

**Ciara Matthews**

# **Divorce**

## **When can I apply for a Divorce?**

In order to be eligible for a Decree of Divorce you must fulfil three criteria:

1. You must be living separate and apart from your spouse for four out of the five years immediately prior to the institution of Divorce proceedings\*,
2. There must be no possibility of a reconciliation between you and your spouse, and
3. The Court must be satisfied that “proper provision” exists, or will exist once financial Orders are made by the Court, for you, your spouse and any dependant children.

\*The Court may, in some instances, accept a period of time when the parties lived under the same roof, in the same house, but lived apart from each other in that house, as part of the four year period.

## **What is the effect of a Divorce?**

The effect of a Decree of Divorce is that you are free to remarry in the future. It also automatically terminates the inheritance rights each spouse has to a share of the estate of the other spouse.

## **What is “proper provision”?**

This will depend upon the circumstances of each individual case. In some cases, proper provision already exists in the form of the arrangements already agreed by the Spouses. In other cases, there may be no such agreement in place and the Court must decide what, if any, Orders should be made in order to provide for the Spouses and any dependant child or children.

Certain factors are taken into account by the Judge in determining what constitutes proper provision in each case including:

- (a) the income, earning capacity, property and other financial resources which each of the spouses has or is likely to have in the foreseeable future,
- (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future,
- (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses commenced to live apart from one another,
- (d) the age of each of the spouses, the duration of their marriage and the length of time during which the spouses lived with one another,
- (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family. This includes any contribution made by each of them to the income, earning capacity, property and financial resources of the

other spouse and any contribution made by either of them by looking after the home or caring for the family,

(g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each of them during the period when they lived with one another and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,

(h) any income or benefits to which either of the spouses is entitled,

(i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,

(j) the accommodation needs of either of the spouses,

(k) the value to each of the spouses of any benefit which, by reason of the Decree of Divorce, that spouse will forfeit the opportunity or possibility of acquiring (for example, a benefit under a pension scheme),

(l) the rights of any person other than the spouses, including a person to whom either spouse is remarried.

In addition, in deciding whether to make an Order in favour of a dependent child of the family concerned, the Court must have regard to the financial needs of the child, the child's income, earning capacity (if any), property and other financial resources and accommodation needs. It must also take into account any physical or mental disability of the child. Furthermore, it must consider the manner in which the child was being, and in which the Spouses anticipated that the child would be, educated or trained.

### **What Orders can be made by the Court?**

The Divorce legislation provides that, once a Decree of Divorce has been granted by the Court, the Court can then make Orders such as custody and access, maintenance, lump sum, secured lump sum, transfers of property between spouses, transfers of pension benefits between spouses, assignments of an interest in life policies, blocking any further court application for provision from a deceased divorced spouses estate and a conferral of the right on one spouse to reside in a property for his or her lifetime to the exclusion of the other spouse. It can also make Barring Orders and Safety Orders if one spouse and/or the children of the parties are encountering Domestic Violence. The Court can also direct one spouse to pay the costs of the other spouse of the proceedings.

It is also possible for the Court to make interim Orders, which are Orders made whilst the proceedings are ongoing and have not been fully heard. These can be Protection Orders or Interim Barring Orders, where there is a concern for the safety of a spouse and/or dependant child or children. Such Orders can also be for interim maintenance and, in relation to a child or children, custody and access Orders. A Court can also make an Order directing that a report be produced by a suitably qualified professional, such as a psychologist or psychiatrist, on any question affecting the welfare of a dependant child or children, such as custody and access.

In deciding whether to make an Order and in determining what type of Order should be made, the Court must have regard to the terms of any Separation Agreement (also

known as a Deed of Separation) which has been entered into by the Spouses and is still in force.

### **Can the Orders be varied in the future?**

If the Court grants a Decree of Divorce and Ancillary Orders, such as custody and access Orders, maintenance Orders, it is open to either you or your divorced spouse to seek to vary those Orders in the future, where a serious issue arises affecting the welfare of the child or children or there is a change in the circumstances of either spouse. The most likely change in circumstances will be an increase or decrease in the amount of income available to either or both spouses, necessitating an application to vary any maintenance Order made by the Court.

There are certain restrictions on the Court's ability to vary certain Orders made, which your solicitor can discuss with you at a consultation.

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