

Migration 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 4 – Migration)

© 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.



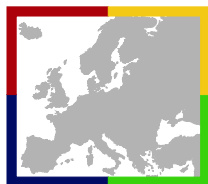
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



Recommended citation:
F. Ryan, 'Migration 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 4.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 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

4.1 Partner of national citizen

4.2 Partner of national citizen (foreign status)

4.3 Partner of (non-EU) foreigner

4.4 Partner of EU citizen (foreign status)

4.5 Foreign status as impediment to marry

4.6 Foreign status and inheritance

4.7 Citizenship

4.8 Recognition of joint adoption

4.9 Recognition of second-parent adoption

4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

4.10 - General background regarding migration (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 migration, then please do so here.

Immigration law in Ireland tends to leave considerable discretion to the Department of Justice and Equality in determining the immigration status of non-EU individuals and in granting permission to enter and reside in the State. As such, the family members of Irish nationals and residents rarely enjoy firm legal entitlements to reside in Ireland.

There are two exceptions:

- (a) Under art.18 of the Refugee Act 1996, and art. 57 of the International Protection Act 2015, a person who has been declared a refugee in Ireland has a legal entitlement to be joined in Ireland by their spouse or civil partner (amongst others);**
- (b) EU law confers rights of residence on the spouses, civil partners and de facto partners of EU nationals exercising their rights of free movement by coming to live and work in Ireland.**

Outside of these categories, there is no definitive legal right (even for Irish nationals resident in Ireland) to be joined in Ireland by a non-EEA spouse, civil partner or cohabitant. It is, however, possible for the spouse, civil partner or cohabitant to apply for entry to and residence in Ireland. In general, it is common for the right of residence to be granted, though it may also be refused. Whether a right of residence is granted will depend, for instance, on the resources of the parties. Different rules apply to non-EEA nationals resident in Ireland, depending on their particular status, such that it can take longer for certain types of sponsor (depending on their particular legal status) to get permission to be joined in Ireland by family members.

As a matter of immigration policy, spouses and civil partners are treated the same in practice. Same-sex and opposite-sex couples outside of marriage are also treated the same as each other, but usually face a greater burden in establishing an entitlement to come and reside in Ireland when compared with spouses and civil partners.

Immigration status is often contingent on being able to prove that the immigrant will not become a "burden on the state". The parties may also have to show, in addition, that their relationship is genuine and that they are living together.

Immigration policy requires that marriages and civil partnership be genuine and subsisting. Under the Civil Registration (Amendment) Act 2014, it is possible to prevent a marriage or civil partnership from being celebrated on the basis that it is a marriage or civil partnership of convenience. This is defined as a marriage or civil partnership entered into where at least one of the parties does so with the sole purpose of gaining an immigration advantage.

A registered partnership formalised abroad may be recognised as a civil partnership in Ireland, but only if the parties are of the same sex, and not too closely related by blood. Irish law does not permit the recognition of opposite-sex registered partners.

Notably, under the Marriage Act 2015, a civil partnership entered into abroad more than 6 months after art. 8 of that Act became law (which happened on November 16, 2015) will not be recognised as a civil partnership in Ireland.

As regards adoption, at the moment, only married couples may adopt children jointly, and second-parent adoption is not permitted. (A person may, however, apply to adopt as an individual, regardless of civil status.) The Children and Family Relationships Act 2015 had proposed to allow civil partners and long-term cohabitants to adopt jointly, but the relevant provisions that would have allowed this have not yet been brought into force.

The Adoption (Amendment) Bill 2016 proposes: (a) to allow applications for joint adoption by civil partners and long-term cohabitants (replacing the un-commenced provisions of the 2015 Act) and (b) to allow second-parent adoption by the spouse, civil partner or cohabitant of a parent.

Jurisdiction: Ireland

Source: F. Ryan, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.01 - Partner of national citizen

