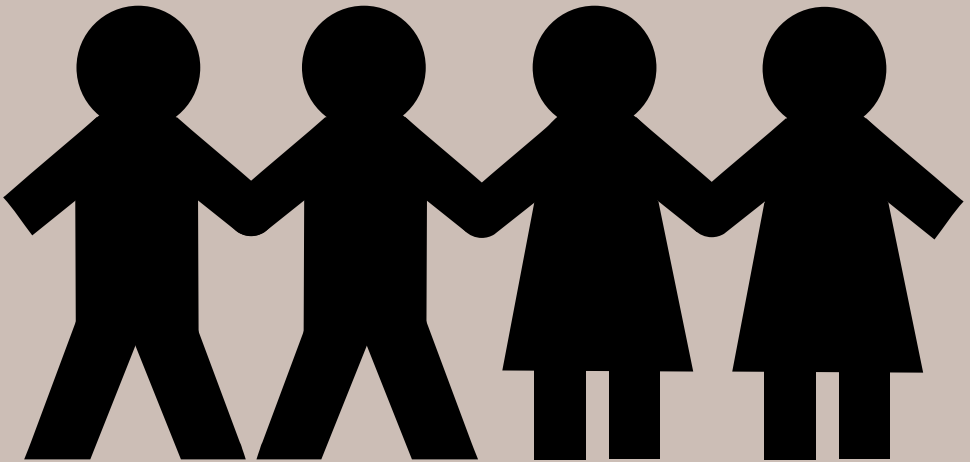


KNOW YOUR RIGHTS

The Rights and Obligations of Civil Partners and other Same-Sex Couples



Irish Council for
Civil Liberties

glen 
gay + lesbian equality network

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KEYWORDS

Civil partners

Two unrelated people of the same sex who enter into a civil partnership together, or who have entered into a foreign same-sex civil partnership or same-sex civil marriage which is recognised in Ireland.

Civil partnership

A voluntary, exclusive union of two people of the same sex who are not closely related to each other. In principle, civil partnership is for life (although it may be dissolved by a court). Civil partners must financially support each other. They also have other rights and obligations both during the relationship and following the end of the relationship.

Cohabitants

Two adults (whether of the same sex or of the opposite sex) who are not married to each other or in a civil partnership together but who live together in an intimate and committed relationship.

Decree of nullity

Also called an annulment. This is a court order stating that a civil partnership registration is not legally valid. It means that the civil partnership never came into being.

Dissolution

A formal court order that ends a civil partnership.

Estate

Your property and wealth. When someone dies, the property and wealth they leave behind is described as their estate.

Maintenance

Financial support given by one person (either voluntarily or by court order) to support his or her spouse, civil partner, qualified cohabitant or biological child.

Qualified cohabitants

• Two cohabitants of the opposite sex who have lived together for two years and who have had one or more children together; or

• Two cohabitants of either the same sex or the opposite sex who have lived together for five years but who have not had children together.

Registrar of Civil Partnerships

A state official, employed by the Health Service Executive, in whose presence a civil partnership is registered.

Testamentary guardian

This is someone appointed by will or deed to act in place of the child's guardian if the guardian dies while the child is still under 18.

Transgender

This is a broad term describing someone whose gender identity or gender expression differs from that of the physical gender to which they were born. Some transgender people live as a member of the gender with which they identify. This is called 'the preferred gender'. Some but not all transgender people undergo medical and/or hormonal treatment to change their physical features to those of their preferred gender. This is called 'gender reassignment'.

ABOUT THIS GUIDE

Before January 2011, Irish law did not recognise same-sex couples (with rare exceptions). There were – and still are – important legal protections for gay, lesbian, bisexual and transgender people as individuals but, before 2011, same-sex couples had few legal rights or obligations.

All this changed when the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 came into force on 1 January, 2011. This is a major step forward for equality as the Act:

- significantly changes the rights and obligations of same-sex couples, particularly those who become civil partners;
- recognises many same-sex couples' foreign marriages and civil partnerships as civil partnerships in Ireland with the same rights and obligations as Irish civil partnerships; and
- gives the same or very similar rights and obligations to the partners in civil partnerships and marriages.

Since the Act came into force, same-sex couples all over Ireland have been entering into civil partnerships, celebrating these with friends and family, and benefiting from the protections that civil partnership gives.

Other laws which came into force around the same time have changed the entitlements of same-sex couples in relation to social welfare. Civil partners are now treated the same as spouses when accessing social welfare entitlements. Furthermore, all cohabitants (same-sex and opposite-sex) are now treated alike in relation to social welfare. In addition, civil partners are now treated the same as married couples in relation to tax, immigration, citizenship and many other areas.

Most of the changes relate to same-sex couples who are civil partners. However, even if you are not a civil partner, you may still have rights and obligations if you are living with someone in an intimate and committed relationship. It doesn't matter whether the other person is of the same sex or the opposite sex.

This guide explains these rights and obligations in plain language. It is aimed at:

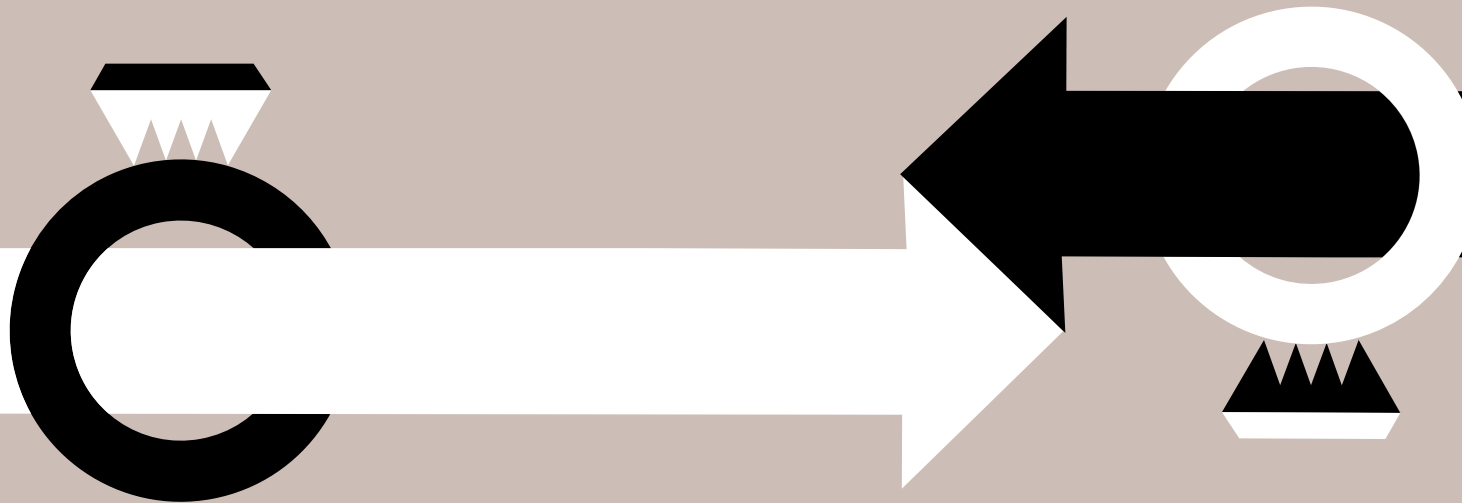
- same-sex couples who have entered into a civil partnership; and
- same-sex couples who are living together but are not civil partners.

COMPARISON BETWEEN MARRIAGE AND CIVIL PARTNERSHIP

This table shows the main similarities and differences between marriage and civil partnership.

	Marriage	Civil Partnership
Eligibility	<ul style="list-style-type: none"> • Couple must be of opposite sex • Both aged 18 or over (unless exempted by a court) • Not closely related by blood or marriage • Not in an existing marriage or civil partnership • Mentally competent • Full, free and informed consent 	<ul style="list-style-type: none"> • Couple must be of same sex • Both aged 18 or over (no exceptions) • Not closely related by blood • Not in an existing marriage or civil partnership • Mentally competent • Full, free and informed consent
Notification requirements	<ul style="list-style-type: none"> • 3 months' notice (unless exempted by court) • Must make formal declaration of freedom to marry 	<ul style="list-style-type: none"> • 3 months' notice (unless exempted by court) • Must make formal declaration of freedom to enter a civil partnership
Registration	<ul style="list-style-type: none"> • Before a registrar of marriages or registered solemniser • Celebrant may be a religious minister • Must take place in presence of at least two adult witnesses • Must take place in a place open to the public • Must take place in an approved venue (if celebrant is a registrar of marriages) • Must exchange declarations • Must sign marriage registration form 	<ul style="list-style-type: none"> • Before a registrar of civil partnerships • Celebrant may not be a religious minister • Must take place in presence of at least two adult witnesses • Must take place in a place open to the public • Must take place in an approved venue • Must exchange declarations • Must sign civil partnership registration form
Maintenance	<ul style="list-style-type: none"> • Obligated to support spouse • Each spouse obliged to support own children • Spouse A to support Spouse B's children if: <ul style="list-style-type: none"> → Spouse A knows they are not his or her children; and → Spouse A treats them as children of the family 	<ul style="list-style-type: none"> • Obligated to support civil partner • Each civil partner obliged to support own children but not children of civil partner

	Marriage	Civil Partnership
Shared/ family home protection	<ul style="list-style-type: none"> • Restrictions on selling, mortgaging or leasing family home – a spouse must get prior written consent from the other spouse (but a spouse who has been deserted does not have to get consent) • Restrictions on disposal of household effects such as furniture • Spouse can take over payment of some debts in respect of the home 	<ul style="list-style-type: none"> • Same as marriage except a deserted civil partner must get consent • Family home of civil partners is called a shared home
Succession	<ul style="list-style-type: none"> • Legal right share to specified portion of deceased spouse's estate regardless of what the deceased's will says • Priority claim over family home • Right to succeed where spouse dies without making a will 	<ul style="list-style-type: none"> • Same as marriage except that civil partner's child has rights in respect of the deceased's estate that in exceptional cases may prevail over the right of the surviving civil partner
Domestic violence	<ul style="list-style-type: none"> • Can seek barring orders, safety orders and protection orders 	<ul style="list-style-type: none"> • Same as marriage
Pensions	<ul style="list-style-type: none"> • Depends on relevant pension scheme 	<ul style="list-style-type: none"> • Same as marriage – civil partners must be treated the same as spouses
Judicial separation	<ul style="list-style-type: none"> • Available 	<ul style="list-style-type: none"> • Not available, see Dissolution
Dissolution	<ul style="list-style-type: none"> • Must be living apart for 4 of the previous 5 years • No reasonable prospect of reconciliation • Must provide properly for spouses & children 	<ul style="list-style-type: none"> • Must be living apart for 2 of the previous 3 years • Must provide properly for civil partners
Remedies available following dissolution	<ul style="list-style-type: none"> • Property adjustment • Pension adjustment • Financial compensation • Family home orders • Orders for sale of property • Claims against deceased's estate 	<ul style="list-style-type: none"> • Same as marriage



Children

Marriage

- Biological or adoptive parent(s) have full rights and obligations in respect of child
- Spouses are joint and equal guardians of children if they are both parents of the children
- Step-parent can be obliged to maintain spouse's children if step-parent accepts the child as a child of the family
- Step-parent cannot seek guardianship or custody (but can be made guardian on death of parent or removal of guardian)
- Step-parent can seek access, if in a parental role
- Step-parent not obliged to provide for spouse's child in will
- Step-parent treated as a parent for purpose of gift and inheritance tax
- Couple can jointly adopt

Civil Partnership

- Biological or adoptive parent has full rights and obligations in respect of child
- Only biological or adoptive parent is guardian
- Civil partner of parent not obliged to maintain child
- Civil partner of parent cannot seek guardianship or custody (but can be made guardian on death of parent or removal of guardian)
- Civil partner of parent can seek access if in a parental role
- Civil partner of parent not obliged to provide for child in will
- Couple cannot jointly adopt
- Civil partner treated as a parent for purpose of gift and inheritance tax

Immigration

- General right to apply to be joined in Ireland by spouse
- No automatic legal rights, unless you are the spouse of an EU national, exercising free movement rights under EU law

- Same as marriage

Taxation

Marriage

- Spouses enjoy various tax exemptions, and share income tax credits and the standard rate income tax band

Civil Partnership

- Same as marriage in nearly all cases. Remaining technical differences are being amended in legislation

Social welfare

- Spouses are treated as a couple
- Entitled to various social welfare payments on death of spouse

- Same as marriage

Pensions

- Spouses may have entitlements to a workplace pension scheme, including death-in-service benefits

- Same as marriage

Protection from discrimination

- Equality law protects spouses from discrimination in employment and in the provision of goods and services

- Same as marriage
- The 'marital status' ground in equality law has changed to 'civil status' to protect civil partners and former civil partners from discrimination

Next of kin

- Not defined in law, but generally assumed that the spouse is the 'next of kin'

- Civil partners must be treated the same as spouses, and this includes 'next of kin' situations

CIVIL PARTNERSHIP

About Civil Partnership

A civil partnership is a formal legal union between people of the same sex who are not related to each other. In principle, civil partnership is for life and can only be ended by death or by an order of a court.

Civil partnership was introduced in Ireland specifically to address the situation of same-sex couples. Under current Irish law, same-sex couples cannot marry. However, civil partnership allows same-sex couples to enter into a formal union which is similar in many ways to marriage.

(Please see the table on page 3 for the main similarities and differences between civil partnership and marriage).

Is civil partnership like marriage?

Civil partnership is like marriage in many ways but there are some important differences. The steps you must take to enter into a civil partnership are almost identical to the steps that a couple intending to marry must take. Most of the rights and obligations of the partners in civil partnerships and marriages are the same or very similar although it is easier to leave a civil partnership than a marriage.

Other similarities between civil partnership and marriage include:

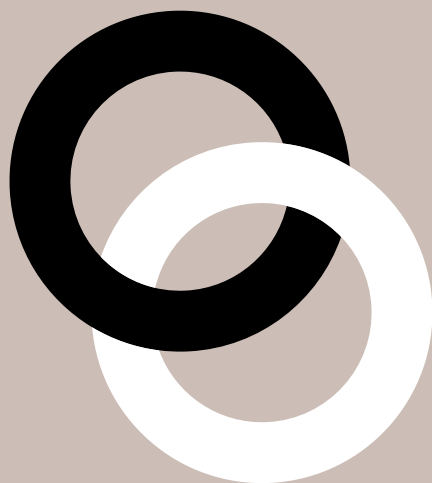
- financial support obligations;
- property rights;
- rights on the death of a partner;
- rights on the ending of the relationship;
- social welfare entitlements;
- rights in relation to immigration and applications for citizenship;
- rights and obligations under tax law; and
- equal treatment under equality laws.

