

Death 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

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

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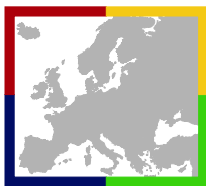
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FamiliesAndSocieties

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. 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 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

6.1 Tenancy continuation

6.2 Property at death

6.3 Inheritance

6.4 Inheritance tax

6.5 Survivor’s pension

6.6 Wrongful death

6.7 General background regarding death

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

6.07 - General background regarding death (Open question)

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

In Ireland, the policy priority in relation to succession is the protection of surviving spouses and civil partners. Surviving spouses and civil partners have an automatic entitlement to a portion of the deceased's estate. Even if the latter made a will disinheriting the surviving spouse or civil partner, the surviving spouse or civil partner may claim one half of the estate as a legal right share if the deceased had no children, or one-third if the deceased had surviving children. A deceased spouse may potentially will his or her entire estate to the surviving spouse or civil partner. (The deceased's child may make a claim against the estate in certain circumstances, though the legal right share of spouses is protected and no claim may be made to diminish the inheritance of a spouse who is also a parent of the child).

Where the deceased dies without making a will, the surviving spouse or civil partner inherits the entire estate, or two-thirds thereof if the deceased had surviving issue (descendants).

There are generous tax exemptions for surviving spouses and civil partners, who pay no inheritance or gift tax on donations or bequests taken from their spouse or civil partner. The children of a deceased person also enjoy a large exemption threshold in respect of an inheritances received from parents. Parent for this purpose includes an adoptive parent and step-parent. The spouse or civil partner of a parent is treated the same as the parent of the child for inheritance tax purposes.

Children have no automatic entitlement to any portion of the deceased's parent's estate if a will is made, unless they are named in the will, though they may make a claim against the estate of a parent if they believe proper provision has not been made for them.

Cohabitants have very limited entitlements under succession law. If no will is made, the cohabitant will normally not inherit. Where a will is made, the deceased is free to provide for the cohabitant, but is not obliged to do so. A qualified cohabitant (where the couple lived together before the relationship ended for at least 5 continuous years, or 2 if they had children together) may seek provision from the estate of the deceased cohabitant, and a court may grant provision if it believes that the survivor was not properly provided for by the deceased.

Jurisdiction: Ireland

Source: F. Ryan, "Death 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-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: 6 - Death

