

**GROUND FOR DIVORCE AND MAINTENANCE BETWEEN
FORMER SPOUSES**

NORWAY

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A. GENERAL

1. *What is the current source of law for divorce?*

The current source of law for divorce in Norway is the Marriage Act 1991.¹ The grounds for divorce are regulated in Chapter 4, sections 19 – 25 of the Marriage Act 1991 and procedural questions are dealt with in Chapter 5, sections 26 – 30.

2. *Give a brief history of the main developments of your divorce law*

Christian the Fifth's Norwegian Law of 1687 allowed three grounds for divorce (adultery, impotency and desertion), but after 1790 divorce was granted in administrative practice after a period of separation² (3 years) or non-cohabitation (6-7 years). Divorce without a previous period of separation or non-cohabitation could only be given on a fault basis.

Divorce by consent was introduced in the Divorce Law 1909 as an autonomous ground for divorce, after a period of separation (1 year). When the spouses did not agree to a divorce, several fault grounds existed, and in addition there was also divorce on the ground of irretrievable breakdown. This divorce regime was retained in the Marriage Act 1918 and it lasted until the Marriage Act 1991. After a

¹ Act No. 47 of 04.07.1991 relating to Marriage (The Marriage Act).

² When the term 'separation' is used in this report, it refers to judicial (and not factual) separation.

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Supreme Court's Judgement in 1952³ separation, and subsequently divorce, was usually awarded on the ground of irretrievable breakdown without any requirement as to proof.

The Marriage Act 1991 introduced a new divorce regime where each spouse could *demand* a divorce after a period of separation or non-cohabitation - consent or a specific ground was no longer required. This, however, did not represent an essential change in practice, due to the Supreme Court's Judgement mentioned above.

3. *Have there been proposals to reform your current divorce law?*

No. Norwegian divorce law was recently reformed - the Marriage Act 1991 entered into force on 1 January 1993.

B. GROUNDS FOR DIVORCE

I. General

4. *What are the grounds for divorce?*

Sections 20 - 24 of the Marriage Act 1991 sets out the legal requirements which are necessary for divorce:

- *Divorce after separation:* A spouse who finds that he or she cannot continue cohabitation may demand a separation (section 20 of the Marriage Act 1991). According to section 21, each of the spouses may demand a divorce when they have been separated for at least one year. Thus, no consent or any special ground is required for separation or divorce.
- *Divorce after cohabitation has terminated:* Each of the spouses may demand a divorce when they have not cohabited for at least two years (section 22 of the Marriage Act 1991). No consent or special ground is required.
- *Divorce on grounds of abuse:* According to section 23 of the Marriage Act 1991 a spouse may demand a divorce

³ *Norwegian Supreme Court Reports*, 1952, p. 812.

immediately – without a prior period of separation – if the other spouse has intentionally attempted to kill him or her or their children or wilfully exposed them to severe maltreatment, or if the other spouse has behaved in a manner that is likely to arouse grave fear of such behaviour.

5. *Provide the most recent statistics on the different bases for which divorce was granted.*

A total of 10,300 marriages were dissolved by divorce and 12,750 marriages were dissolved by separation in 2001. This is 250 more divorces and 150 fewer separations than in 2000. In addition 16,100 marriages were dissolved because one of the spouses had died in 2001. The 10,300 divorces correspond to 11.8 divorced women per 1000 married and separated women. The divorce rates in 2000 and 1999 were 11.5 and 10.4 respectively.⁴

*The latest statistics on the different grounds for divorce
Year 2000*

Grounds for divorce	Percentage
Divorce after separation:	93.8%
Divorce after cohabitation is terminated:	4.3%
Divorce on grounds of abuse:	0.3%
Unknown, etc.:	1.6%

6. *How frequently are divorce applications refused?*

As each spouse can *demand* divorce after a period of separation or non-cohabitation, divorce applications are very seldom refused. In a few cases a divorce can be refused, because the spouses have continued or resumed cohabitation after separation. In these cases separation ceases to have legal effect.

⁴ Source: *Statistisk Sentralbyrå* (Statistics Norway).

