No domínio da justiça civil, os processos e procedimentos pendentes que tiverem tido início antes do final do período de transição continuarão a ser regidos pelo direito da UE. O Portal da Justiça, com base num acordo mútuo com o Reino Unido, manterá as informações relacionadas com este país até ao final de 2024.

Family maintenance

Gibraltar

1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Under Gibraltar law, both the Magistrates' Court and the Supreme Court have the power to make orders with respect to the payment of maintenance. Maintenance is generally covered under the Maintenance Act. In the Supreme Court, provision for child, civil partner, dependant and spousal maintenance may be made ancillary to divorce, judicial separation, annulment or dissolution proceedings. Both the Supreme Court and Magistrates’ Court retain jurisdiction to vary the terms of maintenance payable after the granting of the decree absolute, or dissolution order. In the Magistrates' Court, there is power to make a maintenance order in favour of a wife, a husband, child, or even to the parents of the parties where certain conditions are satisfied. Such an order can be made upon a complaint to be laid before the Magistrates' Court. There is also statutory provision to make a maintenance order where a cohabitee fails to maintain the other cohabitee.

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

A child under the age of sixteen is entitled to receive maintenance. Additionally, a child who, having reached the age of sixteen but who is under twenty-one and is either in full time education or undergoing full-time training for a trade, profession or vocation and for not less than two years is also entitled to receive maintenance.

A child whose earning capacity is impaired through illness or disability of mind or body and who has not reached the age of twenty-one is also entitled to maintenance.

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

To seek maintenance in cases where the jurisdiction of the Supreme Court has not been engaged, an applicant should apply to the Magistrates' Court by way of complaint.

Maintenance applications which are ancillary and arise out of divorce, judicial separation, annulment or dissolution proceedings should be made to the Supreme Court.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

A request for maintenance can be made on behalf of a child by a person having a care order / parental responsibility attached to the child. Pursuant to the provisions of the Maintenance Act, a child himself may apply for maintenance against a person liable to maintain him.

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

If the claim for maintenance arises out of a marriage or a civil partnership, the Magistrates' Court may have jurisdiction to deal with the matter. If the claim for maintenance arises out of divorce, judicial separation, annulment or dissolution proceedings within the jurisdiction of the Supreme Court, then it is that Court that should consider the question of maintenance.

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

An applicant can bring a claim in person and represent himself in Court, alternatively, instruct solicitors to act on their behalf.

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

The filing of a complaint in the Magistrates' Court attracts no fee. Therefore, an applicant in person may appear without having to incur any expense.

In the Supreme Court, the filing of a summons normally attracts a fee of £150. In both the Magistrates' Court and the Supreme Court, legal assistance may be available subject to a means test. Applications for legal assistance in either court should be made to the Supreme Court and application forms are available from the Supreme Court Registry.

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 (e.g. by means of an automatic indexation system)?

Upon hearing the complaint, the Magistrates' Court may make a maintenance order for the payment of a weekly or other periodic sum as the Court considers reasonable in all the circumstances of the case for the maintenance of a child, a father, partner, cohabitee, mother and/or spouse.

Applications can subsequently be made for the variation of maintenance orders. This application would also be made to the Magistrates' Court or to the Supreme Court, where applicable.

The court can in appropriate cases decide that maintenance is to be backdated.

9 How and to whom will the maintenance be paid?

Maintenance can be paid from one party to another or alternatively, payments can be made into Court.

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

There is provision for a complainant to apply for an attachment of earnings order once a defendant has missed at least two of the payments required by the original maintenance order. The Magistrates' Court also has the power to make committal orders, thereby committing a defendant to prison for failure to adhere to the terms of a maintenance order. However, in such cases, the Court gives an opportunity to a defendant to make representations why such an order should not be made.

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

There is no limitation period.

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

Applications for maintenance are normally dealt with by the Magistrates' Court of Gibraltar, 32 – 36 Town Range, Gibraltar. Where a claim for maintenance arises out of divorce, judicial separation or annulment proceedings, the application should be made to the Supreme Court of Gibraltar, 277 Main Street, Gibraltar.

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

There is no provision for this in Gibraltar law. Payment can be enforced by an attachment of earnings order or by the use of committal orders.

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?

Enquiries should be made to the Magistrates' Court, 277 Main Street, Gibraltar or the Supreme Court, 277 Main Street, Gibraltar.

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

Enquiries can be addressed to the:
Clerk of the Magistrates' Court,
Magistrates' Court,
32 – 36 Town Range
Gibraltar
telephone: +350 200 75671
fax: +350 200 40483.
Alternatively, enquiries involving maintenance proceedings in the Supreme Court can be addressed to
The Registry,
Supreme Court,
277 Main Street,
Gibraltar
telephone: +350 200 75608
fax: +350 200 77118.

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?

A complaint setting out the relief claimed in Gibraltar can be sent directly to the Magistrates' Court as and when the jurisdictional requirements are satisfied. Alternatively, the appropriate application can be filed at the Supreme Court Registry where the claim for maintenance arises out of divorce, judicial separation or annulment proceedings.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

As per previous question.

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

Gibraltar is not bound by the Hague Protocol and it does not apply in Gibraltar.

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

The laws of Gibraltar apply to all cases decided in Gibraltar

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?

This Regulation provides a series of measures aimed at facilitating the payment of maintenance claims in cross-border situations. Such claims arise from the obligation to help family members in need. For example, they may take the form of maintenance paid to a child or to a former spouse following divorce.
The Regulation applies to maintenance obligations arising from:
a family relationship;
parentage;
marriage or affinity.

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?

The Maintenance Act sets out the operation of the Maintenance Regulation. The central authority has been designated as:
Minister for Justice,
Government of Gibraltar
Suite 771 Europort
Gibraltar
Tel: + 350 200 59267
Fax: + 350 200 59271
e-mail: moj@gibraltar.gov.gi
The Legal Aid and Assistance Act sets the tests for merit and financial conditions required to qualify.

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