

Death and legal family formats in the UK: Northern Ireland

by Brian Sloan¹

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 6 – Death)

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Disclaimer

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 Northern Ireland

The answers concerning Northern 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 the UK: Northern Ireland
by Brian Sloan (Section 1)

Income, troubles and legal family formats in the UK: Northern Ireland
by Brian Sloan (Section 2)

Parenting and legal family formats in the UK: Northern Ireland
by Brian Sloan (Section 3)

Migration and legal family formats in the UK: Northern Ireland
by Brian Sloan (Section 4)

Splitting up and legal family formats in the UK: Northern Ireland
by Brian Sloan (Section 5)

Death and legal family formats in the UK: Northern Ireland
by Brian Sloan (Section 6)

So this paper is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 6.1 Tenancy continuation
- 6.2 Property at death
- 6.3 Inheritance
- 6.4 Inheritance tax
- 6.5 Survivor's pension
- 6.6 Wrongful death
- 6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

6.07 - General background regarding death (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, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

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Jurisdiction: UK: Northern Ireland

Source: B. Sloan, "Death and legal family formats in UK: Northern 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-UK_NI-Section6.pdf](http://www.LawsAndFamilies.eu/LawsAndFamilies-UK_NI-Section6.pdf) (please use this full citation when citing any information from this table).

Section: 6 - Death

Question: 6.01 - Tenancy continuation

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2003	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2003	2016 Yes, but 2003
? 0000			N/A 0000	? 0000	? 0000
References to legal sources: Rent (Northern Ireland) Order 1978, especially schedule 1. Housing (Northern Ireland) Order 2003, especially art. 13.		References to legal sources: Rent (Northern Ireland) Order 1978, especially schedule 1. Housing (Northern Ireland) Order 2003, especially art. 13.		References to legal sources: Rent (Northern Ireland) Order 1978, especially schedule 1. Housing (Northern Ireland) Order 2003, especially art. 13.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances: The law in this area is very complex, and much depends on the particular type of tenancy held. As summarised by the charity Housing Rights: "[i]f the main tenant of a protected tenancy dies, a close family member who lived in the property with the tenant may be able to inherit the property. This is known as succession and can only happen once for each property. If there has already been a succession since April 2007, the tenancy is a statutory tenancy, rather than a protected tenancy and it cannot be passed on again. The statutory tenancy comes to an end and the landlord is entitled to regain possession of the property without having to provide reasons" (www.housingadviceni.org/advice-private-tenants/being-evicted-protected-tenancy). A "protected" tenancy is a particular type of private tenancy, and "[m]ost private tenants will only be able to pass their tenancy on to someone else if the landlord agrees to this" (www.housingadviceni.org/advice-housing-association-tenants/passing-your-tenancy).		Explanations and nuances: See under Marriage.		Explanations and nuances: See under Marriage.	
In the public sector, it may be possible to succeed a tenancy if it was to a Housing Executive or Housing Association tenancy and the proposed successor is "the spouse or civil partner of the tenant and lived with him or her at the time of death", is "the parent, grandparent, uncle, aunt, nephew, niece, child, grandchild, stepchild or partner of the tenant and lived with him or her for at least 12 months up to the date of death", or has "taken over the care of the deceased's dependent children, or...gave up [a] home or tenancy to move in with and care for the deceased" (www.housingadviceni.org/advice-housing-association-tenants/passing-your-tenancy).					

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Section: 6 - Death

Question: 6.02 - Property at death

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship?
(In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 N/A 0000	2016 N/A 0000	2016 No, but 2005	2016 No, but 1979	2016 No, but 1979
			N/A 0000	No 0000	No 0000
References to legal sources: Administration of Estates Act (Northern Ireland) 1955, Part II. Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.		References to legal sources: Administration of Estates Act (Northern Ireland) 1955, Part II. Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.		References to legal sources: Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances: There is a system of separation of property in Northern Ireland. That said, a surviving spouse may receive some or all of the estate under the statutory intestacy rules or the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.		Explanations and nuances: There is a system of separation of property in Northern Ireland. That said, a surviving civil partner may receive some or all of the estate under the statutory intestacy rules or the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.		Explanations and nuances: A surviving cohabitant is not recognised in the intestacy rules, but may receive some of the estate under the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.	

Jurisdiction: UK: Northern Ireland

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Section: 6 - Death

Question: 6.03 - Inheritance

When one partner dies without testament, is the other partner then an inheritor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 N/A 0000	2016 N/A 0000	2016 Yes 2005	2016 No, but 1979	2016 No, but 1979
			N/A 0000	No 0000	No 0000
References to legal sources: Administration of Estates Act (Northern Ireland) 1955, section 7.		References to legal sources: Administration of Estates Act (Northern Ireland) 1955, section 7.		References to legal sources: Administration of Estates Act (Northern Ireland) 1955, section 7. Inheritance (Provision for Family and Dependants) Order 1979.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Under the intestacy rules, spouses are entitled to all of their spouse's personal chattels. If the deceased partner leaves issue as well as a surviving spouse, the survivor is entitled to a statutory legacy of £250,000 and half of the balance of the estate if there is one surviving child (or the issue of one) and one third if there is more than one (or the issue of more than one). If there are no issue, the survivor receives £450,000 and half of the balance if the deceased has surviving parents or siblings (or the issue of deceased siblings), or the whole of the estate otherwise.</p>		<p>Explanations and nuances: The law is the same for surviving civil partners as for surviving spouses.</p>		<p>Explanations and nuances: Cohabitants are not included in the intestacy rules, but may bring a claim for discretionary provision out of the estate under the Inheritance (Provision for Family and Dependents) Order 1979.</p>	