Question: 6.01 - Tenancy continuation

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2004	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes 2004	2016 Yes 2011
Yes, but 1982	N/A 0000		N/A 0000	No 0000	Doubt 2004
Yes, but 1946					No 0000
<p>References to legal sources: Residential Tenancies Act 2004, art.39(2) and (3).</p> <p>F. De Londras, <i>Principles of Irish Property Law</i>(2nd edn, Clarus Press 2011).</p> <p>A. Lyall, (with A. Power), <i>Land Law in Ireland</i> (3rd edn., Round Hall 2010).</p>		<p>References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.40 amending Residential Tenancies Act 2004, art. 39(2) and (3).</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation</i> (Round Hall 2011), 106-108.</p>		<p>References to legal sources: Residential Tenancies Act 2004, art. 39(2) and (3).</p> <p>Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.203 amending the Residential Tenancies Act 2004, art. 39(3).</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation</i> (Round Hall 2011), 321-322.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Prior to 2015, same-sex couples could not marry under Irish law. The 34th Amendment to the Constitution (enacted August 29, 2015) and the Marriage Act 2015 (which came into force on November 16, 2015) now allow same-sex couples to marry.</p> <p>Part 4 of the Residential Tenancies Act 2004 allows a tenant who has rented a residential dwelling for at least 6 months the option of security of tenure for 4 years from the commencement of the tenancy, subject to certain conditions and exceptions. Where a tenant dies, normally the Part 4 tenancy ends. Under art. 39 of the 2004 Act, however, certain family members who occupied the property at the time of the tenant's death may take over the Part 4 tenancy for the remainder of its duration. Spouses, civil partners, cohabitants, children and parents of the tenant are included in the category of those who may take over the tenancy, provided they occupied the house at the time of the tenant's death. (These provisions are without prejudice to the rights of multiple tenants under Part 6 of the Act.) 'Spouse' includes a spouse of the same sex.</p> <p>The Housing (Private Rented Dwellings) Act 1982 also offers security of tenure, but in very limited cases. (The scope of the Act is limited to properties that were historically rent-controlled.) Under the Act, a tenant's spouse may succeed to a controlled tenancy on the death of the tenant. This right was extended to civil partners by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.41.</p> <p>Prior to 1980, a spouse had a right to succeed to a statutory tenancy in respect of certain 'controlled dwellings' under the Rent Restrictions Act 1946 and the Rent Restrictions Act 1960. The core provisions of the 1960 Act were struck down as unconstitutional in 1980 but were replaced in modified form by the Housing (Private Rented Dwellings) Act 1982. The 1946 and 1960 Acts both allowed spouses to succeed to certain protected tenancies. Other family members living with the tenant at the time of death could also succeed, but non-marital partners were not included under the 1946 and 1960 Acts.</p>		<p>Explanations and nuances: Civil partnership is available only to same-sex couples and first became available in January 2011.</p> <p>The right to succeed to a Part 4 (protected) tenancy was extended to civil partners by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 40, which came into force in January 2011.</p> <p>The Housing (Private Rented Dwellings) Act 1982 also offers rent control and security of tenure, but in very limited cases. Under the Act, a spouse may succeed to a protected tenancy. This right was extended to civil partners by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 41.</p>		<p>Explanations and nuances: A tenant's cohabitant may take over a Part 4 tenancy where the tenant dies before the Part 4 tenancy has ended. The same rules now apply to both different sex and same sex cohabitants. A cohabitant is defined by art.172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 as one of two adults living together in an intimate and committed relationship. The definition of cohabitant excludes close relatives (those within the prohibited degrees of relationship for marriage or civil partnership). (That said, parents and children of the deceased tenant who live in the property at the time of the tenant's death also have a right to take over the tenancy.)</p> <p>Notably, the cohabitant must have lived in the property with the deceased for at least 6 months before the latter's death. While a spouse or civil partner must also have occupied the property at the time of the tenant's death, there is no minimum residential requirement for spouses and civil partners.</p> <p>Prior to 2011, it appeared to be the case that opposite sex but not same sex cohabitants were entitled to succeed to a Part 4 tenancy, though the exact legal position was unclear. Prior to its amendment in 2011, the 2004 Act referred to a person "who was not a spouse of the tenant but who cohabited with the tenant as husband and wife in the dwelling". While the point was never tested in an Irish court, the reference to cohabiting as "husband and wife" appeared to indicate (given the opposition of gender it implied) that the measure only addressed opposite-sex couples. While it is possible that the phrase may have been interpreted as applying to same-sex couples had the matter been tested in court (see Ghaidan v Godin-Mendoza [2004] UK HL 30), it is not clear whether same-sex couples would have been treated as falling within the definition (see Fitzpatrick v Sterling Housing Association [2001] AC 27).</p> <p>Certainly, parliamentary debates appear to indicate that the intent in using the original formula in the 2004 Act as enacted was to confine relief to opposite-sex cohabiting couples (177 Seanad Debates 793, 796, 1119).</p> <p>Any uncertainty on this point was resolved, however, by the 2010 Act. It is clear that both same sex and opposite sex cohabitants are now equally entitled to succeed, subject to the requirement that they cohabited together in the dwelling for at least 6 months before the death of the tenant.</p>	