The main differences are where civil partners are raising children.

Can same-sex couples marry?

No. It is not currently possible in Ireland for a couple of the same sex to marry. Irish law currently prevents two people from marrying if they are of the same sex. Marriage has special protection under the Constitution so not being able to marry means that same-sex couples do not have the protection of the Constitution as a couple.

In addition, Irish law does not recognise the marriages of same-sex couples who have married in countries that allow same-sex marriage. Since 2011, however, couples who enter into a same-sex marriage in certain countries are treated as civil partners in Irish law.



Zappone and Gilligan v. Revenue Commissioners (2006)

Two women who married each other in Canada sought to have their marriage recognised in Ireland as a valid legal marriage. The High Court refused to recognise the marriage, saying that a marriage in Irish law is a union confined to two people of the opposite sex. The judge concluded that the term 'marriage', as used in the Constitution, meant only a heterosexual union. She noted that other judges had consistently said that marriage in Irish law was a union of one man and one woman. She also pointed out that a 2004 Act had restated that in current Irish law marriage can only be between two people of the opposite sex. The Court ruled that there was no constitutional right to enter into a same-sex marriage.

Is a same-sex couple a 'family' under the Constitution?

Only a family based on marriage is recognised under Articles 41 and 42 of the Constitution. This means that same-sex couples, together with the children they are raising, do not have the same rights under the Constitution as marital families.

McD. v. L. (2009)

The Supreme Court ruled that a lesbian couple and their child were not a family under the Constitution. The court acknowledged the loving and caring environment in which the child was being raised but stated that, for constitutional purposes, a family that is not based on marriage is not recognised under the Constitution.

Is a same-sex couple a 'family' under the European Convention on Human Rights?

Same-sex couples are now treated as family under the European Convention on Human Rights. Article 8 of the Convention protects an individual's private, family and home life. This includes same-sex couples with children.

Schalk and Kopf v. Austria (2010)

In this case, the European Court of Human Rights ruled that there was no right under the European Convention on Human Rights for a same-sex couple to marry. However, the court ruled that a same-sex couple was a family under Article 8 and that their family life must be respected. In *Gas and Dubois v. France (2010)*, the court suggested that a lesbian couple and their child were a family under the Convention.

Where there is a conflict between the European Convention on Human Rights and the Irish Constitution, the Irish courts will enforce the terms of the Constitution rather than the terms of the Convention. However, the Irish courts must read Irish laws, where possible, in a way that tries to meet the terms of the Convention. The Irish courts can also declare an Irish law to be 'incompatible' with the Convention, but even if this happens, the law will still be considered valid.

If you feel that your rights under the European Convention on Human Rights are not respected by the Irish courts, you can take your case to the European Court of Human Rights in Strasbourg. For more information about this, see *Know Your Rights: The European Convention on Human Rights in Ireland*. You can find this at www.knowyourrights.ie.

Who may enter into a civil partnership?

A couple must meet certain conditions.

- You and your partner must both freely agree to the civil partnership.
- You must both be of the same sex.
- You must both be aged 18 or over.
- You cannot be too closely related to each other.
- You must both be free to enter into a civil partnership.

If either you or your partner was married or in a civil partnership before, you cannot enter into a new civil partnership unless:

- the previous marriage or civil partnership has been annulled and so is not recognised in law;
- the previous marriage or civil partnership has been ended by divorce or dissolution;
- the other spouse or civil partner has died.

Must the partners be gay, lesbian or bisexual?

No. The Act does not say that the partners have to be gay, lesbian or bisexual.

Can people who are related to each other enter into a civil partnership?

You cannot enter into a civil partnership if you are closely related to each other by blood. For instance, two sisters or an uncle and his nephew may not enter into a civil partnership together. The Act treats people related by adoption the same as blood relations. So, for example, a woman and her adopted sister cannot enter into a civil partnership. However, you may enter into a civil partnership with someone to whom you are related by marriage (for example, a close relation of a former spouse).

What happens if one of the partners is a transgender person?

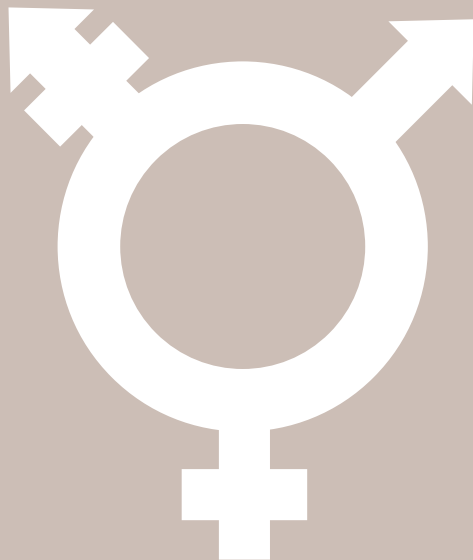
The term 'transgender' describes a person whose current gender identity or gender expression differs from that of the physical gender to which they were born. Some transgender people live as a member of the gender with which they identify. This is called 'the preferred gender'. Some but not all transgender people undergo medical and/or hormonal treatment to change their physical features to those of their preferred gender. This is called 'gender reassignment'.

Irish law, however, treats transgender people as being of the biological gender to which they were born. So, if you were born male but now live as a female, the law still regards you as male. This means that currently you could only enter a civil partnership with a man (even though you are now living as a woman). However, if you come from a country that recognises your gender reassignment, Irish law might recognise it too.

This issue has come up in cases before the courts but the Irish parliament has yet to pass laws in this area.

Foy v. An tArd Chláiritheoir (No. 2) (2007)

In Foy, the High Court stated that Ireland's failure to allow a transgender woman, who was born physically male, to change her birth certificate to reflect her female gender was against the European Convention on Human Rights. The court followed the decision of the European Court of Human Rights in *Goodwin v. United Kingdom* (2002). This decision found that a failure to allow a transgender woman to alter official documents to reflect the gender in which she was now living broke Article 8 of the European Convention, which protects the right to a private life. The European Court of Human Rights in *Goodwin* also said that this failure broke Article 12, which concerns the right to marry, as it prevented a transgender person from marrying in his or her preferred gender.



The decision in Foy does not change the law in Ireland. However, in 2011 the government's Gender Recognition Advisory Group (GRAG) recommended that transgender people should be allowed to change their legal gender. If GRAG's proposals become law, this would allow you to enter into a civil partnership with someone who is of the same gender as your own preferred gender. It would also allow you to enter into a marriage with someone who is of the opposite gender to your own preferred gender.

Are there situations where a civil partnership might be invalid?

Yes. In limited cases, a court may grant a 'decree of nullity' or an 'annulment', confirming that your civil partnership is invalid and has no legal effect. Irish law will consider your civil partnership invalid if, at the time of the civil partnership, either you or your partner:

- was under the age of 18;
- was still married or in a civil partnership which had not been dissolved;
- did not comply with all of the essential steps needed to form a civil partnership;
- did not give full, free and informed consent;
- was unable to give an informed consent because of a lack of mental capacity, as certified by a consultant psychiatrist;
- were too closely related (by blood or adoption); or
- were of the opposite sex.

However, it appears that you cannot get an annulment on the basis that either you or your partner was impotent at the time of the civil partnership registration.

What happens if my civil partnership is invalid?

If you believe your civil partnership is invalid for any of these reasons, you can get a 'decree of nullity' from a court. This is sometimes called an 'annulment'. If your civil partnership is invalid, it is not strictly necessary to get an annulment. However, it is highly advisable to get a court order to confirm that this is the case. In practice, you may not be allowed to enter into a marriage or another civil partnership without a court order stating that the previous civil partnership is invalid.

If your civil partnership is invalid, the law will treat you and your partner as if you had never entered into a civil partnership. If you lived together for five years or more, you may be entitled to be treated as qualified cohabitants, which means that some solutions may be available to you if your relationship ends. Otherwise, you and your partner will be treated as unmarried with very limited rights and obligations towards each other.

How to Get a Civil Partnership: Giving Notice

Entering into a civil partnership is relatively straightforward. However, there are certain steps you must take to register the relationship. These steps are similar to entering into a civil marriage except that a civil partnership is a civil union and may not be registered in a church or other religious venue.

What do we need to do before we enter into a civil partnership?

It is vital to follow the steps below. If you don't, your civil partnership may not be legally valid. (For more information, see the General Register Office website at www.groireland.ie).



Date	Action
At least 3 months before your intended civil partnership	<ul style="list-style-type: none"> You and your partner must give written notice to a registrar of civil partnerships of your intention to enter into a civil partnership You and your partner must give this written notice in person at the office of a registrar. If one or both of you are ill or live abroad, you may not have to go to the office in person but you must get the registrar's permission for this You must make an appointment to meet the registrar. You can book an appointment online at www.crsappointments.ie Both of you must supply your passports and long-form birth certificates to confirm your identities and also show proof of address Both of you must give any other information the registrar asks for, such as PPS numbers, and pay the notification fee It is a good idea to agree the date of the civil partnership ceremony with the registrar before making any other arrangements

Date	Action
We've missed the 3-month notice period. What do we do?	<ul style="list-style-type: none"> You may ask the Circuit Court or High Court to excuse you from the 3-month notice period but you must do this before the civil partnership ceremony To be excused, you must satisfy the court that there were good reasons for missing the deadline (for example, if one partner has a serious illness)
At least 5 days before the civil partnership registration	<ul style="list-style-type: none"> Both of you must go together to the office of the registrar (or another convenient place if the registrar agrees) and declare formally that there is no legal reason why you cannot enter into a civil partnership In practice, this declaration is typically made at the office of the registrar when giving the three months' notice of intention to enter into a civil partnership (see above) Even if you were excused from giving 3 months' notice or giving the notice in person, you will both still have to go to the registrar's office (or another approved place) to declare that there is no legal reason why you cannot enter a civil partnership

Registering a Civil Partnership

Once you have given notice, the registrar of civil partnerships will issue a civil partnership registration form. This allows you and your partner to register your civil partnership. You must do this within six months of the date on which the form was completed by the registrar. If you don't, you will have to start the process again and give another three months' notice of your intention to enter into a civil partnership. For this reason, it is a good idea to agree the date of the civil partnership ceremony with the registrar before making any other arrangements.

What happens at the civil partnership registration?

- Your civil partnership registration must take place before a registrar of civil partnerships and at least two witnesses aged 18 or over.
- You and your partner each have to make three declarations:
 - That you intend to take each other as a civil partner;
 - That you intend to support and live with your civil partner; and
 - That you know of no impediment to the civil partnership. An 'impediment' is a legal reason that would prevent the civil partnership from being formed.
- You, your partner, the witnesses and then the registrar must all sign the civil partnership registration form.
- A civil partnership registration will only take place if the officiating registrar is satisfied that both of you understand the nature of civil partnership and the declarations that you make.

Where can the civil partnership registration take place?

The ceremony may take place at a civil registry office or an approved venue such as a hotel or castle. If the civil partnership does not take place in a registry office, the Health Service Executive (HSE) must approve the venue. In practice, the Civil Registration Service, which is part of the HSE, may approve the venue. The venue must meet certain conditions:

- It must be both suitable and sufficiently dignified for a civil partnership registration.
- It must be open to the public. Although the venue may be privately owned, the public must be able to enter without charge on the day of the civil partnership.
- It must be fully accessible to people with disabilities, adequately insured and compliant with health and safety laws.
- It must be part of a building – you cannot register a civil partnership in the open air or in a tent or marquee.
- Unless you or your partner is ill, you cannot enter into a civil partnership in a private home.

If the venue you want to use has already met the requirements for civil marriages, it should be straightforward to get approval for its use to celebrate your civil partnership. If the venue has not been approved before, you will have to complete a venue approval form and submit it to the Civil Registration Service. Make sure you leave plenty of time for the Civil Registration Service to grant approval, as the building will have to be inspected.

What if one of us is too ill to have a civil partnership in public?

If the Civil Registration Service agrees, your civil partnership may be registered in a place that is not open to the public. You will have to provide a certificate from a registered medical doctor. In these cases, the normal requirements for venues, as set out above, do not apply.

Can I have a religious civil partnership ceremony?

No. Civil partnership is a civil union and you cannot enter into a civil partnership before a priest or other religious minister. Also, you cannot celebrate a civil partnership in a church or other building which is used, or has recently been used, for religious services or religious practice. You can, if you wish, have a religious ceremony that is separate from the civil partnership registration and held at another time. The law will not recognise the religious ceremony.

Foreign Civil Partnerships and Same-Sex Marriages

What happens if I have had a foreign civil partnership?

Some but not all foreign civil partnerships between same-sex couples have been recognised in Ireland since January 2011. If your foreign civil partnership is recognised, it gives you the same rights, obligations and entitlements as if you had a civil partnership in Ireland.

How are foreign civil partnerships recognised?

Under Irish law, the Minister for Justice and Equality may bring in rules (called a 'statutory instrument') that set out which foreign same-sex legal relationships will be recognised in Ireland. Currently, the rules only allow the Minister to recognise foreign same-sex legal relationships where:

- only people who are not in an existing civil partnership or marriage can enter the relationship;
- the legal relationship is registered under the law of the other state;
- only a court order can end the legal relationship – relationships that can be ended by agreement or without a court order cannot be recognised;
- the type of relationship is similar to an Irish civil partnership.

As of October 2012, Ireland recognised 39 classes of foreign legal relationship between same-sex couples (from 32 jurisdictions) as civil partnerships. This list will be updated from time to time as other countries bring in civil partnership or civil marriage for lesbian and gay couples.

Which foreign same-sex legal relationships does Ireland recognise?

Here are some examples.

- Civil partnerships from the United Kingdom (including Northern Ireland), South Africa and the Isle of Man;
- Registered partnerships from Austria, the Czech Republic, Denmark, Finland, Germany, Iceland, Norway, Sweden and Switzerland;
- Civil unions from New Zealand; and
- Civil unions from Connecticut, Illinois, New Hampshire, New Jersey, Rhode Island, Vermont or a domestic partnership from Oregon, in the United States of America.

Check the Department of Justice website for an up to date list of recognised relationships – www.justice.ie.

