

Formalisation of legal family formats in Ireland

by Brian Tobin ¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 1 – Formalisation)

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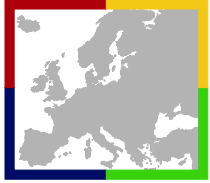


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FamiliesAndSocieties

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This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

The six papers about Ireland

The answers concerning Ireland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

**Formalisation of legal family formats in Ireland
by Brian Tobin (Section 1)**

**Income, troubles and legal family formats in Ireland
by Fergus Ryan (Section 2)**

**Parenting and legal family formats in Ireland
by Brian Tobin (Section 3)**

**Migration and legal family formats in Ireland
by Fergus Ryan (Section 4)**

**Splitting up and legal family formats in Ireland
by Brian Tobin (Section 5)**

**Death and legal family formats in Ireland
by Fergus Ryan (Section 6)**

So this paper about Ireland is based on **Section 1 (Formalisation)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 1.1 Legal family formats
- 1.2 Two siblings
- 1.3 With resident foreigner
- 1.4 With non-resident foreigner
- 1.5 Two foreigners
- 1.6 Two resident foreigners
- 1.7 Two non-resident foreigners
- 1.8 Start at registry
- 1.9 Start at public authority
- 1.10 Start at religious building
- 1.11 Contract
- 1.12 Statutory contract
- 1.13 Surname
- 1.14 Living together
- 1.15 Sex
- 1.16 General background regarding formalisation
- 1.17 Literature

In the following pages of this paper, first the answers to questions 1.16 and 1.17 are presented, followed by the answers to questions 1.1 to 1.15.

1.16 - General background regarding formalisation (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, constitutional, legal-cultural, religious, etc.) that may be relevant for the understanding of your answers above regarding formalisation, then please do so here.

1.17 - Literature (Open question)

Please list some relevant literature about the family formats concerned, especially in English and/or online (with web links).

From November 16, 2015, marriages of same-sex couples are permitted and recognised in Ireland. This is by virtue of the 34th Amendment to the Constitution and the Marriage Act 2015.

Marriage may be entered into before a civil Registrar of Marriages, but marriages by religious bodies are also recognised as having civil effects, subject to conditions that apply equally to all religions. Provision is also made for marriages to be celebrated by not-for-profit secular bodies espousing, for example, humanism.

From 2011 to 2015 couples of the same sex only (who were not close blood relatives) could enter into a civil partnership, conferring many of the same rights and obligations as marriage. With effect from November 16, 2015, new civil partnerships cannot be contracted, subject to transitional provisions. Existing civil partnerships remain in place and remain valid, but civil partners may marry each other, whereupon their subsisting civil partnership shall stand dissolved.

Cohabitants, both same-sex and opposite-sex are recognised for certain limited purposes. Long-term 'qualified cohabitants' may seek court-ordered relief at the end of a relationship, subject to showing financial dependence, and may seek provision from a partner's estate on the latter's death.

Ryan, F. (2011). Annotated Legislation - Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Dublin: Thomson Round Hall.

Tobin, B. (2013). The Regulation of Cohabitation in Ireland: Achieving Equilibrium between Protection and Paternalism, 35 (3) Journal of Social Welfare and Family Law 279.

Flynn, L. (2001). From Individual Protection to Recognition of Relationships? Same-sex Couples and the Irish Experience of Sexual Orientation Law Reform. In R. Wintemute & M. Andenaes (Eds.), Legal Recognition of Same-sex Partnerships. A Study of National, European and International Law (pp. 591-604). Oxford: Hart.

Jurisdiction: **Ireland**

Source: **B. Tobin, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).**

Section: **1 - Formalisation**

Question: **1.01 - Legal family formats**

Which of the three legal family formats mentioned here are available to different-sex and/or same-sex couples?

