



FAMILY LAW

IN IRELAND

DIVORCE:

WHAT IS DIVORCE?

Divorce is an official termination of a legal marriage and is governed by the *Family Law (Divorce) Act 1996*. Divorce allows for parties involved to remarry. A divorce is final and cannot be taken back but parties can have orders reviewed by the courts.

WHAT DO I NEED TO GET A DIVORCE?

For divorce to be granted, there must be proper provision for spouses and kids, no chance of reconciliation, spouses must have lived apart for at least 2 out of 3 years and either spouse must reside in Ireland. According to s.6(2) of the 1996 act, solicitors should advise clients that if there is a chance of reconciliation between parties, the divorce process may be a waste of time and money. Thus, if there is a chance of reconciliation your solicitor can give you information on mediation and other options. The 1996 act imposes a mandatory requirement of proper provisions for spouses and children. This means that the courts can impose ancillary or preliminary orders regarding custody of children, maintenance, property and more.

What are Ancillary Orders?

Ancillary orders are known as financial matters arising from marital breakdown. These orders can be imposed on either spouse during their lifetime. For instance, periodical payment, maintenance and secured periodical payment orders.

What are Periodical Payments Orders?

They are similar to maintenance orders and are generally paid monthly depending on the facts of your case. s.13(1) of the 1996 act states judges can (a) order spouse to give money to the other spouse for a specific duration (b) order spouse to give money to the other spouse regarding any dependent child for a specific duration.

What are Secured Periodical Payment order:

This order can be granted when your spouse is not making required payments. If a judge sees that a spouse has a reasonable amount of assets, and it is clear that the spouse is not providing for financially, they could impose a secured periodical payment order. Thus, this will give the other spouse a sense of security knowing they will have payment secured. S. 3(1) of the 1996 act states that (a) either spouse is to give money to the other in a secured way (b) spouses can be ordered to give secure payments to a person regarding a dependant child.

What are Maintenance orders?

Section 13(1) of the 1996 act states that (a) a judge has the power to give a lump sum order to a spouse if there were additional expenses before maintenance was applied for. (b) a judge has the power to give a lump sum order to a spouse if there were additional expenses that before maintenance was applied for regarding dependant children.



What are Preliminary Orders?

Section 11 of the 1996 act states parties can be granted preliminary orders in court before their divorce is granted. The type of orders a judge can grant are:

1. Family related orders e.g., custody orders and maintenance orders.
2. Domestic violence orders e.g., safety, barring, protection, and temporary orders.
3. Protection of the family home e.g. property adjustment orders.
4. Protection of the contents in the home and pension adjustment orders

FACT:	The Central Statistics office stated that the number of people being granted a divorce and judicial separation increased by 8.9 per cent between 2011 and 2016 rising from 203,964 to 222,073.
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SEPARATION AGREEMENT

WHAT IS A SEPARATION AGREEMENT?

A separation agreement sets out terms and conditions that are reached by the parties themselves. This agreement must be in writing.

WHAT IS INVOLVED IN A SEPARATION AGREEMENT?

The type of content involves custody, access, and other personal assets. If terms are not agreed on, a mediation or negotiation session can be organised with a solicitor to assist you with your separation agreement. By having a separation agreement in place, it reduces stress, additional strain on spousal relationships and saves time by avoiding the long duration of court proceedings.



JUDICIAL SEPERATION:

WHAT IS JUDICIAL SEPARATION?

A decree of Judicial separation is a court order that is granted to an applicant. It is governed by the *Judicial Separation & Family Law Reform Act 1989*. If you are judicial separated, you are recognised to be separated but remain legally married. These are only granted provided the welfare of dependent children are taken care of.

WHAT ARE THE GROUNDS FOR JUDICIAL SEPARATION?

The grounds for JS are adultery, unreasonable behaviour, desertion of the family home, a normal marital relationship has not existed for at least 1 year, parties agreed to live apart for at least a year and parties have lived apart for at least 3 years.

ADULTERY:

This ground can be difficult to prove unless you have proof that adultery occurred. Section 40 of the *Judicial Separation & Family Law Reform Act 1989* states if one partner commits adultery, and the other party is aware, and continues to live with them then you cannot rely on this ground. This is only if the married couple were living together for at least 1 year or more.

UNREASONABLE BEHAVIOUR:

Section 2(b) of the *Judicial Separation & Family Law Reform Act 1989* it states “that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent”. In other words, either spouse being mentally or physically abusive which makes it impossible to live with their spouse.

DESERTION:

Section 2(c) of the *Judicial Separation & Family Law Reform Act 1989* states that if there has been desertion by the respondent of the applicant for a continuous period of at least one year immediately preceding the date of the application. In other words, either spouse has voluntarily deserted the family home for at least 1 year before the date of application.

PARTIES MUST HAVE AGREED LIVED APART FOR 1 YEAR UP TO THE DATE OF THE APPLICATION.

