings have already begun or the amount of maintenance being sought exceeds the limit of the District Court, then the matter of maintenance will often be determined in the Circuit Court or the High Court.

When parents are unmarried, it may be necessary to establish the paternity of the child in the course of maintenance proceedings. Also, note that paying maintenance does not give a parent any access or guardianship rights. These are separate issues.

If circumstances of either party substantially change after a Maintenance Order has already been obtained, either party can go back to court at any stage for a Variation Order to have the amount of maintenance increased or decreased.

If needed, the District Court can direct that maintenance payments be made to the District Court Clerk. The District Court has a fully computerised payments system for the receipt and transmission of payments and all payments received are immediately dispatched to the maintenance creditor.

In addition, if you use the District Court office as a conduit for payments, it keeps a record of all maintenance payments received. If payments then fall into arrears, you can prepare a summons to be issued (dated and signed) by the District Court clerk for recovery of arrears. You will have to serve the summons. At the hearing of the summons, the District Court

clerk can give sworn evidence to the court of the amount of arrears due.

A Maintenance Order can run from the date on which the order was applied for, but more usually it only takes effect from the date of the court order. From that point on, where maintenance is not paid or only partly or sometimes paid, the unpaid amount is known as 'arrears of maintenance'.

No 'clean break': It is important to note that under Irish law, maintenance orders can be changed or varied at any time after separation, divorce, dissolution of civil partnership or the end of the cohabitation, when it is shown to the court that a significant or fundamental change of circumstances of any of the spouses, civil partners or cohabitants has occurred. This might happen, for example, when the person has become unemployed or taken a salary cut, but can also include extreme circumstances such as grave illness. For that reason, it may not be possible to achieve a 'clean break' with a final agreement about maintenance arrangements on separation, divorce, dissolution or the end of cohabitation in Irish law.

What happens when somebody doesn't pay maintenance?

Non-payment of a Maintenance Order is a criminal offence, just like any breach of a court order, and may result in a prison sentence or a fine because the person who breaches the order is also in contempt of court.

The court will usually not impose a prison sentence in cases where the maintenance debtor is unable to pay but is more likely to impose a sentence where he/she is refusing to pay.

If maintenance payments are not made, you have a couple of options.

- If the maintenance debtor is in employment or on a private pension, you can apply to the court for an Attachment of Earnings Order. This kind of order means the employer or pension provider is required to deduct the maintenance payments at source from the maintenance debtor's salary, social welfare payment or pension payment.
- If the maintenance debtor is self-employed or you do not want to apply for the Attachment of Earnings Order, then you can apply for an Enforcement Summons. This compels the person to attend court on a specific date or risk imprisonment for contempt of court.
- If the maintenance debtor falls behind on payments, you can apply to the court to sort out the arrears. This means that the judge will listen to reasons why the maintenance is not being paid and make the appropriate order.

What if the person is living abroad?

A: Where the maintenance debtor is living in another EU member state:

In this case, **Council Regulation (EC) 4/2009** (commonly known as the **Maintenance Regulation**) applies. The Maintenance Regulation enables the maintenance creditor to **establish, modify or enforce** a Maintenance Order throughout the European Union. You should contact the Central Authority for Maintenance Recovery in Dublin for assistance (details at end of leaflet).

For example, if you have a situation where the maintenance creditor lives in Ireland and has obtained a maintenance order against the maintenance debtor who lives in Poland, and the maintenance debtor does not comply with the order, then he or she should contact the Central Authority in Dublin. The Irish Central Authority can request the Central Authority in Poland to enforce the Maintenance Order against the maintenance debtor in Poland in accordance with the Polish debt collection laws.

The same applies the other way round, where the maintenance debtor is in Ireland and the maintenance creditor in another EU member state. For example, if the maintenance debtor lives in Ireland and the maintenance creditor lives in France, the same procedure will take place and the maintenance creditor should contact the Central Authority for Maintenance Recovery in France.

If the maintenance creditor does not have a court order for maintenance, the Central Authority will assist in obtaining the order. It is essential however that the maintenance creditor is able to provide as much information as possible to the Central Authority in order to assist in locating the maintenance debtor.

B: Where the maintenance debtor is living in:

- any of the states of the United States of America; or
- any country that has signed up to the New York Convention on the Recovery Abroad of Maintenance 1956 other than EU member states.

The maintenance creditor should in this case contact the Central Authority for Maintenance Recovery for help (details at end of leaflet). The Central Authority will contact the Central Authority in the country or state where the maintenance debtor resides. The procedure here is similar to where the maintenance debtor lives in an EU member state.

To summarise, the Central Authority will assist with the following issues:

- Applying for maintenance orders in any one of the EU member states, any of states of the USA and any of the 60 countries that have signed up to the New York Convention 1956;
- Enforcing maintenance orders that exists in any one of these countries;

- Seeking an increase in payments under an existing Maintenance Order in any one of these countries/states.

The *in camera* rule

All cases in the Family Law Courts in Ireland are heard *in camera* (in private). Therefore, members of the general public are not permitted to enter the court. The *in-camera* rule has changed recently to allow the media to have limited access to family law hearings and to have limited rights to report on the proceedings.

Useful addresses:

Family Mediation Service

1st Floor,
St. Stephen's Green House,
Earlsfort Terrace, Dublin 2,
Tel: +353 (0)1 6344320
Fax: +353 (0)1 6622339
Web: www.legalaidboard.ie/
Email: info@fsa.ie

The Central Authority for Maintenance Recovery

Department of Justice and Equality,
Bishop's Square, Redmond's Hill, Dublin 2.
Tel: +353 (0)1 479 0200
LoCall: 1890 555 509
Fax: +353 +353 (0)1 479 0201
Email: mainrecov_inbox@justice.ie

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 other satisfactory way of resolving the problem.

You apply for civil legal aid to the Legal Aid Board – it is based in Cahirciveen, Co Kerry and its website is www.legalaidboard.ie or you can telephone at 066-947 1000 or LoCall: 1890-615 200

After approval, the Legal Aid Board provides you with the services of a solicitor and, if 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.

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 €30 for legal advice and €130 for legal aid. Law centre staff will advise what a person's actual contribution will be as each person is assessed on an individual basis.

Before you qualify for legal aid, you must first satisfy a means test. Your disposable income must be less than €18,000 and your disposable capital cannot be more than €100,000.

If you are in receipt of allowances, they will be taken into account and they are deductible

when calculating disposable income. The maximum allowance on childcare facilities if you are working is €6,000 per child per year and the maximum allowance on accommodation costs (e.g. rent) is €8,000 per year. The Public Service Pension Related Levy and the Universal Social Charge are now also considered and are deductible for the purposes of assessment.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property). If your capital resources exceed €4,000, you must complete a Statement of Capital.

For further details on financial eligibility requirements or for details of other allowances, contact your local Law Centre. A full list is available at www.legalaidboard.ie.

FLAC has prepared a guide to the state legal aid system which you can download at bit.ly/CLAFIacsheet.

Need more information?

Legal information leaflets are also available from FLAC on a variety of other areas of law. They are free to download as PDFs from the FLAC website or in print from your local FLAC centre or Citizens Information Centre.

FLAC Mission Statement

FLAC (Free Legal Advice Centres) is a human rights organisation which exists to promote equal access to justice for all.

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FLAC offers free, confidential basic legal information via its lo-call telephone information line at 1890 350 250 or 01 874 5690. One-to-one legal advice is available through a network of voluntary advice centres countrywide – www.flac.ie/help



promoting access to justice

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