(For the distinction between registered partnership and cohabitation, see section e of the [Guidance for experts answering questions in the questionnaire](#). If there are two or more formats available for informally cohabiting couples, then please mention these formats separately in the explanation to this question.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2015	2016 No 0000	2016 No 2015	2016 Yes 2011	2016 Yes 2011
	No 0000		Yes 2011	Yes, but 1996	No, but 1996
			No 0000	No 0000	No 0000
References to legal sources: Civil Registration Act 2004. Marriage Act 2015.		References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Marriage Act 2015.		References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The Marriage Act 2015 gives effect to the result of the Marriage Equality Referendum, which was held on 22nd May 2015. The coming into force of the 2015 Act on November 16th 2015 means that same-sex couples can now marry.</p>		<p>Explanations and nuances: Registered civil partnerships became a reality in Ireland as a result of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, which entered into force in January 2011.</p> <p>However, the success of the Marriage Equality Referendum and the passing of the Marriage Act 2015 means that registered civil partnerships can no longer be entered into by same-sex couples for constitutional reasons.</p> <p>The Irish Constitution expressly protects "marriage, on which the family is founded" and now that same-sex couples can marry, a competing State-sponsored institution such as registered civil partnership would most likely be unconstitutional, hence the rationale for its abolition. Existing civil partnerships will of course continue to be preserved.</p>		<p>Explanations and nuances: Opposite-sex cohabiting couples were recognized for certain purposes in a piecemeal fashion prior to the 2010 Act (from 1996). In general, the couple had to be living together as husband and wife under certain pieces of legislation and so same-sex cohabiting couples were mostly excluded.</p> <p>However, for some very specific purposes same-sex cohabitants did get some early recognition. See for example question 2.7 ("safety order" possible in case of domestic violence, since 1996) and question 6.4 ("dwelling house" exemption from Capital Acquisitions Tax, since 1999). See also the Powers of Attorney Act 1996.</p>	

Jurisdiction: Ireland

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Section: 1 - Formalisation

Question: 1.02 - Two siblings

Is starting this type of relationship legally possible for two siblings?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 N/A 2015	2016 No 2011	2016 No 2011
	N/A 0000		No 2011	No 0000	No 0000
			N/A 0000		
<p>References to legal sources: Marriage Act 1835, as amended by the Marriage (Prohibited Degrees of Relationship) Act 1907 & 1921.</p> <p>Civil Registration Act 2004, section 2(2)(a).</p> <p>Marriage Act 2015, section 5.</p>		<p>References to legal sources: Marriage Act 2015.</p> <p>Civil Registration Act 2004, section 2(2A), as inserted by section 7 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p>		<p>References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, section 172(1).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Section 5 of the Marriage Act 2015 extends the prohibited degrees of relationship for opposite-sex couples to same-sex couples.</p>		<p>Explanations and nuances: Since 16th November 2015 it is no longer possible for same-sex couples to enter into registered civil partnerships in Ireland.</p> <p>Civil partnership, when it was available, was not available to siblings.</p>		<p>Explanations and nuances: This section defines a cohabitant as one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.</p>	

Jurisdiction: **Ireland**

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Section: **1 - Formalisation**

Question: **1.03 - With resident foreigner**

Is starting this type of relationship legally possible for a national citizen and a foreigner both residing in the country?
(As to the meaning of "residing", see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes, but 1986	N/A 0000		Yes, but 2011	X	X
Yes, but 0000			N/A 0000	X	X
References to legal sources: Irish Nationality and Citizenship Act 1986, section 3. Irish Nationality and Citizenship Act 2001, sections 4 and 5, repealing section 8 of the 1986 Act. Civil Registration (Amendment) Act 2014.		References to legal sources: Civil Law (Miscellaneous Provisions) Act 2011, section 33. Civil Registration (Amendment) Act 2014.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The resident foreigner will not automatically acquire Irish citizenship upon marriage, but may marry an Irish national.</p> <p>Where the resident foreigner is not an EU national, an objection may be lodged and the marriage blocked if it is a 'marriage of convenience', i.e. where the sole purpose of the marriage is to gain an immigration advantage.</p>		<p>Explanations and nuances: No new civil partnerships can be entered into after 16th November 2015 (subject to transitional provisions in the 2015 Act).</p> <p>Prior to 16th November 2015 the resident foreigner could enter into a civil partnership with an Irish national, but s/he would not automatically acquire Irish citizenship upon entering into the civil partnership with the Irish national.</p> <p>Where the resident foreigner was not an EU national, an objection could be lodged and the civil partnership blocked if it was a 'civil partnership of convenience', i.e. where the sole purpose of the civil partnership was to gain an immigration advantage.</p>			