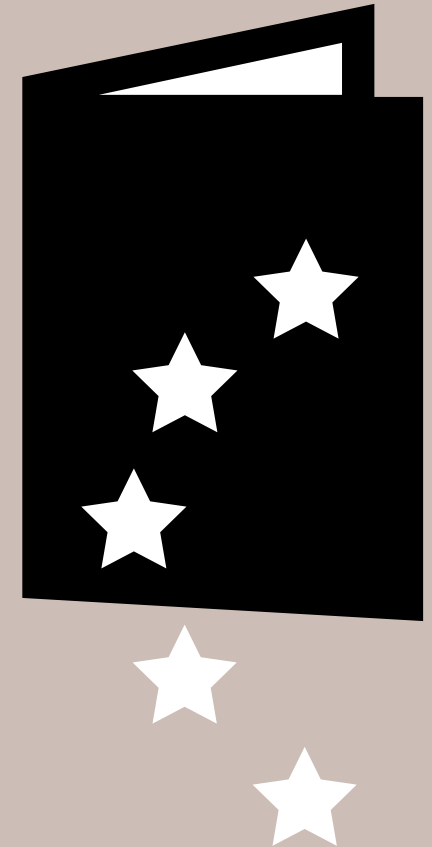
What if I enter into a foreign same-sex marriage?

Some places allow couples of the same sex to marry. If you marry in certain countries or places, your same-sex marriage will be recognised in Ireland, but as a civil partnership rather than a marriage. The same rights, obligations and entitlements will apply as if you had a civil partnership in Ireland. As of the time of writing, Ireland recognises same-sex marriages from the following places as civil partnerships under Irish law:

- Argentina, Belgium, Canada, Iceland, the Netherlands, Norway, Portugal, South Africa, Spain and Sweden;
- The US states of California, Connecticut, Iowa, Massachusetts, New Hampshire, New York and Vermont and the city of Washington DC (the District of Columbia);
- Mexico City.

Do I need to do anything to have my foreign civil partnership recognised in Ireland?

If your civil partnership or marriage is from one of the places recognised in Ireland, you do not need to do anything. If you need to prove that you are entitled to be treated like a civil partner under Irish law, for example by the Revenue Commissioners in relation to tax, a copy of your foreign certificate of marriage or civil partnership should be enough.



Protecting Your Shared Home (Civil Partners)

When civil partners live in a home together, it is called a 'shared home'. Under the law, a civil partner who owns the shared home cannot sell, lease, mortgage or dispose of the shared home, or any part of it, without first getting the written agreement of the other civil partner. The same applies to married couples.

What is a shared home?

This is the home in which the civil partners live. It may be a house, apartment, mobile home, or even a boat or plane if you and your civil partner normally live there. The shared home also includes the garden or yard, but does not include land used for farming or business.

Under the law, a home will also be treated as a 'shared home' if the civil partner who does not own it lives there, or used to live there before the relationship ended.



What restrictions apply to dealings with the shared home?

If you own all or part of the shared home, you must get the agreement of your civil partner in writing before you can sell, lease, mortgage or dispose of the home. This written agreement is needed even if your civil partner does not own the shared home. If you sell, lease, mortgage or dispose of the shared home or any part of it without getting written agreement beforehand, the transaction will generally have no legal effect.

Are there exceptions to this rule?

You don't need written agreement beforehand if:

- both you and your civil partner are selling the shared home together;
- the transaction was agreed before you became civil partners;
- a bank is selling the property because you can't meet your debts;
- a court has ruled that there is no need for consent, for example if:
 - it believes that one civil partner has withheld consent without good reason;
 - a civil partner cannot be located; or
 - a civil partner is not mentally capable of giving consent;
- six years have passed since the transaction (although some exceptions apply).



Financial Support

A transaction will be valid where:

- the buyer or person who leased the property did so for full market value; and
- neither the buyer nor the buyer's solicitor knew or should have known that the property was a shared home.

What other protections are available?

- A court may take steps to protect the shared home if the behaviour of one civil partner may cause loss of the shared home or make it unsuitable to live in. This only applies where one civil partner is trying to drive the other civil partner from the shared home.
- A civil partner may seek damages if the behaviour of the other civil partner has in fact led to the loss of the shared home or made it unsuitable to live in.
- A court may make an order preventing the sale or removal of household items such as bedding, furniture or a washing machine from the shared home. This happens automatically during proceedings to dissolve the civil partnership. A court may also make such an order where you have applied for a barring order or safety order.
- A court may grant compensation if household items have been removed from the shared home in breach of a court order or where the removal of these items has made it difficult to live in the home.

The law also allows a court to put off proceedings against a civil partner for repossession or sale of a shared home if the other civil partner is willing and able to:

- take over mortgage or rent payments; and
- clear mortgage or rent arrears on the shared home.

Does shared home protection apply to cohabitants or qualified cohabitants?

No. Shared home protection only applies to civil partners. (The family home of spouses enjoys similar protections).

Does shared home protection give me joint ownership of the shared home?

If you don't own the home, shared home protection does not give you any ownership rights in the property. However, the law encourages civil partners to transfer the shared home into joint names by exempting them from stamp duty and registration fees on the transfer.

You could also notify the Property Registration Authority that the property is a shared home so that anyone thinking of buying it will know it is a shared home. For more information on this, see www.landregistry.ie.

You and your civil partner must support each other financially. This applies both during the civil partnership and after a civil partnership ends. A court may grant what is called 'maintenance' if you or your civil partner fails to provide for each other's financial needs during the civil partnership or after the civil partnership is dissolved.

There are three types of maintenance award that a court may make:

- **Periodical payments orders** – this means one civil partner must make regular payments, usually weekly or monthly, to support the other civil partner;
- **Secured periodical payments orders** – this involves regular payments but with a fund or property used as security in case a payment is not made;
- **Lump sum orders** – one civil partner must pay a lump sum, in one or more instalments, to support the other civil partner.

How much maintenance will I get?

The amount depends on your and your civil partner's circumstances. The court will look at:

- the needs of each of you;
- the income, resources and earning capacity of each of you; and
- the obligations and responsibilities of each of you, in particular towards a dependent child.

How is maintenance paid or collected?

Maintenance is usually paid directly through your bank accounts by standing order or direct debit. If the District Court has ordered that maintenance be paid, it may be paid through the District Court office. If the maintenance is not paid, the court may order that the money be taken directly from the earnings of the civil partner who is required to pay, if that person is working as an employee or receives a pension. This is called an 'attachment of earnings' order. It means the employer will have to deduct maintenance from the employee's salary and pay it directly to the District Court clerk. The clerk will then pay whoever was granted maintenance.

Is there any protection for the civil partner paying maintenance?

Where maintenance orders are made, the court must consider the needs of both civil partners, including the civil partner from whom maintenance is sought. Attachment of earnings orders are rare and are only made where there is either a history of non-payment or it is likely that the civil partner won't pay. When making an attachment of earnings order, the court will set what is called a 'protected earnings rate'. This means that the salary of the partner who has to pay maintenance will not be reduced below this amount. This makes sure that the partner who is paying maintenance still has enough to live on.

When a Civil Partner Dies

When your civil partner dies, you have certain rights in law. The extent of your rights depends on whether your civil partner made a valid will before death.

Why should I make a will?

Making a will lets you decide how your property will be dealt with on your death. It also lets you minimise the tax that your successors will have to pay on their inheritances. By making a will, you can also choose who you would like to administer your estate after your death. These are called your executors.

How do I make a will?

You can make a will without legal assistance but we strongly advise you to consult with a solicitor when making your will.

Your will should:

- renounce any previous wills you may have made;
- clearly say what you want done with what you own on your death;
- deal with the possibility that someone to whom you want to leave something may die before you;
- appoint a replacement guardian for your child (or children) under 18, in case you die before they reach the age of 18.

You should sign the will in the presence of two witnesses. The witnesses are not allowed to take any share under the will. So, if you intend to leave something to someone in your will, neither that person nor their spouse or civil partner should witness the will.

What effect does civil partnership have on existing wills?

If you made a will before your civil partnership, you will need to make a new will on entering civil partnership as your old will is no longer valid. The same applies if you marry. The only exception is where you made the will 'in contemplation of' your upcoming civil partnership. In other words, that you had the civil partnership in mind when you made the will. In this case, the will remains valid after the civil partnership. (The same applies to a will made in contemplation of a marriage). Get legal advice if you entered into a foreign legal relationship which is recognised as a civil partnership in Ireland, and if you made a will before your legal relationship was recognised in Ireland.

What if my civil partner makes a will but does not provide for me in his or her will?

If your civil partner dies and has made a will, you have a guaranteed right to a minimum part of your deceased civil partner's estate, regardless of what the will says. This is called the 'legal right share'. It consists of:

- one-half of the estate if your civil partner had no surviving children of his or her own
- one-third of the estate if the deceased had surviving children.

Your civil partner may leave you more than the legal right share in his or her will but he or she cannot give you less. You also have rights in relation to your shared home but this will depend on the circumstances of each case.

What if my deceased civil partner had children?

Normally, the court cannot reduce your legal right share. However, if your civil partner did not provide adequately for his or her own child, the child can make a claim against the estate. In exceptional cases, the court may reduce your legal right share to do justice to the child. (By contrast, the legal right share of a spouse cannot be reduced in such cases).

Can my civil partner's child claim from my estate?

A child can only make a claim against the estate of the child's biological or adoptive parent. Your civil partner's child cannot make a claim against your estate or succeed to any part of your estate unless you specifically provide for the child in your will.

What if I die without making a will?

If you die without making a will, or if your will is invalid, your estate will be divided in accordance with the law. The amount your surviving civil partner will get depends on whether you had any 'issue' (this means direct descendants such as children, grandchildren or great-grandchildren).

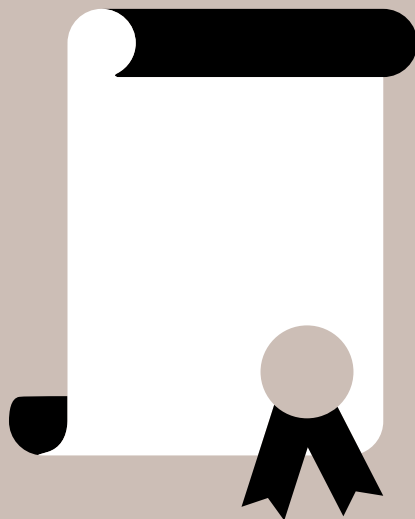


If you did not make a will and:	Outcome
You had no 'issue'	<ul style="list-style-type: none"> Your surviving civil partner gets all of your estate
You had children of your own and they all survive you	<ul style="list-style-type: none"> Your surviving civil partner gets two-thirds of your estate The remaining one-third is divided equally among your children (though, in exceptional cases, a court may give your child a larger portion of your estate if this is necessary to provide properly for the child)
You had children of your own but some died before you	<ul style="list-style-type: none"> Your surviving civil partner gets two-thirds of your estate The remaining one-third is divided so that: <ul style="list-style-type: none"> your surviving children get what they would have received had all your children been alive; and the children of any child who died before you get an equal share of what their parent would have received had their parent (your child) been alive
You had no surviving children, but had surviving grandchildren who are still alive	<ul style="list-style-type: none"> Your surviving civil partner gets two-thirds of your estate The remaining one-third is divided equally among the grandchildren

Can I lose my right to succeed following a relationship breakdown?

You lose the right to claim **both** the legal right share **and** any entitlement you have if your civil partner died without making a valid will, **if**:

- the civil partnership was dissolved before death;
- you and your civil partner separated **and**, as part of the separation agreement, you agreed to give up your rights on each other's death; or
- you had deserted your civil partner for two years or more immediately before he or she died.



In such cases, you can still be named in the deceased's will, but the deceased is under no obligation to do so. You may also lose your legal right share if you have committed certain offences against your deceased civil partner or a child of your deceased civil partner.

Can I give up my right to succeed?

Yes, you may give up your right to succeed on the death of your civil partner.

We dissolved our civil partnership before my former civil partner died. Can I claim from his or her estate?

Normally, you have no legal right to inherit from a former civil partner where your civil partnership has been dissolved before death. Your legal right share, and your right to inherit if your former civil partner died without a will, no longer apply when you get a dissolution.

You can succeed, however, if you are named in your former civil partner's will. You can also ask the court to provide for you from your deceased former civil partner's estate if you can show that he or she did not make proper provision for you. The court can, however, block this right to apply at the time you dissolve your civil partnership.

Will I have to pay tax if I get an inheritance from my civil partner?

You do not have to pay what is called 'capital acquisitions tax' (inheritance tax or gift tax) on any inheritances and gifts that you get from your civil partner. However, you will have to pay tax if you were a cohabitant of the deceased.

If your civil partner leaves a gift or inheritance for your child, the child is entitled to be treated, for tax purposes, as if he or she was your civil partner's child. This means that the child may get more property from the deceased free of tax than the child might otherwise get if the donor was not your civil partner.

Am I entitled to any social welfare payments if my civil partner dies?

You may be entitled to a surviving civil partner's pension on the death of your civil partner. This also applies if you and your civil partner had split up or if your civil partnership was dissolved before the death. However, you will not get this pension if:

- you are living (cohabiting) with someone else;
- you have married; or
- you are in a new civil partnership.

Other once-off benefits may also be available. See the section on social welfare on page 57.

Ending a Civil Partnership: Separation

Counselling and mediation services are available for same-sex partners to discuss problems in their relationships. Ideally, you should explore these supports before considering separation or dissolution.

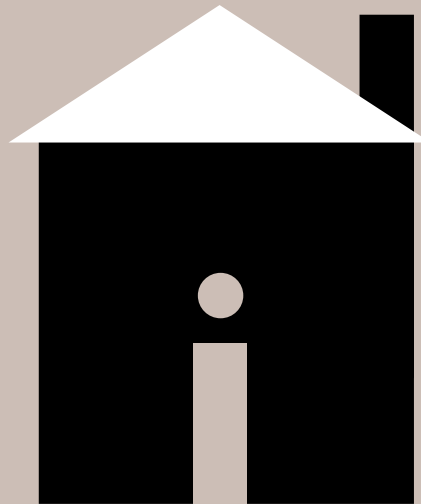
Mediation services will also help you to agree the terms on which you will live apart from each other, if that is what both of you decide.

Can I make a separation agreement?