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7. *Is divorce obtained through a judicial process, or is there also an administrative procedure?*

According to the Marriage Act section 27, separation and divorce are granted by means of an administrative procedure (by the County Governor). In the following cases, however, the decision shall be made by the court:

- When the case concerns the dissolution of the marriage pursuant to section 23 (divorce on the ground of abuse) or section 24 (marriage between close relatives and bigamy).
- When the case concerns divorce pursuant to section 22 (divorce after cohabitation has terminated) and the parties do not agree that the conditions – two years of non-cohabitation - have been fulfilled
- When proceedings for separation or divorce are instigated by the guardian or provisional guardian.

Divorce pursuant to section 22 (and section 21) shall also be decided by a court when the demand is made in proceedings for divorce that have been brought before the court on other grounds (i.e. abuse), or in connection with a case concerning a question pursuant to the Marriage Act (i.e. division of assets, maintenance) or a case concerning a question pursuant to the Children Act concerning children of the marriage, which is related to the demand for divorce.

8. *Does a specific competent authority have jurisdiction over divorce proceedings?*

No specific authority has jurisdiction over divorce proceedings. Most divorces are granted administratively by the County Governor (Fylkesmannen). According to the Marriage Act section 27 §§ 2 and 3 a few cases are decided within the ordinary court system.

9. *How are divorce proceedings initiated? (e.g. Is a special form required? Do you need a lawyer? Can the individual go to the competent authority personally?)*

Divorce proceedings are initiated when one (or both) of the spouses send a petition for separation or divorce to the County Governor, or send a writ demanding separation or divorce to the court. (The Marriage Act section 29). Spouses who have children of their marriage under 16 years of age must attend mediation proceedings before the case is brought before the County Governor or a court. (The Marriage Act section 26). The purpose of this mediation is to reach an agreement concerning parental responsibility, right of access or to determine where the child or children shall permanently reside. Thus, the purpose is *not* to bring the spouses back together. The spouses do not need a lawyer. The spouses are under an obligation to attend this mediation in person unless compelling reasons prevent them from doing so. When an attempt at mediation has been made, certification shall be issued to that effect.

10. When does the divorce finally dissolve the marriage?

According to the Marriage Act section 25 § 1, the divorce normally enters into effect on the day the licence is issued by the County Governor or the judgment is pronounced. A licence or judgement for divorce, however, does not give the right to contract a new marriage until the licence has become final or the judgment has become legally binding (the Marriage Act section 25 § 2).

If under your system the sole ground of divorce is irretrievable breakdown of marriage answer part II only. If not, answer part III only.

III. Multiple grounds for divorce

1. Divorce by consent

22. Does divorce by consent exist as an autonomous ground for divorce, or is it based on the ground of irretrievable breakdown?

Consent is irrelevant in our divorce system. Each spouse can *demand* a divorce after a specific period of time without any consent or any specific ground according to the Marriage Act sections 21 and 22, and consent has no effect on the granting of divorce. Therefore, Questions 22 – 32 are of no relevance in the Norwegian divorce system.

2. Divorce on the ground of fault/ matrimonial offence

33. *What are the fault grounds for divorce?*

The only fault ground is *abuse*, and this ground gives the right to divorce immediately without any prior period of separation or non-cohabitation, according to the Marriage Act section 23. Only 0.3% of all divorces are granted on the ground of abuse. If there has been a prior period of separation or non-cohabitation, no ground for divorce is needed.

34. *If adultery is a ground what behaviour does it constitute?*

Adultery is not a ground for divorce under Norwegian divorce law.

35. *In what circumstances can injury or false accusation provide a ground for divorce?*

A spouse can demand an immediate divorce without any prior separation, if the other spouse has intentionally attempted to kill him or her or their children or wilfully exposed them to severe maltreatment, or if the other spouse has behaved in a manner that is likely to arouse a grave fear of such behaviour (the Marriage Act section 23).

36. *Is an intentional fault required?*

Yes, according to the Marriage Act section 23, the other spouse must intentionally have attempted to kill him or her or their children, or wilfully have exposed them to severe maltreatment, or behaved in a manner that is likely to arouse a grave fear of such behaviour.

37. *Should the fault be offensive to the other spouse? Does the prior fault of one spouse, deprive the guilty / fault-based nature of the shortcomings of the other?*

Yes, the fault should be offensive to the other spouse, see Question 36. The prior fault of one spouse does not deprive the guilty nature of the shortcomings of the other.

38. To obtain a divorce, is it necessary that the marriage was of a certain duration?

No

39. Does the parties' reconciliation prevent the innocent spouse from relying upon earlier facts as a ground for divorce?