Jurisdiction: **Ireland**

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Section: **1 - Formalisation**

Question: **1.04 - With non-resident foreigner**

Is starting this type of relationship legally possible for a national citizen residing in the country and a foreigner residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes, but 1986	N/A 0000		Yes, but 2011	X	X
Yes, but 0000			N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Civil Registration Act 2004, section 46.</p> <p>Section 8 of the Irish Nationality and Citizenship Act 1956, as inserted by section 3 of the Irish Nationality and Citizenship Act 1986.</p> <p>Irish Nationality and Citizenship Act 2001, sections 4 and 5, repealing section 8 of the 1986 Act.</p> <p>Civil Registration (Delivery of Notification of Intention to Marry) (Prescribed Circumstances) Regulations 2010 SI No. 667 of 2010.</p> <p>Civil Registration (Amendment) Act 2014.</p>		<p>References to legal sources: Marriage Act 2015.</p> <p>Part 7A of the Civil Registration Act 2004, as inserted by section 16 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p> <p>Civil Law (Miscellaneous Provisions) Act 2011, section 33.</p> <p>Civil Registration (Delivery of Notification of Intention to Marry) (Prescribed Circumstances) Regulations 2010 SI No. 667 of 2010.</p> <p>Civil Registration (Amendment) Act 2014.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no residence or nationality requirement per se for marriage in Ireland, though the parties are required to give at least 3 months' notice of their intention to marry and to make a declaration in person at the office of the Registrar at least 5 days before the ceremony to the effect that there is no impediment to the marriage.</p> <p>NB: While the 3 months' notice of marriage must normally be delivered in person by both parties, it is possible to deliver notice by post, fax, or electronic means, with the prior permission of the registrar, if one or both parties reside outside Ireland, or if either or both parties are too ill to attend the Registrar's Office. However in all cases the declaration that there is no legal impediment to marriage must be made in person at the Registrar's Office at least 5 days before the marriage.</p> <p>If the foreign national is not an EU or EEA national, he or she may require a visa to travel to Ireland and will require permission to be in Ireland at the time of the ceremony. When giving notice of marriage, proof of immigration status is required. Marriages of convenience (where the sole purpose was to gain an immigration advantage) can be blocked under the Civil Registration Act 2004 as amended by the Civil Registration (Amendment) Act 2014.</p> <p>The foreigner cannot automatically acquire Irish citizenship upon marrying the national citizen.</p>		<p>Explanations and nuances: There was no residence or nationality requirement per se for civil partnership, though the parties were required to give at least 3 months' notice and to make a declaration in person at the office of the Registrar at least 5 days before the ceremony to the effect that there was no impediment to the union.</p> <p>NB: While the 3 months' notice of intention to enter into civil partnership normally had to be delivered in person by both parties, it was possible to deliver notice by post, fax or electronic means with the prior permission of the Registrar, if one or both parties resided outside Ireland, or if either or both parties was too ill to attend the Registrar's Office. However in all cases the declaration that there was no legal impediment to civil partnership had to be made in person in the office of the Registrar at least 5 days before the civil partnership.</p> <p>If the foreign national was not an EU or EEA national, he or she may have required a visa to travel to Ireland and required permission to be in Ireland at the time of the ceremony.</p> <p>Civil partnerships of convenience (where the sole purpose was to gain an immigration advantage) could be blocked under the Civil Registration Act 2004 as amended by the Civil Registration (Amendment) Act 2014.</p> <p>The foreigner could not automatically acquire Irish citizenship upon entering into the civil partnership with the national citizen.</p>			

Jurisdiction: **Ireland**

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Section: **1 - Formalisation**