If you and your civil partner decide to go your separate ways, we strongly advise you to draw up a separation agreement that sets out the terms of the separation. A separation agreement typically covers:

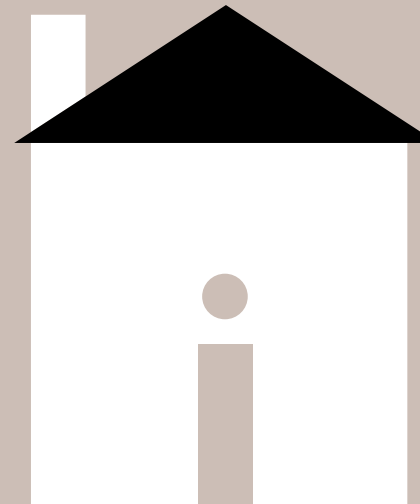
- whether one of you will support the other financially;
- what will be done with your shared home and other shared property;
- who will pay things such as utility bills and health insurance; and
- whether both of you agree to give up your legal succession rights.

The parts of a separation agreement that deal with financial support, property and other financial arrangements may be made a 'rule of court'. This means that those parts of the agreement can be enforced by a court as if they were a part of an order made by the court itself. This makes it easier to enforce those parts of the agreement if you or your civil partner breaks the agreement. To get this rule of court, you must apply for a court order. Generally, the court will only grant an order if it believes the agreement protects the interests of both of you.



Will a court put into effect a separation agreement?

Either you or your civil partner can ask a court to enforce (that is, put into effect) a separation agreement. The court must take the separation agreement into account when deciding whether to grant any remedies following a dissolution. However, the court may override the separation agreement if it believes the agreement is not fair and reasonable.



Can I get a judicial separation?

No. Judicial separation only applies to married couples. Judicial separation gives a married couple access to various remedies ordered by the court but it does not allow them to remarry. Civil partners can get the same remedies if their civil partnership is dissolved.

(Judicial separation was introduced in Ireland to provide remedies before the introduction of divorce. The remedies available on dissolution of a civil partnership are substantially the same as those available on judicial separation).

Please note that separation on its own does not dissolve the civil partnership. You will not be permitted to enter another civil partnership or a marriage without first dissolving your prior civil partnership. In addition, while it is common in separation agreements to give up your legal succession rights, if you separate and do not give up these rights, the rights will survive. (On the other hand, if you dissolve your civil partnership, these legal succession rights automatically end).

Ending a Civil Partnership: Dissolution

What is dissolution?

Civil partnership dissolution is like divorce – it formally ends or ‘dissolves’ the civil partnership. It allows you and your former civil partner to enter into a new civil partnership or marriage with other people.

How do I get a dissolution?

Only the Circuit Court or High Court may dissolve a civil partnership. To seek a dissolution, one of you must be domiciled in Ireland or have lived in Ireland for at least a year before applying for a dissolution. Your domicile is the country that is, or that you have made, your permanent home.

What are the grounds for dissolution?

- You must have been living apart for two out of the previous three years; and
- The court must be satisfied that both you and your civil partner have been properly provided for.

What does ‘living apart’ mean?

In the context of dissolution, ‘living apart’ means that:

- at least one of you has decided to end the relationship and has told the other; and
- you both are living separate lives.

It is not enough to live in separate places if you both want to continue your relationship. For instance, if you live away from your civil partner solely for work reasons, but you both still want the relationship to continue, you are not ‘living apart’ for this purpose.

If on the other hand, your relationship has ended and you live in separate homes, you will be treated as living apart. The court may also consider that you are ‘living apart’ from each other even if you both live in the same property, provided you can show that your relationship has ended and you are living substantially separate lives.

What does ‘properly provided for’ (also called ‘proper provision’) mean?

Before granting a dissolution, the court must be satisfied that you are both properly provided for (as far as your financial circumstances allow). The court may refuse to dissolve your civil partnership if it believes that one of you is being treated unfairly in any settlement.

Either you or your partner can ask the court to make orders following the dissolution to make sure there is proper provision for both of you. The types of orders that are available are explained in the next section on ‘Remedies’.

Do I have to show that my civil partner was to blame for the break-up?

No. Dissolution is a ‘no fault’ remedy. This means that the court is not concerned with who is to blame for the break-up. The court is mainly concerned with making sure that you meet the grounds for dissolution and that each of you is financially supported following the dissolution.

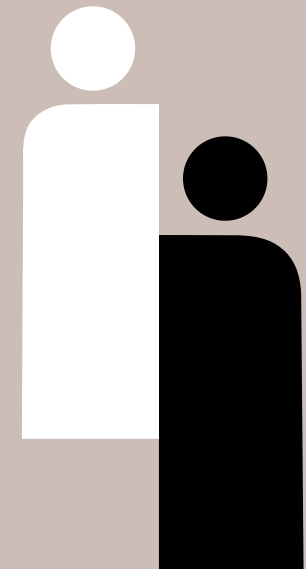
What happens once my civil partnership is dissolved?

You are no longer each other’s civil partners. This means that:

- you are both free to enter into a civil partnership or marriage with someone else;
- you both lose any right to rely on each other financially unless you have both agreed to do so or the court has made orders about this. Such orders are almost always made at the time of dissolution;
- you lose any entitlement to the legal right to a share of your former civil partner’s estate on his or her death (your former civil partner can still name you in their will, if they want to, but they have no obligation to do so);
- if your former civil partner dies without making a will, you will not generally be entitled to inherit any part of their estate (but there is an exception, discussed below).

Do any legal rights remain after the dissolution?

- You may seek financial support and other remedies from your former civil partner at the time of the dissolution or at any time after that but not if you marry or enter into a new civil partnership.
- If you can show that your former civil partner did not properly provide for you during their lifetime, you may be able to claim support from their estate when they die – as long as the court did not block this right at the time of the dissolution.



Remedies Available Following Dissolution of a Civil Partnership

Can my former civil partner and I agree a financial settlement?

Yes. Before or at the time of the dissolution, you and your former civil partner can draw up an agreement to deal with your property and finances.

What happens if we can't agree?

You can ask the court to make various orders about financial support, property, pensions and your shared home.

- **Orders for financial support.**
This is also called 'maintenance'. It may be a regular weekly or monthly payment or it may be paid in one or more lump sums. The court may require that whoever is going to pay the maintenance give some form of security to make sure that the maintenance is paid. To fund this, or to fund a lump sum order, the court may order the sale of property belonging to either civil partner.
- **Orders relating to property owned by you or your former civil partner.**
These are called 'property adjustment orders'. They allow the court to take property owned by one of you and give it to the other to take care of their future financial needs. The property may include land, houses, cars, furniture, money or shares. The court may also order the sale of property in certain circumstances.
- **Orders relating to your shared home.**
The court may allow one of you to stay living in the shared home or it may order the sale of the shared home and the money from the sale divided between you.
- **Orders relating to pensions.**
The court may order that part of one former civil partner's pension goes to benefit the other former civil partner. Or the court may split one former civil partner's pension in order to create a separate new pension for the other former civil partner. The court may also order that if you die before reaching retirement age, part of any death-in-service benefit that your employer might pay to survivors is paid to your former civil partner.
- **Orders for financial compensation.**
The court may order either of you to create a life assurance policy or sign over an existing policy for the benefit of the other former civil partner. This is for security in case one of you dies early.

On what basis will the court make these orders?

You do not have an automatic right to any of these orders. The court will decide whether to grant an order based on the particular circumstances of you and your former civil partner. The court will take the following factors into account:

- What income and resources do you both have or are likely to have in the future?
- What is your earning capacity (that is, how much are each of you likely to earn)?
- What are your needs, including accommodation needs?
- What standard of living did you both enjoy before the relationship broke up?
- How old are you both?
- How long have you been civil partners?
- How long have you lived together as civil partners?
- Do either of you have any relevant physical or mental disabilities?
- What contribution has each of you made to the civil partnership? This includes a contribution made by a civil partner working in the home.
- If one of you has stayed at home, what impact has this had on your earning capacity?
- What social welfare entitlements, if any, do either of you have?
- What benefits, if any, will either of you lose if your partnership is dissolved?
- Do either of you have children of your own?

Will the court look at the behaviour of my former civil partner?

The court will only take behaviour into account when deciding whether to grant orders following dissolution if the behaviour was so serious that it would be unjust to ignore it. Examples include violence, sexual abuse, serious financial irregularity or attempts to hide assets from the court. The court is unlikely to take infidelity into account. Even if the behaviour of your former civil partner is serious, the court may still make an order to provide for his or her future financial needs. The purpose of an order following dissolution is not to punish wrongdoing or to reward virtue.



COHABITATION

When can I seek remedies?

There is no time restriction on your right to seek remedies following dissolution. However, court orders are almost always sought at the time of dissolution. Please note the following important points:

- If you have been awarded maintenance, the maintenance stops if your former civil partner dies.
- If you have been awarded maintenance, the maintenance stops if you marry or enter into a new civil partnership.
- Generally, you may not seek an order for your benefit if you have married or entered into a new civil partnership since the dissolution (although there are some exceptions).
- You must apply for an order relating to 'death-in-service' benefits within one year of the end of the civil partnership.

In divorce cases, the courts increasingly try to deal with all aspects of the financial settlement at the time of the divorce and, where possible, to discourage people from returning to court later. It is expected that the courts will take a similar approach in relation to the dissolution of civil partnerships.

Can the court change or end an order?

Yes, but the courts usually only do this if the circumstances of either of the former civil partners has changed significantly.

What if my former civil partner dies?

If your former civil partner dies after you have dissolved your civil partnership, you cannot ordinarily claim from their estate, unless you are named in their will. Your legal right share ends on dissolution, and so does your right to succeed if the deceased did not make a will.

If, however, you can show that your former civil partner did not properly provide for you during his or her lifetime, you may be able to claim support from their estate when they die – as long as the court did not block this right at the time of the dissolution.

If you are getting maintenance when your former civil partner dies, your right to continuing maintenance ends on his or her death.

A same-sex couple that lives together but does not enter a civil partnership may still have certain legal rights and obligations. In particular, the law may consider you to be a 'cohabitant' if you live in an intimate and committed relationship with someone to whom you are not related.

To decide whether you are in an intimate and committed relationship, the court will look at:

- your living arrangements;
- your financial arrangements;
- whether you have, or care for, biological or adoptive children together; and
- whether you are known socially as a couple.

Cohabitants may be of the same sex or of the opposite sex.

What are the rights of cohabitants?

Cohabitants have limited rights. Cohabitants may seek protection from domestic violence. You may seek a safety order to prevent your cohabitant from using or threatening violence against you. If you have lived together for six of the previous nine months, you may seek a barring order. This prevents your cohabitant from entering your shared home. Some restrictions apply, particularly where your cohabitant has a greater legal or beneficial interest in the property than you do.

You may sue someone who is responsible for the wrongful death of your cohabitant, provided you lived together for at least three years before the death.

If your cohabitant dies and you live in private rented accommodation, you can take over the lease and continue to pay the rent until the lease ends. However, you must have lived together in the home for at least six months before the death.

Does the court recognise an agreement between cohabitants?

Cohabitants may enter into agreements about their financial and property arrangements which set out what will happen during the relationship and if the relationship breaks up. If the agreement was made on or after 1 January 2011 you must both:

- get separate independent legal advice; or
- agree in writing to get joint legal advice.

The agreement must be in writing and signed by both of you. The courts will generally enforce agreements between cohabitants but will not do so if it would cause a serious injustice.

What is a 'qualified cohabitant'?

Qualified cohabitants are long-term cohabiting couples who have particular rights and obligations if their relationship ends.

Qualified cohabitants are couples who have lived together for:

- two years if they have children together (this would apply to opposite-sex couples only); or
- five years if they do not have children together (this applies to both same-sex and opposite-sex couples).

What if I am married to someone else?

You cannot be a qualified cohabitant if either you or your cohabitant is married to someone else, unless the married couple have been separated for four of the previous five years.

What if I am in a civil partnership with someone else?

You can be someone's qualified cohabitant even if you are in a civil partnership with someone else at the same time.

Will time spent living together before 2011 be counted?

The law came into force on 1 January 2011. Time spent living together before that can be counted to see whether two people are entitled to be treated as qualified cohabitants from 2011 onwards.

We split up as a couple before 2011. Can we be treated as qualified cohabitants?

No. If you split up as a couple before 1 January 2011, and are no longer a couple, you will not be treated as qualified cohabitants, no matter how long you lived together.

What are my rights as a qualified cohabitant?

If you are a qualified cohabitant, you have more rights and obligations if your relationship breaks up or your partner dies than you would if you were simply a cohabitant.

If your relationship ends, you may apply for various court orders if you can show that you are financially dependent on your former cohabiting partner and cannot independently support yourself, either as a result of the relationship or the ending of the relationship. A court may order:

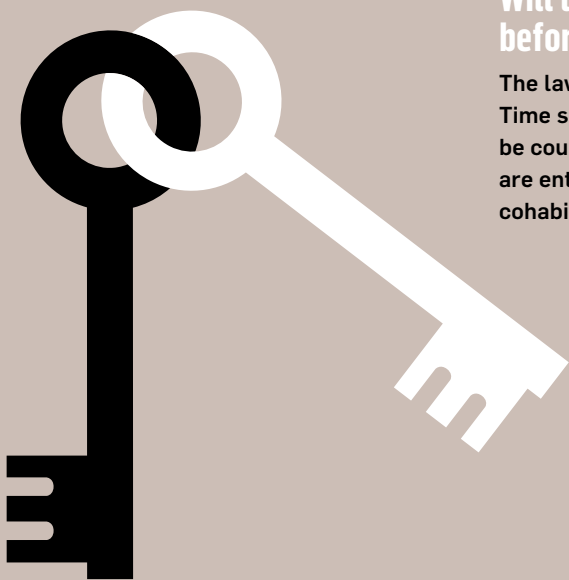
- Maintenance – this is financial support and may be either a lump sum or monthly or weekly payments;
- A pension adjustment – if the maintenance would not be enough to support you, the court may order that part of your partner's pension be reassigned to you;
- A property adjustment – if neither maintenance nor a pension adjustment order would be enough to support you, the court may order that some or all of your partner's property be transferred to support you.

In each case, you must:

- have been a qualified cohabitant at the end of the relationship;
- show that you are financially dependent on your former cohabiting partner as a result of the relationship or the ending of it. If you have enough independent means to support yourself, you cannot get these orders;
- not have married or entered into a civil partnership;
- generally seek these court orders within two years of the relationship breaking up.

What happens if a qualified cohabitant or a cohabitant dies?

You do not have an automatic right to part of your cohabiting partner's estate. If you wish to provide for each other, it is vital that you both make wills which set out how the surviving cohabitant is to be provided for.



