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Family maintenance

Ireland

1 What do the concepts “maintenance” and “maintenance obligation” cover according to the law of Ireland? Which persons have to pay a “maintenance allowance” to another person?

An order for maintenance between spouses requires either of the spouses concerned to make to the other spouse such periodic payments or lump sum payments for his or her support and, where appropriate, to make to such person as may be specified in the order such periodic payments for the benefit or such dependent members of the family, if any.

An order for maintenance of a dependent child requires either of the parents concerned to make to the other parent, or to another person who has care and custody of the child, such periodic payments or lump sum payments as may be specified in the order for the support of the child.

A maintenance obligation is a requirement to provide financial support for a person and, where such an obligation is enforced through the courts, to discharge the obligations of any court order pertaining to maintenance.

Maintenance is payable by the following categories of persons:

Parents in respect of their children: Yes

Children to their parents: Generally No

A divorced spouse to the other spouse: Yes

Other:

Civil partners and Co-habitants for the purposes of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Unmarried parent to the carer of their child

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

A dependant child under the age of eighteen years, a dependant child under twenty-three in full time education or a child of any age who is dependant due to disability.

Parents have an obligation to support their children financially so that their day to day and occasional financial needs can be met.

Children generally cannot be held to pay maintenance to their parents save in the rare and extraordinary circumstance whereby property rights held upon trust are varied upon divorce and transferred to the possession of children.

A divorced spouse can be held to provide maintenance to the other spouse where the applicant spouse has demonstrated that the other has failed to adequately provide for them in view of the circumstances.

A civil partner or cohabitant for the purposes of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 can be held to provide maintenance to the other civil partner or cohabitant where the applicant civil partner or cohabitant has demonstrated that the other has failed to adequately provide for them in view of the circumstances.

Parents, whether married or not, can apply to the court for maintenance from the other parent in respect of their children. So too can a legal guardian, health board or any person holding legal status in relation to a dependant child.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

Normally application is made to the Court by the dependant by way of civil legal action against the other person. In relation to child maintenance, the application is usually made by the parent or other person who has care and custody of the child.

Information on procedures applying to maintenance applications generally is available on the Family Law section of the Courts Service web site (www.courts.ie).

4 Who is considered to be the applicant in a maintenance case? Can a request be made on behalf of a relative, (if yes, what grade), or a child?

Usually the applicant in a maintenance case is the parent who is caring for the child/children. Applicants can include ex-spouses as well as children in their own right. Parties require sufficient interest in a case to give them standing, or locus standi, to make a request to obtain maintenance. In the case of a relative or a close relation it would be necessary that the applying person would have certain legal powers to manage the affairs of the relative or close friend such as power of attorney. Parents or legal guardians are able to apply for maintenance on behalf of a child under the age of majority.

5 If I plan to bring the case to court, how does I know which court has jurisdiction?

The District Court has jurisdiction to order maintenance for a child to the maximum amount of €150 per week from either parent and to order maintenance to a spouse/civil partner to the maximum amount of €500 per week. If greater amounts are sought it is necessary to apply to the Circuit Court or the High Court. Where matrimonial proceedings have already been commenced in the Circuit Court or the High Court, it is necessary to make applications there regardless of the amount sought.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, specific organisation or government department (central or local) etc.)? If not, which procedures?

No. An application can be made in person should the applicant choose not to instruct a solicitor. Civil Legal Aid is available to those family law litigants who require it according to their means.

7 Does I have to pay fees to bring a case to court? If so, how much are they likely to be? If the financial means of the plaintiff are insufficient, can he/she obtain legal aid to cover the costs of the procedure?

All Family Law proceedings in Ireland are exempt from court fees. The cost of obtaining legal advice and representation can be varied; however, civil legal aid is available to those on a means-dependant basis.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised if living costs or family circumstances change? If yes, how? Can maintenance be claimed and backdated to before the date of application?

The District Court has jurisdiction to order maintenance for a child to the maximum amount of €150 per week from either parent and to order maintenance to a spouse/civil partner to the maximum amount of €500 per week. If greater amounts are sought, it is necessary to apply to the Circuit Court or the High Court.

When determining maintenance, the court will look to the reasonable needs of the maintenance creditor (the person entitled to the maintenance) against the ability of the maintenance debtor (the person directed to pay the maintenance) to pay. Parties are able to make an application to the court so as to revise any maintenance order in view of any changed financial circumstances of the parties.

A Maintenance Order shall commence on the date that is specified in the order being a date which may be before or after the date on which the order is made but which shall not be earlier than the date of the application for the order

In Divorce and Judicial Proceedings in the Circuit or High Court maintenance can only be backdated to the date of the application at the earliest

9 How and to whom will the maintenance be paid?

Maintenance is usually by direct payment to the maintenance creditor. However, creditors have a right to have maintenance paid through the court office.