No, the parties' reconciliation does not prevent the innocent spouse from relying upon earlier facts as a ground for divorce according to the Marriage Act section 23 (divorce on grounds of abuse).

40. How is the fault proved?

No special means of proof is required; there is a free assessment of the evidence.

41. Are attempts at conciliation, information meetings or mediation attempts required?

No.

42. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, may the competent authority invoke this on its own motion?

No.

43. Is it possible to pronounce a judgment against both parties, even if there was no counterclaim by the respondent?

No.

3. Divorce on the ground of irretrievable breakdown of the marriage and/or separation

44. *How is irretrievable breakdown established? Are there presumptions of irretrievable breakdown?*

Irretrievable breakdown is not a ground for divorce under Norwegian law. Each spouse can demand a divorce after a specific period of time without any consent or any ground, according to the Marriage Act section 21 and 22.

45. *Can one truly speak of a non-fault-based divorce or is the idea of fault still of some relevance?*

As each spouse can demand a divorce after a specific period of time without any ground, the idea of fault is of no relevance.

46. *To obtain the divorce, is it necessary that the marriage was of a certain duration?*

Each spouse can demand a divorce after one year of separation or two years of non-cohabitation, according to the Marriage Act sections 21 and 22, regardless of the duration of the marriage.

47. *How long must the separation last before divorce is possible?*

The separation⁵ must have lasted for one year, according to the Marriage Act section 21. Alternatively, if the spouses have not cohabited (de facto) for two years, each of them can demand a divorce (the Marriage Act section 22).

48. *Does this separation suffice as evidence of the irretrievable breakdown?*

⁵ When the term 'separation' is used in this report, it refers to judicial (and not factual) separation.

Irretrievable breakdown is not a ground for divorce under Norwegian law, see Question 44.

49. In so far as separation is relied upon to prove irretrievable breakdown,

- (a) Which circumstances suspend the term of separation?
- (b) Does the separation need to be intentional?
- (c) Is the use of a separate matrimonial home required?

Irretrievable breakdown is not a ground for divorce under Norwegian law, see Question 44.

50. Are attempts at conciliation, information meetings or mediation attempts required?

Each spouse can demand a divorce after a specific period of time, without any consent or any ground, according to the Marriage Act sections 21 and 22. In these cases, spouses who have children of their marriage under 16 years of age must attend mediation proceedings before the case is brought before the County Governor or a court. The purpose of the mediation is to reach an agreement concerning parental responsibility, right of access or where the child or children shall permanently reside. Thus, the purpose is *not* to bring the spouses back together.

51. Is a period for reflection and consideration required?

Apart from the separation period or the period of non-cohabitation mentioned in Question 50, no specific period of reflection is required.

52. Do the spouses need to reach an agreement or to make a proposal on certain subjects? If so, when should this agreement be reached? If not, may the competent authority determine the consequences of the divorce?

No, the spouses do not need to reach an agreement or to make a proposal on certain subjects. As mentioned in Question 51 spouses who have children of their marriage under 16 years of age must attend mediation proceedings before the case is brought before the County

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Governor or a court. But no agreement is required; an *attempt* to reach agreement is all that is required. If the parties do not agree upon matters concerning children the court will have the authority to decide on parental responsibility, right of access or where the child or children shall permanently reside, according to the Children Act 1981.

53. To what extent must the competent authority scrutinize the reached agreement?

The competent authorities have no right to scrutinize the agreement which has been reached– this is so whether the agreement concerns parental responsibility, division of assets, maintenance or any other issue. (If the social security authorities however, have granted benefits to single parents, they can revise the amount of maintenance to children agreed upon by the parents.)

54. Can the divorce application be rejected or postponed due to the fact that the dissolution of the marriage would result in grave financial or moral hardship to one spouse or the children? If so, can the competent authority invoke this on its own motion?

No, the competent authority has no right to reject or postpone the dissolution of marriage. As mentioned above, each spouse can *demand* a divorce – no ground or consent is needed.