RAISING CHILDREN AS A COUPLE

It is important to note the following:

- You may provide for each other in your wills but you are not obliged to do so.
- If either of you dies without making a will, the survivor is not entitled to any portion of the deceased cohabiting partner's estate. However, a qualified cohabitant (but not a cohabitant) may seek provision from the estate. This is discussed below.
- If you leave any property to your cohabitant or qualified cohabitant, it will be subject to the legal right share of a surviving spouse or civil partner (see page 24 for more about legal right shares).
- For the purpose of inheritance tax, cohabitants and qualified cohabitants are treated as 'strangers in law'. This means that the surviving cohabitant or qualified cohabitant may have to pay a significant amount of inheritance tax (this does not arise in the case of civil partners or spouses).

How do I seek provision from my qualified cohabitant's estate?

You can ask the court to provide for you from your qualified cohabitant's estate. You will have to show that your deceased partner has not already properly provided for you. If the relationship broke up before death, you will also have to show that you are not able to support yourself (although you do not have to prove this if your relationship existed up to the date of death). The amount you can claim cannot be more than a spouse would receive in similar circumstances.

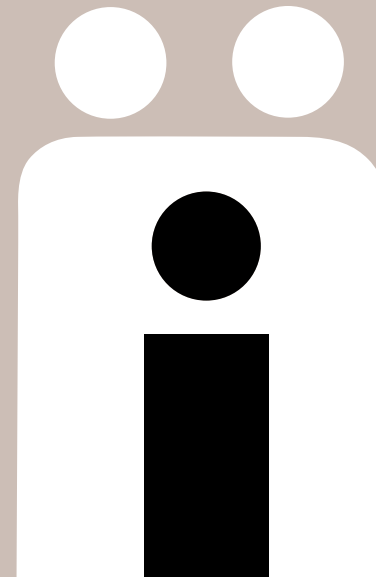
Can we avoid these obligations if we break up?

You and your qualified cohabitant may agree that these rights and obligations will not apply if your relationship ends. You must do this in writing after you both get independent legal advice. A court may refuse to enforce the agreement if it believes that it will cause serious injustice.

Many same-sex couples raise children together. These may be:

- children from a previous relationship with a person of the opposite sex;
- children born to one of the couple as a result of an arrangement where someone else helps the couple to have a child;
- a child adopted by one of the partners;
- foster-children (same-sex couples may act as foster-parents to a child).

However, in general, a same-sex couple cannot share legal responsibility for a child. Only one of the partners may act as legal parent at any one time.



Key Concepts

Before discussing this issue further, it may be useful to explain some key concepts.

Adoption

If you adopt a child, you become the legal parent of the child. The child's natural parents lose all rights and duties in respect of the child.

Guardianship

This gives you the right and duty to make all major decisions about the child's upbringing, including decisions about schooling, religion, whether or not the child should undergo medical treatment, and travel outside Ireland. It also allows you to claim custody of your child from those who are not guardians of the child.

Custody

If you have custody of a child, the child lives with you. Additionally, you have the duty to care for the child on a day-to-day basis. It is possible for two parents to share 'joint custody' in which case the child will live some of the time with one parent and the rest of the time with the other parent.

Access

This allows you to have contact with and visit the child in cases where you do not have custody.

Maintenance

This is financial support provided (in this context) for a child.

Can same-sex couples adopt?

Anyone may be eligible to adopt a child, provided they meet the adoption conditions. You cannot be refused permission to adopt on the basis of your sexual orientation or whether you are in a same-sex relationship or civil partnership.

However, a same-sex couple cannot adopt jointly as a couple. Only a married opposite-sex couple may do this. Also, you cannot adopt your civil partner's or cohabitant's child unless they give up parental responsibility for the child.

What rights and obligations does a same-sex couple have towards their child?

If you are the biological or adoptive parent, you have certain rights and obligations towards your child. If you are not the biological or adoptive parent, you have almost no rights or obligations in relation to the child. This is the case even if you are the civil partner of the child's parent.

This is a similar situation to that of step-parents in a second marriage, though some differences apply. In particular, a step-parent together with his or her spouse may be able to jointly adopt a spouse's child (although this is not always possible).

Joint adoption of a child is not possible for civil partners or other same-sex couples. Also, a step-parent may be obliged, in certain cases, to maintain his or her spouse's child (this is discussed below). A parent's civil partner is not obliged to do so.

What rights do I have if I am a biological or adoptive parent?

Your rights and obligations will depend on whether you are female or male, and on your marital status.

A biological mother in all cases is entitled to guardianship of her child.

A biological father shares guardianship if he is, or was, married to the mother of the child. A father keeps this right even on divorce. In some cases, he may also keep this right if the marriage is annulled.

If the mother and father have never been married, a biological father is not automatically a guardian. However, he may become a joint guardian either by court order or where the mother and father make a 'statutory declaration' making the father a joint guardian. A 'statutory declaration' is a written agreement by the mother and father signed in the presence of a solicitor, peace commissioner, commissioner of oaths or notary public.

An adoptive parent is treated as if the adopted child was born to him or her within a marriage. This means that an adoptive parent is entitled to guardianship of the child. Where a child is adopted, its natural parents lose any rights and obligations that they previously had towards the child.

A biological or adoptive parent can seek custody of a child in the courts. This includes a biological father who does not have guardianship. A guardian who is not a parent can also seek custody. For more on guardianship, see page 38.

A biological or adoptive parent can seek access to or visitation rights in respect of a child with whom they are not living.

What obligations do I have towards my biological or adopted child?

You must maintain and support the child financially until the child is 18 or, if still in full-time education, 23. This applies whether you are married or unmarried. If the child has a disability and is unable to live an independent life, you must continue to support them financially for as long as they are unable to live an independent life.

Can I lose these rights because I am gay or lesbian?

Under the European Convention on Human Rights, a biological parent cannot be denied custody or access to their child simply because the parent is gay, lesbian or bisexual.

Salguiero da Silva Mouta v. Portugal (1999)

In this case, a father was denied custody of his child on the basis that he was gay and living with a male partner. The European Court of Human Rights concluded that this decision breached the father's right not to be discriminated against on account of his sexual orientation in relation to his family and private life.

What rights and obligations do I have if I am not the biological or adoptive parent?

Very few. There are some steps that a couple may take (these are discussed below) but in general the law does not recognise the relationship between a child and someone who is not the child's biological or adoptive parent.

McD. v. L. (2009)

In this case, a male friend of a lesbian couple agreed to help them father a child. He agreed in writing that he would not act as a parent of the child, but would instead play the role of a 'favourite uncle'. When the child was born, however, he realised that he wanted an increased role. When the couple tried to leave Ireland with the child, he sought guardianship of and access to the child. The Supreme Court ruled that he was the father of the child and entitled to apply for guardianship but, due to the facts of the case, the court did not award him guardianship. However, the court did grant him a right of access to his child (which allowed him ongoing contact with the child) as the court believed this was in the best interests of the child. The Supreme Court ruled that the environment in which the child was being raised was a loving and caring environment and that this was relevant to its decision. Even so, it said that the couple and their child were not a family under the Constitution or (at that time) under the European Convention on Human Rights, and so were not entitled to protection as a family under the Constitution or (at that time) under the Convention. (The European Court of Human Rights has since said that same-sex couples are entitled to protection as a family under the Convention). The court also noted that the mother's partner had no independent rights to guardianship of the child.

Can I become a guardian if I am not the biological parent of the child?

Generally, no. It is not generally possible for someone who is not a biological or adoptive parent of the child to become the child's guardian.

However, there are some exceptions to this rule:

- You may be appointed a guardian by will, by deed or by court order on the death of an existing guardian;
- You may be appointed a guardian by a court on the removal of an existing guardian who was previously appointed by will, by deed, by court order or by a statutory declaration made by the father and mother (discussed above on page 39);
- You may be appointed a guardian by a court where the child has no guardian;
- If you adopt a child, you become the child's guardian. It is not possible, however, for a same-sex couple to adopt a child jointly, even if they are civil partners. This means that you and your same-sex partner cannot jointly adopt your partner's child.

Can I seek custody of a child if I am not the biological parent of the child?

Generally, no. An order for custody typically requires a child to live with a parent or guardian. Only a guardian, the child's mother or the child's father may seek custody of a child.

However, in exceptional cases, the courts have left children in the custody of people who are not their guardians or parents. It is also possible, in very exceptional cases, for you to apply to court for the child to be made a ward of court and placed in your custody, if the child's welfare is in serious danger, but this is very rare.

Can I maintain contact with a child if I am not the biological parent of the child?

Yes. If you have been involved in parenting the child, and have played a parental role in respect of the child, you have a legal right to seek access so that you can maintain contact with the child. A court can order that you be allowed to visit the child, take the child for short periods, or to maintain contact with him or her.

Can I be made to pay maintenance for a child if I am not the biological parent of the child?

Generally, no. Parents, whether married to each other or not, must financially support their biological and adopted children.

Someone who is not a child's parent does not typically have to support them. There is one key exception. The court may rule that a step-parent must financially support a child where:

- the step-parent knows that the child is not his or her child; and
- the step-parent treats the child as a child of the family.

This exception does not apply to civil partners or cohabitants who are not the parents of a child.

What are the child's rights on the death of a parent?

- If the biological or adoptive parent dies without making a will, the child is entitled to part of the parent's estate (see page 25 for details).
- If the parent dies but has made a will, the court may give the child more from the estate than what the will says, if the court believes the parent has failed to provide properly for the child.

These rights apply whether the child is born inside marriage, outside marriage, or adopted.

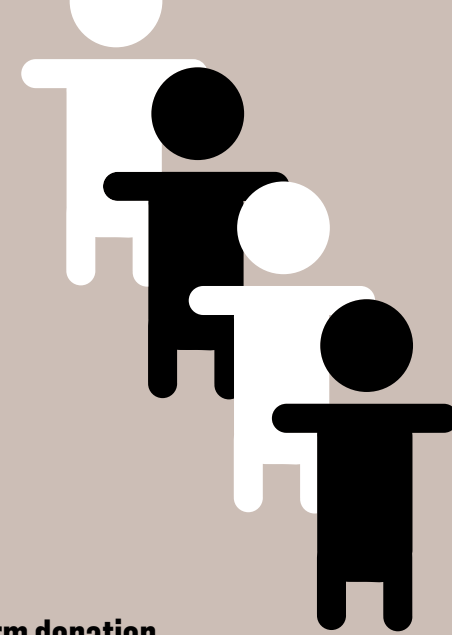
What are the child's rights on the death of a civil partner or cohabitant of the child's parent?

If you are not the child's biological or adoptive parent, you do not have to provide for your partner's child on your partner's death. However, if you choose, you can provide for the child in your will. If you die without making a will, the child of your surviving partner is not entitled to any provision from your estate. The child cannot sue for provision from your estate either.

Does the law recognise any relationship between a child and the civil partner of the child's parent?

- A civil partner of a parent may seek access – that is, the entitlement to visit and maintain contact with the child – if they have played a role in parenting a child.
- You may make a gift or bequest in favour of the child of your civil partner. The Revenue Commissioners will treat this gift or inheritance as if a parent of a child had made the gift. This would reduce the amount of gift or inheritance tax (capital acquisitions tax) that the child would have to pay.

ASSISTED HUMAN REPRODUCTION



- If the court makes a maintenance order or any other order following dissolution of your civil partnership, it must take into account any obligation that either civil partner has to their own biological or adopted children. This does not mean, however, that you have to financially support your former civil partner's child if you are not the child's parent.
- You may seek a barring order or safety order to protect a child who is not your child but for whom you have played a parental role.

If the court makes any orders in favour of qualified cohabitants, such as a maintenance order, it must take into account any obligation that either qualified cohabitant has to their biological or adopted children. This does not mean, however, that you have to financially support your qualified cohabitant's child if you are not the child's parent.

You may seek a barring order or safety order to protect a child who is not your child but for whom you have played a parental role.

Does the law recognise any relationship between a child and the same-sex cohabitant or qualified cohabitant of the child's parent?

A same-sex cohabitant or qualified cohabitant of a parent may seek access – that is, the right to visit and maintain contact with the child – if they have played a role in parenting a child.

You may make a gift or bequest in favour of the child (though you are not obliged to do so). No tax relief is available for such a gift or inheritance.

What can we do to improve the situation in relation to our child?

The biological or adoptive parent may make a will appointing the surviving civil partner or same-sex cohabitant as a 'testamentary guardian' of the child. This means that if the parent dies, the surviving civil partner or cohabitant is entitled to act as guardian of the child, along with other existing guardians, should there be any. However, surviving guardians, should there be any, may contest this. In this case, the testamentary guardian must get a court order if he or she wants to act as a guardian.

What is assisted human reproduction?

Assisted human reproduction involves conceiving a child in a way that does not involve sexual intercourse between the parents of the child. Examples of assisted human reproduction include 'IVF treatment', where embryos are fertilised outside the womb and then implanted in the womb, and 'surrogacy', where a surrogate mother agrees to carry a baby on behalf of a couple.

Currently, Ireland has no laws to deal with assisted human reproduction. This means that couples who try to have children in this way face great difficulties.

Can a clinic that provides IVF treatment treat me differently because I am a civil partner, or because I am gay, lesbian or bisexual?

No. Under the Equal Status Acts 2000-2011 service providers (including clinics providing IVF services) cannot discriminate on the basis of your sexual orientation. Clinics must treat civil partners the same as spouses.

Sperm donation

If you are a lesbian couple and you want to use a sperm donor to help you have a child, you should note that Irish law considers the sperm donor to be the legal father of the child. (If one of you is married and gives birth to the child, your husband is presumed to be the legal father unless you can prove otherwise, for example by a paternity test).

The sperm donor, as legal father, has rights as well as obligations in relation to the child. In particular, he has an obligation to financially support his child and this obligation cannot be removed by agreement between you and the sperm donor. The child also has full inheritance rights to the sperm donor's estate. In addition, a court may decide it is in the child's best interests to give the legal father guardianship, custody or access to the child. However, if he has had no contact with the child, he is unlikely to succeed in an application for guardianship or custody. Currently in Irish law, there is no way to remove the sperm donor's legal position as father.

Surrogacy

There are particular complications in Irish law with surrogacy.

If the child is born to a surrogate mother, Irish law automatically regards her to be the legal mother of the child.

The surrogate mother is automatically a guardian of the child and this gives her significant rights and obligations regarding the child.

