

Income, troubles and legal family formats in Ireland

by Fergus Ryan ¹

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

Edited by Kees Waaldijk,² Marie Digoix,³ Natalie Nikolina,² Giuseppe Zago,² Daniel Damonzé,² Arianna Caporali,³ Kamel Nait Abdellah ³

Published by INED, Paris, 2017, www.LawsAndFamilies.eu

Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 2 – Income and troubles)

© 2017 Fergus Ryan

¹ Dr Fergus Ryan (Senior Lecturer in Law, Department of Law, Maynooth University, www.maynoothuniversity.ie/law) is grateful for the useful comments that Dr Brian Tobin (Lecturer in Law, NUI Galway) made on an earlier version of the answers in this section of the database.

² [Grotius Centre for International Legal Studies](#), Leiden University, Netherlands, www.leiden.edu.



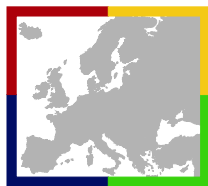
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



Recommended citation:
F. Ryan, 'Income, troubles and 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 (question 2.x).

Acknowledgment

The research leading to these results has received funding from the European Union's Seventh Framework Programme (FP7/2007-2013) under grant agreement no. 320116 for the research project FamiliesAndSocieties, www.familiesandsocieties.eu.



FamiliesAndSocieties

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 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 2 (Income and troubles)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

2.1 Lower income tax

2.2 Social benefits

2.3 Health insurance

2.4 Care between partners

2.5 Care for a parent

2.6 Next of kin

2.7 Domestic violence

2.8 Criminal procedure

2.9 General background regarding income and troubles

In the following pages of this paper, first the answer to question 2.9 is presented, followed by the answers to questions 2.1 to 2.8.

**2.09 - General background regarding income and troubles
(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, family support, etc.) that may be relevant for the understanding of your answers above regarding income and troubles, then please do so here.

The Constitution of Ireland 1937 offers strong protection to the family. The relevant constitutional measures, however, are confined to the family based on marriage. Outside the framework of marriage, prior to 2011, cohabitation was rarely recognised in law. Prior to 2011, cohabitants had few rights and obligations in respect of their relationship.

In more recent years, however, Irish law has moved to recognise greater family diversity. In 2011, civil partnership was introduced for same-sex couples (where they were not closely related). This extended rights and obligations, and legal recognition, to registered civil partners. The rights and obligations of civil partners are largely equivalent (though not identical) to those available to married couples. At the same time, limited protections were introduced for same-sex and opposite-sex cohabitants, particularly those in long term cohabitation arrangements.

For the purposes of social welfare, spouses, civil partners and cohabitants are largely treated the same (though there are some differences in relation to benefits on death). Domestic Violence legislation also recognizes and protects cohabitants, though subject to different conditions than apply to spouses and civil partners.

On the other hand, taxation laws generally recognise only spouses and civil partners to the exclusion of cohabitants.

Where a couple splits up, various reliefs are available. Separating and divorcing spouses may seek a variety of court-ordered remedies in respect of maintenance, property, the family home, pensions, and other financial matters. Similar measures are available to civil partners who dissolve their civil partnership. Civil partners and spouses may also seek maintenance from their spouse/civil partner during the relationship.

Much more limited reliefs are available to long-term or 'qualified' cohabitants on the end of their relationship, though these reliefs are limited and contingent on demonstrating financial

dependence.

Marriage equality was introduced for same-sex couples in 2015, by means of a constitutional amendment (the 34th Amendment). While the amendment is technically self-executing, the Marriage Act 2015 (brought into force on November 16, 2015) has cleared the way for same-sex couples to marry and, in particular, allows civil partners to marry each other. The first marriages took place on November 17, 2015. Spouses whether of the same-sex or of the opposite-sex are required to be treated equally in law.

For this purpose of this part, cohabitant means one of two adults, not closely related, who are in an intimate and committed relationship.