C. SPOUSAL MAINTENANCE AFTER DIVORCE

I. General

55. What is the current source of private law for maintenance of spouses after divorce?

The current source of private law for maintenance after divorce is the Marriage Act 1991 Chapter 16 sections 79 - 85. Some of the rules have been elaborated upon by the courts and by administrative decisions. If

both parties so desire, the question of maintenance might be decided administratively, and in these cases rules of guidance exist.⁶

56. Give a brief history of the main developments of your private law regarding maintenance of spouses after divorce.

According to the Marriage Act 1918 section 57 the responsibility to support the other spouse ceased after divorce. Maintenance could be granted in some cases, however, if the court found this to be “fair”. This rule was subject to much criticism. It was pointed out that especially housewives had little opportunity to support themselves after divorce. As a result the rules were revised in 1937, and the rules for maintenance upon divorce and separation now became identical. The main condition for granting maintenance (section 56) was the spouse’s need for support due to the fact that the opportunity to ensure adequate support had been reduced as a result of the marriage. Apart from the debtor’s ability to pay (including his “fictional” income) the amount of maintenance was to some extent determined according to the standard of living during the marriage. The claimant’s conduct during the marriage was also significant, according to section 56 § 4. The Marriage Act 1991 took a far more restrictive view of maintenance, even though the general conditions did not undergo any substantial changes. The main principle *is that each spouse shall support themselves after separation or divorce* - maintenance shall only be granted in exceptional cases.⁷ The Marriage Act 1991 section 79 § 1 states that the mutual obligation of spouses to provide support cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without separation or divorce. Section 79 § 2 sets out the general rule for maintenance in these cases: ‘If the ability and opportunity of the spouse to ensure support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the other spouse may be ordered to pay maintenance. In other cases maintenance may only be ordered if special reasons so indicate.’

⁶ Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00).

⁷ NOU 1987: 30 p. 44, Ot. prp. nr. 28 (1990.91) p. 46 and Rikstrygdeverkets rundskriv 1. February 1994 om ektefellebidrag (53-00) 5.3.

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The *duration* of maintenance is also limited: According to section 81, maintenance shall be ordered for a limited period not exceeding three years. If special reasons so indicate, maintenance may, however, be ordered for a longer period or without any time-limit. The rules of duration were criticised because it did not pay enough attention to housewives who had been working at home for a long period of time, and had little opportunity to support themselves. As a result, section 81 was amended in 1998.⁸ Now section 81 explicitly states that maintenance, as a main rule, shall be ordered for a longer period of time or without any time-limit if the marriage has lasted for a long time. This, however, had been the rule in practice even before 1998.⁹

57. Have there been proposals to reform your current private law regarding maintenance of spouses after divorce?

No. The Norwegian private law regarding the maintenance of spouses after divorce was recently reformed - the Marriage Act 1991 entered into force on 1 January 1993, and underwent a few minor amendments in 1998.

58. Upon divorce, does the law grant maintenance to the former spouse?

Yes, the Norwegian law grants maintenance in some cases. As a main principle each spouse shall support him/herself after separation or divorce - maintenance shall only be granted in exceptional cases. The Marriage Act 1991 section 79 § 1 states that the mutual obligation of spouses to provide support cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without a separation or divorce. Section 79 § 2 sets out the general rule for maintenance in these cases: 'If the ability and opportunity of the spouse to ensure support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the other spouse may be ordered to pay maintenance.' In other cases maintenance may only be ordered if special reasons so indicate, for example to a sick or disabled former spouse.

⁸ Act No. 37 of 05.05.1998.

⁹ See for example *Norwegian Supreme Court Reports* 1992 p. 1098 and *Norwegian Supreme Court Reports* 1997 p. 806.

59. *Are the rules relating to maintenance upon divorce connected with the rules relating to other post-marital financial consequences, especially to the rules of matrimonial property law? To what extent do the rules of (matrimonial) property law fulfil a function of support?*

The rules are not explicitly connected, but the economic settlement after divorce will in practice affect the amount of maintenance granted. The fact that maintenance is granted might also have some significance in those (few) cases where a discretionary rule of division of property is applied.

To some extent, the rules of matrimonial property law do fulfil a function of support, but this is not the main function of these rules. Normally only assets created during the marriage are shared equally, according to the Marriage Act sections 58 and 59, and the main justification for this rule is that both spouses are presumed to have made a *contribution* to the acquisition.