If the surrogate mother is married, the law presumes her husband is the father of the child unless you can prove that he is not the father. In such cases, you may have to do a paternity test to prove the genetic father's paternity.

If one of the couple who arranged the surrogacy with the surrogate mother is the genetic father of the child, and the surrogate mother is not married, he will be treated as the child's legal father. In such cases, you may have to do a paternity test to prove the genetic father's paternity.

If the genetic father is not married to the surrogate mother, he is not automatically a guardian of the child but he may apply to court to be appointed a guardian. He may also become a guardian by making a statutory declaration (discussed on page 39) in agreement with the surrogate mother.

If the surrogate mother is not married to the father of the child, she can give her child up for adoption. It is, however, important to note that:

- the mother's consent to adoption must be full, free and informed;
- the adoption will not be recognised if the mother has been paid to give up her child for adoption. Payment in such cases may amount to a criminal offence;
- a same-sex couple cannot jointly adopt a child.

Please note that if the child is born outside Ireland, the legal position may be different, depending on the applicable national law. It is vital to get legal advice in these cases.

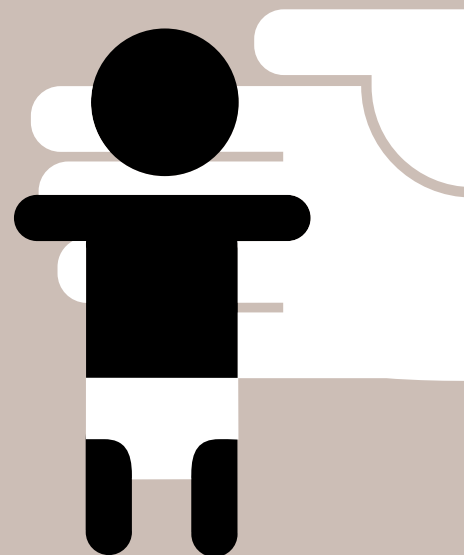
Surrogacy arrangements in other countries

The Department of Justice and Equality has issued guidelines for people who want to make surrogacy arrangements in a foreign country and bring the child to Ireland. It is vital in these cases to get specialist legal advice before you make any arrangements. In addition to the points made above, you should note that:

- The child, if born abroad, will only be entitled to Irish citizenship if either the genetic father or the surrogate mother is an Irish citizen;
- A passport will usually only be issued to a child if all the child's guardians (including the surrogate mother) agree to this beforehand;
- Usually, only a parent or guardian of a child may apply for a passport or other travel document for a child;

- Ideally, a legal guardian who can make decisions on the child's behalf should accompany the child to Ireland. If this is not possible, the state may issue an emergency travel certificate for the child entitling the child to travel to Ireland. In these cases, the state may require the genetic father to apply to the court for a declaration of parentage and a guardianship order within 10 days of the child's arrival in the state.

The Department of Justice and Equality has issued a guidance note entitled *Citizenship, Parentage, Guardianship and Travel Document Issues in Relation to Children Born as a Result of Surrogacy Arrangements Entered Into Outside the State*. You can find this at www.justice.ie under the Press and Publications tab.



EQUAL TREATMENT

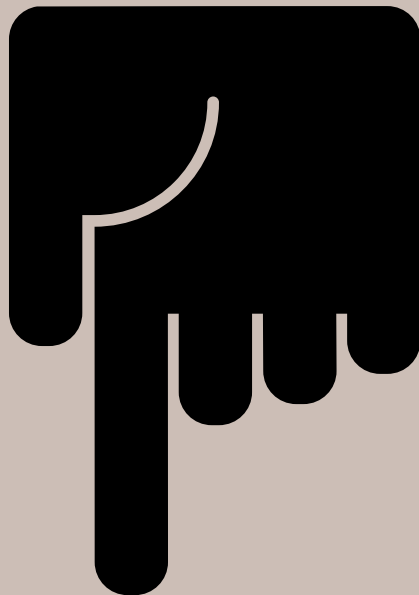
The Civil Partnership Act updated the equality legislation to protect civil partners from discrimination. The new law changed the definition of the protection ground from 'marital status' to 'civil status'. It now includes protection from discrimination based on the fact that a person is single, married, divorced, separated, widowed, a civil partner, or a former civil partner where the civil partnership has ended through death or dissolution.

Employment

You have the right not to be treated differently in employment because you are (or were) a civil partner or because of your sexual orientation.

An employer may not base decisions about hiring, the terms and conditions of employment, promotion or the termination of employment on your 'civil status'. In general, it is also illegal for an employer to discriminate on the basis of your sexual orientation – that is, whether you are gay, lesbian, bisexual or heterosexual.

If you are a transgender person and you have had surgery or have taken hormones to change your physical gender, or you are planning to do either, you cannot be discriminated against in, or dismissed from employment.



Dismissal from employment

An employer may not fire you on the basis of your sexual orientation. This applies regardless of the exceptions listed below. It is based on the 1993 Unfair Dismissals Act.

Are there exceptions?

There are some exceptions to the general rule that an employer cannot discriminate on the grounds of civil status or sexual orientation. The most relevant exception is that a school, hospital or other institution run by a religious organisation (or run in accordance with religious values) may discriminate in the context of employment. It can do so where it can show that this is reasonably necessary to protect its 'religious ethos' from being undermined. 'Religious ethos' means the religious values or principles in accordance with which the organisation is run.

The religious organisation may also treat staff more favourably on the basis of their religious belief if this is reasonably necessary to safeguard its religious ethos. However, there are no similar exceptions to the Unfair Dismissals Act.

Pensions

The terms and conditions of pension schemes cannot discriminate on the basis of civil status or sexual orientation. Where a pension scheme gives a benefit to the spouse of a pension-holder, it must give the same benefit to the civil partner of a pension-holder. Spouses and civil partners must be treated equally in the context of pensions.

Goods and services

It is unlawful to discriminate on the basis of civil status or sexual orientation in the supply of goods and services. This includes the supply of health insurance.

Is it unlawful to discriminate against cohabitants?

The Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011 do not specifically forbid discrimination against cohabitants or qualified cohabitants.

However, in the context of employment and the supply of goods and services, it is illegal to discriminate against people on the basis that they are not married or in a civil partnership, or on the basis of their sexual orientation.

IMMIGRATION

Civil partners are now treated the same as spouses for the purpose of immigration, while same-sex couples in 'de facto' relationships, including cohabitants, are treated the same as opposite-sex couples in the same situation. 'De facto relationship' is the term that the Irish immigration authorities use to describe a durable relationship which is not formally registered through marriage or civil partnership.

Official Irish government policy and European Union (EU) law make it possible for some same-sex couples to live together in Ireland, and for the non-Irish partner to be able to work in Ireland. However, each case is different and a non-EU partner may not always be able to live and work in Ireland. It is a good idea to talk to a solicitor with immigration expertise. Here are some general principles that apply.

If your partner is an EU, EEA or Swiss national

In nearly all cases, if your civil partner or de facto partner is a national of the EU, the European Economic Area (the EU plus Iceland, Liechtenstein and Norway), or Switzerland, he or she may live, work, study or set up a business in Ireland in their own right.

If your partner is not an EU, EEA or Swiss national

If your civil partner or de facto partner is not a national of these countries, their right to remain and work in Ireland will depend on their particular circumstances. The exact position depends on whether you are civil partners or de facto partners. The general principles are outlined in the table below. You can get more information on the website of the Irish Naturalisation and Immigration Service, www.inis.gov.ie.



Civil Partnership

An Irish national with a civil partner who is not an EU/EEA/Swiss national

If you are an Irish national and your civil partner (or partner in a relationship recognised in Ireland as a civil partnership) is not an EU, EEA or Swiss national:

- Your civil partner may apply to join you (or to remain with you) in Ireland
- Your civil partner will normally be allowed to join you or remain in Ireland and will normally be allowed to live with you and work in Ireland, as long as they meet certain conditions. However, your civil partner has no automatic right to this
- In order to qualify you must be in a valid, existing civil partnership. This includes a foreign legal relationship recognised in Ireland as a civil partnership
- You must not be living apart from each other

An EU National with a civil partner who is not an EU/EEA/Swiss national

If you are a national of an EU state other than Ireland (or if you are an Irish national who has lived in another EU state and you are returning to Ireland) and you are exercising your right to move freely within the EU to work, study or set up a business:

- As an EU national, you have a legal right under EU law to come to Ireland to work, study or set up a business
- You have the right to be accompanied to Ireland by your civil partner, even if he or she is not an EU/EEA/Swiss national, provided you can show that you are in a recognised civil partnership
- Your civil partner should be able to live with you and work in Ireland although there are some exceptions to this
- Unless you are employed or self-employed, you will have to show that you can support your civil partner

(In practice, similar principles apply to EEA and Swiss nationals)

A non-EU/EEA/Swiss national with a civil partner who is not an EU/EEA/Swiss national

If you are not an EU, EEA or Swiss national and you have come to Ireland to work or set up a business:

- You are entitled to apply to be accompanied to Ireland by your civil partner
- You may have to show that you can support your civil partner
- The requirements will differ depending on the basis on which you have been allowed to reside in the state, and whether your civil partner needs a visa to come to Ireland
- Your civil partner may have to apply separately or in their own right for permission to work in Ireland
- Not all foreign civil partnerships are recognised in Ireland (see page 17)

CITIZENSHIP

De Facto Partners

An Irish national with a de facto partner (not a civil partner) who is not an EU/EEA/Swiss national

If you are an Irish national and your de facto partner is not an EU, EEA or Swiss national:

- Your partner may apply to join you or remain in Ireland and to work in Ireland
- You must show that you have been in a durable (serious) relationship for at least 2 years. In practice, this usually requires you to show that you have lived together for 2 years, though cohabitation may not be strictly necessary in all cases
- You must give evidence of the relationship and how you will support your partner. This may include tenancy agreements and utility bills that show you have lived together, and bank statements that show you can support your partner
- Your partner may have to give evidence of private health insurance
- Your partner may be granted permission to work in Ireland
- If you cannot show that you have been a couple for two years, your partner may be allowed to stay but not to work in Ireland

An EU National with a de facto partner who is not an EU/EEA/Swiss national

If you are an EU national and you have come to Ireland to work, study or set up a business:

- Under EU law, your partner is entitled to accompany you to Ireland even if he or she is not an EU national, provided you can show that you are in a durable relationship. In practice, Irish immigration authorities require that the relationship must have existed for at least two years before applying. EU law does not specify any minimum period
 - You must give evidence of this relationship
 - Your de facto partner should be able to live with you and work in Ireland although there are some exceptions
 - Unless you are employed or self-employed, you will have to show that you can support your civil partner
- (In practice, similar principles apply to EEA and Swiss nationals)

A non-EU/EEA/Swiss national with a de facto partner who is not an EU/EEA/Swiss national

If you are not an EU, EEA or Swiss national and you have come to Ireland to work or set up a business:

- You are entitled to apply to be accompanied to Ireland by your partner, provided you can show that you have been in a durable relationship for at least 4 years. In practice, this usually requires you to show that you have lived together for 4 years, though cohabitation may not always be necessary
- You must give evidence of the relationship and show how you will support your partner. This may include tenancy agreements and utility bills that show you have lived together, and bank statements that show you can support your partner
- Your partner may have to give evidence of private health insurance
- The requirements differ depending on the basis on which you have been allowed to reside in the state, and whether your partner needs a visa to come to Ireland
- Your partner may have to apply separately or in their own right for permission to work in Ireland

I am not a citizen of Ireland. When can I apply for citizenship?

As a general rule, you may apply for citizenship of Ireland after you have lived lawfully in Ireland for a certain length of time. Normally, you must have lived in Ireland for:

- one year continuously immediately before your application; and
- an additional four out of the eight years before that. This is a total of five of the previous nine years.

You cannot count time you spent in Ireland:

- on a student visa;
- as an asylum seeker; or
- when you did not have permission to be in Ireland.

What if I am married to, or the civil partner of, an Irish citizen?

In either of these cases, you may apply for Irish citizenship after a total of three rather than five years' residence in Ireland. This is shorter than the normal residence requirement. Certain conditions apply.

- You must have been living in Ireland for one continuous year immediately before you applied and for at least two of the four years before that (a total of three of the previous five years).

- You must have been married or in a civil partnership for at least three years before your application for citizenship.
- Your marriage or civil partnership must be recognised in Ireland.
- You must be living together and not separated or divorced from your spouse or civil partner.
- You must be a person of good character. If you have been convicted of an offence, for instance, your application may be denied.
- You must intend to remain indefinitely in Ireland once granted citizenship.
- You must make a declaration of fidelity (faith) to the nation and loyalty to the state. You must also agree to observe the laws of the state and to respect its democratic values.

Who may grant citizenship?

Only the Minister for Justice and Equality may grant citizenship. The Minister may also decide not to grant citizenship even if you meet all of the requirements.

Can my cohabitant acquire citizenship through his or her relationship to me?

No, your cohabiting partner cannot apply for citizenship on the basis of living with you. However, your cohabiting partner can apply for citizenship in his or her own right after five years' legal residence if he or she meets all the requirements.

REFUGEES

Someone who is in Ireland may ask that they not be returned to their country of origin (or any other country) because they fear they will be persecuted if they return. If there are good reasons for this fear, they may be granted asylum and the law will consider them to be a refugee. A refugee has the right to remain in Ireland and enjoys most of the rights of an Irish national.

Can I seek asylum on grounds of sexual orientation?

If you have good reasons to fear you may be persecuted on the basis of your sexual orientation or gender, you may ask for asylum. It doesn't matter whether the persecution is likely to be caused by individuals or the state, if you can show that the state is either unwilling or unable to protect you from the persecution.

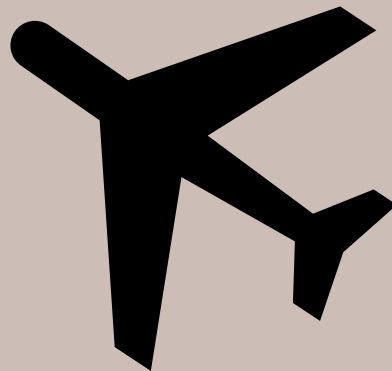
There are, however, limits to your right to seek asylum.

You must show that you are likely to be persecuted on the basis of a recognised ground. The recognised grounds include sexual orientation and gender as well as race, religion, nationality, political opinion and trade union membership.

It must be demonstrated that persecution is likely to happen if you are returned to a country. It must also be shown that the state is likely to either be the source of the persecution or unable or unwilling to prevent it.