Jurisdiction: Ireland

Source: F. Ryan, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: 2 - Income and Troubles

Question: 2.01 - Lower income tax

Can a relationship of this type result in lower income tax than for two individuals without a partner?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1980	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 No 0000	2016 No 0000
Yes, but 1967	N/A 0000		N/A 0000		
? 0000					
References to legal sources: Taxes Consolidation Act 1997 as amended. Taxation of Married Couples and Civil Partners (Revenue Commissioners 2015) www.revenue.ie/en/tax/it/credits/married-persons-taxation.html . Income Tax Act 1967 (now repealed).		References to legal sources: Taxes Consolidation Act 1997 as amended by the Finance Act (No. 3) 2011. F. Ryan, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Annotation (Round Hall 2011), 18-19.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: In Ireland, taxpayers who are married or in a civil partnership may effectively opt to lower their combined/shared income tax liability. The relevant measures are of most benefit where there is a significant disparity in income between spouses/civil partners, where one spouse or civil partner earns considerably more than the other. The spouses or civil partners may lower their combined tax liability effectively by sharing each other's unused tax credits. Thus, if a spouse or civil partner has not used all their tax credits, the other spouse or civil partner may avail of additional credits/relief (subject to certain restrictions and conditions).</p> <p>For income tax, there is a 'standard rate band', a threshold below which income tax is paid at 20% and above which income tax is paid at 40%. (The 40% rate only applies to that portion of income above the threshold). If one spouse or civil partner earns less than the threshold amount at which the higher rate of income tax becomes payable, the unused portion of that person's 'standard rate band' may be transferred to the other spouse or civil partner, subject to some restrictions and upper limits. The net effect is that a spouse or civil partner may lower the amount of his or her income that would otherwise be subject to the higher rate of income tax.</p> <p>Since 2001, when tax individualisation was introduced, the income tax benefits of marriage are not as generous as they previously were, particularly where only one spouse works. Nonetheless, a married couple will still often benefit from being married, particularly if one spouse earns a lot less than the other spouse or if only one spouse is earning.</p> <p>The position prior to 1980 is complex. Where only one of a married couple was earning an income, the couple potentially could end up paying less tax than two single people living together. However, a double income married couple in many cases was potentially liable to pay more in tax than their unmarried counterparts. In <i>Murphy v Attorney General</i> [1982] Irish Reports 241 (decided in 1980), this outcome was found to be in breach of the constitutional protections for marriage and the family in art.41 of the Constitution of Ireland 1937 (as it penalised married couples for being married). The law was subsequently amended such that, since 1980, a married couple will not pay more in income tax than a similarly positioned cohabiting couple, and indeed in some cases (described above) will pay less in tax.</p>		<p>Explanations and nuances: For the purposes of tax law, civil partners are treated the same as spouses. Spouses and civil partners enjoy relatively generous tax exemptions and tax treatment, particularly in the context of income tax law, capital acquisition, capital gains and stamp duty.</p>		<p>Explanations and nuances: Two cohabitants are treated for income tax purposes (and most other tax purposes) as individuals. Therefore there is no income taxation benefit in cohabiting outside of marriage and civil partnership when compared with two individuals who are not partners.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: 2 - Income and Troubles