Jurisdiction: **Ireland**

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Section: **6 - Death**

Question: **6.02 - Property at death**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1965	2016 No, but 2015	2016 N/A 0000	2016 No, but 2011	2016 No 0000	2016 No 0000
No, but 0000	N/A 0000		N/A 0000		
References to legal sources:		References to legal sources:		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Ireland operates a system of separate property for husbands and wives during marriage. While husbands and wives may hold property jointly, if they choose to do so, there is no automatic rule that makes property acquired during the marriage joint or community property. A husband or wife may continue to own and acquire separate property after marriage. Where property is held in joint tenancy, however, the survivor takes the entire property when the other joint tenants die. Where property is held by both spouses as tenants in common, by contrast, the survivor keeps only the portion to which he or she is individually entitled and the deceased's interest becomes part of the deceased's estate.</p> <p>Where, however, a spouse dies and has made a will, the surviving spouse is entitled to claim, at a minimum, one half of the deceased's estate if the deceased had no surviving children, and one-third if the deceased had surviving children. This is called the 'legal right' share. While the deceased spouse may confer a larger portion of their estate on the surviving spouse by will, the survivor is entitled to no less than the legal right share, regardless of the terms of the deceased's will (Succession Act 1965, art. 111).</p> <p>Where a spouse dies without making a will the surviving spouse is entitled to succeed to the entire estate if the deceased had no surviving issue (descendants), and two-thirds of the estate if the deceased had surviving issue (Succession Act 1965, art. 67).</p>		<p>Explanations and nuances: Ireland operates a system of separate property for civil partners during civil partnership. While civil partners may hold property jointly, if they choose to do so, there is no automatic rule that makes property acquired during the relationship joint property. A civil partner may continue to own and acquire separate property after civil partnership.</p> <p>Where property is held in joint tenancy, however, the survivor takes the entire property when the other joint tenants die. Where property is held by both civil partners as tenants in common, by contrast, the survivor keeps only the portion to which he or she is individually entitled and the deceased's interest becomes part of the deceased's own estate.</p> <p>Where, however, a civil partner dies and has made a will, the surviving civil partner is entitled to claim, at a minimum, one half of the deceased's estate if the deceased had no surviving children, and one-third if the deceased had surviving children. This is called the 'legal right' share.</p> <p>While the deceased civil partner may confer a larger portion of their estate on the surviving civil partner by will, the survivor is entitled to no less than the legal right share regardless of the terms of the deceased's will (Succession Act 1965, art. 111A).</p> <p>Where a civil partner dies without making a will the surviving civil partner is entitled to succeed to the entire estate if the deceased had no surviving issue (descendants), and two-thirds of the estate, if the deceased had surviving issue (Succession Act 1965, art. 67A).</p> <p>While civil partners and spouses are treated largely the same, a child of a deceased civil partner has stronger rights in respect of the estate than a child of a deceased spouse.</p>		<p>Explanations and nuances: When a cohabitant dies, the surviving cohabitant is not entitled to any portion of the deceased's estate unless the deceased made a will bequeathing property to the survivor. The deceased is normally fully entitled not to bequeath any property to a surviving cohabitant.</p> <p>A person may, however, make a claim against the estate of their deceased qualified cohabitant under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 194. This is only possible where the person is a qualified cohabitant. A qualified cohabitant is one of two cohabitants who (at the time the relationship ends) have lived together for a continuous period of at least 5 years, or 2 years if they have children together. A court may grant provision from the estate of the deceased if the judge is satisfied that the deceased did not properly provide for the surviving qualified cohabitant. See DC v DR [2015] IEHC 309. If the couple split up before death, the survivor must demonstrate financial dependence, but this criterion does not apply where the couple was still together at death.</p>	

