

## **NATIONAL REPORT: REPUBLIC OF IRELAND**

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### **A. General**

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

In Ireland a person can be married, a civil partner in the case of a same-sex relationship only or, if in an informal relationship, a 'cohabitant' and in some cases a 'qualified cohabitant'. Marriage is not available for same-sex couples nor is civil partnership/civil union available for opposite sex couples.

Heterosexual marriage is governed by the Irish Marriage Act 1972. The Act has been modified by the Irish Age of Majority Act 1985, the Irish Family Law Act 1995 and the Irish Civil Registration Act 2004 (as amended). In *Zappone and Gilligan v Revenue Commissioners* [2006] IEHC 404, the High Court held that the right to marry under the Constitution was confined to the union of a man and a woman.

Same-sex civil partnerships were not recognised in law until the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. This Act provides for a scheme of civil registration of same-sex partnerships together with a range of rights and responsibilities for registered civil partners.

Cohabitants were similarly afforded no recognition in Irish law prior to the introduction of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Under this Act, 'cohabitants' may enter into valid agreements regarding their financial affairs during the course of their relationship or when their relationship ends and 'qualified cohabitants' can seek redress orders from the court in certain circumstances.

The Irish Children and Family Relationships Bill contains provisions which will affect civil partners and cohabitants if the Act is passed by the Irish parliament. Notably, the Irish Children and Family Relationships Bill 2015 will enable an eligible adult to apply to court for a guardianship order. An eligible adult is a person who is in a marriage or civil partnership with a child's parent, or has cohabited with them for three years, and has shared responsibility for the child's care for a 2 year period. This will enable step-parents to seek guardianship and is an important reform, in that it enables step-parents to acquire parental responsibility without having to resort to adoption. These proposed amendments alter significantly existing legislation which precludes a person who is married to, in a civil partnership with or cohabiting with a child's parent from making such an application to become a guardian.

Moreover, a person may be eligible to apply for guardianship where they have cared for the child for one year, and no other parent or guardian is able to or will fulfil the rights and duties of the role. For example, this provision will allow foster parents to be appointed as guardians after a 12 month period.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

Cohabitants were not recognised in Irish law in any way prior to the introduction of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Part 15 of this Act covers situations where one cohabitant wishes to claim in the courts against the other, upon the termination of their relationship, for 'redress' either in the form of a compensatory maintenance order, a property adjustment order, a pension adjustment order or for an order for provision from the estate of the other cohabitant. In addition, S. 202 of the Act gives legal validity to agreements entered into by cohabitants to provide for financial matters during the relationship or when the relationship ends through death or otherwise.

Prior to the commencement of the Act, disputes following cohabitant relationship breakdown were not dealt with by family law legislation and couples who cohabited acquired no rights against each other. In particular, in the case of a property dispute between cohabiting couples, the parties were required, on failing to reach a compromise, to bring a claim in the civil courts by way of equitable proceedings under the Irish Partition Acts 1868-1876. Now, applications under the redress scheme for those who come within the definition of 'qualified cohabitants' are dealt with *in camera* in the family courts. It is worth noting, however, that the redress scheme merely provides a right to apply to court for relief and not an automatic entitlement to have one or more of the abovementioned orders made in the applicant's favour.

Disqualifying circumstances are oriented towards preventing certain couples from having access to the courts.

Those who do not come within the definition of 'cohabitants' include people who are already married to someone else (S. 172 (6) of the Irish 2010 Act), underage partners (i.e. persons under 18), people in incestuous relationships, and those who would be prohibited from marrying in the State (S. 172 (4) of the Irish 2010 Act).

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable, briefly indicate the leading cases.**

This can be seen in property law – as properties can be owned by a couple in an informal relationship under a joint tenancy or under a tenancy in common. Where property is held in a joint tenancy, each tenant has an equal undivided share of the property that will pass automatically to the surviving joint tenant(s) upon the death of one joint tenant. Under a tenancy in common, the co-owners each hold a distinct, independent but undivided share of the property, not necessarily equal, which will pass upon the death of one tenant to whomever he stipulates under a will or alternatively, on intestacy. Relevant and instructive cases include the following:

Joint tenancy: *Irwin v Deasy* [2011] IESC 15.

Tenancy in common: *MC v BS* [2008] IEHC 463.

Section 36 of the Irish Family Law Act 1995 governs property disputes between married couples. While this provision does not apply to disputes between couples in an informal relationship, S. 44 of the Irish Family Law (Divorce) Act 1996 provides that it operates in respect of couples who had previously been engaged. Where an agreement to marry is terminated, S. 36 of the 1995 Act applies as if the parties to the agreement were married, to any dispute between them, or any claim by one of them, in relation to property in which either or both of them had a beneficial interest while the agreement was in force.

Guardianship, access and custody disputes concerning the children of couples in an informal relationship, whether they have cohabited or not, are conducted through applying to the District Family or Circuit Family Courts for orders under the Irish Guardianship of Infants Act 1964. For maintenance of children, applications are made to the family courts under the Irish Family Law (Maintenance of Spouses and Children) Act 1976.

The Irish Domestic Violence Act 1996 (as amended) provides protection to persons in informal relationships. A person can apply for a barring order against a cohabitant where the applicant and the respondent have lived together in an intimate and committed relationship for six months in aggregate out of the previous nine months. As a barring order effectively removes the respondent from his or her home, cohabitants can only apply for same where they have an equal or greater interest in the property in question than the respondent. The remedy of a safety order is more widely accessible to those in informal relationships. A person can seek a safety order where they are neither the respondent's spouse or civil partner nor related to them within the prohibited degrees of relationship, but have lived with the respondent in an intimate and committed relationship prior to the application for a safety order. In addition, a parent of a child can always apply for a safety order against the other parent of their child, without any cohabitation requirement whatsoever.

The Irish Children and Family Relationships Bill 2015 makes extensive provision for informal relationships and, when enacted, will bring about fundamental change to the law in this area. This new legislation will enable an eligible adult to apply to court for a guardianship order as detailed in Question 1.

**4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

Part 15 of the Irish 2010 Act sets out the law in respect of cohabitants. A 'cohabitant' is defined at S. 172 as being 'one of two adults (whether of the same or opposite sex) who live together as a couple in an intimate and committed relationship and are not related to each other within the prohibited degrees of a relationship or married to each other or civil partners of each other'. In determining whether or not two adults are cohabitants the court can take into account all the circumstances of the relationship and in particular the following as per S. 172(2):

- (a) the duration of the relationship;
- (b) the basis on which the couple live together;
- (c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;
- (d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;
- (e) whether there are one or more dependent children;
- (f) whether one of the adults cares for and supports the children of the other; and
- (g) the degree to which the adults present themselves to others as a couple.

Section 172(3) clarifies that a relationship does not cease to be an intimate relationship for the purpose of the Irish 2010 Act merely because it is no longer sexual in nature. Not only does the Irish 2010 Act provide for the category of cohabitants. It also introduces the concept of 'qualified cohabitants'. Section 172(5) states:

- 'For the purposes of this part, a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that the relationship ended, whether through death or otherwise was living with the other adult as a couple for a period:
- (a) of two years or more, in the case where they are parents of one or more dependent children; and
  - (b) of five years or more in any other case.'

The independent significance of the term 'cohabitant' is primarily that cohabitants are covered by the rules on cohabitation agreements in S. 202 of the Irish 2010 Act, irrespective of whether the duration of their relationship is such that they come within the definition of 'qualified cohabitants'. It is only a qualified cohabitant who is eligible to apply for redress from the other cohabitant upon the termination of the relationship through the redress scheme in the Act. Thus couples who have lived together for four years for example, and have no dependent children together, cannot apply to court for relief when their relationship ends.

**5. Where informal relationships between a couple have legal effect:  
a. When does the relevant relationship begin?**

To come within the definition of a 'cohabitant', there is no precise enumeration in the Act as to the required length of cohabitation. As seen above, however, the duration of the relationship is one of the circumstances that the court will take into account in determining whether two adults are cohabitants or not.

With regard to 'qualified cohabitants', S. 172 (5) of the Irish 2010 Act states the following:

'For the purposes of this Part, a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period –

- (a) of 2 years or more, in the case where they are the parents of one or more dependent children, and
- (b) of 5 years or more, in any other case.'