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. 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 0000	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2011	2016 Yes, but 2008	2016 Yes, but 2008
	N/A 0000		N/A 0000	No, but 2006	No, but 2006
				No 0000	No 0000
<p>References to legal sources: INIS (Irish Naturalisation and Immigration Service) Policy on Immigration for "Spouse of an Irish National/Civil Partnership with an Irish National", available at: www.inis.gov.ie/en/INIS/Pages/WP07000024.</p> <p>Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).</p>		<p>References to legal sources: INIS Policy on Immigration for "Spouse of an Irish National/Civil Partnership with an Irish National", available at: www.inis.gov.ie/en/INIS/Pages/WP07000024.</p> <p>Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).</p>		<p>References to legal sources: INIS Policy on Immigration for "De Facto Partnership Immigration Permission in Ireland", available at: www.inis.gov.ie/en/INIS/Pages/De%20Facto%20Relationships.</p> <p>Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).</p> <p>Same-Sex Couples and Immigration Provisions in Ireland (GLEN 2011) available at: www.glen.ie/attachments/Immigration.PDF.</p> <p>Gay and Lesbian Equality Network's Progress Report 2010-12: www.glen.ie/attachments/GLEN_Progress_Report_2010_-_2012..pdf.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: It is important to stress that there is no automatic statutory entitlement to residence in Ireland for the non-EU national spouses of Irish citizens. Nonetheless, it is possible for the spouse of an Irish citizen to apply for residence in Ireland on the basis of marriage to an Irish citizen. It is common for residence to be granted, though subject to conditions. Residence may be refused, but the general practice is to allow residence on application by the spouse, provided certain conditions are met.</p> <p>The marriage must be genuine and the parties must be living together or must be committed to living together if an entitlement to residence is granted. The parties may also have to show that they have or will have sufficient resources to support each other without having to rely on social security. In particular, certain minimum income requirements may be applied.</p> <p>When residence is granted, it is common for the non-EU national spouse to be granted permission to work in Ireland without the need for a work permit, though there is no automatic statutory entitlement to work.</p>		<p>Explanations and nuances: It is important to stress that there is no automatic statutory entitlement to residence in Ireland for the non-EU national civil partners of Irish citizens. Nonetheless, it is possible for the civil partner of an Irish citizen to apply for residence in Ireland on the basis of a civil partnership with an Irish citizen. It is common for residence to be granted, though subject to conditions. Residence may be refused, but the general practice is to allow residence on application by the civil partner, provided certain conditions are met.</p> <p>The civil partnership must be genuine and the parties must be living together or must be committed to living together if an entitlement to residence is granted. The parties may also have to show that they have or will have sufficient resources to support each other without having to rely on social security. In particular, certain minimum income requirements may be applied.</p> <p>When residence is granted, it is common for the non-EU national civil partner to be granted permission to work in Ireland without the need for a work permit, though there is no statutory entitlement to work.</p> <p>Since 2011, official State policy is that civil partners are to be treated the same as spouses for the purpose of immigration. It appears, in practice, that spouses and civil partners of Irish nationals are treated the same.</p>		<p>Explanations and nuances: It is important to stress that there is no automatic entitlement in such cases; there is only a right to apply for residence. There is no automatic legal entitlement, but in practice it is possible to acquire residence entitlements based on a durable cohabiting relationship, provided certain conditions are met.</p> <p>A de facto partner of an Irish citizen of the opposite sex or same sex may seek a right of residence with their Irish citizen partner in Ireland. As with spouses and civil partners, there is no automatic entitlement to residence.</p> <p>According to INIS (the Irish Naturalisation and Immigration Service), the parties must show that:</p> <ul style="list-style-type: none"> • "they have a mutual commitment to a shared life to the exclusion of all others akin to a marriage or civil partnership in practice though not in law and • the relationship between them is genuine and continuing and • they live together or do not live separately and apart on a permanent basis and • they are not related by family" (source: www.inis.gov.ie/en/INIS/Pages/De%20Facto%20Relationships). <p>Normally, the parties will have to show that they have been living together for at least 2 years. Evidence of cohabitation and of a durable relationship akin to marriage will usually be required. Certain minimum income requirements may be applied.</p> <p>For this purpose, official policy is that same-sex cohabitants are treated the same as opposite-sex cohabitants.</p> <p>Prior to around 2006, unmarried cohabitants were generally not officially recognised for immigration purposes, but could still apply for residence based on their individual circumstances. In some cases, non-EEA nationals were allowed residence based in part on relationships with Irish citizens but, formally speaking, such relationships were not recognised, and such recognition would have been ad hoc and exceptional. From 2006 onwards, policy changed gradually in favour of recognition of cohabitants, though residence was initially granted on an ad hoc, case-by-case basis.</p> <p>According to the Gay and Lesbian Equality Network's Progress Report 2010-12, the policy on non-marital partners officially changed in 2008. (source: www.len.ie/attachments/GLEN_Progress_Report_2010_-_2012..pdf). After the publication of the Heads of Bill of the Civil Partnership Bill 2008, the Irish Naturalisation and Immigration Service adopted and published on its website a policy allowing long-term de facto partners (both same-sex and opposite-sex) to apply for residence, subject to certain conditions. The policy has been updated in the interim, but broadly speaking, cohabiting couples have been able to apply for residence since 2008.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.02 - Partner of national citizen (foreign status)

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership			Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex	
2016 Yes, but 0000	2016 Yes, but 2008	2016 Yes, but 2008	2016 Yes, but 2008	X	X	
	No, but 2006	No, but 2006	No, but 2006	X	X	
	No 2001	No 1998	No 1989	X	X	
	N/A 0000	N/A 0000	N/A 0000	X	X	
<p>References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 5. Marriage Act 2015.</p>		<p>References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 5. Marriage Act 2015. The relevant statutory instruments recognizing foreign registered partnerships are:</p> <ul style="list-style-type: none"> • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 (Statutory Instrument (S.I.) No. 649 of 2010). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2011 (S.I. No. 642 of 2011). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2012 (S.I. No. 505 of 2012). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2013 (S.I. No. 490 of 2013). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2014 (S.I. No. 212 of 2014), (Repealed by s.12(10) of the Marriage Act 2015). 				