Section 2 (d) of the *Judicial Separation & Family Law Reform act 1989* states “that the spouses have lived apart from one another for a continuous period of at least one year immediately preceding the date of the application and the respondent consents to a decree being granted” In other words, both parties separate and agree to live apart for a duration of a year and parties consent to a decree of judicial separation being given. The reasons for your split aren’t accounted for under this ground.

A NORMAL MARITAL RELATIONSHIP HASN’T EXISTED FOR 1 YEAR:

Section 2 (f) of the *Judicial Separation & Family Law Reform act 1989* states “That if a marriage has broken down to the extent that the court is satisfied in all the circumstances that a normal marital relationship has not existed between the spouses for a period of at least one year immediately preceding the date of the application”. In other words, your marital relationship hasn’t existed for at least 1 year. A normal marital relationship is defined as two spouses residing together and having loyalty and love towards each other.

THE PARTIES HAVE LIVED APART FOR 3 YEARS AT THE TIME OF THE APPLICATION WITHOUT CONSENT OF THE OTHER PARTY

Section 2(e) of the *Judicial Separation & Family Law Reform act 1989* it states “that the spouses have lived apart from one another for a continuous period of at least three years immediately preceding the date of the application” This means that partners must live apart for a consistent period of 3 years after the JS application begins.

GUARDIANSHIP

WHAT IS GUARDIANSHIP?

A guardian has a legal right and a duty of care over a child. S.6 of the Guardianship of infants act 1964 to provide the child with a healthy home, education, and the general welfare of the child this includes providing maintenance.

WHO HAS GUARDIANSHIP OVER A CHILD?

Upon, birth, mothers have automatic guardianship rights in contrast to fathers where it is not automatic. An application for guardianship can be made by someone other than a parent if they provide for the child, civil partners, cohabitants, grandparents, or someone who shares responsibility for the child.

AS A FATHER, HOW CAN I GET GUARDIANSHIP OF MY CHILD?

Fathers can gain guardianship rights by either signing a statutory declaration with the mothers consent, being appointed guardian by the District Court, marrying the child's mother, complying with a cohabitation period or by will.

WHAT IS TEMPORARY GUARDIANSHIP?

Temporary guardianship can be granted if a guardian cannot comply with their responsibilities towards the child.



ACCESS:

WHAT DOES HAVING ACCESS MEAN?

If you gain access to a child, you have a legal right to spend time with them for a specific duration. The time spent is based on what is agreed with the child's legal guardian or the courts.

HOW DO I GAIN ACCESS?

To gain access you can, apply to the District Court or create an agreement with the guardian. If an agreement is not concluded, mediation could be considered to assist both parties.



MAINTENANCE:

WHAT IS MAINTENANCE:

Maintenance is a sum of money that is given to support your dependent child or spouse/ civil partner. The amount of maintenance is subjective as it depends on individual financial circumstances.

WHO DO I HAVE TO GIVE MAINTENANCE TO?

Your child or spouse. A child is considered to be under the age of 18 or 23 if they are in full time education.

HOW CAN MAINTENANCE BE ARRANGED?

1. Divorce or Judicial Separation.
2. Coming to an agreement with the parties involved
3. Separation Agreement
4. Maintenance order by the court.

See the following YouTube video on Maintenance provided by Treoir.

<https://youtu.be/NeefYGMI7Mg>

SAFEGUARDING WELFARE CHILDREN:



WHAT IS SAFEGUARDING WELFARE OF CHILDREN?

The *Childress First Act 2015* governs child safeguarding and welfare. The act provides guidelines for institutions, parents, family members and more on identifying and reporting child abuse.

WHY IS THIS IN PLACE?

Due to the severity of cases involving children, it is important that certain procedures are in place to ensure the welfare of a child is protected. This is especially important in this generation due to child abuse being more common since covid lockdown, social media and more. For instance, New amendments in legislation allows for the safety and welfare of a child being protected online.

WHAT IS A CHILD SAFEGUARDING STATEMENT?

A child safeguarding statement must be completed if you are working within certain groups under the 2015 act and are a provider to a relevant service. A child safeguarding statement identifies the type of services, procedures, and potential risks that a child is faced with daily.

Below is a link for Tulsa's Guidebook for Child Safeguarding procedure and Policy.

<https://www.tusla.ie/uploads/content/Tusla - Child Safeguarding - A Guide for Policy, Procedure and Practice.pdf>

NOTE:	If you have a child protection or welfare concern, you should formally report to Tulsa or a local social worker. In cases of emergency, where a child or young person appears to be at immediate and serious risk, contact An Garda Síochána.
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CIVIL PARTNERS

WHAT IS CONSIDERED A CIVIL PARTNER, AND CAN I HAVE ONE TODAY?

Civil partners are anyone who is not related and are in a committed relationship. Registering a civil partnership will give your relationship legal recognition. The Marriage Act 2015 introduced a ban on registering new civil partnerships.

HOW DO I END A CIVIL PARTNERSHIP?