This suggests that the relationship in itself must have commenced either 2 years or more where children are involved, or 5 years or more if not. The relationship has legal importance in terms of gaining redress etc. beginning from such time as the relationship actually reaches those thresholds.

The categorisation of one as being a qualified cohabitant is significant in that it enables that person to apply to the court for redress in circumstances where he or she is financially dependent on the other cohabitant (S. 173). Where a court is satisfied that a qualified cohabitant is financially dependent on another cohabitant and that such financial dependency arises from the relationship, or termination of the relationship between the parties, the court may, if it is satisfied that it is 'just and equitable' to do so, make various ancillary Orders (S. 173(2)). Section 173(3) directs a court to take into account the following factors in considering whether or not it is just and equitable to make an Order in all the circumstances:

- (a) The financial circumstances, needs and obligations of each qualified cohabitant existing as at the date of application or which are likely to arise in the future;
- (b) Subject to subsection (5), the rights and entitlements of any spouse or former spouse;
- (c) The rights and entitlements of any civil partner or former civil partner;
- (d) The rights and entitlements of any dependent child or of any child of a previous relationship of either cohabitant;
- (e) The duration of the parties' relationship, the basis on which the parties entered into the relationship and the degree of commitment of the parties to one another;
- (f) The contributions that each of the cohabitants made or is likely to make in the foreseeable future to the welfare of the cohabitants or either of them, including any contribution made by each of them to the income, earning capacity or property and financial resources of the other;
- (g) Any contribution made by either of them in looking after the home;

(h) The effect on the earning capacity on each of the cohabitants on the responsibilities assumed by each of them during the period they lived together as a couple and the degree to which the future earning capacity of a cohabitant is impaired by reason of that qualified cohabitant having relinquished or forgone the opportunity of remunerative activity in order to look after the home;

(i) Any physical or mental disability of the qualified cohabitant;

(j) The conduct of each of the cohabitants, if the conduct is such that, in the opinion of the Court, it would be unjust to disregard it.

Section 173(5) precludes the court from making any Order in favour of a qualified cohabitant that would affect any right of any person to whom the other cohabitant is or was married to. Ancillary Orders made under Part 15 in favour of qualified cohabitants can be varied in accordance with S. 173(6) of the Irish 2010 Act.

#### **b. When does the relevant relationship end?**

The statute does not explicitly define when a relationship of cohabitation ends, but it presumably is where the couple no longer live together in an intimate and committed relationship. Thus, for the purpose of having legal effect, it may be inferred that cohabitation ends when the disqualifying criteria such as marriage to another person are met, and in any case where the couple are no longer actually cohabiting. Regarding 'qualified cohabitants' the relationship must have ended after the lengthy cohabitation period specified in the above cited Irish 2010 Act (two or five years depending on whether or not the cohabitants have children together). There is a limitation period for seeking redress as a qualified cohabitant. Section 195 of the Act provides that an application for redress must be instituted within 2 years of when the relationship between the cohabitants ends, whether through death or otherwise, save in exceptional circumstances. Qualified cohabitants, therefore, cannot apply for redress once this limitation period has passed.

#### **6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?**

It has been very significant and relevant. A precise definition of the family is not provided by the Irish Constitution and this has led to the courts formulating its own definition. They have interpreted the Constitution as only recognising the family unit as based upon marriage. Kelly J in *Ennis v Butterly* [1997] I.L.R.M. 28 held that 'non-marital cohabitation...cannot have the same constitutional status as marriage' and 'that it would be contrary to public policy, as enunciated in the Constitution, to confer legal rights on persons in non-marital unions akin to those who are married'. While these judicial statements certainly reflect the aforementioned constitutional position, they appear to have left some flexibility for legal recognition of cohabitation, providing it was not equivalent to that afforded to traditional marriage. The leading judgment on this point was delivered by Walsh J in *The State (Nicolaou) v An Bord Uchtála* [1966] I.R. 567. In this case, Walsh J held that: 'While it is true that unmarried persons cohabiting together and the children of their union may be

referred to as a family and have many, if not all, of the outward appearances of a family....nevertheless so far as Article 41 is concerned the guarantees therein contained are confined to families based on marriage.'

Walsh J acknowledged the existence of other types of family units and their lack of Constitutional protection. As non-marital and less traditional family units become increasingly common in Ireland, the deficiencies of the Irish Constitution (or, perhaps more properly, the mode of interpretation favoured by the courts) in this regard have become more marked. This has necessitated the use of legislation to provide some protection and legal recognition for cohabiting couples.

The view taken by the courts in relation to cohabiting couples is a strict one and its origin is found, not only in the case law but more particularly in the Irish Constitution. Under Art. 41 the State recognises the family as the natural primary and fundamental unit group of society and further pledges to guard with special care the institution of marriage on which the family is founded and to protect it against attack. In *State (Nicolaou) v An Bord Uchtála* [1966] I.R. 567 Henchy J. in the High Court held that:

'for the State to award equal constitutional protection to the family founded on marriage and the 'family' founded on an extra-marital union would in effect be a disregard of the pledge which the State gives in Article 41.3.1 to guard with special care the institution of marriage.'

Further, on appeal, Walsh J. in the Supreme Court said that it was:

'quite clear ... that the family referred to in Article 41 is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the law for the time being in force in the State.'

In the case of *W.O'R. v E.H. & An Bord Uchtála* [1996] 2 I.R. 248 this view was reiterated by Hamilton C.J. when he said that:

'a *de facto* family, or any rights arising therefrom is not recognised by the Constitution or by any of the enactments of the Oireachtas dealing with the custody of children.'

This position was more recently upheld by the Supreme Court in *McD v L.* [2009] IESC 81 where it was emphatically stated that 'there is no institution in Ireland of a *de facto* family'.

As Irish society changes the social view in relation to cohabitation has also changed. It was not, however, until 2010 that the law in Ireland changed in respect of cohabiting couples and those in same-sex relationships. Arguably, the amendments do not go far enough in satisfying the degree of change advocated for by those who lobby for the rights of same-sex couples and cohabiting couples. Others see the Irish 2010 Act as a stepping stone to greater recognition and status in the future.

There is likely to be significant developments in this area with the Irish Government promising a referendum on same-sex marriage during 2015.

**7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

Ireland has a dualist approach to international instruments.

The European Convention on Human Rights Act 2003 was intended to give the Convention domestic effect in Ireland. It allowed litigants to rely directly upon the Convention in ways that had been previously precluded.

EU legislation has had a greater impact given the fact that regulations enjoy the status of supremacy.

The designation of the family in Art.41 of the Irish Constitution as a private realm, which is virtually impenetrable, still endures, as can be seen from the Supreme Court case of *North Western Health Board v HW and CW* [2001] IESC 90. In the face of such a restrictive interpretation of the 'family', Irish litigants have sought redress under international law through international human rights treaties. However, our dualist approach to international law generally makes international human rights treaties binding on the State, though not on the courts, as such treaties have traditionally not been incorporated into Irish law. This has changed, to a limited extent, with the incorporation of the European Convention on Human Rights and Fundamental Freedoms (ECHR) into domestic law.

The incorporation of the ECHR into Irish law has been by way of statute. As a result of incorporation, the provisions of the ECHR have become part of Irish domestic law. It is now possible to take proceedings before the Irish courts alleging a breach of the ECHR. Previously, to assert any rights under the ECHR, an injured party had to first exhaust all domestic remedies before bringing the case to the European Court of Human Rights in Strasbourg, with the costs and delays associated with that process.

The indirect or interpretative mode of incorporation preserves the domestic primacy of the Constitution. Consequently, Art. 41 of the Irish Constitution continues to act as an impediment to the effective implementation of the legal entitlements of children under the ECHR. In particular, incorporation of the ECHR at sub-constitutional level ensures that child rights remain subordinate to parental rights.

The impact of the revised Brussels II Regulation was highly significant in Ireland in several respects. It brought the so-called Brussels Convention directly into the corpus of EC law. As such it enjoyed the status of supremacy accorded to all binding EU laws. It rendered the measure directly applicable in Ireland as a matter of EC law. In other words, the measure became part of Irish law without the need for incorporation by the Irish State.



**8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple? Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.**

Informal relationships were not regulated or recognised in Irish law prior to the Irish 2010 Act. This Act was intended to recognise cohabitant status and give cohabitants rights in law.