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: There is no automatic statutory entitlement to residence for spouses of Irish citizens. Nonetheless, it is possible for the spouse of an Irish citizen to apply for residence in Ireland on the basis of the marriage. It is common for residence to be granted once the parties establish that the marriage is valid, genuine and subsisting. Residence may be refused, but the general practice is to allow residence on application by the spouse of an Irish citizen, provided certain conditions are met.</p> <p>The marriage must be genuine and the parties must be living together or must be committed to living together if an entitlement to residence is granted. The parties may also have to show that they have or will have sufficient resources to support each other without having to rely on social security.</p> <p>The question here effectively concerns whether the foreign marriage would be recognised as valid in Ireland. The answer depends on private international law but, generally, foreign marriages will be recognised in Ireland. Provided the parties had capacity to marry by the law of their domicile, and complied with the formalities in the state in which the marriage took place, the marriage should be recognised.</p> <p>The possibility of a public policy objection to a marriage on the basis that the parties are of the same sex no longer arises now that the marriage of same sex couples is permitted in Ireland. The Marriage Act 2015, art. 12(1) states that "A marriage under the law of a place other than the State shall not be precluded from being recognised as a marriage by reason of the sex of the parties to the marriage." So the fact that a marriage is between two parties of the same sex should not, of itself, preclude its recognition in Ireland.</p> <p>For same-sex couples, the 'yes but' between 2011 and 2015 needs further explanation: the couple would not have been recognised as married, but would have been recognised as civil partners. Between 2008 and 2011 a same-sex married couple would not be recognised as either married or civil partners but would likely have obtained residence for the non-EU citizen on the basis of being in a de facto relationship.</p> <p>From 2011 until 2015, a marriage between a couple of the same sex would generally be recognised in Ireland as a civil partnership, subject to the conditions laid down in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 5.</p> <p>Prior to 2011, a marriage of a same-sex couple formalised abroad would not have been recognised in Irish law (see Zappone and Gilligan v Revenue Commissioners [2006] IEHC 404). The couple, however, may have been recognised as de facto partners under the immigration policy adopted in 2008 and addressed in question 4.1. In other words, the couple could, indirectly, have gained residence on the basis of their relationship, but their marriage (if they were of the same sex) would not have been recognised as a marriage until 2015.</p> <p>As per the note in question 4.1, between 2006 and 2008, some non-EU nationals were granted residence in Ireland on the basis of their relationship with an Irish national, but only on an ad hoc basis.</p>		<p>Explanations and nuances: Only registered partnerships between couples of the same sex are recognised in Ireland.</p> <p>For different-sex couples, the 'yes but' between 2008 and 2016 needs further explanation: the couple are not recognised as civil partners but would likely obtain residence for the non-EU citizen on the basis of being in a de facto relationship.</p> <p>For same-sex couples, the 'yes but' between 2008 and 2011 needs further explanation: the couple would not have been recognised as civil partners but would likely have obtained residence for the non-EU citizen on the basis of being in a de facto relationship.</p> <p>Here is the position relating to same-sex registered partners:</p> <p>There is no automatic statutory entitlement to residence for civil partners of Irish nationals. Nonetheless, it is possible for the civil partner of an Irish national to apply for residence in Ireland on the basis of the civil partnership. It is common for residence to be granted once the parties establish that the civil partnership is valid, recognised in Ireland, genuine and subsisting. Residence may be refused, but the general practice is to allow residence on application by the civil partner of an Irish citizen, provided certain conditions are met.</p> <p>The civil partnership must be genuine and the parties must be living together. The parties may also have to show that they have or will have sufficient resources to support each other without having to rely on social security.</p> <p>Whether the parties are recognised as being civil partners in Ireland depends on whether the particular class of legal relationship into which they have entered is formally recognized in Ireland. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 allows certain classes of foreign legal relationship between same-sex couples entered into outside Ireland to be recognised in Ireland by order of the Minister for Justice and Equality. For this to happen the relevant class of legal relationship from the relevant jurisdiction must have been designated as equivalent to a civil partnership in an Order/statutory instrument passed by the Minister for Justice and Equality. There are five such statutory instruments, listed above (the last has been repealed by the Marriage Act 2015).</p> <p>Notably, however, even if the class of relationship available in a particular state is open to opposite-sex couples, only same-sex couples will be recognised as civil partners in Ireland. Recognition will not apply to couples who are within the prohibited degrees of relationship for civil partners.</p> <p>If the class of legal relationship is identified in an Order (statutory instrument) made by the Minister, the parties will be recognised as civil partners in Ireland. For instance, if the parties are in a UK civil partnership, or an Austrian or German registered partnership, they will be recognised as civil partners in Ireland. By contrast, some registered partnerships/unions are not recognised in Ireland, such as French PaCS and Slovenian Registered Partnerships, which are not civil partnerships for the purpose of Irish law.</p> <p>Thus, recognition of a foreign civil partnership is not automatic and depends on the relevant class of legal relationship being formally recognised in a statutory instrument.</p> <p>Notably, under the Marriage Act 2015, a civil partnership entered into abroad more than 6 months after art. 8 of that Act became law (which happened on November 16, 2015) will not be recognised as a civil partnership in Ireland.</p> <p>Prior to 2011, same-sex civil partnerships were not recognised in Ireland. The couple, however, may have been recognised as de facto partners under the immigration policy adopted in 2008 and addressed in question 4.1.</p> <p>Different-sex registered partnerships:</p> <p>Ireland does not formally recognise different-sex registered partnerships. The Civil Partnership Act provides only for the formal recognition of same-sex registered partnerships. The couple, however, may be recognised as de facto partners under the immigration policy adopted in 2008 and addressed in question 4.1.</p> <p>As per the note in question 4.1, between 2006 and 2008, some non-EU nationals were granted residence in Ireland on the basis of their relationship with an Irish national, but only on an ad hoc basis.</p>			

Jurisdiction: Ireland

Source: F. Ryan, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.03 - Partner of (non-EU) foreigner

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 0000	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2011	2016 Yes, but 2008	2016 Yes, but 2008
	N/A 0000		N/A 0000	No, but 2006	No, but 2006
				No 0000	No 0000
References to legal sources: Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).		References to legal sources: Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).		References to legal sources: Policy Document on Non-EEA Family Reunification (Department of Justice and Equality, 2013).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: NB - I am not sure whether to characterise this as 'yes, but' or 'no, but'. There is no automatic legal entitlement but, in practice, it is possible for the spouse of a person legally resident in Ireland to obtain a right to residence on the basis of marriage. There can, however, be delays in and barriers to obtaining residence, depending on the capacity in which the sponsor is legally resident in Ireland.</p> <p>Much depends on the particular circumstances. There is no automatic entitlement to residence for the spouse, but the spouse may apply to join the resident in Ireland.</p> <p>The sponsoring spouse must in all cases be lawfully resident in Ireland. In some cases, depending on the type of permission the sponsor has, the spouse will be able to apply for permission to join the sponsor in Ireland with immediate effect, and may be able to accompany the sponsor on the latter's arrival in Ireland. This is the case, for instance, for those holding a green card, those with business permission, investors, and PhD students. In other cases, however, the spouse may have to wait one year before being allowed to apply to reside in Ireland (this applies, for instance, to non-green card employment permit holders). In some other cases, residence is not permitted at all (e.g. students other than certain categories of PhD and Scholarship student).</p> <p>Minimum salary requirements apply.</p>		<p>Explanations and nuances: NB - I am not sure whether to characterise this as 'yes, but' or 'no, but'. There is no automatic legal entitlement but, in practice, it is possible for the civil partner of a person legally resident in Ireland to obtain a right to residence on the basis of civil partnership. There can, however, be delays in obtaining and barriers to residence, depending on the capacity in which the sponsor is legally resident in Ireland.</p> <p>Much depends on the particular circumstances. There is no automatic entitlement to residence for the civil partner, but the civil partner may apply to join the resident in Ireland.</p> <p>Civil partners for this purpose are treated the same as spouses under official immigration policy guidelines.</p> <p>The sponsoring civil partner must in all cases be lawfully resident in Ireland. In some cases, depending on the type of permission the sponsor has, the civil partner will be able to apply for permission to join the sponsor in Ireland with immediate effect, and may be able to accompany the sponsor on the latter's arrival in Ireland. This is the case, for instance, for those holding a green card, those with business permission, investors, and PhD students. In other cases, however, the civil partner may have to wait one year before being allowed to apply to reside in Ireland (this applies, for instance, to non-green card employment permit holders). In some other cases, residence is not permitted at all (e.g. students other than certain categories of PhD and Scholarship student).</p> <p>Minimum salary requirements apply.</p>		<p>Explanations and nuances: NB - I am not sure whether to characterise this as 'yes, but' or 'no, but'. There is no automatic legal entitlement, but in practice is possible to obtain a right to residence on the basis of a durable relationship akin to marriage with a person legally resident in Ireland. There can, however, be delays in and barriers to obtaining residence, depending on the capacity in which the sponsor is legally resident in Ireland.</p> <p>Much depends on the particular circumstances. There is no automatic entitlement to family reunification, but the cohabiting partner may apply to join the resident in Ireland. Certain conditions as to the duration and quality of the relationship apply. In particular, the parties usually are required to have lived together for at least two years and must be able to demonstrate that their relationship is durable.</p> <p>For official purposes, same-sex and opposite-sex partners are treated the same.</p> <p>The same rules regarding sponsors apply to cohabitants as apply to civil partners and spouses. The parties must be in a position to show that they are in a stable cohabiting relationship akin to marriage.</p> <p>Minimum salary requirements apply.</p> <p>Prior to around 2006, unmarried cohabitants were generally not officially recognised for immigration purposes, but could still apply for residence based on their individual circumstances. In some cases, non-EEA nationals were allowed residence based in part on relationships with Irish citizens but, formally speaking, such relationships were not recognised, and such recognition would have been ad hoc and exceptional. From 2006 onwards, policy changed gradually in favour of recognition of cohabitants, though residence was initially granted on an ad hoc, case-by-case basis. According to the Gay and Lesbian Equality Network's Progress Report 2010-12, the policy on non-marital partners officially changed in 2008 (source: www.glen.ie/attachments/GLEN_Progress_Report_2010_-_2012..pdf). After the publication of the Heads of Bill of the Civil Partnership Bill 2008, the Irish Naturalisation and Immigration Service adopted and published on its website a policy allowing long-term de facto partners (both same-sex and opposite-sex) to apply for residence, subject to certain conditions. The policy has been updated in the interim, but broadly speaking, cohabiting couples have been able to apply for residence since 2008.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.04 - Partner of EU citizen (foreign status)