60. *Do provisions on the distribution of property or pension rights (including social security expectancies where relevant) have an influence on maintenance after divorce?*

Yes, provisions on the distribution of property have an influence on maintenance after divorce. According to the Marriage Act section 80, the amount of maintenance is partly determined on the basis of the *need* for maintenance on the part of the person entitled thereto, and in determining this need all assets are taken into account. No division of pension rights takes place under our matrimonial property system, but in some cases a spouse may be granted compensation if she or he is placed in an unreasonably disadvantageous economic situation due to the fact that pension rights are not divided (the Marriage Act section 61 b). Such compensation might influence the amount of maintenance and can be awarded instead of, or in addition to, maintenance. It must be remembered, however, that both compensation and maintenance are only granted in exceptional cases - the main principle under our law is that each spouse shall support him/herself after divorce; see Question 58.

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61. *Can compensation (damages) for the divorced spouse be claimed in addition to or instead of maintenance payments? Does maintenance also have the function of compensation?*

Compensation (damages) cannot be claimed due to shortcomings in the marital obligations. No, the function of maintenance is to assure adequate support.

62. *Is there only one type of maintenance claim after divorce or are there, according to the type of divorce (e.g. fault, breakdown), several claims of a different nature? If there are different claims explain their bases and extent.*

There is only one type of maintenance claim after divorce.

63. *Are the divorced spouses obliged to provide information to each other and/or to the competent authority on their income and assets? Is this right to information enforceable? What are the consequences of a spouse's refusal to provide such information?*

Spouses are under an obligation to give each other the information necessary to assess their financial position, according to the Marriage Act section 39. For this purpose a spouse may demand that both the other spouse and the tax assessment authorities provide information regarding the tax returns or tax assessment of the other spouse. A spouse may also demand information from companies, enterprises or other institutions engaged in financing or insurance activities, and from others who manage funds.

II. Conditions under which maintenance is paid

64. *Do general conditions such as a lack of means and ability to pay suffice for a general maintenance grant or do you need specific conditions such as age, illness, duration of the marriage and raising of children? Please explain.*

General conditions such as a lack of means and ability to pay do *not* suffice for the grant of maintenance. As a general rule, the ability and opportunity of the spouse to ensure support must have been reduced

as a result of caring for children of the marriage or of the distribution of joint tasks during the marriage, according to the Marriage Act section 79 § 2. In other cases maintenance may only be ordered if special reasons so indicate, for example if the former spouse is sick or disabled. The amount of maintenance shall be assessed on the basis of the need for maintenance on the part of the person entitled thereto, and the ability to pay of the person liable to pay the maintenance (the Marriage Act section 80). In practice, maintenance after divorce is granted in a limited number of cases.

65. To what extent does maintenance depend on reproachable behaviour or fault on the part of the debtor during the marriage?

Maintenance does not depend on those factors, see Question 64.

66. Is it relevant whether the lack of means has been caused by the marriage (e.g. if one of the spouses has give up his/her work during the marriage)?

Yes, according to the Marriage Act section 79 § 2 it is normally a condition for granting maintenance that the ability and opportunity of the spouse to ensure support have been reduced *as a result of caring for children of the marriage or of the distribution of joint tasks during the marriage.*

67. Must the claimant's lack of means exist at the moment of divorce or at another specific time?

The claimant's lack of means must exist when the claim for maintenance is made. The Marriage Act section 79 § 1 states that the mutual obligation of spouses to provide support cease to exist upon separation and divorce. The same applies to a cessation of cohabitation without separation or divorce. From this moment onwards a claim for maintenance can be instigated. Each of the parties may request that the maintenance determined be altered or revoked if there are special grounds for doing so, according to the Marriage Act section 84. There is no maximum limitation period - a spouse can in principle file a maintenance request many years after the divorce.

III. Content and extent of the maintenance claim

68. *Can maintenance be claimed for a limited time-period only or may the claim exist over a long period of time, maybe even lifelong?*

According to the Marriage Act section 81, maintenance shall normally be ordered for a limited period not exceeding three years. If the marriage has lasted for a long time, or if there are other special reasons, maintenance may be ordered for a longer period or without any time-limit. Section 81 was slightly amended in 1998,¹⁰ and now the section explicitly states that maintenance, as a main rule, shall be ordered for a longer period of time or without any time-limit if the marriage has lasted for a long time. This, however, had been the rule in practice even before 1998.¹¹

69. *Is the amount of the maintenance granted determined according to the standard of living during the marriage or according to, e.g. essential needs?*

The amount of maintenance shall be assessed on the basis of the *need* for maintenance on the part of the person entitled thereto and the *ability to pay* of the person liable to pay the maintenance (the Marriage Act section 80 § 1). The amount is not determined according to the standard of living during the marriage, but as the determination of the exact amount is left to the discretion of the court or administrative authority, the previous standard of living might be taken into account, especially if the marriage had lasted for a long time.¹²

70. *How is maintenance calculated? Are there rules relating to percentages or fractional shares according to which the ex-spouses' income is divided? Is there a model prescribed by law or competent authority practice?*

There are no rules in the Marriage Act relating to percentages according to which the ex-spouse's income is divided, and no other

¹⁰ Act No. 37 of 05.06.1998.