The Irish Children and Family Relationships Bill is the most recent proposal for reform of the rules regarding informal relationships between couples. It represents the most significant change in family law in a generation and attempts to reflect the social reality of contemporary family life in Ireland. Until recent decades, family life in Ireland has been synonymous with marriage. However, increasing recognition of marriage breakdown, changes in relationship formation patterns, economic change and the influence of international law have all contributed to the increasing fluidity and diversification of family forms. The new framework that will be implemented following the passage of this Bill will not only radically overhaul many existing rules, it will create new rights for parents, both biological and social, and, most critically, for children. As a result, it represents an important milestone on the road to recognition of children as rights holders.

The Bill can be seen as providing various different pathways to parentage. This is connected to legal recognition of the changing family landscape in modern Ireland: diversity in families is ever more common. These families deserve recognition, security, and equity. Allowing for parentage to be legally confirmed and recognised is an important element in this. It is vital for children, in that it invests those who are already, or who are likely to, provide for, support and care for the child and their development with the rights, responsibilities and legally consequential duties attendant upon parenthood. This can be seen in such Heads as 5-7 and 8-13 of the Bill.

Issues that are addressed in the Bill include: presumptions of paternity; determination of parentage; declarations of parentage; parentage and legal issues in the context of assisted human reproduction ('AHR'); DNA testing to determine parentage; the establishment of a national donor-conceived persons register; issues relating to guardianship, custody, access and maintenance; reform of court practices and adoption, among other issues. For the first time, the Bill introduces automatic guardianship for non-marital fathers, provided certain cohabitation requirements have been satisfied.

Almost of all the proposals contained in the draft Bill are progressive and given that there has been only piecemeal reform to the Irish law in relation to the family outside marriage since the Irish Guardianship of Infants Act 1964, this consolidated approach is to be welcomed and should considerably improve the position regarding informal relationships between a couple.

**9. Are there any recent proposals (e.g. by parliament, law commissions or similar bodies) for reform in this area?**

The Irish Children and Family Relationships Bill contains provisions which increase the legal recognition of informal relationships by providing them with the rights, responsibilities and duties of guardianship, and which does the same for adoption through amending the relevant adoption legislation. This brings those couples in informal relationships closer in legal provision and recognition to married couples.<sup>1</sup>

The Bill includes some far reaching provisions which will be examined below. These include the extension of automatic guardianship to non-marital fathers cohabiting for a specified period with the child's mother. Other major developments in the Bill include the provisions on Assisted Human Reproduction. Part 12 of the Bill allows same-sex couples, both civil partners and cohabiting couples, to adopt a child jointly subject to the requirement that they are suitable adopters. Part 7 of the Bill sets out various provisions by which a wider circle of people will be able to apply for guardianship, custody of, or access to a child. Part 9 of the Bill sets out various provisions which aim to help make 'parenting work'. The law relating to child maintenance is amended so that all children will be treated equally regardless of the circumstances of conception and birth, when making child support/lump sum orders. Mediation is encouraged to resolve disputes about children of estranged parents (Part 8).

**B. Statistics and Estimations**

**10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.**

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<sup>1</sup> The author, Geoffrey SHANNON, acts as the sole Government Rapporteur in this area and has made extensive proposals for reform which are reflected in the Children and Family Relationships Bill. See website of Department of Children and Youth Affairs.

Modified Table of statistics from the Irish Central Statistics Office Website:

Year	Marriages	
	Number <sup>2</sup>	Rates <sup>3</sup>
2000	19,168	5.1
2001	19,246	5.0
2002	20,556	5.2
2003	20,302	5.1
2004	20,979	5.2
2005	21,355	5.2
2006	22,089	5.2
2007	22,756	5.2
2008	22,187	5.0
2009	21,627	4.8
2010	20,594	4.5
2011	19,879	4.3
2012	21,245	4.6
2013	20,680	4.5
	338 - Civil partnerships	

Population estimates by age group and sex (rounded off to hundreds)

	2013	2014
<b>Both sexes</b>		
0 - 14 years	1,007,700	1,015,900
15 - 24 years	533,300	523,400
25 - 44 years	1,414,000	1,397,800
45 - 64 years	1,070,000	1,086,200
65 years and over	568,100	586,600
All ages	4,593,100	4,609,600
<b>Male</b>		
0 - 14 years	513,900	518,000
15 - 24 years	273,200	268,700
25 - 44 years	693,200	681,600
45 - 64 years	532,200	540,400
65 years and over	261,300	271,100
All ages	2,273,800	2,279,700
<b>Female</b>		
0 - 14 years	493,800	497,700
15 - 24 years	260,100	254,700
25 - 44 years	720,800	716,100
45 - 64 years	537,800	545,800
65 years and over	306,800	315,600
All ages	2,319,300	2,329,900

<sup>2</sup> Data for marriages are by year of Registration. Births and deaths data up to and including 2010 are year of occurrence and are final, 2011 and 2012 data are year of registration and are preliminary.

<sup>3</sup> Rates per 1,000 of the estimated population.

According to the Irish Central Statistics Office in the past fifty years, the average age of grooms increased from 26.2 years in 1977 to a high of 34.7 years in 2012. The average age of grooms in 2013 was 34.9 years, 0.2 years more than the average age in 2012. A similar trend exists for brides – the average age increased from 24.0 in 1977 to a high of 32.8 in 2013.

The number of marriages registered in 2013 was 20,680 which equates to a marriage rate of 4.5 per 1,000 of the population. 20,713 marriages were registered in 2012, also equating to a marriage rate of 4.5 per 1,000 of the population. In 2011, 19,855 marriages were registered with a marriage rate of 4.3 per thousand of the population.

429 civil partnership ceremonies occurred in 2012 and 338 civil partnership ceremonies in 2013, with 208 male unions and 130 female unions. Almost 74% (249) of these same-sex couples reside in the Leinster area with 139 same-sex partnerships (41%) living in Dublin City and a further 22% residing in the greater Dublin area. Excluding the Dublin area, Cork County had the highest number of civil partnerships registered in 2013 (18) and accounted for over 5% of all civil partnerships registered in that year. In contrast, in 2012 Leitrim, Mayo, Roscommon or Sligo registered no civil partnerships and in 2013 there were no registered civil partnerships in Cavan, Leitrim, Longford, Monaghan, Offaly, Sligo or South Tipperary.

**11. How many couples are living in an informal relationship in your jurisdiction?  
Where possible, indicate trends.**

Cohabitation has increased substantially in Ireland over the last decade. Indications are that it nearly tripled in incidence between 1994 and 2002. It is associated with being young, urban and in the labour market. Most cohabitations are short, and over 40% of new marriages are preceded by cohabitation, reflecting its position as an accepted mainstream practice in contemporary Ireland.

Of the 1.18 million families in Ireland, the 2011 census showed that 143,600 were cohabiting couples. This was an increase of 21,800 on the 2006 figure, but shows a slower rate of growth than in previous years. (From 2002 to 2006 cohabiting relationships grew by an average of 11,000 per year).

While the majority (57.8%) of those couples had no children, the average number of children in this family type was rising. There were 0.7 children per cohabiting couple in 2011, up from 0.6 in 2006. Cohabiting couples with children had an average of 1.74 children. As cohabitation is often a precursor to marriage in Ireland, these couples tend to be younger on average than married couples (35.1 years as opposed to 50.4 for married).

Relevant data is as follows:

Cohabiting couple without children: 83,292

Cohabiting couple with children (of any age)

All children under 15 years: 49,005

All children aged 15 years and over: 5,717

Remainder: 5,547

Total: 60,269

**12. What percentage of the persons living in an informal relationship are:**

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

All that is known is that men in cohabiting couples are on average 2.35 years older than their female partner.

As cohabitation is often a precursor to marriage in Ireland, cohabiting couples tend to be younger on average than married couples (35.1 years as opposed to 50.4 for married).

**13. How many couples living in an informal relationship enter into a formal relationship with each other:**

- a. Where there is a common child?
- b. Where there is no common child?

The 2011 census simply demonstrated that 'pre-family' couples (defined for census purposes as couples without children where the woman was aged under 45) accounted for the vast majority (85.8%) of childless cohabiting couples. A further 12.6% were 'empty nest' families (i.e. where the woman was aged 45 to 64), and less than 2% were retired couples (woman aged 65 or over).