Question: **1.05 - Two foreigners**

Is starting this type of relationship legally possible for two foreigners, only one of whom is residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes, but 1986	N/A 0000		Yes, but 2011	X	X
Yes, but 0000			N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Civil Registration Act 2004, section 46.</p> <p>Section 8 of the Irish Nationality and Citizenship Act 1956, as inserted by section 3 of the Irish Nationality and Citizenship Act 1986.</p> <p>Irish Nationality and Citizenship Act 2001, sections 4 and 5, repealing section 8 of the 1986 Act.</p> <p>Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.</p> <p>Civil Registration (Amendment) Act 2014.</p>		<p>References to legal sources: Marriage Act 2015.</p> <p>Part 7A of the Civil Registration Act 2004, as inserted by section 16 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p> <p>Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.</p> <p>Civil Law (Miscellaneous Provisions) Act 2011, section 33.</p> <p>Civil Registration (Amendment) Act 2014.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no residence or nationality requirement per se for marriage in Ireland, though the parties are required to give at least 3 months' notice of their intention to marry and to make a declaration in person at the office of the Registrar at least 5 days before the ceremony to the effect that there is no impediment to the marriage.</p> <p>NB: While the 3 months' notice of marriage must normally be delivered in person by both parties, it is possible to deliver notice by post, fax, or electronic means, with the prior permission of the registrar, if one or both parties reside outside Ireland, or if either or both parties are too ill to attend the Registrar's Office. However in all cases the declaration that there is no legal impediment to marriage must be made in person at the Registrar's Office at least 5 days before the marriage.</p> <p>If the foreign national is not an EU or EEA national, he or she may require a visa to travel to Ireland and will require permission to be in Ireland at the time of the ceremony. When giving notice of marriage, proof of immigration status is required.</p> <p>Marriages of convenience (where the sole purpose was to gain an immigration advantage) can be blocked under the Civil Registration Act 2004 as amended by the Civil Registration (Amendment) Act 2014.</p> <p>The foreigner cannot automatically acquire Irish citizenship upon marrying the national citizen.</p>		<p>Explanations and nuances: There was no residence or nationality requirement per se for civil partnership, though the parties were required to give at least 3 months' notice and to make a declaration in person at the office of the Registrar at least 5 days before the ceremony to the effect that there was no impediment to the union.</p> <p>NB: While the 3 months' notice of intention to enter into civil partnership normally had to be delivered in person by both parties, it was possible to deliver notice by post, fax or electronic means with the prior permission of the Registrar, if one or both parties resided outside Ireland, or if either or both parties was too ill to attend the Registrar's Office. However in all cases the declaration that there was no legal impediment to civil partnership had to be made in person in the office of the Registrar at least 5 days before the civil partnership.</p> <p>If the foreign national was not an EU or EEA national, he or she may have required a visa to travel to Ireland and required permission to be in Ireland at the time of the ceremony.</p> <p>Civil partnerships of convenience (where the sole purpose was to gain an immigration advantage) could be blocked under the Civil Registration Act 2004 as amended by the Civil Registration (Amendment) Act 2014.</p> <p>The foreigner could not automatically acquire Irish citizenship upon entering into the civil partnership with the national citizen.</p>			

Jurisdiction: **Ireland**

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Section: **1 - Formalisation**

Question: **1.06 - Two resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes, but 1986	N/A 0000		Yes, but 2011	X	X
Yes, but 0000			N/A 0000	X	X
References to legal sources: Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.		References to legal sources: Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no nationality requirement for marriage.</p> <p>If both foreigners are EU or EEA nationals, there are no special conditions (though the parties will have to establish their nationality and immigration status on giving notice).</p> <p>If either party is not an EU or EEA national, the marriage may be blocked if it is a marriage of convenience, the sole purpose of which is to gain an immigration advantage. The parties will be required to show proof of immigration status when they give notice to marry.</p>		<p>Explanations and nuances: There was no nationality requirement for civil partnership.</p> <p>If both foreigners were EU or EEA nationals, there were no special conditions (though the parties would have to establish their nationality and immigration status on giving notice).</p> <p>If either party was not an EU or EEA national, the civil partnership may have been blocked if it was a civil partnership of convenience, the sole purpose of which was to gain an immigration advantage. The parties were required to show proof of immigration status when they gave notice to enter into a civil partnership.</p>			

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.07 - Two non-resident foreigners**