Question: 2.02 - Social benefits

When one partner (long-term unemployed or even never having been employed at all) would be entitled to a basic social benefit, will the income of the other partner then be taken into consideration and will it possibly result in loss or reduction of this entitlement?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1985	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes 1989	2016 Yes 2011
? 0000	N/A 0000		N/A 0000	No, but 1973	No, but 1989
				No 0000	No 0000
<p>References to legal sources: Social Welfare Consolidation Act 2005.</p> <p>Social Welfare (No. 2) Act 1985 (since repealed).</p> <p>With thanks to Treoir (www.treoir.ie), the national organisation for unmarried parents.</p>		<p>References to legal sources: Social Welfare and Pensions Act 2010.</p> <p>F. Ryan, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Annotation (Round Hall 2011), 19-21.</p>		<p>References to legal sources: Social Welfare Consolidation Act 2005 as amended by the Social Welfare and Pensions Act 2010.</p> <p>Social Welfare (No. 2) Act 1989 (since repealed).</p> <p>Social Welfare Act 1973 and Social Welfare (Single Woman's Allowance) Regulations, 1974 (Statutory Instrument No. 209/1974)(since repealed).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Many (though not all) social welfare/social insurance payments are conditional on satisfying a means test. In means testing a person for certain social welfare payments, the income and property of a spouse, civil partner or cohabitant is usually taken into account. For this purpose, spouses, civil partners and cohabitants are now treated the same.</p> <p>While a social welfare recipient is entitled to an additional benefit in some cases for a spouse, civil partner or cohabitant as a 'qualified adult' dependent, where two spouses, civil partners or cohabitants are both in receipt of some social welfare payments, the total amount to which they are entitled is in many cases capped at a level below what would be available in aggregate to two individuals not living together. (This has been the case for married couples since 1985. See the Social Welfare (No. 2) Act 1985, arts. 12 and 13). (The legislation prior to 1985 is vague on this point).</p> <p>In other words, there is a social welfare penalty in some cases for couples who live together when compared with two separate individuals who are not cohabiting with each other. The difference can amount to as much as €132 per month.</p>		<p>Explanations and nuances: Many (though not all) social welfare/social insurance payments are conditional on satisfying a means test. In means testing a person for certain social welfare payments, the income and property of a spouse, civil partner or cohabitant is usually taken into account. For this purpose, spouses, civil partners and cohabitants are treated the same.</p> <p>While a social welfare recipient is entitled to an additional benefit in some cases for a spouse, civil partner or cohabitant as a 'qualified adult' dependent, where two spouses, civil partners or cohabitants are both in receipt of some social welfare payments, the total amount to which they are entitled is in many cases capped at a level below what would be available in aggregate to two individuals not living together.</p> <p>In other words, there is a social welfare penalty in some cases for couples who live together when compared with two separate individuals who are not cohabiting with each other. The difference can amount to as much as €132 per month.</p>		<p>Explanations and nuances: Many (though not all) social welfare/social insurance payments are conditional on satisfying a means test. In means testing a person for certain social welfare payments, the income and property of a spouse, civil partner or cohabitant is usually taken into account. For this purpose, spouses, civil partners and cohabitants are treated the same.</p> <p>While a social welfare recipient is entitled to an additional benefit in some cases for a spouse, civil partner or cohabitant as a 'qualified adult' dependent, where two spouses, civil partners or cohabitants are both in receipt of some social welfare payments, the total amount to which they are entitled is in many cases capped at a level below what would be available in aggregate to two individuals not living together. This has been the case since 1989 (see the Social Welfare (No.2) Act 1989) following the decision in Hyland v Minister for Social Welfare [1989] 1 Irish Reports 624). In that case, the Supreme Court found that measures that capped the social welfare entitlements of a married couple at a rate lower than the entitlements of a similarly placed cohabiting unmarried couple were unconstitutional (as they penalised married couples for being married). Since 1989, therefore, cohabiting couples of the opposite sex have been treated the same as spouses in this context, and cohabiting couples of the same sex have been so treated since 2011.</p> <p>In other words, there is a social welfare penalty in some cases for couples who live together when compared with two separate individuals who are not cohabiting with each other. The difference can amount to as much as €132 per month.</p> <p>Prior to 2011, same-sex partners were not officially recognised as cohabiting. Social welfare legislation expressly recognised only spouses and opposite-sex cohabitants, specifically "a man and woman who are not married to each other but are cohabiting as husband and wife". In practice, however, it is my understanding that some social protection officials did recognise same-sex couples as cohabiting in some cases. Nonetheless, in law, prior to 2011, a cohabiting couple of the same sex were not treated as cohabiting for the purpose of social welfare law.</p> <p>The One Parent Family Payment (OPFP) is not available where a recipient is living with a spouse, civil partner or cohabitant of either sex. Prior to 2011, the OPFP was technically available to a person living with a partner of the same sex, but this anomaly has since been removed. Since 1973, what is now the one parent family payment has only been available to persons who are not cohabiting with a person of the opposite sex. Since 2011, this exclusion also applies where the applicant lives with a person of the same sex.</p>	