**14. How many informal relationships are terminated:**

- a. Through separation of the partners?
- b. Through the death of one of the partners?

Statistical information is not available.

**15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?**

Statistical information is not available.

**16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.**

Statistical information is not available.

**17. What is the proportion of children living within an informal relationship who are not the couple’s common children (excluding foster children)?**

	<b>Births outside marriage</b>	<b>Births registered to parents at the same address</b>	<b>Births outside marriage as a % of all births</b>
2002	18,815	-	31.1%
2003	19,313	-	31.4%
2004	19,938	-	32.3%
2005	19,528	-	32.0%
2006	21,295	-	33.2%
2007	23,170	11,932	32.8%
2008	24,844	12,859	33.1%
2009	24,532	13,647	33.0%
2010	24,860	13,498	33.7%
2011	25,190	13,822	34.0%
2012	25,344	14,321	35.1%

There were 6,406 births registered as outside marriage/civil partnership in quarter 1 of 2013. This accounted for 36.5% of all births, an increase of 0.6 percentage points on the first quarter of 2012. Ten years earlier, in quarter 1 of 2004, 5,181 births were registered outside marriage or 33.2% of all births. (CSO, Vital Statistics, First Quarter 2013)

This provides a basic insight, but it does not differentiate between lone parents and cohabitants where only one cohabitant is the parent.

**18. How many children are adopted within an informal relationship:**

**a. By one partner only?**

Statistical information is not available. Adoption is only possible in very specific cases.

**b. Jointly by the couple?**

This is not possible under the Irish Adoption Act 2010.

In Ireland, at present the following persons are eligible to adopt:

- A married couple living together;
- A married person alone. The other spouse's consent to adopt must be obtained unless the couple is living apart and separated under a court decree or a deed of separation, or the other spouse has deserted the prospective adoptive parent or the other spouse's conduct has resulted in the prospective adoptive parent, with just cause, leaving the other spouse;

- The mother, father or relative of the child (relative meaning a grandparent, brother, sister, uncle or aunt of the child and/or the spouse of any such person, the relationship to the child being traced through the mother or the father);
- A widow or widower;
- A sole applicant who is not in one of the categories listed above may only adopt where the Adoption Authority is satisfied that, in the particular circumstances of the case, it is desirable.

It is not possible for two unmarried persons to adopt jointly. This, however, is due to change with the Irish Children and Family Relationships Bill. Part 11 of the Bill allows same-sex couples, both civil partners and couples cohabiting for three years or more, to adopt a child jointly subject to the requirement that they are suitable adopters.

**c. Where one partner adopted the child of the other?**

Statistical information is not available.

**19. How many partners in an informal relationship have been in a formal or an informal relationship previously?**

Statistical information is not available.

**C. During the Relationship**

**20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:**

**a. Where there are no children in the household?**

Qualified Cohabitants (having been in a relationship of cohabitation of 5 years or more where they have no children together) may be under a legal duty to support each other upon the termination of the relationship, where one is financially dependent on the other, should the court accede to an application for redress under Part 15 of the Irish 2010 Act.

There is no entitlement under the Irish Family Law (Maintenance of Spouses and Children) Act 1976 for one cohabitee to apply for maintenance from the other for their own benefit.

**b. Where there are common children in the household?**

Qualified Cohabitants (having been in a relationship of cohabitation for 2 years or more and having one or more dependent children together) may be under a legal duty to support each other upon the termination of the relationship, where one is financially dependent on the other, should the court accede to an application for redress under Part 15 of the Irish 2010 Act.

There is a duty upon parents to support the dependent children of the informal relationship under S. 5A of the Irish Family Law (Maintenance of Spouses and Children) Act 1976. In respect of a dependent child whose parents are not married to each other, one parent may apply to court for a maintenance order to support any dependent children where there has been a failure to provide reasonable maintenance by the other parent.

**c. Where there are other children in the household?**

Qualified Cohabitants (having been in a relationship of cohabitation of 5 years or more where they have no dependent children together) may be under a legal duty to support each other upon the termination of the relationship, where one is financially dependent on the other, should the court accede to an application for redress under Part 15 of the Act.

A parent can only seek maintenance for their child from the other parent of the child under the Irish 1976 Act and cannot apply for same from their partner who is not the child's parent, although this may change under pending legislation.

The treatment of these issues in the legislation renders it difficult to answer the above questions separately. The court has regard to all of the above issues, when deciding on orders for maintenance, property etc.

Section 173 of the Irish Civil Partnership and Cohabitants Act 2010 provides as follows:

'173— (1) A qualified cohabitant may, subject to any agreement under section 202, apply to the court, on notice to the other cohabitant, for an order under Sections 174, 175 and 187 or any of them.

(2) If the qualified cohabitant satisfies the court that he or she is financially dependent on the other cohabitant and that the financial dependence arises from the relationship or the ending of the relationship, the court may, if satisfied that it is just and equitable to do so in all the circumstances, make the order concerned.

(3) In determining whether or not it is just and equitable to make an order in all the circumstances, the court shall have regard to —

(a) The financial circumstances, needs and obligations of each qualified cohabitant existing as at the date of the application or which are likely to arise in the future,

(b) Subject to subsection (5), the rights and entitlements of any spouse or former spouse,

(c) The rights and entitlements of any civil partner or former civil partner,

(d) The rights and entitlements of any dependent child or of any child of a previous relationship of either cohabitant,

(e) The duration of the parties' relationship, the basis on which the parties entered into the relationship and the degree of commitment of the parties to one another,



- (f) The contributions that each of the cohabitants made or is likely to make in the foreseeable future to the welfare of the cohabitants or either of them including any contribution made by each of them to the income, earning capacity or property and financial resources of the other,
- (g) Any contributions made by either of them in looking after the home,
- (h) The effect on the earning capacity of each of the cohabitants of the responsibilities assumed by each of them during the period they lived together as a couple and the degree to which the future earning capacity of a qualified cohabitant is impaired by reason of that qualified cohabitant having relinquished or foregone the opportunity of remunerative activity in order to look after the home,
- (i) Any physical or mental disability of the qualified cohabitant, and
- (j) The conduct of each of the cohabitants, if the conduct is such that, in the opinion of the court, it would be unjust to disregard it.'

As stated above, the categorisation of an individual as being a 'qualified cohabitant' is significant in that it enables that person to apply to the court for redress in circumstances where he or she is financially dependent on the other cohabitant (S. 173). Where a court is satisfied that a qualified cohabitant is financially dependent on another cohabitant and that such financial dependency arises from the relationship, or termination of the relationship between the parties, the court may, if it is satisfied that it is 'just and equitable' to do so, make various ancillary Orders (S. 173(2)).

Under the Irish 2010 Act, there are 4 main types of orders that a qualified cohabitant may seek from the court:

- Section 174 provides for the making of property adjustment orders, which enables the transfer or settlement of specified property in which the cohabitant has an interest.
- Section 175 provides for the making of Compensatory Maintenance Orders. This enables the court to make Periodical Payment Orders, Secured Periodical Payments Orders, or Lump Sum Orders in favour of a financially dependent qualified cohabitant. Periodic Orders cease to have effect upon the marriage or registration of a civil partnership of the recipient qualified cohabitant (S. 175(5)). Further, no such Order can be made in favour of a qualified cohabitant who has married or registered a civil partnership (S. 175(6)). In terms of the safeguarding of such payments, Attachment of Earnings Orders are available to qualified cohabitants as per S. 176 to 186. Further, in the event of a maintenance debtor failing to comply with any such Order, the maintenance creditor may sue by way of simple contract debt before a court of competent jurisdiction so as to enforce the Order.
- A qualified cohabitant may apply to the court for a Pension Adjustment Order as per S. 188 to 192 of the Irish 2010 Act.
- Section 194 provides that a qualified cohabitant may, after the death of his or her cohabitant, apply for an order for provision out of the net estate.

Where a qualified cohabitant institutes proceedings pursuant to S. 173 of the Irish 2010 Act seeking redress, the court may adjourn such proceedings so as to enable the parties to attempt to reconcile or reach an agreement as to the issue before them.

**21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?**

There is no general duty on partners in an informal relationship to contribute to the costs and expenses of their household. This only becomes an issue if the matter is raised in the courts as above.