Jurisdiction: **Ireland**

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Section: **6 - Death**

Question: **6.03 - Inheritance**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1965	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 No, but 2011	2016 No, but 2011
Yes, but 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p>References to legal sources: Succession Act 1965, art. 67.</p> <p>Keating on Probate (3rd edn., Round Hall 2013).</p> <p>A. Keating, <i>Succession Law in Ireland</i> (Clarus Press 2015).</p>		<p>References to legal sources: Succession Act 1965, art. 67A (as amended by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.73).</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> Annotation (Round Hall 2011), 132-152.</p>		<p>References to legal sources: Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.194.</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</i> Annotation (Round Hall 2011), 306-312.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Where a spouse dies without making a valid will: (a) If the deceased had no surviving issue (descendants such as children and grandchildren), the surviving spouse inherits the entire estate of the deceased. (b) If the deceased had surviving issue, the surviving spouse inherits two-thirds of the entire estate and the remaining one-third is divided among the surviving issue. (If the deceased had children, they take equal shares of the remaining third. If the deceased person's child died before the deceased intestate, that child's children share what their parent would have received, equally (per stirpes).)</p> <p>Prior to 1965, the estate of a deceased person who did not make a will was distributed in a manner that left comparatively little for the surviving spouse. Real property was inherited by the heir-at-law (usually the eldest son), subject to the widow's right to dower. The husband of the deceased was entitled to all of his deceased wife's personal property, while a widow was entitled to one-third of her husband's personal property (one-half if there were no surviving children). These rules were abolished and replaced by the Succession Act 1965.</p>		<p>Explanations and nuances: If a civil partner dies without making a valid will: (a) If the deceased had no surviving issue (descendants such as children and grandchildren), the surviving civil partner inherits the entire estate of the deceased. (b) If the deceased had surviving issue, the surviving civil partner inherits two-thirds of the entire estate and the remaining one-third is divided among the surviving issue. (If the deceased had children, they take equal shares of the remaining third. If the deceased person's child died before the deceased intestate, that child's children share what their parent would have received, equally (per stirpes).)</p> <p>The position of the surviving civil partner is largely the same as that of a surviving spouse, though the position is more complicated if the deceased had children. In such a case, if the deceased had a civil partner, the surviving child of the deceased may claim a larger portion of the estate if a court is satisfied that it would be unjust not to make an order in favour of the child. This effectively allows the court to reduce the inheritance of the surviving civil partner. This right does not apply where a spouse dies without making a will.</p>		<p>Explanations and nuances: A person's surviving cohabitant cannot normally share in the estate of the deceased where the deceased did not name the survivor in a will. Thus, if a cohabitant dies without making a will, the surviving cohabitant normally gets nothing.</p> <p>Nonetheless, art. 194 of the 2010 Act allows a surviving qualified cohabitant to seek provision from the estate. See DC v DR [2015] IEHC 309. To succeed, the qualified cohabitant must show that the deceased did not properly provide for the survivor. If the parties were not together at the time of death, the survivor must demonstrate that the relationship ended within two years of the death and the survivor is financially dependent (these conditions do not apply where the relationship was intact at the time of death.)</p> <p>A qualified cohabitant is one of two cohabitants who, at the time of the ending of the relationship or death of one of the cohabitants, have lived together for at least 5 continuous years before the relationship ended, or two years if the couple had children together. (To be qualified cohabitants, the parties must not be closely related, within the prohibited degrees of relationship for marriage or civil partnership.)</p>	

Jurisdiction: **Ireland**

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Section: **6 - Death**

Question: **6.04 - Inheritance tax**

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1985	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 No, but 1999	2016 No, but 1999
Yes, but 1976	N/A 0000		N/A 0000	No 0000	No 0000
? 0000					
References to legal sources: Capital Acquisitions Tax Consolidation Act 2003, art. 71.		References to legal sources: Capital Acquisitions Tax Consolidation Act 2003, art. 71 as amended by Finance (No. 3) Act 2011, schedule 3, item 10. F. Ryan, The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation (Round Hall 2011), 18-19.		References to legal sources: Capital Acquisitions Tax Consolidation Act 2003, art. 86 (originally introduced by the Finance Act 2000, art. 151, which applies to gifts or inheritances taken on or after December 1, 1999).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Spouses are entirely exempted from paying inheritance or gift tax (Capital Acquisitions Tax) on acquisitions donated to them by or inherited from their spouses.</p> <p>From 1976 until 1985, spouses could inherit a certain portion of the deceased spouse's estate without paying inheritance tax, but inheritance tax was payable on sums inherited above a particular threshold. The Finance Act 1985, art. 59 entirely exempted the surviving spouse from inheritance tax liability, regardless of the size of the inheritance.</p> <p>Prior to 1976, there were various death and estate duties, but these were applied to the entire estate rather than to individual beneficiaries. I have not been able to determine with certainty the precise position of spouses before that date.</p>		<p>Explanations and nuances: Like spouses, civil partners are entirely exempted from paying inheritance or gift tax on acquisitions donated to them by or inherited from their civil partners. For the purpose of tax law, civil partners are treated the same as spouses.</p>		<p>Explanations and nuances: Cohabitants pay inheritance tax on inheritances received from deceased cohabitants on the same basis as inheritances from a stranger. While the survivor may take up to €15,075 without being liable to pay inheritance tax, any amount inherited above this level is subject to capital acquisitions tax at a rate of 33%. The same principles apply to gifts.</p> <p>There is, however, a dwelling house exemption that provides some relief from tax for long-term cohabitants (amongst others). This applies where a person inherits a dwelling house in which he or she has resided (as sole or main residence) for at least 3 years before the testator's death. Provided certain conditions are met, the person inheriting the house is exempt from liability to pay capital acquisitions tax on the inheritance (Capital Acquisitions Tax Consolidation Act 2003, art. 86). This relief is not confined to cohabitants, but is of particular use where a cohabitant inherits a house or a portion of a house in which he or she has been living with his or her deceased cohabitant.</p> <p>Conditions are attached, including that the inheritor not have a beneficial interest in any other dwelling house at the time of the inheritance.</p> <p>The inheritor must normally live in the inherited property for at least 6 years after the death (though there are some exceptions). Similar principles apply to gifts.</p>	