¹¹ See for example *Norwegian Supreme Court Reports* 1992 p. 1098 and *Norwegian Supreme Court Reports* 1997 p. 806.

¹² See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 534.

calculation model is prescribed by law. The determination of the amount of maintenance is left to the discretion of the court or the administrative authority. When the maintenance is decided by the administrative authority, however, one third of the ex-spouses income has been indicated as a suitable amount of maintenance in cases where the debtor has an average income and the claimant has no income at all.¹³

71. What costs other than the normal costs of life may be demanded by the claimant? (e.g. Necessary further professional qualifications? Costs of health insurance? Costs of insurance for age or disability?)

As the amount of maintenance shall be assessed partly on the basis of the *need* for maintenance on the part of the person entitled thereto, all reasonable costs of life may be requested – in some cases also the costs of necessary further professional qualifications and the costs of insurance.

72. Is there a maximum limit to the maintenance that can be ordered?

No specific maximum limit of maintenance is determined by law, but as the amount of maintenance is not determined according to the standard of living during the marriage, but on the basis of the claimant's need and the debtor's ability to pay – there will in practice be a maximum limit.¹⁴

73. Does the law provide for a reduction in the level of maintenance after a certain time?

Even though this is not an explicit option within the law, the competent authority has the opportunity to determine a reduction in the level of maintenance after a certain time.¹⁵

¹³ Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 6.2.

¹⁴ Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 6.1.1.

¹⁵ See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 543.

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74. *In which way is the maintenance to be paid (periodical payments? payment in kind? lump-sum?)?*

Periodical payments is the ordinary way of payment, but according to the Marriage Act section 80 § 2, maintenance may be determined as a lump-sum payment, by means of a one-off payment or in addition to periodical payments, when special reasons so indicate. Such a special reason might for example be the claimant's need to finance a new home or the debtor's unwillingness to pay.¹⁶

75. *Is the lump- sum prescribed by law, can it be imposed by a court order or may the claimant or the debtor opt for such a payment?*

A lump-sum payment can be ordered by the competent authority when special reasons so indicate (see Question 74), and if requested by one or both of the parties.

76. *Is there an (automatic) indexation of maintenance?*

No, there is no automatic indexation of maintenance. The competent authority has the opportunity, however, to order maintenance to be automatically adapted to the consumer price index.¹⁷

77. *How can the amount of maintenance be adjusted to changed circumstances?*

According to the Marriage Act section 84, each of the parties may demand that the maintenance determined by the competent authority be altered or revoked if there are 'special grounds' for doing so, e.g. if the financial situation of the parties improves or worsens due to changes in income, gifts, acquiring a new family etc.¹⁸ A decision not to grant maintenance can also be altered according to section 84. The

¹⁶ See NOU 1987:30 p. 152 and Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 541.

¹⁷ See Ot.prp. nr. 28 (1990.91) p. 47 and Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 534..

¹⁸ For more information on this topic, see Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 547-548.

parties may request a decision on the question of maintenance even if they have previously entered into an agreement regarding maintenance (the Marriage Act section 83).

IV. Details of calculating maintenance: Financial capacity of the debtor

78. Do special rules exist according to which the debtor may always retain a certain amount even if this means that he or she will not fully fulfil his maintenance obligations?

As maintenance, according to the Marriage Act section 80, shall be assessed partly on the basis of the debtor's ability to pay, the debtor may always retain a certain amount, even if this means that the needs of the claimant are not met.

79. To what extent, if at all, is an increase of the debtor's income a) since the separation, b) since the divorce, taken into account when calculating the maintenance claim?

An increase of the debtor's income – whether it occurs after separation or after the divorce – can be taken into account when calculating the maintenance claim.