Cohabitants can, however, voluntarily enter into a 'cohabitants' agreement' to regulate their joint financial affairs during their relationship and for when their relationship ends. This could obviously include terms regarding the costs and expenses of their household. Section 202 of the Irish 2010 Act provides that this agreement will be recognised as valid and enforceable, as long as the cohabitants have each received independent legal advice prior to entry, or if they have received legal advice together, they have waived in writing their right to individual advice. The agreement must be in writing and signed by both, and the general law of contract must be complied with.

The agreement can include a full or partial opt-out of the redress and maintenance schemes.

The courts have the power to vary or set aside a cohabitants' agreement or part of an agreement if putting it into action would cause serious injustice.

The fact that such agreements are optional suggests that there is not necessarily such a duty on cohabitants to contribute to the costs and expenses of the household absent a valid cohabitants' agreement. While in an application under the redress scheme, the court may well find that maintenance is due, this is by no means guaranteed. The redress scheme only provides qualified cohabitants who meet the requirements in the Act with the right to apply for such orders in court and does not necessarily guarantee them success in their applications.

**22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?**

A partner in an informal relationship has no automatic right to remain in the home against the will of the other partner who is the owner/tenant of the home. Their relationship alone does not give rise to any property rights in the home or rights of occupation.

Furthermore, cohabiting families do not have the benefit of the Irish Family Home Protection Act 1976 which applies only to married families. This means that property owned solely by one parent and being used as a family home by the cohabiting couple can be sold without the consent of the other parent.

Section 174 of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, however, provides for the making of Property Adjustment Orders in respect of qualified cohabitants. The gives the court power to transfer the interest which one qualified cohabitant holds in a property to the other partner. It may also vary, extinguish or reduce the interest of either of the cohabitants under an agreement they made pursuant to S. 202 of the Irish 2010 Act. Section 174(2) provides, however, that before the court makes any Property Adjustment Order that it considers whether the financial needs of the qualified cohabitant would be met by either a Compensatory Maintenance Order (S. 175) or a Pension Adjustment Order (S. 187).

- 23. Are there specific rules on a partner's rights of occupancy of the home:**
- a. In cases of domestic violence?**
  - b. In cases where the partner owning or renting the home is absent?**

The generally applicable rules are as in Question 22 above. These rules apply where the partner owning or renting the home is absent.

If domestic violence exists within an informal relationship, a barring order application may be made under the Irish Domestic Violence Act 1996. This secures the removal of the abusive respondent from the home and may impact upon a partner's right of occupancy of the home. There are, however, certain pre-conditions a person in an informal relationship must satisfy in order to bring such an application. A person can only apply for a barring order against a cohabitant, where the applicant and the respondent have lived together in an intimate and committed relationship for six months in aggregate out of the previous nine months. In addition, as a barring order effectively removes the respondent from his or her home, cohabitants can only apply for same where they have an equal or greater interest in the property in question than the respondent. If a cohabitant has no interest in the home, therefore, the cohabitant cannot obtain a barring order and has no entitlement to relief under the Irish Domestic Violence Act.

- 24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:**
- a. Where the home is jointly owned by the partners?**
  - b. Where the home is owned by one of the partners?**
  - c. Where the home is jointly rented by the partners?**
  - d. Where the home is rented by one of the partners?**

There are no specific rules on such transactions. See the previous answer to Question 22. If the home is jointly owned by the partners, both parties must join in the transaction.

- 25. Under what circumstances and to what extent can one partner act as an agent for the other?**

Cohabitants are in a position to act as agents for one another through the mechanism of power of attorney. This is a legal device set up by a person (the donor) during his/her life when he/she is not incapacitated by mental illness. It allows an appointed person (the attorney) to take actions on the donor's behalf if he/she is absent, abroad or incapacitated through illness. The legislation governing this power is set out in the Irish Powers of Attorney Act 1996 and the Irish Enduring Powers of Attorney Regulations 1996 (SI No. 196/1996) as amended by SI No. 287/1996.

The two types of power of attorney allowed under Irish law are power of attorney and enduring power of attorney. Power of attorney gives either a specific or a general power and ceases as soon as the donor becomes incapacitated. Donors can name any person as their attorney; this is therefore open to cohabitants. The enduring power of attorney takes effect on the incapacity of the donor. Cohabitants are eligible for this power only if they are aged 18 or over, not bankrupt, free of convictions for offences which involve fraud or dishonesty, and not disqualified under the Irish Companies Acts.

**26. Under what circumstances can partners in an informal relationship become joint owners of assets?**

Partners in an informal relationship can become joint owners of assets by entering into a cohabitants' agreement. Section 202(1) of the Irish Civil Partnership and Cohabitants Act 2010 provides that cohabitants may enter into an agreement to provide for financial matters during their relationship or when the relationship ends. Partners can additionally become joint owners of assets by ordinary transfer of their assets or by jointly purchasing property together.

**27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.**

There are no specific rules governing acquisitions and/or transactions in respect of household goods. The case law on direct and indirect contributions, however, may be of relevance in this regard.

Where spouses or cohabitees separate, or it becomes necessary for any other reason to determine their respective beneficial interests in property, the courts often apply a resulting trust in favour of the party who does not legally own the property. Where property is purchased in one spouse's name but the other party has made direct financial contributions either to the purchase price or by paying the mortgage, the property will be held on resulting trust for the non-owning spouse to the extent of these contributions, unless there is an agreement between the parties to the contrary (*C v C* [1976] IR 254).

Where a spouse contributes indirectly to the general family fund, for example by paying the household bills through her own earnings, the court will infer a trust in

her favour in the absence of an express or implied agreement to the contrary. This is because that spouse relieves the owning spouse from certain obligations, thereby permitting him to repay the mortgage (*McC v McC* [1986] ILRM 1). The non-owning spouse will have an equitable share in the property in proportion to her contributions.

The courts in Ireland, however, refuse to accept that a spouse's contribution to the household by working in the home, whether by looking after children or performing household duties, may give rise to a beneficial interest (*L v L* [1992] ILRM 115). Similarly, where one partner makes a direct contribution to an improvement on a home owned solely by the other partner, this will not give rise to a beneficial interest in the property unless there was an express or implied agreement that it would (*EN v RN* [1992] 2 IR 116).

Most of the abovementioned case law concerns disputes between married couples. In *McGill v Snodgrass* [1978] I.R. 283, a situation of cohabitation was at issue. Here, the plaintiff left his wife, bought a new house and was registered as owner. The defendant, whom he was in a relationship with, moved in. In later proceedings for possession, the defendant claimed a beneficial interest in the property based on an indirect contribution of £1,000 and work she had done on the home. Gannon J declined to hold that she had any interest, on the ground that there no evidence of an agreement before the purchase of the house that the contributions should give her an interest, nor was there anything to connect the contributions with the purchase itself.

Gannon J stated as follows:

'...in the case of two persons who are not spouses, evidence of a consensus derived from words or conduct and intended to have legal consequences would support a trust expressed or implied or constructive. But whether the party having the legal estate and the party claiming an equitable interest be spouses or not, the Court will not impute a relationship of trustee and *cestui que* trust from the facts of a couple living together in (or seemingly in) the married state and sharing expenses without any more cogent evidence.

...As the counter-claiming defendant is not a spouse but claims to be a *cestui que* trust by virtue of indirect contributions in circumstances of a close domestic relationship corresponding to that between spouses, I think it necessary to point out that indirect contributions which are unrelated to the acquisition of the property cannot found an equitable interest in it.

...the evidence of the defendant in support of her claim falls far short of what is required to enable the Court to hold, by the implication of a trust for her benefit, that she has acquired any beneficial interest in the property which is the subject of the claim. In spite of having the means and the opportunity, she took no part in the negotiations and contributed no amount of the purchase price for the acquisition of the property of which the plaintiff is sole owner. Such as were her indirect contributions all came after the acquisition of the property had been

completed (without continuing instalment payments) and did not bear any significant relationship whatever to either the capital sum of £1,775 or to the sum of £9,750 spent by the plaintiff.'

From this judgment, it appears that a cohabitant in an informal relationship may have a more difficult task in persuading an Irish court that he or she has acquired a beneficial interest in property by virtue of indirect contributions, given the absence of a duty on one cohabitant to maintain the other (compared to spouses).

