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FAMILY LAW UNIT

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CO-HABITATION – PROPOSED CHANGES TO THE LAW IN IRELAND

1. How much maintenance is paid?

The maximum the District Court can award in terms of maintenance is €500.00 per week to a spouse and €150.00 per child per week. If a spouse needs more than these amounts an application must be made to the Circuit Court.

It is advisable to insist on maintenance payments being made through the District Court Clerk so that an accurate record exists of payments made. In the event that the paying spouse fails to make the payments the District Court Clerk can take enforcement action against such spouse.

If the paying spouse is in regular employment his earnings can be attached to satisfy the maintenance order directing that the employer/organisation who pays the spouse to deduct maintenance from his/her salary/payment.

2. How are Maintenance Payments treated for tax purposes?

Where maintenance payments are legally enforceable under a Maintenance Order the person paying maintenance may claim tax relief on the maintenance paid to his/her spouse. The person paying maintenance may not claim tax relief on the maintenance paid to his/her children.

The person receiving the maintenance payments is liable for income tax on the maintenance paid to him/her but not on maintenance payments for his/her children. Where there is a voluntary agreement in relation to maintenance payments the person paying the maintenance may not claim tax relief on any portion of the maintenance payments but the recipient of the maintenance payments is not assessed for income tax purposes on any portion of the maintenance payments.

3. What is meant by 'dependant children'?

Children under the age of 18 years, or 23 years if in full time and continuing education are deemed to be dependants for maintenance purposes.

4. In separation proceedings do I have to disclose all of my income and assets?

Yes. Both spouses must make full and frank disclosure of all income and assets.

5. Can one spouse sell the family home?

No. A spouse is prevented by law from selling, mortgaging, transferring or leasing the family home without the prior consent of the other spouse.

6. If I separate from my spouse am I entitled to their pension scheme?

Yes, as it forms part of your spouse's total income. The area of pensions is a complex area and we recommend seeking specialist advice in separation proceedings.

For further information please contact Emma Cummins, Solicitor, Family Law Unit,, Sheehan & Co., Solicitors, Galway.
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