Is starting this type of relationship legally possible for two foreigners residing abroad?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes, but 1986	N/A 0000		Yes, but 2011	X	X
Yes, but 0000			N/A 0000	X	X
References to legal sources: Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.		References to legal sources: Civil Registration (Delivery of Notification of Intention to Enter into a Civil Partnership) (Prescribed Circumstances) Regulations 2010 SI No. 666 of 2010.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no nationality or residence requirement for marriage.</p> <p>The parties must give at least three months' notice of their intention to marry. Normally, this must be given in person, but parties living abroad may, with the prior permission of the Registrar, give notice by post, fax or e-mail. In all cases, however, the parties have to make a declaration in person at the office of the Registrar at least 5 days prior to the ceremony that there is no legal impediment to marriage.</p> <p>If both foreigners are EU or EEA nationals, there are no special conditions (though the parties will have to establish their nationality and immigration status on giving notice.)</p> <p>If either party is not an EU or EEA national, the marriage may be blocked if it is a marriage of convenience, the sole purpose of which is to gain an immigration advantage. The parties will be required to show proof of immigration status when they give notice to marry. They may also require a visa to travel to Ireland and permission to be in Ireland at the time of the ceremony.</p>		<p>Explanations and nuances: There was no nationality or residence requirement for civil partnership.</p> <p>The parties had to give at least three months' notice of their intention to enter into a civil partnership. Normally, this had to be given in person, but parties living abroad could, with the prior permission of the Registrar, give notice by post, fax or e-mail. In all cases, however, the parties had to make a declaration in person at the office of the Registrar at least 5 days prior to the ceremony that there was no legal impediment to the civil partnership.</p> <p>If both foreigners were EU or EEA nationals, there were no special conditions (though the parties had to establish their nationality and immigration status on giving notice.)</p> <p>If either party was not an EU or EEA national, the civil partnership could be blocked if it was a civil partnership of convenience, the sole purpose of which is to gain an immigration advantage. The parties were required to show proof of immigration status when they gave notice to enter into a civil partnership. They may also have required a visa to travel to Ireland and permission to be in Ireland at the time of the ceremony.</p>			

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.08 - Start at registry**

Can you legally start this type of relationship at the registry of births, marriages and deaths (État civil, Standesamt)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2007	2016 Yes 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes 1844	N/A 0000		Yes 2011	X	X
			N/A 0000	X	X
<p>References to legal sources: Marriages (Ireland) Act 1844 and Marriage Law (Ireland) Amendment Act 1863.</p> <p>Civil Registration Act 2004, section 46.</p> <p>Marriage Act 2015.</p>		<p>References to legal sources: Marriage Act 2015.</p> <p>Civil Registration Act 2004, Part 7A, as inserted by section 16 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances:		Explanations and nuances: No longer possible to notify an intention to enter into a civil partnership since 16th November 2015.			

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.09 - Start at public authority**

Can you legally start this type of relationship at another public authority (e.g. notary public, local population administration, court)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 N/A 2015	X	X
	N/A 0000		No 2011	X	X
			N/A 0000	X	X
References to legal sources: Civil Registration Act 2004, section 46.		References to legal sources: Civil Registration Act 2004, Part 7A, as inserted by section 16 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Only a registrar of marriages (a specific state employee appointed for this specific purpose) or another registered solemniser appointed by a religious or secular body may solemnise a marriage. Judges, mayors, notaries and other public officials are not permitted to do so.</p> <p>In theory a public building such as a city hall could be approved as a venue for civil marriage, but only a registrar of marriages may officiate.</p>		<p>Explanations and nuances: Only a registrar of civil partnerships (a specific state employee appointed for this specific purpose) could have registered a civil partnership. Judges, mayors, notaries and other public officials are not permitted to do so.</p> <p>In theory a public building such as a city hall could be approved as a venue for civil partnership, but only a registrar of marriages may officiate.</p>			

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.10 - Start at religious building**

