

## **1. DIVORCE:**

Divorce is an official termination of a legal marriage and is governed by the *Family Law (Divorce) Act 1996*. 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. Courts can make preliminary and ancillary orders regarding custody, access, maintenance, lump sums, transfer of properties, the extinguishment of succession rights, pension rights and other matters. Solicitors must suggest mediation to you before you proceed with a divorce application. A written separation agreement is optional to put together by the applicant and respondent before the divorce process begins.

## **2. SEPARATION AGREEMENT:**

A separation agreement sets out terms and conditions that are reached by the parties themselves. 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.

## **3. 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 judicially separated, you are recognised to be separated but remain legally married. 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. These are only granted provided the welfare of dependent children are taken care of.

## **4. GUARDIANSHIP:**

A guardian has a legal right and a duty of care over a child. Upon birth, mothers have automatic guardianship rights in contrast to fathers where it is not automatic. Fathers can gain guardianship rights by either signing a statutory declaration with the mother's consent, being appointed guardian by the District Court, marrying the child's mother, complying with a cohabitation period or by will. 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. Temporary guardianship can be granted if a guardian cannot comply with their responsibilities towards the child.

## **5. ACCESS:**

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. 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.

## **6. 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*. Cohabitants can apply for orders such as maintenance, property adjustment orders and many more. To be considered a cohabitant, you must be living together for 5 years as a couple and 3 years if you have kids, you must not be registered in a civil partnership, you must not be in the prohibited

degree of kinship and 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.

#### **7. MAINTENANCE:**

Maintenance is a sum of money that is given to support your dependent child or spouse/ civil partner. A child is considered to be under the age of 18 or 23 if they are in full time education. The amount of maintenance is subjective as it depends on individual financial circumstances.

#### **8. SAFEGUARDING WELFARE 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. New amendments in legislation allows for the safety and welfare of a child being protected online. 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.

#### **9. CIVIL PARTNERS:**

The *Marriage Act 2015* introduced a ban on registering new civil partnerships. However, 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, a separation agreement is recommended. A decree of dissolution can be granted to terminate the partnership if the court is satisfied that requirements are met.

#### **10. IMPLICATIONS 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.

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. Regarding access to kids, your rights are directly enforceable in other states. In addition to the above, 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.