If you committed to a civil partnership before the commencement of this act, you could apply for the same rights as someone in a marital relationship. When terminating a civil partnership, it is recommended to create a separation agreement

A decree of dissolution can be granted to terminate the partnership if the court is satisfied that

- A. The parties must have been living apart from one another for a period amounting to 2 out of the previous 3 years before the application is made
- B. Proper arrangements must have been made or will be made for the civil partners and any dependent child of the civil partners

WHAT IS THE PROCEDURE FOR TERMINATION?

Step 1. Gather the following documents to send to the Circuit Court.

- 1. Family Law Civil Bill.
This outlines personal information such as names, DOB, address, job title, extent of relationship and the extent of living apart and kids.
- 2. Form 51
This outlines your financial circumstances such as income and debts
- 3. Form 378:
This outlines your kids details such as school, college, health, custody, access and more

Step 2. Receive a date for your hearing

Step 3. Outline your documents to the court and make it evident that you fulfil all requirements.

Step 4. A decision will be made by the court.

WHAT IS THE DIFFERENCE BETWEEN A MARRIAGE AND CIVIL PARTNERSHIP?

Marriage is promised by with your vows, in contrast to a civil partnership where it is promised by signing the civil partnership document.



COHABITANTS:

WHAT ARE COHABITANTS?

Cohabitants reside together but are not married. Their rights are governed by the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

CAN I APPLY FOR COURT ORDERS AS A COHABITANT?

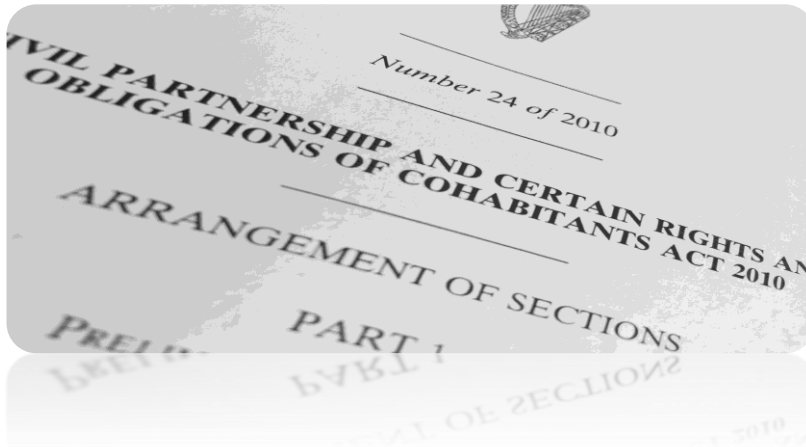
Yes, Cohabitants can apply for orders such as maintenance, property adjustment orders and many more.

WHAT ARE THE REQUIREMENTS TO BE CONSIDERED A COHABITANT ?

To be considered a cohabitant, you must adhere to the following.

1. Live together for 5 years as a couple and 3 years if you have kids,
2. Can't be registered in a civil partnership,
3. You must not be in the prohibited degree of kinship
4. Unmarried.

Courts will examine the financial capacity, the extent of the relationship, financial contributions and if there are kids involved. If either cohabitant is in a marital relationship, they must be living away from their spouse for at least 4 out of 5 years.



IMPLICATIONS MOVING TO ANOTHER JURISDICTION

WHAT HAPPENS IF PROBLEMS ARISE WHEN MOVING TO ANOTHER JURISDICTION?

Protection is afforded under EU law and international conventions if problems arise when moving to another jurisdiction for instance, your spouse resides in a different state, and you are filing for maintenance. Thus, it is hard to identify which national law should be complied with.

Once you obtain a court order, you must undergo a legal process to ensure the court order is effective in your desired jurisdiction. Examples of the protections afforded to you are spousal and parental orders (Regulation 2201/2003), recovery of maintenance (Regulation 4/2009), martial orders can be granted where either spouse is or was living if they are a national of the state or your common domicile (Regulation 2201/2013) and a parents duty of care to their kids (Regulation 2201/2003). These laws cover jurisdiction, enforcement, recognition, access, abduction, custody, guardianship, and foster care.

WHAT HAPPENS IF MY CHILD IS TAKEN TO ANOTHER JURISDICTION WITHOUT MY CONSENT?

In the event of child abduction to another jurisdiction, you can claim your child back by asking the state. The state will give your child back immediately.

WHAT HAPPENS TO MY CUSTODY AND ACCESS RIGHTS IF I MOVE TO ANOTHER STATE?

Regarding access to kids, your rights are directly enforceable in other states. In addition, foreign divorces are recognised in Ireland.

Does Brexit have an impact on Family Law in Ireland?

If you experience any of the following before the dates listed below you will not be affected. If a spouse resides in Ireland and the other in the UK, and your marriage/ civil partnership breaks down after the 31st of December 2020, newly developed laws will apply regarding where the case is heard. The 2007 Hague Maintenance Convention deals with maintenance orders after the 1st of January 2021.