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2006	2016 Yes 2015	2016 Yes, but 2006	2016 Yes 2016	2016 Yes, but 2016	2016 Yes, but 2016
Yes 1978	Yes, but 2006	No 1998	Yes, but 2006	Yes, but 2006	Yes, but 2006
Yes, but 1957	No 2001	N/A 0000	No 1989	No 0000	No 0000
	N/A 0000		N/A 0000		
<p>References to legal sources: Statutory Instrument (S.I.) No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015.</p> <p>S.I. No. 226/2006 - European Communities (Free Movement of Persons) Regulations 2006 (repealed by 2015 Regulations).</p> <p>Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (Free Movement Directive).</p>		<p>References to legal sources: Statutory Instrument (S.I.) No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015.</p> <p>S.I. No. 226/2006 - European Communities (Free Movement of Persons) Regulations 2006 (repealed by 2015 Regulations).</p> <p>Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (Free Movement Directive).</p>		<p>References to legal sources: Statutory Instrument (S.I.) No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015.</p> <p>S.I. No. 226/2006 - European Communities (Free Movement of Persons) Regulations 2006 (repealed by 2015 Regulations).</p> <p>Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (Free Movement Directive).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Under EU Law, as transposed into Irish law, the non-EEA national spouse or civil partner of an EU citizen (where the latter is not an Irish citizen) is legally entitled to reside in Ireland with the EU citizen, subject to certain conditions. In particular, the spouse or civil partner may only be refused entry if he or she suffers from a specified disease or where he or she "represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."</p> <p>Persons seeking entry to Ireland on the basis of a marriage to an EU national must present an original copy of their marriage certificate. The spouse or civil partner must also possess a valid passport as evidence of his or her nationality and identity. Citizens of states that require a visa to travel to Ireland, must obtain such a visa as a pre-requisite to seeking entry.</p> <p>The non-EEA national's right to reside in Ireland is contingent on the EU citizen exercising his or her right of free movement by coming to live in Ireland. The non-EEA national spouse or civil partner of an EU citizen, may reside in Ireland, subject to certain conditions.</p> <p>Under the Act concerning the Conditions of Accession and the Adjustments to the Treaties, Ireland and the UK was entitled to "retain, up to and including 31 December 1977, their national provisions requiring a prior authorization for immigration into Ireland and Northern Ireland of nationals of the other Member States for the purposes of taking up employment and/or for access by such nationals to employment in Ireland and Northern Ireland."</p> <p>From 2011 to 2015, married couples of the same sex were treated as civil partners in Ireland, and thus were subject to the regime formerly applicable to civil partners (see question 4.2).</p> <p>Prior to 2011, married couples of the same sex were not recognised in Irish law, but would have been entitled from 2006 onwards to entry and residence on the basis of their de facto relationship with the EU citizen, provided they could establish the existence of a durable relationship with the EU national (see under Cohabitation).</p>		<p>Explanations and nuances: Under EU Law, the non-EEA national registered partner of an EU citizen (where the latter is not an Irish citizen) is entitled to reside in Ireland, subject to certain conditions. Under the EU's Free Movement Directive (2004/38/EC), if a registered partnership is treated as the equivalent of marriage in the host state, registered partners are to be treated the same as spouses in relation to free movement rules.</p> <p>The European Communities (Free Movement of Persons) Regulations 2006, which implemented the EU Directive into Irish law, did not, however, expressly address the position of civil partners or registered partners (European Communities (Free Movement of Persons) Regulations 2006 (SI 226/2006)). Technically, from 2006 until 2016, under the relevant Irish regulations civil partners or registered partners fell within the category of person who had to present documentary evidence that they were in a durable relationship with the EU citizen (see under Cohabitation).</p> <p>However, since February 1, 2016, under Statutory Instrument No. 548/2015 - European Communities (Free Movement of Persons) Regulations 2015, civil partners are now treated as qualifying family members, and thus treated the same as spouses. Civil partner, for this purpose, means a person who has entered into a civil partnership in Ireland, or who has entered into a registered partnership that is recognised as a civil partnership in Ireland under a statutory instrument made on foot of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.5. Only registered partnerships between same-sex couples not related by blood can be recognised in Ireland as civil partnerships.</p> <p>A civil partner of an EU citizen may only be refused entry if he or she suffers from a specified disease or where he or she "represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society."</p> <p>In practice it is my understanding that, from 2011 to 2016, civil partners were treated the same as spouses, as a matter of policy. My understanding is that presentation of an original civil partnership certificate dispensed with the need to prove a durable cohabiting relationship.</p> <p>Persons seeking entry to Ireland on the basis of a civil partnership with an EU national must present an original copy of their civil partnership certificate. Citizens of states that require a visa to travel to Ireland, must obtain such a visa as a prerequisite to seeking entry.</p> <p>Different-sex registered partners are not recognised as civil partners in Ireland. They thus will have to seek entry and residence in Ireland on the basis of their de facto relationship with the EU citizen. For this purpose, they will have to establish the existence of a durable relationship with the EU national.</p> <p>A question arises as to whether a certificate of registered partnership will be sufficient for this purpose if the class of registered partnership is not recognised in Ireland. Not all foreign registered partnerships are recognised. In particular, registered partnerships between opposite-sex couples are not recognised as civil partnerships in Ireland. The French PaCS and certain other registered partnerships that can be dissolved administratively (rather than by a court) are not recognised in Ireland.</p> <p>Nonetheless, evidence of a non-recognized registered partnership arguably should provide good evidence of a durable relationship as required by the Directive in respect of de facto partners.</p> <p>Notably, under the Marriage Act 2015, a civil partnership entered into abroad more than 6 months after art. 8 of that Act became law (which happened on November 16, 2015) will not be recognised as a civil partnership in Ireland.</p>		<p>Explanations and nuances: Provided a cohabitant can establish to the satisfaction of the State that he or she is in a durable relationship with an EU national, he or she may only be refused entry if he or she suffers from a specified disease or where he or she "represents a danger for public policy or public security by reason of the fact that his or her personal conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society." (Art.5(7) of the 2015 Regulations).</p> <p>Under EU and Irish Law, the non-EEA national de facto partner of an EU citizen (where the latter is not an Irish citizen) is entitled to reside with their EU citizen partner in Ireland, subject to certain conditions. In particular, the parties must show that they are in durable relationship together, and must produce documentary evidence to demonstrate the existence of this relationship.</p> <p>Where an applicant claims he or she is in a durable relationship with an EU citizen, the Minister for Justice and Equality shall seek documentary evidence of the existence of such a relationship. On receipt thereof, the Minister "shall cause to be carried out an extensive examination of the personal circumstances of the applicant" to determine whether he or she should be treated as a permitted family member (see Art. 5 of the 2015 Regulations). In making this decision, the Minister shall have regard to the nature and duration of the relationship, and the capacity of the EU citizen to support the applicant.</p> <p>Cohabitants must therefore provide evidence of a durable relationship for the last two years (the examples given by the Irish Naturalisation and Immigration Service are "evidence of prior cohabitation, evidence of jointly-owned assets, evidence of shared bank accounts or insurance, evidence of travel, original birth certificates of any children of the partnership)." (www.inis.gov.ie).</p> <p>In practice, the parties must normally have been living together in a durable relationship that has subsisted for two years or more. The parties must, moreover, intend to live together indefinitely, and should not be closely related by blood (within the prohibited degrees of relationship for marriage). Any previous marriage with third parties must have permanently broken down.</p> <p>In practice, it tends to be more difficult to establish a right of entry and residence for cohabitants than for civil partners or spouses. In particular, whereas a marriage or civil partnership certificate will usually suffice to establish the right to reside, more extensive documentation and investigation of circumstances may be required in the case of cohabitants.</p> <p>Once you establish that you are in a durable relationship, however, the right to entry and residence usually follows.</p> <p>In one specific context, however, cohabitants fare less well than spouses and civil partners. If the Union citizen is enrolled on an educational course, the right to reside extends only to family members who are spouses or civil partners of the EU citizen, or children (under 21 or dependent) of the EU citizen or of his spouse or civil partner.</p> <p>Citizens of states that require a visa to travel to Ireland, must obtain such a visa as a prerequisite to seeking entry.</p>	