Can you legally start this type of relationship at a church, synagogue, mosque or other religious building?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2015	2016 Yes, but 2015	2016 N/A 0000	2016 N/A 2015	X	X
Yes 0000	N/A 0000		No 2011	X	X
			N/A 0000	X	X
References to legal sources: Civil Registration Act 2004, section 46. Marriage act 2015, section 7.		References to legal sources: Civil Registration Act 2004, Part 7A, as inserted by section 16 of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Religious denominations cannot be forced to officiate marriages of couples of the same sex. Section 7 of the Marriage Act 2015 allows religious bodies and religious solemnisers to opt out of celebrating marriages of same-sex couples. In principle, however, there is nothing in law preventing a registered religious solemniser from officiating at the wedding of a same-sex couple if the church or religious body that appointed him or her agrees to do so. Couples of the same sex may be able to marry each other in a church if the minister is a registered solemniser for this purpose and if the church allows the marriage of same-sex couples.</p> <p>Thus, religious marriage (recognised by the state) is in principle open to same-sex couples, though most major churches will probably choose not to marry same-sex couples. The State, however, will recognise marriages by registered religious solemnisers (who are permitted to solemnise the civil aspects of marriage) if their churches allow them to do so.</p>		<p>Explanations and nuances: 'Civil' partnership was just that and could not be started at a religious building.</p>			

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.11 - Contract**

Can the partners make a contract (with or without third-party effect) to organise their relationship, for example with regard to property or personal obligations? (Think of prenuptial contracts and cohabitation contracts.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 No, but 2015	2016 N/A 0000	2016 No, but 2015	2016 Yes, but 2011	2016 Yes, but 2011
	N/A 0000		No, but 2011	Yes, but 0000	Yes, but 0000
			N/A 0000		
References to legal sources: Report of the Study Group on Pre-nuptial Agreements (Dept. of Justice, Equality and Law Reform, 2007). Ross Aylward, Pre-nuptial Agreements (Round Hall 2006).		References to legal sources:		References to legal sources: The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, section 202.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The law leans against private contractual arrangements relating to spouses' marital rights and obligations. Spouses may not contract out of maintenance/financial support obligations.</p> <p>Pre-nuptial agreements historically were not enforceable as they were contrary to public policy. It remains unclear whether they would be enforced by a court today. Some commentators suggest they are now lawful and are no longer necessarily contrary to public policy, but they cannot displace the courts' legal requirement to ensure proper provision is made on divorce. Spouses may sign away their inheritance rights, i.e. their legal right share of the other spouse's estate as provided for under the Succession Act 1965. They may also agree to settle interests in land. It appears, also, that spouses can make agreements relating to property ownership.</p> <p>Separation agreements may be made at the end of a relationship, and these are legally valid. These agreements do not however have the effect of dissolving the marital relationship - only a court can do that.</p>		<p>Explanations and nuances: The law leans against private contractual arrangements relating to civil partners' rights and obligations. Civil partners may not contract out of maintenance/financial support obligations.</p> <p>Pre-nuptial agreements historically were not enforceable as they were contrary to public policy. It remains unclear whether they would be enforced by a court today. Some commentators suggest they are now lawful and are no longer necessarily contrary to public policy, but they cannot displace the courts' legal requirement to ensure proper provision is made on dissolution of civil partners. Civil partners may sign away their inheritance rights, and may agree to settle interests in land. It appears, also, that civil partners can make agreements relating to property ownership.</p> <p>Separation agreements may be made at the end of a relationship, and these are legally valid. These agreements do not however have the effect of dissolving the civil partnership - only a court can do that.</p>		<p>Explanations and nuances: The cohabitants must each have received independent legal advice before entering into the contract, or have received legal advice together and waived in writing the right to independent legal advice. The contract must be in writing and signed by both cohabitants, and the general law of contract must be complied with.</p> <p>The court may vary or set aside a cohabitants' agreement in exceptional circumstances, where its enforceability would cause serious injustice.</p> <p>Prior to the legislation expressly allowing cohabitation agreements (Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) it was possible that such agreements would not be upheld by a court of law: see <i>Ennis v Butterly</i> [1996] 1 IR 426.</p>	

Jurisdiction: **Ireland**

Source: **B. Tobin, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).**

Section: **1 - Formalisation**

Question: **1.12 - Statutory contract**

Are there specific statutory rules regarding such a contract?

(See question 1.11 about the possibility for the partners to make a contract to organise their relationship.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 No 2015	2016 Yes 2011	2016 Yes 2011
	N/A 0000		No 2011	No 0000	No 0000
			N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, section 202.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: See detailed description in question 1.11.	