It is not enough to show that you may be discriminated against in your home country – discrimination on its own may not constitute persecution.

You may be denied asylum in Ireland if your case is not sound and believable. It can be difficult in practice to establish a sound case as it must be accepted that you are lesbian, gay or bisexual, and that you are likely to suffer persecution if returned to a particular country.



Refugees & family reunification

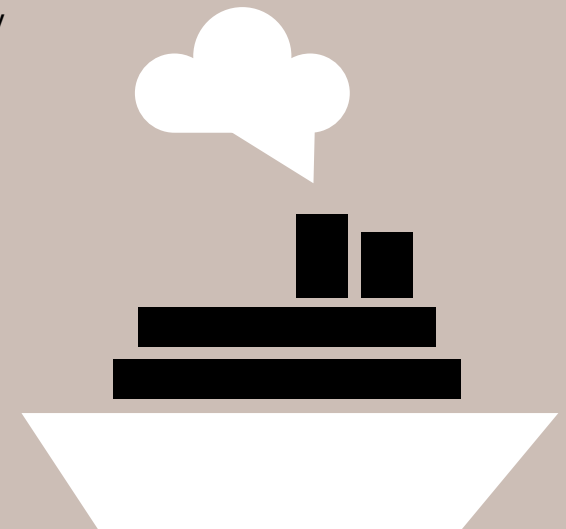
If you have been granted refugee status, you are legally entitled to be joined in Ireland by certain family members. These include your:

- civil partner or spouse;
- unmarried children under the age of 18;
- parents, if you are under 18 and unmarried.

The legal right to family reunification of refugees does not apply to:

- a child of your same-sex partner or civil partner. (However, if your same-sex partner or civil partner has also been granted refugee status, they can apply in their own right for family reunification for their children); or
- a partner you live with but are not married to or in a civil partnership with.

This does not prevent these people and others from applying to come to Ireland, but there is no automatic right to family reunification in such cases.



TAXATION & PENSIONS

Taxation of civil partners

In nearly all cases, civil partners are treated the same as spouses in relation to tax. The remaining differences are technical in nature and are gradually being addressed in amending legislation.

Civil partners may choose to be jointly assessed for income tax.

You may transfer your unused income tax credits to your civil partner.

If you are paying tax at the standard rate only, and have earned less than the maximum at which you pay at the standard rate, you may transfer the unused portion of your standard rate tax band to your civil partner. This means that you may pay less tax as civil partners than if you were not in a civil partnership. Generally, this will only be of benefit where one civil partner is earning substantially less than the other.

If you transfer or make a gift of property to your civil partner, the transaction is exempt from capital acquisitions tax and stamp duty. This applies even if you and your partner separate provided you have not dissolved your civil partnership.

Civil partners do not have to pay capital gains tax on transfers to each other, provided they are living together.

If you inherit or receive a gift from your civil partner, you do not have to pay capital acquisitions tax on the inheritance or gift.

If your civil partnership is dissolved and the court orders transfers of money or property from one of you to the other, this is not subject to capital acquisitions tax, capital gains tax or stamp duty.

If you and your partner separate or dissolve your civil partnership and one of you agrees to pay maintenance to the other (or the court orders maintenance payments), you may:

- continue to be jointly assessed for income tax; or
- whoever receives the maintenance pays tax on the maintenance while whoever pays the maintenance deducts the maintenance when calculating his or her taxable income.

Where a child inherits property from the civil partner of the child's parent, the Revenue treats the inheritance as if the child was a biological child of the deceased. This means that the child will pay less inheritance tax than might have been the case had the donor not been the parent's civil partner. (However, the child cannot make a claim against the estate of the civil partner of the child's parent, and may only inherit if named in the civil partner's will).

Taxation of cohabitants

Cohabitants, generally, are not recognised as couples under tax law. There are, however, some exceptions.

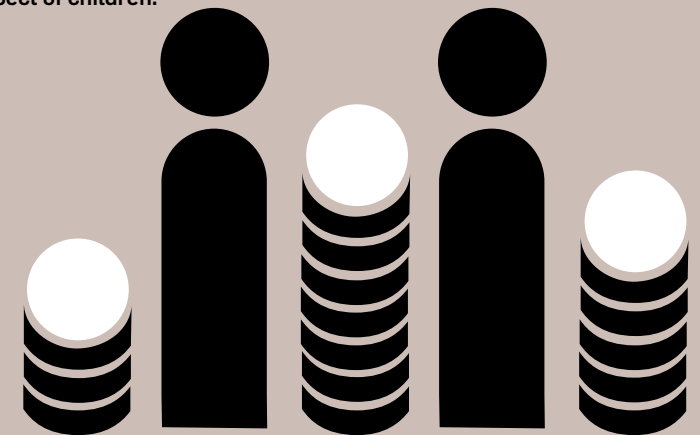
- If you are a qualified cohabitant and the court orders your partner to transfer property or split a pension in your favour, you do not have to pay tax on the transfer.
- If you are a qualified cohabitant and the court orders your partner to pay maintenance to you, you must pay tax on the maintenance while your partner may deduct the maintenance when calculating his or her taxable income.
- If you inherit from your cohabitant or qualified cohabitant the home in which you have lived for the preceding three years, and you have no other home, you do not have to pay capital acquisitions tax on the inheritance as long as you meet certain conditions. This is called the 'dwelling house exemption'.
- You cannot get tax relief for maintenance payments made in respect of children.

Pensions

If a pension scheme gives pension entitlements to the spouse of a scheme member, it must give the same entitlement to a civil partner. In particular, where a scheme pays a death-in-service benefit to a surviving spouse, it must pay the same benefit to the civil partner of the employee. (A death-in-service benefit is a benefit paid where the employee dies before retirement). Retirement benefits given to an employee's spouse must also be given to the civil partner of an employee.

Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen (2008) and Jürgen Römer v. Freie und Hansestadt Hamburg (2011)

Under EU law, employees cannot be discriminated against on the basis of sexual orientation. In Maruko and Römer, the European Court of Justice found that where a state treats civil partnership as similar to marriage, a failure to extend marital pension entitlements to civil partners constitutes discrimination.



SOCIAL WELFARE

In almost all cases, spouses, civil partners and cohabitants – whether of the same sex or the opposite sex – are treated the same when they apply for social welfare payments. The only exception relates to the benefits available when someone dies. These are paid only to surviving civil partners and spouses.

Recognition of cohabitants and civil partners

Social welfare rules treat cohabitants (both same-sex and opposite-sex), civil partners and spouses as couples.

- Your cohabitant, spouse or civil partner is treated as a 'qualified adult'. This means that if you get certain social welfare payments, you may get an additional payment for a partner who lives with you and is financially dependent on you.
- If a social welfare payment is means-tested, the income of your civil partner, spouse or cohabitant will usually be taken into account in deciding whether you are eligible for payments (this applies, for instance, to the Job-Seeker's Allowance).
- The One-Parent Family Payment is paid only to a parent who is not living with a spouse, civil partner or cohabitant (either opposite-sex or same-sex).

Survivors' benefits

Subject to conditions, civil partners and spouses are entitled to various survivors' benefits on the death of their civil partner or spouse. These benefits include a

- widow's, widower's or surviving civil partner's pension (contributory and non-contributory);
- widowed or surviving civil partner's grant (where the survivor is raising children); and
- death benefit (where the death is work-related).

These specific benefits are not available to cohabitants or qualified cohabitants.

Divorced spouses and those whose civil partnerships have been dissolved may also get the surviving civil partner's pension and widowed or surviving civil partner grant.

However, there are some exceptions. You cannot, for instance, claim the surviving civil partner's pension or death benefit if you:

- marry;
- enter into a new civil partnership; or
- live with someone else in an intimate and committed relationship.

In addition, most ongoing survivors' benefits will end if you marry or enter into a new civil partnership after the death. Please note that this is a general guide only.

For detailed information about your social welfare entitlements, contact your local social welfare office or visit www.welfare.ie.

DOMESTIC VIOLENCE

Violence in the home is a serious matter, and those who commit acts of violence and intimidation may be subject to criminal penalties. Survivors of domestic violence can also seek various civil (non-criminal) remedies to protect them. If you suffer abuse (including psychological abuse) or violence in the home from your spouse, civil partner, cohabitant or certain other people, you can ask the court for protection.

What kinds of remedies are available?

Where a court believes that your safety or welfare or that of a dependent child is at risk, the court may grant various orders to protect you or the child.

Safety order – this means the person named in the order cannot threaten, use violence or cause fear to you or a dependent child. If the person does not live with you, they cannot watch or hang around outside your home.

Barring order – this means the person named in the order cannot enter your home.

Protection order – this gives immediate protection while an application for a safety or barring order is being heard.

Interim barring order – a court may grant this if there is an immediate risk of significant harm and you have applied for a full barring order. It means the person named in the order cannot enter your home until the court has made a decision on the full barring order. You can also seek an interim barring order against someone who has not been told of the court application for the order, but in this case it will only be valid for up to eight working days.

Who may apply for these orders?

You may apply for these orders against your:

- spouse;
- civil partner;
- cohabitant;
- child (if the child is over 18); or
- former spouse or former civil partner (where the civil partnership has been dissolved).

You may also seek an order to protect a child if you are the child's parent or if you have acted in a parental role towards the child.

Some restrictions apply if you are a cohabitant and are seeking a barring order.

- You must have lived in the house for at least six of the previous nine months; and
- You cannot seek a barring order against someone who has a greater interest in the home than you do.

These restrictions do not apply to civil partners or spouses.

OTHER MATTERS

Wrongful death

Where someone dies as a result of the deliberate, reckless or negligent behaviour of someone else, their spouse, civil partner or other family members may sue for wrongful death. This right also applies to a cohabitant who was living with the deceased for at least three years before the death. You will need to get legal advice from a solicitor on how to take this action.

Private rented accommodation

If you rent a private residential property for six months or more, you are generally entitled to rent that property for four years from the date the tenancy started. If you are the civil partner or cohabitant of the tenant and have been living in the house, you may take over the tenancy on your partner's death and live in the house for the remainder of the tenancy (although some conditions apply). If you are a cohabitant, you must have been living in the house for at least six months before the tenant's death.

Public rented accommodation (social housing)

The rules relating to social housing vary depending on which local authority you rent from. Please contact your local authority for more information. The updating of the Equal Status Act means that civil partners will be treated the same as spouses.

Protected tenancies

A small number of rental properties in Ireland come under the Housing (Private Rented Dwellings) Act 1982. Rents in these properties are controlled and tenants have a right to live in the property for as long as they wish (although some conditions apply). When a tenant dies, his or her civil partner may take over the property for the remainder of their life. This does not apply to cohabitants. You can get more information from the national housing charity, Threshold, at www.threshold.ie.

Health and next of kin

It is unlawful for health services to discriminate against someone on the basis of their sexual orientation or civil status. The Equal Status Acts 2000-2011 require that health services treat civil partners of patients in the same way as spouses. This implies that even though 'next of kin' is not defined in law, civil partners will be consulted in the same way as spouses in medical issues.

Civil partners must also be treated the same as spouses in relation to the Drug Payment Scheme. This means that where two civil partners and their children spend more than a specified amount between them on prescription medicines, they are entitled to get back the surplus from the state.

Surnames

You can, but you do not have to take your civil partner's surname. You can, if you want, create a double-barrelled surname, incorporating both of your surnames. Or you can keep the surnames you used before your civil partnership.

If you want to change your surname at a bank, or for utility bills and similar documents, it should be enough to show your civil partnership certificate (or certificate of your foreign civil marriage or partnership that is recognised in Ireland). You may also change your surname on your passport by presenting your civil partnership certificate to the Passports Office.

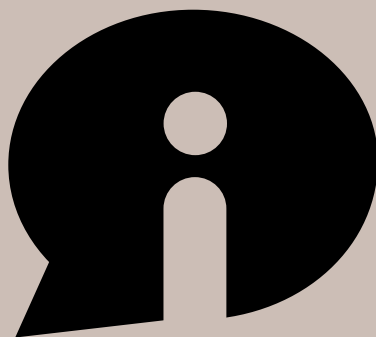


WHERE TO FIND MORE INFORMATION

If you have a specific problem or question, there are a number of sources of information and help. These are outlined in the following pages. However, if you have a legal problem, it is best to talk to a solicitor.

Legal assistance

- You can find a solicitor in your local area on the website of the Law Society at www.lawsociety.ie/Pages/Find-a-Firm.
- If you cannot afford a solicitor, you may be eligible for legal aid from the Legal Aid Board. You will need to show details of your finances and that your case has some chance of success. See www.legalaidboard.ie.
- If your problem is about immigration or refugee status, you can get advice and help from the independent law centres run by the Immigrant Council of Ireland and the Irish Refugee Council. See www.immigrantcouncil.ie/services/legal-service and www.irishrefugeecouncil.ie/law-centre.
- Some communities have independent or community law centres that may be able to help you.
- Non-governmental organisations that cannot afford legal services can get advice from barristers through the Bar Council's Voluntary Assistance Scheme. You will find this at www.lawlibrary.ie under 'The Bar Council and You' tab. (This scheme does not deal with family law).



About civil partnership, marriage and families:

See the Gay and Lesbian Equality Network website, www.glen.ie.

About getting a civil partnership:

See the General Register Office website, www.groireland.ie, and search for 'civil partnership'.

About cohabitation:

Treoir provides free and confidential information to unmarried parents. They have a useful information booklet on cohabitants. See www.treoir.ie under the Cohabiting Parents tab.

About social welfare:

See the Department for Social Protection website, www.welfare.ie, and search for 'civil partnership'.

About taxation:

See the Revenue website, www.revenue.ie, and search for 'civil partnership'.

CONTACTS

CIVIL PARTNERSHIP

General Register Office

This is where records relating to births, deaths, marriages and civil partnerships in Ireland are kept. Contact this office to find out how to give notification of your intention to enter into a civil partnership.

Convent Road, Roscommon
Tel: (090) 663 2900
LoCall: 1890 252 076
Fax: (090) 663 2999
Fax: (090) 663 2988

www.groireland.ie/civil_partnership.htm

Health Service Executive - Civil Registration Service

You can get a nationwide list of civil registrars on the HSE website www.hse.ie under the Services, and then the Births, Deaths and Marriages tabs.