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2015	2016 Doubt 1998	2016 Yes, but 2011	X	X
	Yes, but 2011	N/A 0000	Doubt 1989	X	X
	No 2001		N/A 0000	X	X
	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, arts. 2(2) and 2(2A).</p> <p>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p> <p>Marriage Act 2015.</p>		<p>References to legal sources: Civil Registration Act 2004, arts. 2(2) and 2(2A).</p> <p>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p> <p>The relevant statutory instruments recognizing foreign registered partnerships are:</p> <ul style="list-style-type: none"> • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 (Statutory Instrument (S.I.) No. 649 of 2010). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2011 (S.I. No. 642 of 2011). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2012 (S.I. No. 505 of 2012). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2013 (S.I. No. 490 of 2013). • The Civil Partnership (Recognition of Registered Foreign Relationships) Order 2014 (S.I. No. 212 of 2014), (Repealed by s.12(10) of the Marriage Act 2015). 			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If the couple is married abroad, and the marriage is legally recognised as a valid marriage in Ireland, neither party can legally contract a marriage with a third party in Ireland.</p> <p>A marriage of a same-sex couple celebrated abroad is now recognised as a valid marriage in Ireland, subject to the normal conditions for recognition applicable to opposite-sex marriages. Between 2011 and 2015 marriages between same-sex couples in foreign states were generally recognised as civil partnerships in Ireland, and being in a subsisting civil partnership has, since 2011, been an impediment to marriage to another person.</p> <p>Prior to 2011, marriages celebrated by a same-sex couple in another state were not recognized as legally valid in Ireland, and therefore probably would not have acted as a legal impediment to marriage in Ireland. See Zappone and Gilligan v Revenue Commissioners [2006] IEHC 404.</p>		<p>Explanations and nuances: Both a recognised marriage and a recognized civil partnership are an impediment to a marriage in Ireland (although this impediment does not apply to two people in a civil partnership with each other who wish to marry each other).</p> <p>Only registered partnerships between couples of the same sex are recognised in Ireland. There is no provision allowing for the recognition of opposite-sex registered partnerships. That said, in Irish law, capacity to marry is determined by the law of the person's domicile. As such, it could be argued that if a person was barred from marrying by the law of their domicile, Irish law might prevent them from marrying. That said, the point has not been tested in court, and the 2010 Act seems to indicate that opposite-sex unions (other than marriage) would not be recognised.</p> <p>Whether a foreign registered partnership is recognised in Ireland as a civil partnership depends on whether the particular class of relationship is recognised as a civil partnership in Ireland. The Minister for Justice and Equality is empowered to recognise classes of foreign legal relationships entered into abroad between same-sex couples in specified jurisdictions as civil partnerships in Ireland. A relationship will be recognised as such only if the Minister has, by means of a statutory instrument, designated the class of relationship as a civil partnership for the purpose of Irish law. If the class of legal relationship is recognised as a civil partnership, it will be an impediment in Irish law to a further marriage or civil partnership. (There is an exception for civil partners, who are permitted by law to marry each other.)</p> <p>This means, for instance, that a UK civil partnership or German registered partnership would be an impediment to marriage or civil partnership in Ireland, as both are formally recognised by statutory instrument. On the other hand, a French PaCS may possibly not be an impediment to marriage or civil partnership in Ireland as it is not recognised as a civil partnership or marriage in Ireland.</p> <p>Now that the Marriage Act 2015 has come into force, subject to some exceptions, it is no longer possible to form new civil partnerships in Ireland. Notably, under the Marriage Act 2015, a civil partnership entered into abroad more than 6 months after art. 8 of that Act became law (which happened on November 16, 2015) will not be recognised as a civil partnership in Ireland.</p> <p>Prior to 2011, marriages celebrated by a same-sex couple in another state were not recognized as legally valid in Ireland, and therefore probably would not have acted as a legal impediment to marriage in Ireland. See Zappone and Gilligan v Revenue Commissioners [2006] IEHC 404. Given that same-sex marriages were not recognised, it would appear to follow that same-sex registered partnerships would not have been recognised either, though an argument might have been made that in relation to such a matter, the State might have deferred to the law of the couple's domicile. It is, nonetheless, highly unlikely that an Irish court prior to 2011 would have recognised a same-sex registered partnership for any purpose.</p>			