Jurisdiction: **Ireland**

Source: **B. Tobin**, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: **1 - Formalisation**

Question: **1.13 - Surname**

Can (or must) one partner use or have the surname of the other partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2008	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2015	2016 No, but 0000	2016 No, but 0000
Yes, but 0000	N/A 0000		Yes, but 2011		
			N/A 0000		
References to legal sources: Passports Act 2008, section 10.		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no legal obligation requiring a marital partner to use the surname of the other.</p> <p>As a matter of Irish law, a person may, by common use and repute, change his or her name. For official purposes, a person may change his or her name by deed poll. As a matter of common law, a woman may, on marriage, change her surname to that of her husband but she is not obliged to do so. Under the Passports Act 2008, either spouse may use the surname of the other either instead of or in addition to their own.</p>		<p>Explanations and nuances: Since late 2015, no new civil partnerships can be registered.</p> <p>There has never been a legal obligation requiring a civil partner to use the surname of the other, but they can do so if they wish.</p> <p>Although the Passports Act 2008 has not been amended to address civil partnership, it appears that the Passports Office will in practice allow civil partners to use each other's surnames or a combination of surnames. See www.dfa.ie/passports-citizenship/top-passport-questions/documents-for-passport-in-marriage-name/</p>		<p>Explanations and nuances: There does not appear to be any specific law preventing a cohabitant from using his or her partner's surname.</p>	

Jurisdiction: Ireland

Source: B. Tobin, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).

Section: 1 - Formalisation

Question: 1.14 - Living together

Do partners in this type of relationship have a duty to live together in the same house?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1988	2016 No 2015	2016 N/A 0000	2016 Yes, but 2015	2016 Yes 2011	2016 Yes 2011
Yes 0000	N/A 0000		Yes, but 2011	Yes, but 1996	No 0000
			N/A 0000	No 0000	
References to legal sources: Family Law Act 1988. Family Law Act 1981.		References to legal sources: Civil Registration Act 2004, section 59D, as inserted by section 16 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.		References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, section 172(1).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Arguably, the duty to live together is culturally understood and implicit in the status legally conferred by marriage.</p> <p>Prior to 1988, it was possible to sue for restitution of conjugal rights, effectively requiring a spouse to resume cohabitation. A series of remedies for adultery, enticement and harbouring a spouse were abolished in 1981.</p>		<p>Explanations and nuances: No new civil partnerships can be formed.</p> <p>Section 59D provided that each party to the civil partnership had to make an oral declaration of his or her intention to live with and support the other party.</p> <p>Hence the duty to live with and support the other party will subsist for existing civil partners, though there is no way of enforcing it.</p>		<p>Explanations and nuances: This section defines a cohabitant as one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.</p> <p>1996 - 2011: Opposite-sex cohabitants recognised for very limited purposes (domestic violence, succeeding to a residential tenancy, etc.) and usually had to be living together for at least 6 months. See also question 1.1.</p>	

Jurisdiction: **Ireland**

Source: **B. Tobin, "Formalisation of legal family formats in Ireland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-IE-Section1.pdf](#) (please use this full citation when citing any information from this table).**

Section: **1 - Formalisation**

Question: **1.15 - Sex**

Does the law require relationships of this type to be sexual or intimate?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 No 2015	2016 N/A 0000	2016 No 2015	2016 Yes 2011	2016 Yes 2011
	N/A 0000		No 2011	Yes, but 1996	No 0000
			N/A 0000	No 0000	
References to legal sources:		References to legal sources:		References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, section 172(1).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A marriage can be "avoided" (that is: declared void ab initio) on the basis that the marriage cannot be consummated. Consummation is an act of heterosexual intercourse only. Consummation, however, need only occur once. The right to avoid on this basis can be lost through delay or approbation, and can (it appears) be waived. It is very unlikely this ground will be applied to same-sex married couples, who would arguably be deemed to have waived the right to avoid.</p> <p>A judicial separation may be sought on grounds of adultery by a spouse with a person of the opposite sex only.</p>		<p>Explanations and nuances:</p>		<p>Explanations and nuances: This section provides that a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.</p> <p>s.172(3): ('3) For the avoidance of doubt a relationship does not cease to be an intimate relationship for the purpose of this section merely because it is no longer sexual in nature.'</p> <p>This appears to imply that the relationship must have been sexual at some point, but that an ongoing sexual relationship is not required.</p> <p>See also question 1.1.</p>	