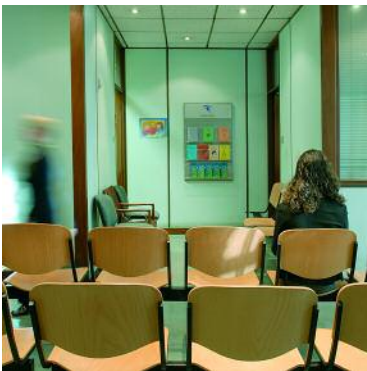


Maintenance procedures in the District Court



Foreword



The courts are asked on a daily basis to make decisions about many areas of community and family life. It is never an easy task.

When relationships break down many people look to the courts to protect their rights and the rights of their children. One of the main areas where the courts are asked to secure rights is in the matter of maintenance for children and dependant spouses. This area of law is one which provides a number of ways for a parent to seek financial support from the other.

This booklet is designed to provide an easy guide to the maintenance procedure in the District Court. It is a much needed look at the processes the courts go through in dealing with this important subject. It provides an insight to the various avenues open to a person seeking payment of maintenance. The information in the booklet complements the excellent efforts of the staff of District Court offices who deal with people seeking information in relation to this and other areas of family law throughout the year.

I welcome this accessible and informative publication. I am grateful to the staff of the District Court and the staff of the Information Office for their efforts in producing it.

Judge Miriam Malone
President of the District Court



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Introduction

In this booklet we provide answers to frequently asked questions about the maintenance process. We do not claim to have dealt with all issues but rather to provide basic information about what can be a complicated area of law.

You can apply for a maintenance order in the District Court, the Circuit Court or the High Court. Orders made in all of these courts can be enforced in the District Court. Much of the information in this booklet relates to the procedure in the District Court. Please be aware of this if you intend to bring an application in the Circuit Court or the High Court.

Our booklet is not intended to be a full explanation of the law or to be legally binding. You may need to obtain legal advice in relation to your maintenance application in which case you should consult a solicitor.



Maintenance of children

Q. Do parents have to support their children financially?

A. 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. The parent with custody of the children has to take care of them and look after all their day-to-day needs. The parent who does not have custody usually has to pay money to the parent with custody. This is to help cover the costs of taking care of the children.

Q. Can maintenance arrangements be made without going to court?

A. Yes

- ▼ Informal maintenance arrangements can be made between the parents. This can work well where the parents can reach a reasonable and fair agreement. (See *Appendix 1* for a sample list of expenses which could help to estimate the weekly expenses of a child.)
- ▼ Mediation can help if parents find it difficult to come to an arrangement that satisfies both of them. (See *Appendix 2* for details of the Family Mediation Service.)
- ▼ Each parent can engage their own solicitor to act as a negotiator of an agreement which both parents can sign.

Q. Does a parent who pays maintenance gain any rights over the children?

A. No. Paying maintenance does not give a parent any rights of guardianship or access.

Q. If the parents cannot reach an agreement can an application be made to the court for a maintenance order?

A. Yes. Either parent may apply to the court under the Family Law (Maintenance of Spouses and Children) Act, 1976 for a maintenance order against the other parent at any time in respect of a dependent child who is residing with him/her. The maximum that the District Court can order from either parent is €150 per week for each child.

A parent may seek a contribution from the other parent towards expenses related to the birth of a child, or funeral expenses if a dependent child dies. The maximum that can be awarded in each of these circumstances is €2,000. A parent can also seek special one-off payments (for example, at Christmas time or at the start of the school year). This can be done through the local District Court office.

Hearings in relation to applications for maintenance are always held in private.



Q. Until what age can maintenance be claimed for a child?

A. Maintenance proceedings can be brought:

- ▼ At any time before the child's 18th birthday
- ▼ At any time before the child's 23rd birthday if the child is in full-time education
- ▼ At any time, irrespective of age, if the child has a mental or physical disability and it is not reasonably possible for the child to maintain him/herself

Q. If my child's other parent marries someone else do I still have to pay maintenance?

A. Yes.

Q. My child's other parent lives abroad – can I get maintenance?

A. It depends on where the other parent lives.

(1) If the other parent lives in the United Kingdom you can apply for maintenance in your local District Court office. You must have an address for the other parent in order to begin proceedings. The District Court Clerk will issue the proceedings and forward the papers to the Master of the High Court for enforcement. If the Master of the High Court makes an enforcement order then the papers are forwarded to the relevant authorities in the United Kingdom.

(continued over-leaf)

- (2) Ireland is a party to various international conventions which allow for persons living in certain countries to recover maintenance from persons living in certain other countries.

For details of these countries, and all other information relating to claims for maintenance in respect of persons living in countries outside Ireland (other than the United Kingdom), contact:

The Central Authority for Maintenance Recovery

Department of Justice, Equality and Law Reform
Floor 2,
Bishops Square
Redmond's Hill,
Dublin 2.
Tel: + 353 (0) 1 479 0200.