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2015	2016 No 1998	2016 Yes, but 2011	X	X
	Yes, but 2011	N/A 0000	No 1989	X	X
	No 2001		N/A 0000	X	X
	N/A 0000			X	X
References to legal sources: Succession Act 1965.		References to legal sources: Succession Act 1965.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: If the marriage is recognised in Ireland under the rules of private international law, the marriage will be recognised for the purpose of inheritance law. In this regard, it should no longer matter whether the marriage is between a couple of the same sex or of the opposite sex provided the marriage has been formed in compliance with the rules of private international law. The fact that the parties to the marriage are of the same sex is no longer an impediment to its recognition in Ireland.</p> <p>From 2011 to 2015, foreign marriages between couples of the same sex were recognised in Ireland as civil partnerships, but not as marriages. Prior to 2011, marriages celebrated abroad between couples of the same sex were not recognised in Ireland. See Zappone and Gilligan v Revenue Commissioners [2006] IEHC 404.</p>		<p>Explanations and nuances: Provided the foreign registered partnership is recognised in Ireland, the relationship will be recognised for the purpose of inheritance law. Whether the foreign registered partnership is recognised in Ireland depends on the terms of art. 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. For a class of legal relationship from a particular state to be recognised as a civil partnership in Ireland, the Minister for Justice and Equality must, by statutory instrument, designate that the particular class of relationship is recognised. So, for instance, a Northern Irish civil partnership is recognised as a civil partnership in Ireland, but a Slovenian registered partnership is not because the Minister has not designated it as equivalent to an Irish civil partnership.</p> <p>Even where the particular class is recognised, only same-sex couples who are party to that class of relationship are recognised in Ireland as civil partners. It appears that there is no legislative basis for recognising foreign registered partners as civil partners in Ireland.</p> <p>For the purpose of inheritance law, civil partners and spouses are largely treated the same, subject to some differences.</p> <p>It is worth noting that foreign registered partnerships entered into abroad between same-sex couples after May 16, 2016 will not be recognised as civil partnerships in Ireland.</p>			

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2001	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2011	2016 No 0000	2016 No 0000
Yes 1986	N/A 0000		N/A 0000		
Yes, but 1956					
Yes 1935					

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Irish Nationality and Citizenship Act 1956, art. 15A, as inserted by Irish Nationality and Citizenship Act 2001, art. 5.</p> <p>Previously: Irish Nationality and Citizenship Act 1935; Irish Nationality and Citizenship Act 1985.</p>		<p>References to legal sources: Irish Nationality and Citizenship Act 1956, art. 15A, as amended by Civil Law (Miscellaneous Provisions) Act 2011, art. 33.</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: A person married to an Irish citizen for at least 3 years may apply for Irish citizenship after 3 years' residence in Ireland, rather than the normal 5 years' residence requirement for naturalisation. The spouse must have lived in Ireland for one continuous year immediately preceding the application plus a further 2 out of the 4 years preceding that one continuous year (3 years in total over a period of 5 years preceding the application). The parties must be in a valid, subsisting marriage, must be living together, and must have been married to each other for at least 3 years. The Minister for Justice and Equality, however, retains full discretion to refuse to grant citizenship. In particular, the applicant must be of good character and must intend to remain living in Ireland indefinitely.</p> <p>Under the Irish Nationality and Citizenship Act 1956, as initiated, a woman could acquire citizenship by marriage to an Irish national simply by making a declaration following marriage. She would then be deemed an Irish citizen by virtue of her marriage. Since 1986, however, spouses are now treated equally, regardless of gender.</p> <p>The automatic right to citizenship on marriage was removed by the Irish Nationality and Citizenship Act 2001. There is no longer an automatic entitlement for spouses; the Minister for Justice and Equality retains absolute discretion to refuse to confer citizenship.</p>		<p>Explanations and nuances: A person in a civil partnership with an Irish citizen for at least 3 years may apply for Irish citizenship after 3 years' residence in Ireland, rather than the normal 5 years' residence requirement for naturalisation. The civil partner must have lived in Ireland for one continuous year immediately preceding the application plus a further 2 out of the 4 years preceding that one continuous year (3 years in total over a period of 5 years preceding the application). The parties must be in a valid, subsisting civil partnership, must be living together, and must have been in a civil partnership with each other for at least 3 years. The Minister for Justice and Equality, however, retains full discretion to refuse to grant citizenship. In particular, the applicant must be of good character and must intend to remain living in Ireland indefinitely.</p> <p>An interesting question arises as to whether two people who entered into a foreign union recognised as a civil partnership in Ireland will be treated as meeting the requirements of this section three years from the date on which their union took place or only three years after their relationship was recognised in Ireland. As civil partnership recognition is not retrospective, it is most likely they will only meet the requirements of the Act three years from the date on which their civil partnership was first recognised in Ireland, i.e. no earlier than 3 year after January 2011.</p>		<p>Explanations and nuances: Cohabitants have no advantage over other persons in obtaining citizenship of Ireland. They must meet the normal requirements for citizenship by naturalisation.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: 4 - Migration