On the other hand, in *Power v. Conroy* [1980] ILRM 31, the plaintiff claimed a beneficial interest in a house purchased in the name of the man with whom she had been living. The financial arrangements of the parties are not entirely clear from the judgment, but it appears that the plaintiff contributed an initial £2,750 to the purchase price of £10,760 together with a further indefinite sum by way of contribution to the joint living expenses while the mortgage was being repaid. McWilliam J. awarded the plaintiff a 55% share of the property. He did not treat the situation different from that of a married couple.

On the specific issue of household goods, *McC v McC* [1986] ILRM 1 is instructive. In this case, the wife had contributed to the cost of a previous family home. When this home was sold, this amount was put towards the cost of furniture in the parties' new house, the purchase of which was financed by the husband. The Supreme Court held that as the wife's contribution was not applied to the purchase price of the second property either directly or indirectly and had not been part of a general family fund, she was not entitled to a beneficial interest in the property. She was only entitled to a one-third share in the furniture and fittings. Although the couple in this case were married, it is likely a similar approach would be taken regarding cohabitants in an informal relationship.

**28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?**

Where one partner to an informal relationship is the legal owner of property, the partners will not be regarded as joint owners solely by virtue of their relationship or due to their cohabitation. No property rights accrue to the non-owning partner by virtue of their relationship alone. However, the non-owning partner may claim a beneficial interest in the property even though title belongs to the other partner where he or she has made direct financial contributions to the purchase price, the mortgage or the general family fund. (See the law on direct and indirect contributions as set out in Question 27 above). This is dependent upon the non-owning partner making an application to court for a beneficial interest and the court making an order reflecting same if the circumstances demand it – it is not an automatic right. Where the non-owning partner is held to have a beneficial interest in the property, this interest will be in proportion to the contribution made and will not necessarily be an equal interest to that of the legal owner.

**29. How is ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?**

This is normally achieved through the law on direct and indirect contributions.

**30. How is ownership of assets proved as regards third parties? Are there rebuttable presumptions?**

This is normally achieved through the law on direct and indirect contributions.

**31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?**

This is not possible unless provided for in a cohabitants' agreement. Section 202 of the Irish Civil Partnership and Cohabitants Act 2010 makes provision for such an agreement.

**32. On which assets can creditors recover joint debts?**

The recovery of joint debts by creditors is not expressly provided for. That said, S. 202(1) of the Irish Civil Partnership and Cohabitants Act 2010 provides that cohabitants may enter into an agreement to provide for financial matters.

**33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.**

This is normally achieved through the law on direct and indirect contributions, see Question 27 and 28 above.

**D. Separation**

**34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?**

The law does not automatically grant maintenance to a former partner, but it does entitle partners to an informal relationship to apply for maintenance from their former partner under S. 175 of the Irish 2010 Act. The requirements are set out in S. 172. It provides that: 'If the qualified cohabitant satisfies the court that he or she is financially dependent on the other cohabitant and that the financial dependence arises from the relationship or the ending of the relationship, the court may, if satisfied that it is just and equitable to do so in all the circumstances, make the order concerned.'

**35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances?**

- a. The creditor's needs and the debtor's ability to pay maintenance?

- b. The creditor's contributions during the relationship (such as the raising of children)?**
- c. The standard of living during the relationship?**
- d. Other factors/circumstances (such as giving up his/her career)?**

See S. 173 of the Irish 2010 Act, as set out above at Question 20(c). There are a range of factors and circumstances in S. 173(3)(a)-(j) that are relevant in determining the amount of maintenance that will be ordered. The court is required to have regard to each factor and there is no hierarchy of factors. The court has discretion as to how much weight to give to each consideration, and which to consider.

**36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

There are none, save for the factors set out in S. 173 of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

**37. Where the law provides maintenance, to what extent, if at all, is it limited to a specific period of time?**

Section 175(4) of the Irish 2010 Act provides that the period specified in an order cannot start earlier than the date of application for the order, and is to end no later than the death of the first qualified cohabitant. Other than this, there is no specific time period set out in the Act for which a qualified cohabitant will be required to continue to pay maintenance.

An order ceases to have effect upon the marriage or registration in a civil partnership, or in a legal relationship with its own order under S. 5, of the qualified cohabitant in whose favour the order was made, except as where payments are due on the date of the marriage or registration.

**38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

Changes in circumstances can influence the right to continued maintenance or the amount due. In this regard, S. 173(6) provides as follows:

'The court may, on the application of the qualified cohabitant or the other cohabitant, if it considers it proper to do so having regard to any change in the circumstances of the case and to any new evidence, including any change in the circumstances occasioned by a variation by another order of the court made in favour of a person to whom the other cohabitant is or was married, by order –

- (a) vary or discharge an order under Section 175 or 187,
- (b) suspend any provision of such an order,
- (c) suspend temporarily any provision of such an order,
- (d) revive the operation of a suspended provision,
- (e) further vary an order previously varied under this section, or



(f) further suspend or revive the operation of a provision previously suspended or revived under this section.'

**39. Is the maintenance claim extinguished upon the claimant entering:**

**a. Into a formal relationship with another person?**

Yes. Section 175(5) provides:

'An order made under subsection (1) (a) or (b) ceases to have effect on the marriage or registration in a civil partnership, or in a legal relationship that is the subject of an order under section 5, of the qualified cohabitant in whose favour the order was made, except as respects payments due under it on the date of the marriage or registration. '

**b. Into an informal relationship with another person?**

The maintenance order will cease to have effect only if the new relationship itself becomes the subject of a section 5 order (regarding the recognition of foreign registered relationships).

**40. How does the creditor's maintenance claim rank in relation to:**

- a. The debtor's current spouse, registered partner, or partner in an informal relationship?**
- b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**
- c. The debtor's children?**
- d. The debtor's other relatives?**

There is no hierarchy in the Irish 2010 Act or in other legislation.

In determining an application for redress by a qualified cohabitant, including in a claim for maintenance, there are a number of factors that the court is required to regard under S. 173(3), none of which are given priority or prominence under the Act. Section 173(3)(b) and (c) specifically requires the court to consider the rights and entitlements of any spouse or former spouse and any civil partner or former civil partner of the cohabitants. Section 173(3)(d) requires the rights and entitlements of any dependent child or of any child of a previous relationship of either cohabitant to be considered by the court. It is worth noting that the qualified cohabitants' current or former partner to an informal relationship is not set out as a factor that shall be taken into consideration by the court in determining claims under the Irish 2010 Act, nor are the other relatives of either party.

A maintenance order made in favour of a qualified cohabitant ceases to have effect when the maintenance creditor remarries or enters into a civil partnership and such an order will not be made by the court at all where the applicant has already married or registered in a civil partnership. There is, however, nothing in the Act that automatically precludes a maintenance claim being brought and an order being made where the maintenance debtor is or has been married. Nevertheless, S. 173(5)

mandates that the court shall not make such an order in favour of a qualified cohabitant that would affect any right of any person to whom the other cohabitant is or was married.

In a similar manner to how the rights of spouses of cohabitants are to be considered by the court in a claim by one cohabitant for maintenance from the other, in an application for ancillary orders under the Irish Family Law Act 1995 and the Irish Family Law (Divorce) Act 1996 upon judicial separation or divorce, the court is required to consider the rights of any person other than the spouses but including a person to whom either spouse is remarried (S. 16(2)(l) and S. 20(2)(l) respectively). This essentially means that if a wife is seeking maintenance from her ex-husband, the court is required to consider the rights of any person other than the spouses and this has been held to include the husband's current partner in an informal relationship. In *JCN v RTN* [1999] IEHC 83, the High Court took into account the husband's commitments to his current partner and their two dependent children in deciding whether to make a pension adjustment order in favour of his wife.

**41. When partners to an informal relationship separate, are specific rules applicable to the determination of ownership of the partner's assets? If there are no specific rules, which general rules are applicable?**

Generally, there are no specific rules applicable to the determination of ownership of the partners' assets. Partners may, however, have a cohabitants' agreement in place which sets out the respective ownership of their assets upon separation pursuant to S. 202 of the 2010 Act. In addition, a qualified cohabitant may make an application to court under Part 15 of the Irish 2010 Act for a Property Adjustment Order upon the termination of the relationship. Furthermore, the law on direct and indirect contributions may apply to determine ownership of the partners' assets, see Question 27 and 28 above.

**42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?**

There are no specific rules regarding the division of all or certain property upon the termination of an informal relationship. See Question 41 for general rules.