Maintenance of spouses

Q. Am I obliged to provide financial support for my husband/wife?

A. A married person can seek maintenance following the breakdown of the marriage. The obligation to maintain and support a husband/wife continues even if the person paying the maintenance remarries and takes on the responsibility for the support of a new spouse and dependent children. Subject to the terms of any agreement reached or to the terms of a court order, a husband/wife only stops being responsible for the maintenance and support of the person receiving the maintenance when that person dies or remarries.

Q. How do I seek maintenance from my husband/wife?

A. You bring an application to court under the Family Law (Maintenance of Spouses and Children) Act, 1976. If the financial circumstances of either party changes the order can be varied by making an application to the court.

Q. My spouse does not work at the moment. Should I wait until he/she gets a job before I go to court to seek maintenance?

A. Not necessarily. He or she may have found a job by the time the case gets to court.

- Q. How will the amount of maintenance payable be decided?
- A. The court must look at how much the person asking for maintenance needs to live, and how much the other person can reasonably pay.

The maximum amount of maintenance that the District Court can order for a spouse is €500 per week.





Methods of payment

The court when making a maintenance order, will specify the amount to be paid and will state how much is payable in respect of the spouse and/or each child. The court will also indicate whether payments are to be made on a weekly, fortnightly or monthly basis and the date on which the first payment is to be made.

The court will also specify to whom payments are to be made.

Court Offices will accept the following methods of payment:

- ▼ Standing Order
- ▼ Bank draft – made payable to the maintenance creditor
- ▼ Cheque - made payable to the maintenance creditor
- ▼ Money order
- ▼ Cash - this must not be sent by post

Q. Do all maintenance payments have to be paid through the District Court office?

A. No. The maintenance creditor can request that payment be made directly to him/her. He/she can also make this request at a later stage by issuing a summons to vary the order.

- Q. What are the benefits of paying the maintenance directly to the person receiving the payment?
- A. There is no delay in receiving the payment and payments can be made outside of office hours.
- Q. What are the benefits of being paid through the District Court office?
- A. The District Court office keeps a record of all maintenance payments received. If payments fall into arrears you must attend at the District Court office to sign a request form to issue proceedings for the arrears. **You must also attend in court at the hearing.** The District Court Clerk will give sworn evidence to the court on your behalf of the amount of arrears due up to the date of issue of the arrears proceedings.
- Q. If the District Court office does not receive payment can it issue the payment due anyway?
- A. No. The District Court office can only issue the payment if they have received it. If the maintenance debtor has not made payments you can attend at the District Court office to issue proceedings to recover arrears.
- Q. In what form will payment issue from the District Court office?
- A.
 - ▼ By way of electronic transfer of funds to the maintenance creditor's bank account.
 - ▼ By cheque made payable to the maintenance creditor.
 - ▼ By cheque to the maintenance creditor's bank account.



Q. How soon after the District Court office receives payment will the payment issue?

A. It depends on the type of payment received.

- ▼ Cash, standing order, bank draft and money orders are processed immediately.
- ▼ If the payment is made by cheque (made payable to the District Court Clerk) the payment issues eight days later to the maintenance creditor, provided the bank clears the cheque.

Q. Do court offices accept payment by way of standing order?

A. Yes. (See sample form in *Appendix 5*). If the maintenance creditor wishes to avail of this facility they must complete a special standing order mandate form which will be provided on request by the District Court office to whom payments are made.

Q. Will maintenance payments stop when children reach 18 years of age?

A. Yes, but an application must be made to court to discharge the order.

Q. Will maintenance payments for children stop when children who are in full-time education reach 23 years of age?

A. Yes, but an application must be made to court to discharge the order.

- Q. If the maintenance debtor is going on holidays and wishes to pay a number of weeks in advance will court offices accept advance payments?
- A. Yes. Court offices will accept advance payments where requested by the maintenance debtor and where advance payments are received by court offices, the complete advance payment is sent to the maintenance creditor.





Enforcement and variation of maintenance orders

Q. What happens if my maintenance payments are not made?

- A.
- ▼ If the maintenance debtor is employed, and there is a maintenance order in place, you can apply to issue proceedings for an enforcement order or an attachment of earnings order. If an attachment of earnings order is made the employer deducts the maintenance payments and sends the payments to the District Court office.
 - ▼ If the person is self-employed or unemployed, and there is a maintenance order in place, you can apply to issue proceedings for an enforcement order.

*Arrears of up to twenty six weeks are the most that can be claimed through an enforcement summons. Arrears which have accrued more than six months before the start of an application to enforce a maintenance order may **not** be recovered under this procedure.*

Q. What if I think he/she might not pay on foot of the maintenance order?

- A. You can apply to the court for an attachment of earnings order at the time the maintenance order is being made.