Question: 4.08 - Recognition of joint adoption

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2010	2016 Yes, but 2015	2016 N/A 0000	2016 Doubt 2011	2016 Doubt 1991	2016 Doubt 1991
Yes, but 1991	N/A 0000		N/A 0000	? 0000	? 0000
? 0000					
<p>References to legal sources: Adoption Act 2010.</p> <p>Adoption Act 1991 (now repealed, but in force for purpose of recognition of foreign adoptions).</p>		<p>References to legal sources: Adoption Act 2010.</p> <p>The 2010 Act was amended by the Children and Family Relationships Act 2015 but the relevant provisions on adoption in that Act have not yet been brought into force, and will likely be repealed and replaced by the Adoption (Amendment) Bill 2016, once enacted.</p>		<p>References to legal sources: Adoption Act 2010.</p> <p>Adoption Act 1991 (now repealed, but in force for purpose of recognition of foreign adoptions).</p> <p>The 2010 Act was amended by the Children and Family Relationships Act 2015 but the relevant provisions on adoption in that Act have not yet been brought into force, and will likely be repealed and replaced by the Adoption (Amendment) Bill 2016, once enacted.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Various conditions apply to the recognition of foreign and intercountry adoptions in Ireland. The question appears to relate to adoptions by couples while resident in the country of adoption, rather than intercountry adoptions, but I will set out the law relating to both.</p> <p>Intercountry adoptions: Particularly stringent rules apply to intercountry adoptions and the recognition of intercountry adoptions. Ireland is a party to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993, which is part of Irish law by virtue of the Adoption Act 2010, art.9. Art. 23 of the Convention requires that "An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States." The conditions for entering into an intercountry adoption are exacting and long delays can be experienced in processing an intercountry adoption. If, however, the conditions are satisfied and an adoption is certified as having proceeded in compliance with the Hague Convention, it should be recognised in Ireland (subject to public policy). An intercountry adoption from or to a non-Hague Convention country may also be recognised where a bilateral agreement is in place between Ireland and the relevant state, provided certain conditions are met.</p> <p>Foreign adoptions: Conditions also apply to the recognition of foreign domestic adoptions (where both the child and the adopters are from the same jurisdiction). Art. 57 of the Adoption Act 2010 allows a foreign domestic adoption entered into by persons habitually resident in the state where the adoption takes place to be recognised if it has been "certified under a certificate issued by the competent authority of the state of the adoption...as having been effected by an adopter or adopters who were habitually resident in that state at the time of the adoption under and in accordance with the law of that state." It must conform, however, to the definition of foreign adoption in the (otherwise repealed) Adoption Act 1991, art. 1, which contains fairly exacting conditions for recognition.</p> <p>Recognition is subject to public policy. With the passage of the Marriage Referendum in Ireland, however, there is no longer any public policy reason why a joint adoption by a same-sex married couple would not be recognised.</p> <p>Provided the relevant conditions are complied with, a foreign or intercountry adoption by a married couple effected in the country in which they are resident should be recognised in Ireland.</p> <p>The position prior to 1991 is unclear, but it is most likely such adoptions would not have been recognised.</p>		<p>Explanations and nuances: The current position in law is unclear, but once the Adoption (Amendment) Bill 2016 is enacted and comes into force, foreign joint adoptions by civil partners residing abroad will be recognised, subject to compliance with the relevant legislative conditions.</p> <p>Art. 57 of the Adoption Act 2010 allows a foreign domestic adoption (i.e. not an intercountry adoption) entered into by persons habitually resident in the state where the adoption takes place to be recognised if it has been "certified under a certificate issued by the competent authority of the state of the adoption...as having been effected by an adopter or adopters who were habitually resident in that state at the time of the adoption under and in accordance with the law of that state." It must conform, however, to the definition of foreign adoption in the (otherwise repealed) Adoption Act 1991, art. 1, which contains fairly exacting conditions for recognition.</p> <p>Where the adoption is an intercountry adoption, it will be recognised only if compliance with the Hague Convention is certified by the state in which the adoption took place (or, if the state is not a Hague Convention country, if it complies with the terms of a bilateral agreement between Ireland and the relevant state).</p> <p>Recognition of a foreign adoption is subject to public policy. Currently, civil partners may not adopt jointly in Ireland (a joint adoption is only possible where the parties are married to each other). Once the Adoption (Amendment) Bill 2016 is enacted and comes into force, however, it will be possible in Ireland for civil partners to apply to adopt a child jointly. As such, any potential public policy arguments against recognition of civil partners who adopt jointly abroad will likely no longer apply.</p> <p>Nonetheless, as the law currently stands, an argument could feasibly be made that because Irish law currently only recognises a joint adoption by married couples, foreign adoptions by civil partners and unmarried couples might not be recognised as a matter of public policy. As the Adoption Authority cannot recognise a joint adoption unless the adopters are married to each other, the issue would likely have to be determined by a court under art. 49 of the 2010 Act. As against this, Irish law permits individuals who are unmarried to adopt as sole applicants; as such, the public policy argument against recognition might not succeed if tested in a court. Certainly, the changes proposed in the 2015 Act and 2016 Bill clearly negate any public policy argument against recognition.</p> <p>While there is a doubt here, I suspect that if the matter came before a court, and the couple had been habitually resident in the country that granted the adoption, there would be no particularly strong public policy reason not to recognise the adoption. Nonetheless, the point is unclear.</p>		<p>Explanations and nuances: The current position in law is unclear, but it is likely that once the Adoption (Amendment) Bill 2016 comes into force that foreign joint adoptions by cohabitants residing abroad will be recognised, subject to compliance with the relevant legislative conditions.</p> <p>Art. 57 of the Adoption Act 2010 allows a foreign domestic adoption (i.e. not an intercountry adoption) entered into by persons habitually resident in the state where the adoption takes place to be recognised if it has been "certified under a certificate issued by the competent authority of the state of the adoption...as having been effected by an adopter or adopters who were habitually resident in that state at the time of the adoption under and in accordance with the law of that state." It must conform, however, to the definition of foreign adoption in the (otherwise repealed) Adoption Act 1991, art. 1, which contains fairly exacting conditions for recognition.</p> <p>Where the adoption is an intercountry adoption, it will be recognised only if compliance with the Hague Convention is certified by the state in which the adoption took place (or, if the state is not a Hague Convention country, if it complies with the terms of a bilateral agreement between Ireland and the relevant state).</p> <p>Recognition of foreign adoptions is subject to public policy. Currently, cohabitants may not adopt jointly in Ireland (a joint adoption is only possible where the parties are married to each other). Once the Adoption (Amendment) Bill 2016 is enacted and comes into force, however, it will be possible for cohabitants who have lived together for at least three years to apply to adopt a child jointly. As such, any potential public policy arguments against recognition of cohabitants who adopt jointly abroad will likely no longer apply.</p> <p>Nonetheless, as the law currently stands, an argument could feasibly be made that because Irish law only recognises a joint adoption by married couples, foreign adoptions by unmarried couples might not be recognised as a matter of public policy. As the Adoption Authority cannot recognise a joint adoption unless the adopters are married to each other, the issue would likely have to be determined by a court under art. 49 of the 2010 Act. As against this, Irish law permits individuals who are unmarried to adopt as sole applicants; as such, the public policy argument against recognition might not succeed if tested in a court of law. Certainly, the changes proposed in the 2016 Bill clearly negate any public policy argument against recognition.</p> <p>While there is a doubt here, I suspect that if the matter came before a court, and the couple had been habitually resident in the country that granted the adoption, there would be no particularly strong public policy reason not to recognise the adoption. Nonetheless, the point is unclear.</p> <p>The position prior to 1991 is unclear, but it is most likely such adoptions would not have been recognised.</p>	