Where the court considers it necessary, the maintenance debtor's wages or salary can be attached where their employer can be directed to deduct payments for transmission to the creditor.

Maintenance is paid to the person entitled to maintenance and to those who administer the maintenance for their benefit such as a parent or legal guardian.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

Where a maintenance debtor does not pay the maintenance creditor can initiate proceedings in the court where the maintenance order was made or in the District Court, depending upon the remedy sought.

The court can make an order attaching the earnings of the maintenance debtor, as discussed in point 1 above.

Should this remedy fail, the court can direct that the maintenance debtor pay the sum owed to the maintenance creditor. Where the maintenance debtor does not comply, the court may order that moneys due to the defaulter from another person be paid instead to the maintenance creditor. It may also order the sale of goods belonging to the debtor to satisfy sums outstanding.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system?

The District Court is the venue for enforcement of orders made in other Member States. It has powers in respect of contempt (section 9A and 9B of the 1976 Act) but only in respect of orders actually made by the District Court. It does not have power to commit for contempt an order made elsewhere. The District Court is effectively restricted to making an Attachment of Earnings Order (where appropriate) orders for distress or garnishee orders (rarely appropriate)

12 Is there an organisation or an authority which can help me to recover maintenance?

It is incumbent upon each maintenance creditor to make application to the court for assistance in the recovery of maintenance. While other remedies are available, such as through mediation, the courts have the appropriate and lawful jurisdiction to remedy non-payment of maintenance.

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

No. The debtor only is liable for maintenance, to be paid directly by him or her or deducted at source from his/her salary.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this member state?

Regulation 4/2009, commonly referred to as the Maintenance Regulation, covers cross-border maintenance applications arising from family relationships. It establishes common rules for the entire European Union and aims to ensure the recovery of maintenance claims even where the debtor or creditor is in another EU country.

The UN Convention on the Recovery Abroad of Maintenance Payments (the New York Convention) was brought into effect in Ireland in November 1995 by the Maintenance Act 1994. This Convention is designed to facilitate the recovery of maintenance in contracting states by a person living in one jurisdiction against a person living in another.

Both instruments establish a network of Central Authorities in each contracting state and applicants/creditors/petitioners can forward their applications to a Central Authority who will forward it to the relevant competent Court and, in some instances, will organise legal assistance. The contact details for the Irish Central Authority for the Recovery of Maintenance from Abroad are as follows:

Department of Justice,
51 St Stephen's Green,
Dublin 2.

Phone number +353 (1) 602 8202

Email mainrecov@justice.ie

No Fax available

A petitioner can obtain the assistance of the District Court Clerk in respect of District Court Orders. Petitioners can also seek the assistance of legal representation. They may be eligible for legal aid and should contact their local law centre in this regard. Finally the petitioner can seek the assistance of FLAC (Free Legal Advice Centre) an independent, voluntary organisation that operates a network of legal advice clinics throughout the country. These clinics are confidential and free of charge.

In cross-border cases where the maintenance debtor is living in another jurisdiction, the petitioner can make an application via the Central Authority for Maintenance Recovery located in the Department of Justice and Equality.

14.2 If so, how can that authority or private organisation be contacted?

The relevant court office or organisation can be contacted by telephone, letter, email or attendance in person. Petitioners are advised to visit the website of each organisation for further and localised information.

Contact details for court offices may be found on the Courts Service website (www.courts.ie).

Please see Q. 14.1 and the website for the Department of Justice and Equality (www.justice.ie) for contact details of the Irish Central Authority for the Recovery of Maintenance from Abroad.

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

See above; No. 14.1.

15.2 If so, how can that authority or private organisation be contacted?

See above; No. 14.2.

16 Is this Member State bound by the 2007 Hague Protocol?

Yes

17 If this Member State is not bound by the 2007 Protocol, which law will be applicable to the maintenance claim according to its private international law rules?

Not applicable.

18 What are the rules on access to justice in cross border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

The applicant/petitioner does not have to pay fees to bring a case to court. Applicants benefit from free legal aid in relation to these matters - once an application is received by the Irish Central Authority, if required, the application will be forwarded to the Legal Aid Board for their attention.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

Article 51 refers to what actions the Central Authority takes in relation to applications under the Maintenance Regulation. In relation to seeking declarations of enforceability, the Irish Central Authority now requests these from the Office of the Master of the High Court. The Irish Central Authority forward applications for enforcement directly to the District Courts. In relation to initiating proceedings the Central Authority will arrange for legal representation for the Applicant through the Legal Aid Board.

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Last update: 15/12/2023

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