**43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?**

No, partners do not have preferential rights regarding their home and/or household goods unless they are joint tenants. Qualified cohabitants who prove to the court that they are financially dependent on their ex-partner may apply for a Property Adjustment Order.

**44. How are the joint debts of the partners settled?**

No specific rules apply.

**45. What date is decisive for the determination and the valuation of:**

**a. The assets?**

The date of dissolution.

**b. The debts?**

The date of dissolution.

**46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?**

First of all, S. 172(2)(c) of the Irish 2010 Act lists the degree of financial dependence of either adult on the other as one of the criteria for the court to regard in order to determine whether or not two adults fall within the definition of cohabitants under the Act.

In order to apply for redress under the scheme set out in the Irish 2010 Act, S. 173(2) of the Irish 2010 Act provides that: 'If the qualified cohabitant satisfies the court that he or she is financially dependent on the other cohabitant and that the financial dependence arises from the relationship or the ending of the relationship, the court may, if satisfied that it is just and equitable to do so in all the circumstances, make the order concerned.' This demonstrates that financial dependence is a pre-condition to making an application for maintenance, property adjustment orders or pension adjustment orders under the Act.

Furthermore, contributions made and disadvantages suffered are relevant in an application for redress by an economically dependent qualified cohabitant. In deciding whether it is just and equitable to make an order under the redress scheme in favour of the applicant, S. 173(3)(f) provides the court must have regard to the contributions that each of the cohabitants made to the welfare of the cohabitants, including any contribution made by each of them to the income, earning capacity or property and financial resources of the other. In addition, the court will consider any contributions made by either of them in looking after the home (S. 173(3)(g)) and the effect on the earning capacity of each of the cohabitants of the responsibilities assumed by each of them during their relationship and the degree to which the future earning capacity of a cohabitant is impaired by reason of that cohabitant having relinquished or forgone the opportunity of remunerative activity in order to look after the home (S. 173(3)(h)).

**E. Death**

**47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?**

The surviving informal partner, whether a cohabitant or qualified cohabitant has no automatic rights on intestacy. On the other hand, a surviving spouse or civil partner, by virtue of his status, will be entitled to the deceased's entire estate should he die intestate and there are no issue.

A 'qualified cohabitant' as defined in S. 172 (5) of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 has a right under S. 194 of that Act to apply to Court to seek provision from the estate of the deceased cohabitant in either a testate or intestate situation. Where the relationship between the partners is still in existence at the time of the deceased's death, it is not necessary for the applicant cohabitant to show financial dependence as is required generally under the redress scheme, reflecting the fact that neither party had withdrawn their commitment from the relationship. Where the relationship between the parties had ended during the deceased's lifetime, the financial dependency prerequisite applies. Under S. 194(3) of the Act, the court 'may by order make the provision for the applicant that the court considers appropriate having regard to the rights of any other person having an interest in the matter, if the court is satisfied that proper provision in the circumstances was not made for the applicant during the lifetime of the deceased for any reason other than conduct by the applicant that, in the opinion of the court, it would in all the circumstances be unjust to disregard.'

A surviving qualified cohabitant may apply to the court for such provision to be made for him or her out of a deceased's cohabitant's estate within six months from the first taking out of a grant of representation to the estate. Such provision can only be made out of the 'net estate of the deceased cohabitant'. This means the estate that remains after any other rights under the Irish Succession Act 1965 of a surviving spouse/civil partner have been satisfied (S. 194(11)).

**48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?**

No, cohabiting couples have no legal rights or claims on each other's estates, apart from the right to apply for provision as outlined above pursuant to S. 194 of the Irish 2010 Act if they come within the definition of 'qualified cohabitants'. Where the parties' relationship ended two or more years prior to the death of the deceased cohabitant, applications under S. 194 cannot be brought. One exception to this limitation period is where the claimant was in receipt of periodical payments from the deceased either pursuant to a S. 175 maintenance order or a cohabitants' agreement - as the unexpected death of the maintenance debtor would mean that payments would cease at a time when they may still be needed. Thus, the receipt of maintenance entitles a qualified cohabitant to make a claim for provision out of the deceased's estate where the relationship broke down more than 2 years prior to death.

**49. Are there specific rules dealing with the home and/or household goods?**

No. The general rules set out in Questions 47 and 48 are the only rules that apply.

**50. Can a partner dispose of property by will in favour of the surviving partner:**

**a. In general?**

Yes. There is nothing to prevent a partner leaving some or all of his or her property to the surviving partner by will.

**b. If the testator is married to or is the registered partner of another person?**

Yes. There is nothing preventing a partner leaving some or all of his or her property to the surviving partner by will. This, however, is subject to the Legal Right Share of a surviving spouse/civil partner under S. 111/111A of the Irish Succession Act 1965 respectively. The Legal Right Share is half the estate where the deceased spouse/civil partner did not have children and one third of the estate where they did. The surviving spouse/civil partner has a right to appropriate the dwelling in which they reside in whole or in part satisfaction of their Legal Right Share under s.56 of the same Act. The same right applies to household chattels under S. 56(2) and 111A of the Irish 1965 Act. The surviving spouse/civil partner therefore has a legal right share in the deceased's estate, regardless of what the deceased has said or specified in his will. Whatever the testator bequeaths to his partner will be subject to this legal right share.

**c. If the testator has children?**

Yes. There is nothing preventing a partner leaving some or all of his or her property to the surviving partner by will. This, however, is subject to the right of the testator's children to initiate legal proceedings against the estate under S. 117 of the Irish Succession Act 1965 where the deceased has failed to make proper provision for them in accordance with his or her moral duty. The children do not have to be minors (under 18) and if they are minors an application can be taken on their behalf. It is only the children of the deceased cohabitant who can make this application.

Provision for a partner made in a will, therefore, may be overridden by a S. 117 application. Should no legal proceedings be initiated by the children, however, or should the court determine that proper provision for them was made during the testator's lifetime, the bequest to the deceased's partner made in the will shall stand.

**51. Can partners make a joint will disposing of property in favour of the surviving partner:**

**a. In general?**

The status of a 'joint' will is unclear under Irish Law.

There is a doctrine of 'mutual wills'. This doctrine usually applies when two people, often but not necessarily husband and wife, each make separate wills in which they leave their property to the survivor of them with remainders over usually for their children, or where they each leave their property to a third party directly (such as their child) in pursuance of an agreement between them not to revoke their wills without the consent of the other party. If one of the parties dies, then the courts will impose a trust on the survivor in favour of the beneficiaries under the will of the survivor. Thus, if the survivor revokes the will, the remedy is in equity by way of a constructive trust. There must, however, not only be an agreement between the parties, but a binding contract, and judges may examine the evidence for an intention to create a binding contract.

There is nothing however to prevent cohabitants making 'matching' or 'mirror' wills leaving property to each other. Moreover, there is nothing to prevent cohabitants either purchasing property jointly so that on the death of one cohabitant the surviving cohabitant succeeds to the property by survivorship outside the estate of the deceased cohabitant. Similarly, there is nothing to prevent a cohabitant who is the legal owner of a property transferring that property into the joint names of both cohabitants so that the property passes to the surviving cohabitant outside the will.

**b. If either testator is married to or is the registered partner of another person?**

The status of a 'joint will' is unclear in Irish law. Again, however, as outlined above, the Legal Right Share of the surviving spouse/civil partner would rank in priority ahead of any bequest to a cohabitant in a will.

**c. If either testator has children?**

Again, as outlined above, any such bequest in a will may be subject to an application by or on behalf of the children of the deceased cohabitant.

**52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner?**

**a. In general?**

Yes. A cohabitant can nominate certain assets on either a statutory or non-statutory basis (i.e. a credit union account or a life insurance policy in favour of a surviving cohabitant). Such nominated assets would not be considered to be part of the estate of the deceased.

**b. If either partner is married to or is the registered partner of another person?**

Yes. As above, a cohabitant can nominate certain assets on either a statutory or non-statutory basis. Such assets are not considered to be part of the estate of the deceased, so they would not be taken into account when calculating the estate of the deceased for the purpose of the Legal Right Share. There is a provision, however, under S. 121 of the Irish Succession Act 1965 in certain circumstances to have a court declare that the nomination was made to disinherit a spouse/civil partner and/or children of the deceased and to have the nominated asset included in the estate for the purpose of the Legal Right Share referred to earlier.