- Q. My child's father/mother was ordered to pay maintenance three years ago but I feel that the amount he/she was ordered to pay is not enough now. What can I do?
- A. You can issue proceedings to apply for a variation order to change the amount of maintenance being paid. If there is an attachment of earnings order in existence you will also need to apply for a variation of the attachment of earnings order.





Glossary of terms

Acts: The laws in Ireland are found in various acts (also known as “statutes”). See *Appendix 4* for a list of some of the acts relating to maintenance.

Maintenance creditor: The person to whom maintenance payments are made.

Maintenance debtor: The person required to pay maintenance.

Enforcement Summons: The summons issued where there is a failure by the maintenance debtor to pay the maintenance creditor as the court has directed.

Enforcement Order: The order made by the court to pay arrears of maintenance.

Attachment of Earnings: The court can order that maintenance be deducted by the employer of the maintenance debtor. The employer gets a copy of the court order with instructions to send payments to the court or the maintenance creditor and also a notice to notify the Family Law Office or the local District Court if the maintenance debtor leaves their employment. The maintenance debtor must notify the court of his/her leaving or changing employment.

Variation Order: Either party can apply to the court to vary a court order at any time if circumstances change, or by producing evidence that was not available to the party applying when the order was last made or varied. An increase in a party’s earnings or a decrease in the value of the original order as a result of inflation could be a sufficient change in circumstances to justify the variation of a previous order.

APPENDIX 1

Estimated average weekly expenditure on a child

Basics:	Euro
Food	
Clothing	
Shoes	
Nappies	
Childcare	
Education:	
School fees	
College fees	
Transport	
Books	
Uniform	
Extra tuition	
Extra curricular activities	
Contributions to school	
Travel:	
Petrol	
Bus	
Train fares	
Car insurance	
Car tax	
Medical Expenses:	
Doctor	
Hospital	
Dentist	
Chemist	
Special needs (e.g. Diet)	
Medical Insurance	



Housing:

Rent

Mortgage repayments

ESB

Gas

Oil

Telephone

Other:

Holidays/outings

Birthdays

Christmas gifts

Life Insurance

TV

Video

DVD

TV Licence

Other Loans

Credit Union

Pension Contributions

Savings

TOTAL WEEKLY OUTGOINGS

NET WEEKLY INCOME

AMOUNT LEFT OVER EACH WEEK

APPENDIX 2

Support and Information Services

1. **Family Mediation Service** - a free State run service staffed by professionally trained mediators to help couples who have decided to separate or divorce, or who have already separated, to negotiate their own terms of agreement. The service is available to married and non-married couples. Offices are located in the following areas:

Dublin - Floor 1, St. Stephen's Green House, Earlsfort Terrace, Dublin 2.

Tel: (01) 634 4320

Fax: (01) 662 2339

email: fmsearlsfort@welfare.ie

Limerick - 1st Floor, Mill House, Henry Street, Limerick.

Tel: (061) 214 310

Fax: (061) 312 225

email: fmsmillhouse@eircom.net

Cork - Hibernian House, 80A South Mall, Cork.

Tel: (021) 425 2200

Fax: (021) 425 1331

email: fmshibernian@eircom.net

Galway - Ross House, Merchants Road, Galway.

Tel: (091) 509 730

Fax: (091) 567 623

email: fmshalway@eircom.net

2. **Money Advice and Budgeting Service** - a free and confidential service funded by the Department of Social and Family Affairs. It provides budgeting advice and assists people experiencing difficulty with debt including those involved in court proceedings. There are offices located throughout the country. For further details and a list of offices visit www.mabs.ie.



3. **Treoir** - The national federation of services for unmarried parents and their children. This organisation provides free information to parents who are not married to each other and to those involved with them. You can contact them at:
14, Gandon House, Custom House Square, IFSC, Dublin 1.
Telephone (01) 670 0120 or Low Call: 1890 252 084
email: info@treoir.ie

4. **Open** - The national network of local lone parent self help groups. You can contact them at:
7 Red Cow Lane, Smithfield, Dublin 7.
Telephone (01) 814 8860
email: enquiries@oneparent.ie

5. **Legal Aid Board** - The State body responsible for the provision of civil legal aid and advice to persons of modest means. The service is provided on a nationwide basis. For further details and a list of offices visit www.legalaidboard.ie. You can contact them at:
St Stephen's Green House, Dublin 2.
Telephone 01 646 9700

6. **Citizens Information** - An Irish e-Government website providing public service information for Ireland. For further details visit www.citizensinformation.ie