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.03 - Health insurance**

Is the amount of money that the two partners in this type of relationship would have to pay for (public or private) health insurance, normally smaller than what two individuals without a partner would have to pay?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 1994	2016 No 2015	2016 N/A 0000	2016 No 2011	2016 No 0000	2016 No 0000
? 0000	N/A 0000		N/A 0000		
References to legal sources: Health Insurance Act 1994 as amended.		References to legal sources: Health Insurance Act 1994 as amended.		References to legal sources: Health Insurance Act 1994 as amended.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Ireland has community rating for health insurance. All adults pay the same amount for a particular plan, regardless of actuarial risk or civil status. (Nonetheless, different plans are priced differently depending on the level of coverage provided.) I am not aware of any legislative provision allowing discounts for couples. My understanding is that such discounts are not permitted. Discounts are available, however, for children.</p> <p>Notably, the Equal Status Act 2000 prohibits discrimination on the basis of civil status (including being married, being a civil partner, or single) though there are some exceptions in the Act.</p> <p>I am not certain in relation to the position before 1994, but I am not aware of any legal provisions that permitted or required discounts for married people before that date.</p>		<p>Explanations and nuances: In the provision of health insurance, the Health Insurance Act 1994 bans discrimination on the basis of age, sex and sexual orientation.</p> <p>Ireland has community rating for health insurance. All adults pay the same amount for a particular plan, regardless of actuarial risk or civil status. (Nonetheless, different plans are priced differently depending on the level of coverage provided.) I am not aware of any legislative provision allowing discounts for couples. My understanding is that such discounts are not permitted. Discounts are available, however, for children.</p>		<p>Explanations and nuances: Ireland has community rating for health insurance. All adults pay the same amount for a particular plan, regardless of actuarial risk or civil status. (Nonetheless, different plans are priced differently depending on the level of coverage provided.) I am not aware of any legislative provision allowing discounts for couples. My understanding is that such discounts are not permitted. Discounts are available, however, for children.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: 2 - Income and Troubles

Question: 2.04 - Care between partners

In case one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2001	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes 2001	2016 Yes 2001
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p>References to legal sources: Carer's Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p> <p>Department of Jobs, Enterprise and Innovation, Carer's Leave Act 2001; Explanatory Booklet for Employers and Employees (2011).</p>		<p>References to legal sources: Carer's Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p>		<p>References to legal sources: Carer's Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee provided the employee is taking leave to provide full-time care to the person. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p> <p>To the best of my knowledge, there was no statutory right to carer's leave prior to 2001.</p>		<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee provided the employee is taking leave to provide full-time care to the person. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p>		<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee provided the employee is taking leave to provide full-time care to the person. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p> <p>To the best of my knowledge, there was no statutory right to carer's leave prior to 2001.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: 2 - Income and Troubles

Question: 2.05 - Care for a parent

In case the parent of one partner is in need of care, does the other partner then have a statutory right to paid or unpaid leave to give that care?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2001	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes 2001	2016 Yes 2001
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p>References to legal sources: Carer's Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p> <p>Department of Jobs, Enterprise and Innovation, Carer's Leave Act 2001; Explanatory Booklet for Employers and Employees (2011).</p>		<p>References to legal sources: Carers' Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p>		<p>References to legal sources: Carers' Leave Act 2001.</p> <p>www.welfare.ie (Department of Social Protection).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee. Thus, the person could feasibly be a parent of the employee's partner. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, Social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p> <p>To the best of my knowledge, there was no statutory right to carer's leave prior to 2001.</p>		<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee. Thus, the person could feasibly be a parent of the employee's partner. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, Social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p>		<p>Explanations and nuances: An employee has a statutory right to take carer's leave of up to 104 weeks to look after any person who requires full-time care (constant supervision or assistance) because of a physical or mental disability or condition. The person in respect of whom the employee takes leave need not necessarily be a family member or relative of the employee. Thus, the person could feasibly be a parent of the employee's partner. An employee may take leave to care for any person provided the latter has a condition that requires full time care.</p> <p>Carers on leave are not statutorily entitled to pay from their employers. Nonetheless, Social welfare payments (carer's allowance and carer's benefit) are available to carers, subject to certain conditions.</p> <p>To the best of my knowledge, there was no statutory right to carer's leave prior to 2001.</p>	