80. How far do debts affect the debtor's liability to pay maintenance?

Debts might affect the debtor's liability to pay maintenance to the extent that it affects his/her financial situation, as maintenance is determined on the basis of the debtor's ability to pay. However, if the debt is caused by luxury consumption, this might be a sufficient reason not to take the debt fully into account.¹⁹

81. Can the debtor only rely on his or her other legal obligations or can he or she also rely on his or her moral obligations in respect of other persons, e.g. a de facto partner or a stepchild?

¹⁹ Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 6.1.1

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Moral obligations, e.g. supporting a de facto partner, can be considered when determining the debtor's ability to pay. To what extent such moral obligations are taken into account depends on the circumstances of the actual case.²⁰

82. Can the debtor be asked to use his or her capital assets in order to fulfil his or her maintenance obligations?

The debtor's capital assets can be taken into account when calculating the amount of maintenance, but the main basis of assessment is the debtor's income.²¹

83. Can a 'fictional' income be taken into account where the debtor is refusing possible and reasonable gainful employment or where he or she has deliberately given up such employment?

In most cases 'fictional' income will not be taken into account, but in exceptional cases such income might be considered, e.g. when the refusal of possible gainful employment is motivated by a wish to avoid paying maintenance.²²

84. Does the debtor's social security benefits, which he or she receives or could receive, have to be used for the performance of his or her maintenance obligation? Which kinds of benefits have to be used for this purpose?

All kinds of social security benefits which the debtor receives, can be used for the performance of his maintenance obligation.

85. In respect of the debtor's ability to pay, does the income (means) of his or her new spouse, registered partner or de facto partner have to be taken into account?

²⁰ See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 536-537.

²¹ See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 537-538.

²² See NOU 1987: 30 p. 152, Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 537 and Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 6.1.1.

No, the income (means) of his or her new spouse, registered partner or de facto partner have no direct influence on the amount of maintenance. However, there might be an indirect influence, as the costs of the debtor might increase or decrease, due to the new relationship. The priority is subject to the discretion of the court. In one case from 1987 the Supreme Court decided that a separated spouse's claim for maintenance ranked ahead of the claim (moral obligation) of a new de facto partner.²³

V. Details of calculating maintenance: The claimant's lack of own means

86. In what way will the claimant's own income reduce his or her maintenance claim? Is it relevant whether the income is derived on the one hand, from employment which can be reasonably expected or, on the other, from employment which goes beyond what is reasonably expected?

As the amount of maintenance shall be assessed on the basis of the need for maintenance, the claimant's own income will reduce his claim. All income is taken into account – including income from employment which goes beyond what is reasonably expected.

87. To what extent can the claimant be asked to seek gainful employment before he or she may claim maintenance from the divorced spouse?

As maintenance shall only be granted in exceptional cases – normally only in cases where the ability and opportunity of the spouse to ensure support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation, the claimant will in practice have to seek gainful employment in most cases.

88. Can the claimant be asked to use his or her capital assets, before he or she may claim maintenance from the divorced spouse?

²³ See *Norwegian Supreme Court Reports* 1987 p. 467. See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 537 and p. 547-548.

Yes, capital assets can be taken into account.²⁴ To what extent the claimant will be asked to use his or her capital assets before he or she may claim maintenance from the divorced spouse is left to the discretion of the court.²⁵

89. *When calculating the claimant's income and assets, to what extent are the maintenance obligations of the claimant in relation to third persons (e.g. children from an earlier marriage) taken into account?*

The claimant's total financial situation shall be taken into account, including maintenance obligations of the claimant in relation to children from an earlier marriage.

90. *Are there social security benefits (e.g. income support, pensions) the claimant receives which exclude his or her need according to the legal rules and/or court practice? Where does the divorced spouse's duty to maintain rank in relation to the possibility for the claimant to seek social security benefits?*

Social benefits to which the claimant has an unconditional right (e.g. old-age pensions, disability pension and - to some extent - also benefits to single parents) shall always be taken into account, and such benefits will therefore in practice reduce or exclude his or her need for maintenance. Other social benefits (e.g. income support, social security benefits) might be taken into account, especially if the debtor has a limited ability to pay, but - as a general rule - the divorced spouse's duty to maintain ranks ahead of such conditional social security benefits.²⁶

VI. Questions of priority of maintenance claims

91. *How is the relationship between different maintenance claims determined? Are there rules on the priority of claims?*

²⁴ See for example Norwegian Supreme Court Reports 1967 p. 447.

²⁵ Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 536.

²⁶ *Norwegian Supreme Court Reports* 1974 p. 342, Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001, p. 535-536, and Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 6.1.1.1.