SOCIAL WELFARE & PENSIONS

Department of Social Protection

This government department is in charge of social welfare services and payments in Ireland. These include jobseekers' benefit, children's allowance, redundancy and insolvency payments. The department also runs employment services and agencies such as the Pensions Board and the Citizens Information Board. You can find the full range of services and contact details at www.welfare.ie

The Pensions Board

The board oversees the implementation of the Pensions Act which provides for the regulation of occupational pensions and Personal Retirement Savings Accounts.

Verschoyle House
28-30 Lower Mount Street, Dublin 2
Tel: (01) 613 1900
LoCall: 1890 65 65 65
Email: info@pensionsboard.ie
www.pensionsboard.ie

TAXATION

The Revenue Commissioners

The Revenue Commissioners assess, collect and manage taxes on behalf of the State. See its website for information on tax, contact details for Revenue offices nationwide, and LoCall numbers for a wide range of taxation-related matters.
www.revenue.ie

CHILDREN AND YOUNG PEOPLE

Office of the Ombudsman for Children

This office advises the government on children and young people. It also does research and handles complaints.

Millennium House
52-56 Great Strand Street, Dublin 1
Tel: (01) 865 6800
Freefone: 1800 20 20 40
Email: oco@oco.ie
www.oco.ie

Children's Rights Alliance

This is a partnership of non-governmental organisations working to secure the rights of children in Ireland. The alliance campaigns for the implementation of the United Nations Convention on the Rights of the Child. You can contact the alliance if you have any questions about your rights as a child or young person.

31 Molesworth Street, Dublin 2
Tel: (01) 662 9400
Fax: (01) 662 9355
Email: info@childrensrights.ie
www.childrensrights.ie

CONTACTS

BeLonG To

BeLonG To is a national youth service for lesbian, gay, bisexual and transgender (LGBT) young people in Ireland. It provides direct services to LGBT young people in Dublin and supports LGBT youth groups around the country.

Parliament House
13 Parliament Street, Dublin 2
Tel: (01) 670 6223
Fax: (01) 670 2619

www.belongto.org

EMBASSIES

If you need to contact your embassy or consular office in Ireland, the best thing is to ask the Department of Foreign Affairs for contact details.

Department of Foreign Affairs

Consular Section
69-71 St. Stephen's Green, Dublin 2

For the Munster area:
Consular Services
Department of Foreign Affairs
1A South Mall, Cork
Tel: (01) 408 2308/ 408 2585/ 408 2302
www.dfa.ie

EMPLOYMENT

National Employment Rights Authority*

NERA gives information to employees and employers on employment rights and makes sure they comply with employment law.

O'Brien Road, Carlow
Tel: (059) 917 8800
LoCall: 1890 80 80 90

www.employmentrights.ie

*At time of print, plans were underway to incorporate NERA into the new Workplace Relations Service, part of the Department of Jobs, Enterprise and Innovation. See www.workplacerelations.ie

GOVERNMENT

Department of Justice and Equality

This government department deals with a range of issues such as criminal and civil law reform, equality, property, asylum and immigration.

Pinebrook House
71-74 Harcourt Street, Dublin 2
Montague Court, Montague Street, Dublin 2
Tel: (01) 602 8202
LoCall: 1890 221 227
Email: info@justice.ie
www.justice.ie

Department of Foreign Affairs & Trade

This government department deals with international issues and Ireland's interests abroad.

69-71 St. Stephen's Green, Dublin 2
Tel: (01) 478 0822
LoCall: 1890 426 700

www.dfa.ie

Citizens Information Board

This national agency gives information and advice on social services and money matters. It also provides advocacy services. You can get information by calling to one of its offices, by phone or on the website.

The agency has 268 offices around the country. Phone the helpline or visit the website to find one near you.
LoCall: 1890 777 121

www.citizensinformation.ie

Other government departments

You can get information about other government departments from the citizens' information services. You can also find a list of government departments, agencies and bodies on www.gov.ie

LEGAL MATTERS

Bar Council

This is the representative and regulatory body for barristers. If you are looking for a barrister or have a complaint about your barrister, you can contact the Bar Council.

Bar Council Administration Office
Four Courts, Dublin 7
Tel: (01) 817 5000
Email: barcouncil@lawlibrary.ie

www.lawlibrary.ie

The Law Society of Ireland

This is the representative and regulatory body for solicitors. If you are looking for a solicitor or have a complaint about your solicitor, you can contact the Law Society.

Blackhall Place, Dublin 7
Tel: (01) 672 4800
Email: general@lawsociety.ie
www.lawsociety.ie

Legal Aid Board

This board provides legal aid if you can't afford to pay for a lawyer. It gives legal aid only for civil issues such as suing for personal injury or applying for asylum. It does not deal with criminal issues.

Head office:
Quay Street, Cahirciveen, Co Kerry
Tel: (066) 947 1000
LoCall: 1890 615 200
Email: info@legalaidboard.ie

Dublin office:
47 Upper Mount Street, Dublin 2
Tel: (01) 644 1900

www.legalaidboard.ie

Free Legal Advice Centres

This non-governmental organisation offers basic, free legal services to the public, including legal advice.

13 Lower Dorset Street, Dublin 1
Information and referrals: 1890 350 250
Tel: (01) 874 5690
www.flac.ie

CITIZENSHIP AND IMMIGRATION

Irish Naturalisation and Immigration Service (INIS)

This is a 'one stop shop' for matters relating to asylum, immigration, citizenship and visas.

13-14 Burgh Quay, Dublin 2
Tel: (01) 616 7700
LoCall: 1890 551 500
www.inis.gov.ie

Immigrant Council of Ireland

This non-governmental organisation promotes the rights of migrants through information, legal advice, advocacy, lobbying, research and training. The Council is also an independent law centre.

2 St. Andrew Street, Dublin 2
Tel: (01) 674 0202
Email: admin@immigrantcouncil.ie
www.immigrantcouncil.ie

Garda National Immigration Bureau

This section of the Garda Síochána deals with immigration issues. It carries out deportations, border control checks and investigations relating to illegal immigration and human trafficking.

13-14 Burgh Quay, Dublin 2
Tel: (01) 666 9130 / 666 9101
Email: gnib_dv@garda.ie
www.garda.ie

CONTACTS

Irish Refugee Council

This non-governmental organisation advocates on behalf of refugees and asylum seekers.

Second floor, Ballast House

Aston Quay, Dublin 2

Tel: (01) 764 5854

Email: info@irishrefugeecouncil.ie

www.irishrefugeecouncil.ie

Integrating Ireland

This non-governmental organisation is a network of community and voluntary groups working to integrate asylum seekers, refugees and immigrants into Irish society.

18 Dame Street, Dublin 2

Tel: (01) 645 3070

Email: info@integratingireland.ie

www.integratingireland.ie

Reception and Integration Agency

This government agency manages the accommodation of people seeking asylum in Ireland. It also co-ordinates the provision of services at the accommodation centres.

Block C, Ardilaun Centre

112-114 St. Stephen's Green, Dublin 2

Tel: (01) 418 3200

Email: RIA_inbox@justice.ie

www.ria.gov.ie

Refugee Legal Services

This is part of the Legal Aid Board. It provides confidential and independent legal services to people applying for asylum, and on immigration and deportation matters.

Dublin:

48-49 North Brunswick Street

Georges Lane, Dublin 7

Tel: (01) 646 9600

Email: dublinrls@legalaidboard.ie

Timberlay House

79-83 Lower Mount Street, Dublin 2

Tel: (01) 631 0800

Email: dublinrls@legalaidboard.ie

Cork:

North Quay House, Popes Quay, Cork

Tel: (021) 455 4634

Email: corkrls@legalaidboard.ie

Galway:

Seville House, New Dock Road, Galway

Tel: (091) 562 480

Email: rlsgalway@legalaidboard.ie

United Nations High Commissioner for Refugees (UNHCR) Office

This UN agency co-ordinates efforts to protect refugees and resolve challenges facing refugees.

Merrion House, Suite 4

1-3 Lower Fitzwilliam Street, Dublin 2

Tel: (01) 631 4613

www.unhcr.ie

TRANSLATION & INTERPRETATION

Irish Translators and Interpreters

Organisation

This organisation represents translators and interpreters. If you are looking for a translator or interpreter, you could contact them for advice.

C/o Irish Writers' Centre

19 Parnell Square, Dublin 1

Tel: (087) 673 8386 / (01) 872 6282

www.translatorsassociation.ie

EQUALITY AND HUMAN RIGHTS

Equality Tribunal*

This is an independent, impartial forum to hear or mediate complaints of alleged discrimination under equality legislation. Its decisions and mediated settlements are legally binding.

3 Clonmel Street, Dublin 2

Tel: (01) 477 4100

LoCall: 1890 34 44 24

Fax: (01) 477 4141

Email: info@equalitytribunal.ie

www.equalitytribunal.ie

*At time of printing, plans were underway to incorporate the Equality Tribunal into the new Workplace Relations Service, part of the Department of Jobs, Enterprise and Innovation. See www.workplacerelations.ie

Equality Authority*

This agency works to prevent discrimination in employment and make sure there is equal access to a wide range of goods and services.

2 Clonmel Street, Dublin 2

LoCall: 1890 245 545

Email: info@equality.ie

www.equality.ie

Irish Human Rights Commission*

This statutory agency works to make sure that the human rights of all people in Ireland are respected.

Fourth Floor, Jervis House

Jervis Street, Dublin 1

Tel: (01) 858 9601

Email: info@ihrc.ie

www.ihrc.ie

*At time of printing, plans were underway to merge the former Equality Authority and the former Irish Human Rights Commission into a new body, called the Irish Human Rights and Equality Commission

THE LGBT COMMUNITY

BeLonG To

See 'Children and Young People' above

Gay and Lesbian Equality Network

This non-governmental organisation campaigns for equality for lesbian, gay and bisexual people in marriage, at home, at school, at work and in the wider community.

2 Exchange Street Upper, Dublin 8

Tel: (01) 672 8650

Email: info@glen.ie

www.glen.ie

National LGBT Helpline

This is a non-judgmental and confidential phone service that provides listening, support and information to lesbian, gay, bisexual and transgender people, their family and friends, and to those who are questioning if they might be LGBT.

Tel: 1890 929 539

www.lgbt.ie

LGBT Diversity

This is a joint initiative by 12 lesbian, gay, bisexual and transgender (LGBT) organisations. It runs regional programmes to support LGBT groups nationwide. You can get information and contact details on its website.

Email: info@lgbtdiversity.com

www.lgbtdiversity.com

LINC

LINC, based in Cork, works to improve the quality of life, health and well-being of lesbian and bisexual women in Ireland and their families.

11a White St, Cork

Tel: (021) 480 8600

Email: info@linc.ie

www.linc.ie

Marriage Equality

The goal of this non-profit advocacy organisation is to achieve equality for lesbian, gay, bisexual and transgender people in Ireland through the extension of civil marriage rights to same-sex couples.

4th Floor, 2-3 Parnell Square East, Dublin 1

Tel: (01) 1 873 4183

www.marriageequality.ie

National Lesbian and Gay Federation

This registered charity promotes the rights and welfare of LGBT people. It oversees the magazine Gay Community News and is involved in public policy development and lobbying.

Unit 2, Scarlett Row

Essex Street West, Dublin 8

Email: info@nlgf.ie

www.nlgf.ie

www.gcn.ie

CONTACTS

Outhouse

This is a community and resource centre for LGBT people, and their families and friends. It offers a safe space for people to inform, meet and organise.

105 Capel Street, Dublin 1

Tel: (01) 873 4999

Fax: (01) 865 0090

Email: info@outhouse.ie

www.outhouse.ie

Transgender Equality Network Ireland

This organisation seeks to improve conditions and advance the rights and equality of transgender people and their families.

The Gate Lodge

Carmichael Centre for Voluntary Groups

North Brunswick Street, Dublin 7

Tel: (01) 873 3575

Fax: (01) 873 5737

Email: info@teni.ie

www.teni.ie

Regional LGBT Organisations

There are LGBT community centres in Cork (LINC and Gay Project Cork) and Dundalk (Dundalk Outcomers) and many LGBT groups across Ireland that provide support and information on LGBT issues. Contact GLEN at the above details for further information.

FAMILY MATTERS

Family Mediation Service

This service is run by the Legal Aid Board. It helps couples who have decided to separate or divorce, or who have already separated, to negotiate their own terms of agreement. It also addresses the needs and interests of all involved. To request family mediation services, contact the Legal Aid Board (see 'Legal Matters' above). You can also get a list of mediation service centres around Ireland.

See their website www.legalaidboard.ie

under the Family Mediation Service tab.

One Family

This organisation provides family support services to one-parent families and the professionals who work with them.

2 Lower Pembroke St, Dublin 2

Tel: (01) 662 9212

Fax: (01) 662 9096

LoCall: 1890 662 212

Email: info@onefamily.ie

www.onefamily.ie

One Parent Exchange Network (OPEN)

This network of lone parent groups helps member groups to provide information, services and support to one-parent families. It also conducts campaigns and research.

7 Red Cow Lane, Smithfield, Dublin 7

Tel: (01) 814 8860

Fax: (01) 814 8890

www.oneparent.ie

Treoir

Treoir provides a free, confidential information and referral service to unmarried parents – whether living together or not – and to the agencies involved with them.

14 Gandon House, Lower Mayor Street

IFSC, Dublin 1

LoCall: 1890 252 084

Tel: (01) 670 0120

Email: info@treoir.ie

www.treoir.ie

DESIGNED AT WWW.DETAIL.IE

KNOW YOUR RIGHTS:

The Rights and Obligations of Civil Partners and other Same-Sex Couples

Know Your Rights is a public information project of the Irish Council for Civil Liberties (ICCL), designed to inform people in clear and accessible language about their rights under various key areas of the law in Ireland. This is the fifth pack in the Know Your Rights series, and was produced in partnership with the Gay and Lesbian Equality Network (GLEN). This, and other packs in the Know Your Rights series, are also available for print and download free of charge on our webpage, www.knowyourrights.ie.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, which came into force in January 2011, was a major step forward for equality for same-sex couples in Ireland. Since January 2011, same-sex couples all over Ireland have been entering into civil partnerships, celebrating with friends and family, and benefiting from the protections that the Act gives. The Act also created a number of protections and obligations for all cohabiting couples who are not civil partners or married.

This guide explains in plain language the rights and obligations created by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. It is aimed both at same-sex couples in a civil partnership, and those who are living together but not civil partners.

This pack was researched and written in collaboration with the ICCL and GLEN by Dr Fergus Ryan of the Department of Law at Dublin Institute of Technology.

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E: info@iccl.ie
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Dublin 8
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www.glen.ie

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