

## Splitting up and legal family formats in Ireland

by Brian Tobin <sup>1</sup>

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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 5 – Splitting up)

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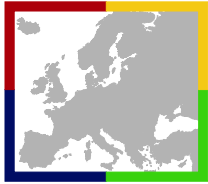


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# FamiliesAndSocieties

## 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](http://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](http://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](http://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 5 (Splitting up)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 5.1 Dissolution by court
- 5.2 Agreed administrative dissolution
- 5.3 Unilateral administrative dissolution
- 5.4 Agreed informal dissolution
- 5.5 Unilateral informal dissolution
- 5.6 Dissolution by marrying someone else
- 5.7 Ending by conversion
- 5.8 Ending by marrying each other
- 5.9 Property at dissolution
- 5.10 Alimony
- 5.11 Parental authority
- 5.12 General background regarding splitting up

In the following pages of this paper, first the answer to question 5.12 is presented, followed by the answers to questions 5.1 to 5.11.

**5.12 - General background regarding splitting up (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 splitting up, then please do so here.

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Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.01 - Dissolution by court

Can this type of relationship be ended by court decision?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1996	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2011	X	X
No 0000	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b> Constitution of Ireland, Article 41.3.2.  Family Law (Divorce) Act 1996.		<b>References to legal sources:</b> Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Part 12.  Children and Family Relationships Act 2015.			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Divorce was only introduced following a constitutional referendum in 1996 that led to the insertion of the present Article 41.3.2.</p> <p>However, there are stringent requirements for obtaining a divorce:</p> <p>The parties must be living apart for 4 out of the previous 5 years; there must be no reasonable prospect of reconciliation, and; proper provision must be made for the spouses and any children of one or both of them.</p>		<p><b>Explanations and nuances:</b>                      The parties must be living apart for 2 out of the previous 3 years and proper provision must be made for civil partners and any dependent children.</p> <p>Civil Partnership was introduced in 2011.</p>			

Jurisdiction: **Ireland**

Source: **B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.02 - Agreed administrative dissolution**

Can this type of relationship be ended by mutual agreement in an administrative procedure?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 No 2011	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances: A foreign registered partnership will not be recognised in Ireland if it can be dissolved in this manner.			

Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.03 - Unilateral administrative dissolution

Can this type of relationship be ended by one partner unilaterally in an administrative procedure?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 No 2011	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances: A foreign registered partnership will not be recognised in Ireland if it can be dissolved in this manner.			



Jurisdiction: **Ireland**

Source: **B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.04 - Agreed informal dissolution**

Can this type of relationship be ended by mutual agreement without involvement of any authority?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 No 2011	X	X
	N/A 0000		N/A 0000	X	X
<b>References to legal sources:</b>		<b>References to legal sources:</b>			
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> A foreign registered partnership will not be recognised in Ireland if it can be dissolved in this manner.			

Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.05 - Unilateral informal dissolution

Can this type of relationship be ended by one partner unilaterally without involvement of any authority?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No 0000	2016 No 2015	2016 N/A 0000	2016 No 2011	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources:		References to legal sources:			
Explanations and nuances:		Explanations and nuances: A foreign registered partnership will not be recognised in Ireland if it can be dissolved in this manner.			

Jurisdiction: **Ireland**

Source: **B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.06 - Dissolution by marrying someone else**

Can a registered partnership be ended by one partner marrying someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 No 2011	X	X
X	X		N/A 0000	X	X
		<b>References to legal sources:</b> Civil Registration Act 2004, section 2(2)(f), as inserted by section 7 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.			
		<b>Explanations and nuances:</b> There is an impediment to a marriage if one of the parties to the marriage is, or both are, already party to a subsisting civil partnership.			

Jurisdiction: **Ireland**

Source: **B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).**

Section: **5 - Splitting up**

Question: **5.07 - Ending by conversion**

Can this type of relationship be ended by the partners by way of conversion (of a marriage into a registered partnership or vice versa)?

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b>            Where the parties to a subsisting civil partnership with each other marry each other, the subsisting civil partnership shall stand dissolved from the date of the marriage.</p> <p>Technically, it's not a conversion, but in practice, with 5 days' notice, civil partners may become each other's spouses by marrying each other.</p>			

Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.08 - Ending by marrying each other

Can a registered partnership be ended by the partners marrying each other?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
X	X	2016 N/A 0000	2016 Yes 2015	X	X
X	X		No 2011	X	X
X	X		N/A 0000	X	X
		<b>References to legal sources:</b> Marriage Act 2015.			
		<b>Explanations and nuances:</b> Where the parties to a subsisting civil partnership marry each other, the subsisting civil partnership shall stand dissolved from the date of the marriage.			

Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.09 - Property at dissolution

In case the partners split up, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1995	2016 No, but 2015	2016 N/A 0000	2016 No, but 2011	2016 No 0000	2016 No 0000
No 0000	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Family Law (Divorce) Act 1996, Part 3.  Family Law Act 1995.		<b>References to legal sources:</b> Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Part 12.		<b>References to legal sources:</b> Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Part 15.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      There is no joint property (or community property) regime for marriage in Ireland. Each party retains their separate property during marriage, though they may agree to hold assets jointly. However, on judicial separation and divorce the parties may seek remedies in respect of the entire asset base of both parties. In theory, everything is up for grabs, though the courts are less likely to touch inheritances and property brought to the marriage.</p> <p>On judicial separation and divorce, the court may transfer interests in property and pensions between spouses or in favour of children, and require lump sums to be paid to spouses or children or require periodical payments to be made. In this sense, one could say that where the partners split up the property of each and of both is subject to reassignment, but if remedies are not sought, each party retains their separate property. Moreover, there is no automatic entitlement to any particular portion of the parties' assets. The court is required to ensure there is proper provision, not equal division.</p>		<p><b>Explanations and nuances:</b>                      There is no joint property (or community property) regime for civil partnership in Ireland. Each party retains their separate property during civil partnership, though they may agree to hold assets jointly. However, on dissolution the parties may seek remedies in respect of the entire asset base of both parties.</p> <p>On dissolution, the court may transfer interests in property and pensions between civil partners and require lump sums to be paid to civil partners or require periodical payments to be made. In this sense, one could say that where the partners split up the property of each and of both is subject to reassignment, but if remedies are not sought, each party retains their separate property. Moreover, there is no automatic entitlement to any particular portion of the parties' assets. The court is required to ensure there is proper provision, not equal division.</p>		<p><b>Explanations and nuances:</b></p>	



Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.10 - Alimony

In case the partners split up, do statutory rules on alimony apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1995	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes, but 2011	2016 Yes, but 2011
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Family Law (Divorce) Act 1996, Part 3.  Family Law Act 1995.</p>		<p><b>References to legal sources:</b> Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Part 12.</p>		<p><b>References to legal sources:</b> Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Part 12 (sections 172 &amp; 173).</p>	
<p><b>Explanations and nuances:</b> 1995 Act applies to maintenance available upon judicial separation.  1996 Act applies to maintenance available upon divorce.</p>		<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b> The parties must have been living together for 5 years, or 2 years where there is a child of the relationship, and the party seeking maintenance (alimony) must have been financially dependent on the other cohabitant.</p>	

Jurisdiction: Ireland

Source: B. Tobin, "Splitting up 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](http://www.LawsAndFamilies.eu), [LawsAndFamilies-IE-Section5.pdf](#) (please use this full citation when citing any information from this table).

Section: 5 - Splitting up

Question: 5.11 - Parental authority

In case the partners split up, do statutory rules on parental authority/responsibility apply?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1964	2016 Yes, but 2016	2016 N/A 0000	2016 Yes, but 2016	2016 Yes, but 1987	2016 Yes, but 2016
	No 2015		No 2011	No 0000	No 0000
	N/A 0000		N/A 0000		
<b>References to legal sources:</b> Guardianship of Infants Act 1964, Part 2.		<b>References to legal sources:</b> Guardianship of Infants Act 1964, section 6C.  Children and Family Relationships Act 2015, Part 4.		<b>References to legal sources:</b> Guardianship of Infants Act 1964, sections 6A & 6C.  Status of Children Act 1987.  Children and Family Relationships Act 2015, Part 4.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Married parents remain joint guardians (joint parental responsibility) of their biological children irrespective of a breakdown of their marriage.</p> <p>However, if a non-biological social parent was not appointed a guardian during the marriage, he/she cannot be so appointed by the court upon its termination because section 6C of the Guardianship of Infants Act 1964, as inserted by section 49 of the Children and Family Relationships Act 2015, provides that a person seeking to be appointed a guardian must be married to the parent of the child and have shared with that parent responsibility for the child's day-to-day care for a period of more than 2 years.</p> <p>Section 49 of the Children and Family Relationships Act 2015, insofar as it inserts section 6C into the Guardianship of Infants Act 1964, was commenced on 18 January 2016 by the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016.</p>		<p><b>Explanations and nuances:</b>                      However, if a non-biological social parent was not appointed a guardian during the civil partnership, he/she cannot be so appointed by the court upon its termination because section 6C of the Guardianship of Infants Act 1964, as inserted by section 49 of the Children and Family Relationships Act 2015, provides that a person seeking to be appointed a guardian must be in a civil partnership with the parent of the child and have shared with that parent responsibility for the child's day-to-day care for a period of more than 2 years.</p> <p>If both civil partners are legal parents (via joint adoption or DAHR as provided for under the Children and Family Relationships Act 2015) then they share guardianship.</p> <p>Section 49 of the Children and Family Relationships Act 2015, insofar as it inserts section 6C into the Guardianship of Infants Act 1964, was commenced on 18 January 2016 by the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016.</p>		<p><b>Explanations and nuances:</b>                      A biological father who has cohabited with the child's mother can seek to be appointed a guardian of his child by the court at any time, including upon the termination of the relationship: Guardianship of Infants Act 1964, section 6A.</p> <p>However, if a non-biological social parent was not appointed a guardian already, he/she cannot be so appointed by the court upon its termination because section 6C of the Guardianship of Infants Act 1964, as inserted by section 49 of the Children and Family Relationships Act 2015, provides that a person seeking to be appointed a guardian must have cohabited with the parent of the child for over 3 years and have shared with that parent responsibility for the child's day-to-day care for a period of more than 2 years.</p> <p>Section 49 of the Children and Family Relationships Act 2015, insofar as it inserts section 6C into the Guardianship of Infants Act 1964, was commenced on 18 January 2016 by the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2016.</p>	