Jurisdiction: UK: Northern Ireland

Source: B. Sloan, "Death and legal family formats in UK: Northern 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-UK_NI-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: 6 - Death

Question: 6.04 - Inheritance tax

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1975	2016 N/A 0000	2016 N/A 0000	2016 Yes 2005	2016 No 0000	2016 No 0000
No 0000			N/A 0000		
References to legal sources: Finance Act 1975. Inheritance Tax Act 1984, ss. 18, 8A.		References to legal sources: Inheritance Tax Act 1984, ss. 18, 8A.		References to legal sources: Inheritance Tax Act 1984, ss. 18, 8A.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances: Transfers between spouses on death are exempt from inheritance tax under the Inheritance Tax Act 1984. In addition, the remainder of the "nil rate band" (i.e. the amount below the threshold at which inheritance tax begins to be charged) of the first spouse can be applied to the estate of the second to die.		Explanations and nuances: The law is the same for civil partners as for spouses.		Explanations and nuances: Inheritance tax advantages are not extended to informal cohabitants.	

Jurisdiction: UK: Northern Ireland

Source: B. Sloan, "Death and legal family formats in UK: Northern 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-UK_NI-Section6.pdf](http://www.LawsAndFamilies.eu/LawsAndFamilies-UK_NI-Section6.pdf) (please use this full citation when citing any information from this table).

Section: 6 - Death

Question: 6.05 - Survivor's pension

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?
(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1993	2016 N/A 0000	2016 N/A 0000	2016 Yes, but 2005	2016 No, but 1993	2016 No, but 1993
? 0000			N/A 0000	? 0000	? 0000
References to legal sources: Pensions Act (Northern Ireland) 2015. Pensions Act (Northern Ireland) 2008. Pension Schemes (Northern Ireland) Act 1993.		References to legal sources: Pensions Act (Northern Ireland) 2015. Pensions Act (Northern Ireland) 2008. Civil Partnership Act 2004. Pension Schemes (Northern Ireland) Act 1993. Walker v Innospec [2015] EWCA Civ 1000.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The position in England and Wales (essentially the same as in Northern Ireland with the exception of the availability of same-sex marriage in England and Wales) is summarised in HM Government. (2014). "Review of Survivor Benefits in Occupational Pension Schemes".</p> <p>Dependants to whom survivor benefits are paid "can include...spouses, and surviving civil partners", and "[m]any occupational schemes also include options for scheme members who are co-habiting to nominate their partner to receive survivor benefits in the event the scheme member dies before their partner". It is noteworthy, however that "[t]he detailed arrangements for these pensions vary considerably between schemes and between categories of survivor" ([2.10]).</p> <p>The legal position depends upon whether the scheme has "contracted out" of the additional state pension, which means that "its members and the employer of those members pay reduced National Insurance Contributions and receive benefits from that scheme which are specified in legislation, which broadly replace those that would have been provided by the additional state pension system" ([2.6]), although "contracting out" is set to be abolished for the future.</p> <p>While "[p]rivate sector schemes that are not contracted out are not obliged to pay survivor benefits at all", "those that do provide survivor benefits to surviving...spouses have been required to provide them to surviving civil partners". They "are permitted to provide survivor benefits to surviving civil partners taking into account only service since 5 December 2005" ([2.18]). Contracted-out schemes are required to pay a guaranteed minimum pension to widowers and civil partners of either gender based on service from 6 April 1988, while the equivalent date for widows is 6 April 1978.</p>		<p>Explanations and nuances: See under Marriage. The taking into account of service only since 5 December 2005 was upheld in Walker v Innospec [2015] EWCA Civ 1000.</p>		<p>Explanations and nuances: See under Marriage.</p>	

Jurisdiction: UK: Northern Ireland

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Section: 6 - Death

Question: 6.06 - Wrongful death

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1977	2016 N/A 0000	2016 N/A 0000	2016 Yes 2005	2016 Yes, but 1983	2016 Yes, but 2005
? 0000			N/A 0000	No 0000	No 0000
References to legal sources: Fatal Accidents (Northern Ireland) Order 1977.		References to legal sources: Fatal Accidents (Northern Ireland) Order 1977.		References to legal sources: Fatal Accidents (Northern Ireland) Order 1977, as amended by the Administration of Justice Act 1982, section 68 (in force since 1983), and by the Civil Partnership Act 2004, section 207 (in force since 2005).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
Explanations and nuances: A "defendant" who is entitled to benefit from an action under the Fatal Accidents (Northern Ireland) Order 1977 is defined as including the spouse or civil partner of the deceased (art. 2(2)(a)-(aa), as well as any person who for the whole of the period of two years immediately preceding the death was living in the same household as the deceased (Art 2(2)(b) as the deceased's spouse or civil partner.		Explanations and nuances: See under Marriage.		Explanations and nuances: See under Marriage. Cohabitants are excluded from the specific damages available for bereavement under art. 3A.	