7. **One Family** - One Family is a leading national organisation for one-parent families in Ireland. One Family works with all types and all members of one-parent families. Services include information and support, parenting and self-development courses, support groups, counselling and campaigning. You can contact them at:
National Helpline: 1890 66 22 12
Email: support@onefamily.ie
Web: www.onefamily.ie

APPENDIX 3

Contact details for District Court offices

Location	Phone No.	Fax No.
Athlone	(090) 649 2271	(090) 649 3385
Ballina	(096) 72940	(096) 72944
Ballinasloe	(090) 964 2342	(090) 964 4731
Bray	(01) 274 4800	(01) 274 4801
Carlow	(059) 913 1225	(059) 913 1325
Carrick on Shannon	(071) 962 0481	(071) 962 2061
Castlebar	(094) 902 1764	(094) 902 1990
Cavan	(049) 433 1585	(049) 433 1590
Clonakilty	(023) 35759	(023) 35767
Clonmel	(052) 29220	(052) 28699
Cork	(021) 431 9610	(021) 431 9614
Doire na Fhéich	(091) 572202	(091) 572078
Donegal	(074) 972 1532	(074) 972 1947
Drogheda	(041) 983 8313	(041) 983 6297
Dublin Family Law Office	(01) 888 6308	(01) 671 7903
	(01) 888 6344	
	(01) 888 6353	
Dundalk	(042) 939 2350	(042) 939 2399
Dun Laoghaire	(01) 280 0038	(01) 284 5019
Ennis	(065) 682 1682	(065) 682 1908
Fermoy	(025) 31160	(025) 33656
Galway	(091) 562560	(091) 564895
Kilkenny	(056) 772 1019	(056) 772 3260
Killarney	(064) 31142	(064) 30233
Letterkenny	(074) 912 1909	(074) 912 6613
Limerick	(061) 414300	(061) 414926
Listowel	(068) 21220	(068) 23825
Longford	(043) 46491	(043) 45449
Loughrea	(091) 841463	(091) 847272
Mallow	(022) 21486	(022) 21249



Location	Phone No.	Fax No.
Monaghan	(047) 81417	(047) 81542
Mullingar	(044) 934 8364	(044) 934 8716
Naas	(045) 897430	(045) 866731
Nenagh	(067) 31319	(067) 41405
Portlaoise	(057) 862 1158	(0502) 862 0828
Roscommon	(090) 662 6174	(090) 662 5833
Sligo	(071) 914 2429	(071) 914 2297
Swords	(01) 840 3187	(01) 890 1714
Thurles	(0504) 21343	(0504) 22289
Tralee	(066) 712 1187	(066) 718 0250
Trim	(046) 948 1250	(046) 943 1794
Tuam	(093) 24318	(093) 70234
Tullamore	(057) 932 1153	(057) 932 1626
Waterford	(051) 874657/ 872768	(051) 876852
Wexford	(053) 912 2097	(053) 912 4798
Youghal	(024) 92175	(024) 92889

See also the Dublin District Court Family Law office leaflet available on *www.courts.ie* or from:

Information Office
 Courts Service
 Phoenix House,
 15/24 Phoenix Street North,
 Smithfield,
 Dublin 7

APPENDIX 4

Relevant Legislation

Order applied for	Relevant Act
Maintenance Order	Guardianship of Infants Act, 1964, and Section 5 and 5A of the Family Law (Maintenance of Spouses and Children) Act, 1976
Variation of Maintenance Order	Section 6 of the Family Law (Maintenance of Spouses and Children) Act, 1976.
Attachment of Earnings Order	Section 10(1)(a)(iii) of the Family Law (Maintenance of Spouses and Children) Act, 1976.
Lump sum payments instead of, or in addition to, other maintenance payments	Section 41 of the Family Law Act, 1995.



Appendix 5

Sample standing order form

<Case Record Number>

Request for standing order

The Manager

Name & Address of Bank:

1. Please charge to my Account: Account No.

--	--	--	--	--	--	--	--	--	--

2. Name of Account

3. REF NUMBER:

And pay to

4. Name of Account:

Bank:

5. Branch:

Account Number

The amount stated below at the specified intervals:

Frequency **WEEKLY/ MONTHLY** (Please specify)

Commencing with the first payment on _____

Amount € _____

Finishing with the last payment on:

_____ **TO BE LATER INSTRUCTED**

My/ Our account will at all times contain sufficient funds to enable each payment to be effected on the due date.

Signed _____

Address _____

Date _____

Please complete and return to family law office

The first payment to be in on _____
and every thursday thereafter

- ▼ Please note that it takes approximately two weeks to set up payment by way of standing order
- ▼ You are liable for all payments due up until the date the standing order commences.



This is an information leaflet. This leaflet does not provide legal advice. If you need legal advice please consult a solicitor.

Produced by the Courts Service,
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Phoenix House, 15/24 Phoenix
Street North, Smithfield, Dublin 7
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