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.06 - Next of kin**

In case of accident or illness of one partner, is the other partner considered as next of kin for medical purposes (even without power of attorney)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2015	2016 N/A 0000	2016 Doubt 2011	2016 Doubt 2011	2016 Doubt 2011
	N/A 0000		N/A 0000	No, but 0000	No, but 0000
References to legal sources: Common law.		References to legal sources: F. Ryan, Civil Partnership v Marriage? Some examples of remaining differences (April 2015) http://fergryan.blogspot.ie/2015/04/civil-partnership-v-marriage-some.html		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A spouse of an injured or ill person is treated as the next of kin of that person. This does not in itself entitle the spouse to make medical and other decisions on behalf of the ill person, though it is common for doctors to consult with family members and next of kin where the patient is unable to make decisions for himself. Next of kin would also typically have preferential visiting rights.</p>		<p>Explanations and nuances: In practice, it appears the answer is yes, but there is some doubt as a matter of law.</p> <p>The position of civil partners is not clear though it is more likely than not that civil partners would in practice be treated as next of kin. The question of who is next of kin is determined by rather vague common law principles.</p> <p>Traditionally, a non-marital partner was not treated as next of kin. It is likely, however, that the traditional approach to next of kin has changed. Although legislation does not address whether civil partners can be next of kin for these purposes, it appears in practice that civil partners are generally treated as next of kin.</p> <p>Notably, the Equal Status Act 2000 requires that in relation to the provision of goods and services, civil partners must be treated the same as spouses. Discrimination on the basis of civil status is banned. It should follow that in a hospital setting, civil partners should be treated the same as spouses and should, therefore, be entitled to be treated as next of kin in cases of illness and accident. Legislation on mental health and powers of attorney treats civil partners largely the same as spouses; this would appear to indicate that civil partners should be treated the same as spouses in the context of next of kin as well. Succession legislation also generally treats civil partners the same as spouses, all of which suggests a court would be likely to say that civil partners are each other's next of kin.</p> <p>Nonetheless, the absence of a clear legal designation of civil partners as next of kin for these purposes creates some uncertainty and can, in isolated cases, place civil partners in a somewhat doubtful position when it comes to visitation rights and being consulted on medical matters. I am aware of one situation where a civil partner experienced difficulty convincing a hospital that he was his civil partner's next of kin (though the difficulty was ultimately resolved).</p>		<p>Explanations and nuances: In practice, it appears the answer is yes, but there is some doubt as a matter of law.</p> <p>In 2011, cohabitants were given an official legal status by Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. The Act did not address the matter of next-of-kin. Nonetheless, it would appear that, in practice, most hospitals tend to treat cohabitants favourably.</p> <p>The position of cohabitants is not clear though it is more likely than not that cohabitants in practice would be treated as next of kin in a medical context. The question of who is next of kin is determined by rather vague common law principles.</p> <p>Traditionally, a non-marital partner was not treated as next of kin. It is likely, however, that the traditional approach to next of kin has changed. Although legislation does not address whether cohabitants can be next of kin for these purposes, it appears in practice that cohabitants are generally treated as next of kin in medical practice.</p> <p>Nonetheless, the absence of a clear legal designation of cohabitants as next of kin for these purposes creates some uncertainty and can, in isolated cases, place cohabitants in a somewhat doubtful position when it comes to visitation rights and being consulted on medical matters.</p>	

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: **2 - Income and Troubles**

Question: **2.07 - Domestic violence**

When one partner uses violence against the other partner, does specific statutory protection apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1996	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes, but 1996	2016 Yes, but 2011
Yes 1981	N/A 0000		N/A 0000	No 0000	Yes, but 1996
Yes 1976					No 0000
No 0000					