**c. If either partner has children?**

Yes, again subject to the provisions of S. 121 as outlined at Question 52(b).

**53. Is the surviving partner entitled to a reserved share<sup>4</sup> or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

The surviving cohabitant is not entitled to a reserved share. As outlined in the response to Question 47, a 'qualified cohabitant' (as defined) has a right under S. 194 of the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 to apply to Court to seek provision from the estate of the deceased cohabitant.

**54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

None that I am aware of.

**55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

None that I am aware of.

**56. Are there any statistics or estimations on how common it is that a partner in an informal relationships is the beneficiary to the other partner's life insurance?**

None that I am aware of.

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<sup>4</sup> See: Regulation (EU) no 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession.

The Irish Probate Office retain statistics of the civil status of deceased people where a grant of representation issues in their estate (either testate or intestate). That said, however, this information would not necessarily reveal whether the deceased was a cohabitant or not and would not record whether he/she made a will in favour of a surviving cohabitant. In the case of a person who dies without a significant estate or where property is held jointly, a grant of representation may not be required. The General Register Office<sup>5</sup> would have records of the civil status of everyone whose death is registered in Ireland. However, it would not have the detailed information in relation to informal relationships and provision in relation to same.

## **F. Agreements**

### **57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

Yes, there are specific rules concerning agreements between partners to an informal relationship. In particular, S. 202 of the Irish 2010 Act provides for cohabitants' agreements. Cohabitants may enter into agreements to provide for financial matters during the relationship or when the relationship ends, whether through death or otherwise. Such agreements are only valid if the following requirements as per S. 202(2) are complied with:

- (a) The cohabitants –
  - (i) Have each received independent legal advice before entering into it; or
  - (ii) Have received legal advice together and have waived in writing the right to independent legal advice;
- (b) The agreement is in writing and signed by both cohabitants; and
- (c) The general law of contract is complied with.

Cohabitants may agree to opt out of the redress provisions of Part 15 of the Irish 2010 Act, in that they may agree that neither cohabitant is entitled to apply for redress as per S. 173, or to apply for an Order for provision from the estate of the other cohabitant pursuant to S. 194. Whilst cohabitants' agreements may be valid and enforceable, the court retains a jurisdiction to set such agreements aside or vary same in exceptional circumstances where the enforceability would cause a serious injustice (S. 202(4)).

### **58. Are partners in an informal relationship permitted to agree on the following issues:**

- a. The division of tasks as between the partners?**
- b. The contributions to costs and expenses of the household?**
- c. Their property relationship?**
- d. Maintenance?**
- e. The duration of the agreement?**

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<sup>5</sup> Available at: [www.welfare.ie/en/Pages/General-Register-Office.aspx](http://www.welfare.ie/en/Pages/General-Register-Office.aspx).



The above rules indicate that none of these issues would be outside the acceptable limits of such an agreement.

**59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?**

Generally, as a matter of Irish law, this is not possible. However, S. 202(3) of the Irish 2010 Act would seem to indicate that this is possible in limited circumstances. It provides:

‘Subject to subsection (4), a cohabitants’ agreement may provide that neither cohabitant may apply for an order for redress referred to in Section 173, or an order for provision from the estate of his or her cohabitant under Section 194.’

**60. Are the agreements binding:**

- a. Between the partners?**
- b. In relation to third parties?**

The agreement, being a contract, could well be binding on both cohabitants and third parties, but as only cohabitants are mentioned in the Act it seems reasonable to suggest that it is only cohabitants who would be considered under the 2010 Act itself.

Section 208 of the Irish 2010 Act provides that in making any Order whether it be by way of Periodic Maintenance, Lump Sum, Property Adjustment Order, Pension Adjustment Order or Order for Provision from the Estate of the Deceased Person the court shall have regard to the rights of any other person with an interest in the matter, including a spouse or former spouse, a civil partner or former civil partner. This saving provision applies in respect of the Irish 2010 Act as a whole.

**61. If agreements are not binding, what effect, if any, do they have?**

Under the legislation, such cohabitants’ agreements are valid and enforceable. However, if their enforcement would lead to serious injustice, the court may vary or set aside the agreement. In the event, however, that an agreement is not binding, it is still valuable in indicating the intentions of the parties and gives the court a starting point from which to assess the parties’ financial affairs.

**62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?**

Yes – see Question 59 above – partners, in their cohabitants’ agreement, may opt out of the redress scheme in Part 15 of the Irish 2010 Act.

**63. When can the agreement be made (before, during, or after the relationship)?**

This is unclear under the Irish Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Section 202(5) of the Irish 2010 Act provides that ‘an agreement that meets the other criteria of this section shall be deemed to be a cohabitants’ agreement under this section even if entered into before the cohabitation has commenced’. This indicates that the agreement can be made prior to cohabitation. There appears to be nothing in the Act preventing such an agreement from being made at any point during the parties’ relationship of cohabitation. However whether an agreement can be made after the end of the relationship is unclear. Section 202(1) states that cohabitants may enter into a cohabitants’ agreement - presumably meaning that a couple must come within the definition of ‘cohabitants’ under S. 172 of the Act if they wish to enter into this type of an agreement. Thus, it may not be possible to make a cohabitants’ agreement when the relationship has broken down and the parties are no longer living together.

- 64. What formal requirements, if any, govern the validity of agreements:**
- a. As between the parents?**
  - b. In relation to a third party?**

Section 202 of the Irish 2010 Act sets out the formal requirements that govern cohabitants’ agreements. They are discussed in full at Question 57.

- 65. Is independent legal advice required?**

Yes, S. 202(2)(a)(i) requires cohabitants obtain independent legal advice prior to entering into an agreement. Joint legal advice is acceptable where there is a written waiver from both parties of their right to independent advice.

- 66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?**

No.

- 67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?**

No.

## **G. Disputes**

- 68. Which authority is competent to decide disputes between partners in an informal relationship?**

The courts are the only competent authority that can decide disputes between partners to an informal relationship.

- 69. Is that the same authority as for spousal disputes?**

Yes.

**70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?**

Cohabitants' agreements can be examined, followed and enforced by the courts. According to S. 202(4) of the Irish 2010 Act, the court may modify or set aside such an agreement in exceptional circumstances, whether in part or in full, where its enforceability would cause serious injustice.

**71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?**

Yes. According to the Irish 2010 Act, where enforcing the agreement would cause serious injustice, the courts may vary it or set it aside. 'Serious injustice' is not defined and no grounds are enumerated within the Act as to what may amount to such injustice. It would seem that unfairness to a partner would be a fairly compelling reason to override or modify an agreement. It is worth highlighting, however, that the court is only permitted to vary or set aside an agreement in 'exceptional circumstances' and overriding or modifying these agreements will not be permitted to become the norm.

**72. What alternative disputes-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?**

Legislation on Alternative Dispute Resolution (ADR) is imminent and may address the absence of ADR mechanisms with regard to disputes arising out of informal relationships.

The Family Mediation Service assists in some ways regarding disputes arising out of informal relationships. This is a state run, free-of-charge service that encourages separating couples to co-operate with each other in working out mutually acceptable arrangements regarding parenting of children, financial support, family home and property, pensions and other issues. This service is available for cohabitants and also for separating couples who have children together, but have never lived together.

Where a qualified cohabitant institutes proceedings pursuant to S. 173 of the Irish 2010 Act seeking redress, the court may adjourn such proceedings so as to enable the parties to attempt to reconcile or reach an agreement as to the issue before them (S. 193). Under S. 193(4), the court may, at its discretion when adjourning proceedings, advise the cohabitants to seek the assistance of a mediator or other third party in relation to the cohabitants' proposed reconciliation or reaching of an agreement between them on some or all of the terms of a possible settlement.

Part 8 of the Irish Children and Family Relationships Bill encourages mediation to resolve disputes between parents of estranged children. In an application regarding guardianship, custody, upbringing or access to a child, Head 53 obliges solicitors to discuss with parties the possibility of engaging in counselling to assist in reaching an agreement or the possibility of effecting a deed in writing made between the parties.

**73. What are the procedural effects of an agreement on ADR between partners to an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?**

There are no clear procedural effects of an agreement on ADR between partners to an informal relationship. Any party can seize the competent authority in breach of an ADR clause.

**74. Ware there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?**

None are currently available.