The priority of the claim of a child of the debtor and the claim of a divorced spouse is determined in administrative regulations.²⁷ The priorities of other claims are not subject to specific rules.²⁸

The only maintenance claims under Norwegian law are children's claims towards their parents and claims between spouses/ex-spouses.

92. Does the divorced spouse's claim for maintenance rank ahead of the claim of a new spouse (or registered partner) of the debtor?

No, the priority is subject to the court's discretion.²⁹

93. Does the claim of a child of the debtor, if that child has not yet come of age, rank ahead of the claim of a divorced spouse?

Yes, as a general rule, the claim of a child of the debtor ranks ahead of the claim of a divorced spouse's claim. There is however a limited possibility to reduce both claims, if they amount to more than 30% of the debtor's income.³⁰

94. What is the position if that child has reached the age of majority?

As a general rule, the claim of a child of the debtor that has reached the age of majority also ranks ahead of the claim of a divorced spouse.³¹

95. Does the divorced spouse's claim for maintenance rank ahead of the claims of other relatives of the debtor?

²⁷ Forskrift om fastsetjing og endring av fostringstilskot 20.03.1989 nr. 785

²⁸ Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 537 and p. 547-548.

²⁹ Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 537 and p. 547-548.

³⁰ Administrative regulation 20.03.1989 nr. 785 (Forskrift om fastsetjing og endring av fostringstilskot), section 2 and section 4 e. See Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 537.

³¹ Administrative regulation 20.03.1989 nr. 785 (Forskrift om fastsetjing og endring av fostringstilskot), section 4 a.

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No other relatives have any maintenance claims under Norwegian law.

96. *What effect, if any, does the duty of relatives or other relations of the claimant to maintain him or her have on the ex-spouse's duty to maintain him or her?*

See Questions 95 and 91. The possibility of factual support from other relatives is regarded as irrelevant.³²

VII. Limitations and end of the maintenance obligation

97. *Is the maintenance claim extinguished upon the claimant's remarriage or entering into a registered partnership? If so: may the claim revive under certain conditions?*

The maintenance claim is extinguished upon the claimant's remarriage, according to the Marriage Act section 82. The claim does not revive.

98. *Are there rules according to which maintenance may be denied or reduced if the claimant enters into an informal long-term relationship with another person?*

Whether the maintenance terminates if the person entitled thereto enters into a de facto relationship is left for the competent authority to decide. A departmental circular recommends, as a general rule, that a de facto relationship which has lasted for more than two years should have this effect.³³

99. *Can the maintenance claim be denied because the marriage was of short duration?*

³² *Norwegian Supreme Court Reports* 1966 p. 1242 and Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 536.

³³ Rundskriv Q 15/01 01.07.2001 p. 65 and Holmøy og Lødrup, *Ekteskapsloven og enkelte andre lover med kommentarer*, 2nd Edition, Oslo, 2001 p. 547.

No. However, a marriage of short duration will in practice exclude maintenance in most cases, as the main condition for maintenance is that the ability and opportunity of the spouse to ensure support have been reduced as a result of caring for children of the marriage or of the distribution of joint tasks during cohabitation.(the Marriage Act section 79).

100.Can the maintenance claim be denied or reduced for other reasons such as the claimant's conduct during the marriage or the facts in relation to the ground for divorce?

No, in most cases the claimant's conduct during the marriage or the facts in relation to the ground for divorce is irrelevant.³⁴

101.Does the maintenance claim end with the death of the debtor?

Yes.

VIII. Maintenance agreements

102.May the spouses (before or after the divorce or during the divorce proceedings) enter into binding agreements on maintenance in the case of (an eventual) divorce?

The spouses may enter into binding agreements on maintenance before or after divorce or during divorce proceedings, according to the Marriage Act section 83.

103.May a spouse agree to renounce his or her future right to maintenance? If so, are there limits on that agreement's validity?

A spouse may agree to renounce his or her future right to maintenance, as long as it is not with regard to a hypothetical future divorce.

104.Is there a prescribed form for such agreements?

³⁴ Ot.prp. nr. 28 (1990-91) p. 46 and p. 136. Rikstrygdeverkets rundskriv 01.02.1994 om ektefellebidrag (53-00) 5.5.3.

Norway

No, there is no prescribed form for such agreements.

105.Do such agreements need the approval of a competent authority?

No approval is required.