Jurisdiction: **Ireland**

Source: **F. Ryan**, "Migration 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-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Doubt 2010	2016 Doubt 2015	2016 N/A 0000	2016 Doubt 2011	2016 Doubt 2010	2016 Doubt 2010
No 1991	N/A 0000		N/A 0000	Doubt 1991	Doubt 1991
Doubt 0000				No 0000	No 0000
References to legal sources: Adoption Act 1991. Adoption Act 2010. Adoption (Amendment) Bill 2016.		References to legal sources: Adoption Act 1991. Adoption Act 2010. Adoption (Amendment) Bill 2016.		References to legal sources: Adoption Act 1991. Adoption Act 2010. Adoption (Amendment) Bill 2016.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: It is not entirely clear whether such an adoption would be recognised in Ireland. It is possible to argue in favour of recognition, but the issue appears not to have been tested.</p> <p>In Ireland, adoption ordinarily has the effect of permanently terminating existing parental rights and duties (Adoption Act 2010, art.58). Ireland does not currently permit an adoption to be made in the State under which existing parental rights and duties are not ended. If, for instance, the new spouse of a parent wished to adopt the parent's child, and the parent wished to retain legal parenthood, both the spouse and the parent would have to apply to adopt the child jointly.</p> <p>In relation to foreign adoptions effected while the couple lived abroad, under the Adoption Act 1991, a foreign adoption would be recognised only "if the adoption has essentially the same legal effect as respects the termination and creation of parental rights and duties with respect to the child in the place where it was effected as an adoption effected by an adoption order [in Ireland]". While this Act was abolished in 2010, the definition of foreign adoption in the Adoption Act 2010 refers back to and uses the definition in the 1991 Act. For the purpose of the 2010 Act, the definition of foreign adoption in the 1991 Act still applies. This appears to mean, though the point is unclear, that a foreign adoption that does not involve the termination of existing parental rights may not be recognised in Ireland.</p> <p>On the other hand, art. 57 of the 2010 Act appears to allow for the recognition of a foreign or intercountry adoption effected outside Ireland where it does "not have the effect in the state of the adoption of terminating a pre-existing legal parent-child relationship". In such cases, art.57 envisages that the adoption would not have the effect of terminating existing parental duties. This appears to indicate that, once the other conditions are met, such an adoption may be recognised. The difficulty, however, is that the definition of a foreign adoption presupposes the termination of parental rights. The better view may be that this is an error, and that simple or second-parent adoptions can be recognised, but the technical legal position remains unclear.</p> <p>Notably, the Adoption (Amendment) Bill 2016 proposes to introduce second parent adoption in Ireland, for the spouses, civil partners and cohabitants of parents. This would allow the spouse, civil partner or cohabitant to adopt the child, without the parent having to join in the adoption and without the parent losing their existing parental rights. If this were to occur, there would no longer be any reason not to recognise foreign second parent adoptions, provided the adoption otherwise complied with the Hague Convention requirements.</p> <p>Notably, this doubt does not appear to apply to intercountry adoptions, only foreign adoptions.</p>		<p>Explanations and nuances: See the panel under marriage.</p> <p>An additional issue arises in respect of second-parent adoptions by civil partners, given potential public policy concerns.</p> <p>These concerns, however, arguably no longer apply given recent proposals for legislative amendments. The Children and Family Relationships Act 2015 had proposed to allow civil partners to apply to adopt as couples. Those provisions have been enacted by Parliament but have not yet been brought into force. The Adoption (Amendment) Bill 2016 now proposes to abolish the relevant provisions of the 2015 Act as they relate to adoption, though the 2016 Bill proposes substantially to enact the same measures. These measures will allow civil partners and cohabitants to apply as a couple to adopt a child.</p> <p>Notably, the Adoption (Amendment) Bill 2016 proposes to introduce second parent adoption in Ireland, for the spouses, civil partners and cohabitants of parents. If this were to occur, there would no longer be any reason not to recognise foreign second parent adoptions, provided the adoption otherwise complied with the Hague Convention requirements.</p>		<p>Explanations and nuances: See the panel under marriage.</p> <p>Prior to 2010, the better view would appear to be that such adoptions would not have been recognised, as cohabitants were generally not recognised in law.</p> <p>An additional issue arises in respect of second-parent adoptions by cohabitants, given potential public policy concerns. These concerns, however, arguably no longer apply given recent proposals for legislative amendments. The Children and Family Relationships Act 2015 had proposed to allow civil partners to apply to adopt as couples. Those provisions have been enacted by Parliament but have not yet been brought into force. The Adoption (Amendment) Bill 2016 now proposes to abolish the relevant provisions of the 2015 Act as they relate to adoption, though the 2016 Bill proposes substantially to enact the same measures. These measures will allow civil partners and cohabitants to apply as a couple to adopt a child.</p> <p>Notably, the Adoption (Amendment) Bill 2016 proposes to introduce second parent adoption in Ireland, for the spouses, civil partners and cohabitants of parents. If this were to occur, there would no longer be any reason not to recognise foreign second parent adoptions, provided the adoption otherwise complied with the Hague Convention requirements.</p>	