

MAKING SENSE OF MAINTENANCE: WHAT ARE EX-PARTNERS AND SPOUSES ENTITLED TO?

This is a sensitive family law area, which can be complex when parents or spouses are faced with relationship breakdown and are not aware of their rights or their duties.

WHO PAYS MAINTENANCE?

There is a legal responsibility in Ireland on both spouses, to maintain each other in line with their means in the event of dependency.

Both parents have a responsibility to support their children financially. This applies to all parents, whether married, separated, living together or if they have never lived together.

IS THERE A DEFINITION FOR THE WORD CHILD?

Child maintenance is payable for a child up to the age of 18 or to the age of 23 if the child is in full-time education. If the child has a mental or physical disability to such a degree that it will not be possible for the child to maintain themselves fully, then there is no age limit on the payments.

HOW MUCH IS MAINTENANCE TYPICALLY?

A standard rate of child support payment does not exist but the District Court has the power to award sums of up to €150 per week per child and up to €500 per week per spouse.

If someone is seeking more than this they will have to apply through the Circuit Court.

DOES PAYING MAINTENANCE PROVIDE RIGHTS?

What may come as a surprise is that even if a parent financially supports a child, it does not give them automatic rights of guardianship or access.

The Courts do, however, always recommend that a child's welfare takes priority, which generally means having both parents in their life.

WHEN DOES SPOUSAL MAINTENANCE END?

A married person can seek spousal financial support following the breakdown of the marriage. The obligation to maintain and support a spouse continues even if the person paying the maintenance remarries and takes on the responsibility for the support of a new spouse and dependent children.

In general, the responsibility only ends when the other spouse receiving maintenance dies, remarries or is no longer dependent.

IS AN EX-PARTNER ENTITLED TO MAINTENANCE?

Maintenance doesn't only apply to people who are or were married.

Living with your partner may make you a qualified cohabitant which in turn might give you a right to maintenance.

To be a qualifying cohabitant you must have lived with your partner in an intimate and committed relationship for five years (or two years if you have children together).

If you can prove this then you can apply for support or maintenance payments by showing financial dependency as a result of the relationship and its demise.

It is a matter for the Courts to decide who "qualifies" and to grant any maintenance payments that subsequently arise.

IF FATHER AND MOTHER ARE WORKING AND CUSTODY IS GIVEN TO FATHER, DOES SPOUSAL MAINTENANCE APPLY TO THE FATHER?

We deal with situations where a mother pays maintenance to a father. The rights are the same, irrespective of whether the father or the mother is financially dependent on the other.

IF A COUPLE WERE NOT MARRIED, BUT CO-HABITED ARE THEY ENTITLED TO MAINTENANCE?

Prior to January parties were only entitled to spousal maintenance if married.

This all changed with the new **Civil Partnership Act**. Under the Civil Partnership Act a cohabiting couple must have lived together in an intimate and committed relationship for five years or two years if the parties have children together.

A cohabiting couple do not have automatic rights.

They must show financial dependency as a result of the relationship and its demise and it is a matter for the Courts to decide who “qualifies” as a cohabiting couple. The Court does, if the parties qualify, have the power to award maintenance to an ex-partner.

HOW CAN MAINTENANCE BE OBTAINED?

If agreement cannot be reached either by the parties themselves or through their solicitors, then they can apply to Court for a maintenance order and the Judge decides what maintenance is to be paid.

In doing so the Judge will look at the individual circumstances of each case and strike a balance between what one party needs and what the other party can afford.

HOW IS MAINTENANCE PAID?

Parties can make payment arrangements between themselves or it can be paid through the District Court Office where the District Court Clerk will monitor the payments.

In cases where a person fails to comply with a court order and does not pay the amount awarded, an Attachment of Earnings Order can be sought from the Court and the maintenance is deducted by the paying employer.

The employer has to comply with this otherwise they would be held in contempt of court.

If the person is self-employed, an Enforcement Summons can be applied for which can lead to the person being imprisoned if they have no defence to offer for non-payment.

WHAT RECOURSE IS THERE IF MAINTENANCE IS NOT PAID AS REQUIRED?

In cases where a spouse fails to comply with a court order and does not pay the amount awarded, an Attachment of Earnings Order can be sought from the Court. This order results in the maintenance amount being deducted at source by the spouse's employer.

The employer has to comply with this otherwise he would be held in Contempt of Court.

If the spouse is self-employed, an Enforcement Summons can be applied for. When that person comes before the Court the Judge can, if he has no Defence, imprison him or her for a maximum period of three months.

IS THERE LEGAL AID FOR SOMEONE WHO WANTS TO GO TO COURT FOR MAINTENANCE?

There is free legal aid granted to anyone who is earning less than €18,000 per year.

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