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Domestic Violence Act 1996, arts. 2 and 3.</p> <p>Prior to 1996, legislation specifically protected spouses but not cohabiting partners. See the Family Law (Protection of Spouses and Children) Act 1981, and the Family Law (Maintenance of Spouses and Children) Act 1976, art.22.</p>		<p>References to legal sources: Domestic Violence Act 1996, arts. 2 and 3 as amended by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, arts. 91, 92, 93.</p> <p>F. Ryan, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Annotation (Round Hall 2011), 152-157.</p>		<p>References to legal sources: Domestic Violence Act 1996, arts. 2 and 3 as amended by the Civil Law (Miscellaneous Provisions) Act 2011, art. 60.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Both barring orders and safety orders are available to spouses in respect of inter-spousal violence. A barring order excludes the respondent from the couple's home. A safety order requires the respondent to desist from violence or threatening behaviour directed towards the applicant or a dependent child. These are civil remedies, though breach of an order may result in criminal sanctions.</p>		<p>Explanations and nuances: Civil partners are treated the same as spouses for the purpose of domestic violence legislation.</p>		<p>Explanations and nuances: Same-sex and opposite-sex cohabitants may apply for a safety order (requiring that the respondent not molest or threaten the applicant or a dependent child) on the same terms and without any minimum cohabitation requirement.</p> <p>A barring order excluding the respondent from the home is available to (amongst others) an applicant who is not closely related to the respondent and who has cohabited with the respondent in an intimate and committed relationship for 6 of the 9 months prior to an application being made. Barring orders, however, are not available to cohabitants where the person against whom the order is sought has a greater legal or equitable interest in the property from which he or she is being excluded than the applicant.</p> <p>Prior to 2011, there was some doubt as to whether same-sex cohabitants were entitled to a barring order. The language used in the relevant provision of the 1996 Act dealing with cohabiting couples was gendered, and appeared to exclude same-sex relationships (though this was an arguable point). Same-sex partners were, however, entitled to seek a safety order if they had been living together in a relationship the basis of which was not primarily contractual.</p> <p>Since 2011, however, same-sex and opposite-sex cohabitants are treated equally in the context of domestic violence legislation. The term cohabitant in this context excludes persons related to each other within the prohibited degrees of relationship.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Income, troubles and 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-Section2.pdf](#) (please use this full citation when citing any information from this table).

Section: 2 - Income and Troubles

Question: 2.08 - Criminal procedure

In case of a criminal prosecution against one partner, can the other partner then refuse to testify against the partner who is being prosecuted?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1992	2016 Yes, but 2015	2016 N/A 0000	2016 No 2011	2016 No 0000	2016 No 0000
Yes 1924	N/A 0000		N/A 0000		
Yes 0000					
<p>References to legal sources: Section 1(d) of the Criminal Justice (Evidence) Act 1924 abolished and replaced by the Criminal Evidence Act 1992, art. 22.</p> <p>C. Fennell, <i>The Law of Evidence in Ireland</i>, (3rd ed., Bloomsbury 2009).</p>		<p>References to legal sources: F. Ryan, <i>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i>, Annotation (Round Hall 2011), 31.</p> <p>F. Ryan, <i>Civil Partnership v Marriage? Some examples of remaining differences</i> (April 2015) http://fergryan.blogspot.ie/2015/04/civil-partnership-v-marriage-some.html</p>		<p>References to legal sources:</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Under the Criminal Evidence Act 1992, a person generally cannot be forced or compelled to give evidence for the prosecution against his or her spouse, though there are significant exceptions laid down in that Act. A spouse of the accused may be compelled to give evidence against the accused where the accused is alleged to have committed an offence involving violence or a threat of violence directed towards the accused's spouse, a child of the accused or of the spouse, or towards any child under the age of 18. Likewise, the accused's spouse is compellable where the accused is charged with a sexual offence where the alleged victim is a child of the accused or of the accused spouse, or is a child under the age of 18.</p> <p>The exemptions from compellability are much more limited where the spouses are separated or divorced.</p> <p>A spouse is, however, competent in all cases to give evidence against another spouse.</p>		<p>Explanations and nuances: The marital privilege afforded by the Criminal Evidence Act 1992 (which exempts spouses from being compelled to testify against each other except in certain cases) has never been extended to civil partners. In the absence of legislation, it is not applicable to civil partners, though the legal point has never been tested. This means that civil partners can be compelled to give evidence against each other even in cases to which the Criminal Evidence Act 1992 does not apply.</p>		<p>Explanations and nuances: The marital privilege does not apply to cohabitants.</p>	