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Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?

(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1935	2016 Yes, but 2015	2016 N/A 0000	2016 Yes, but 2011	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: Social Welfare Consolidation Act 2005.		References to legal sources: Social Welfare Consolidation Act 2005 as amended by the Social Welfare and Pensions Act 2010, art. 26 and Schedule 3. F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation</i> (Round Hall 2011), 19-21, 160-163.		References to legal sources:	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Social Security: A surviving spouse whose spouse has died is entitled to a widow's/widower's/surviving civil partner's pension from the Department of Social Protection, though certain conditions apply. Different conditions apply depending on whether sufficient social insurance contributions have been made by the recipient or his or her deceased spouse. These pensions are also available to civil partners. Widows have been entitled to pensions since at least 1935: see Widows' and Orphans' Pensions Act 1935.</p> <p>A Widowed or Surviving Civil Partner Grant is also available on a once-off basis to surviving spouses or civil partners with dependent children.</p> <p>Private pensions: Where a member of a pension scheme dies in service (before retirement) entitlement to a death in service payment or survivor's pension from a private pension scheme will depend on the terms of the particular pension scheme. Some (possibly most) pension schemes make provision for surviving spouses, civil partners and children in case of the scheme member's death in service. The scheme may also make provision for a spouse or civil partner where a retired scheme member predeceases his or her spouse/civil partner. Such entitlements, however, and the extent thereof will depend on the particular conditions in the relevant scheme. In many cases, separate pension provision will be made for members' spouses, civil partners and children where the scheme member dies in service. It is possible also that the pension scheme will provide for a lump sum payment to be paid into the member's estate following death in service (thereby indirectly benefitting the surviving spouse). Many schemes also provide a pension for a surviving spouse/civil partner where the member of the scheme dies after retirement.</p>		<p>Explanations and nuances: Social Security: A surviving civil partner is entitled to a widow's/widower's/surviving civil partner's pension from the Department of Social Protection, though certain conditions apply. Different conditions apply depending on whether sufficient social insurance contributions have been made by the recipient or his or her deceased civil partner.</p> <p>A Widowed or Surviving Civil Partner Grant is also available on a once-off basis to surviving spouses or civil partners with dependent children.</p> <p>Private pensions: Where a member of a pension scheme dies in service (before retirement) entitlement to a death in service payment or survivor's pension from a private pension scheme will depend on the terms of the particular pension scheme. It is important to note, however, that where a pension scheme makes provision for spouses, it must treat civil partners equally. (See the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art.99).</p> <p>Some (possibly most) pension schemes make provision for surviving spouses, civil partners and children in case of the scheme member's death in service. The scheme may also make provision for a spouse or civil partner where a retired scheme member predeceases his or her spouse/civil partner. Such entitlements, however, and the extent thereof will depend on the particular conditions in the relevant scheme. In many cases, separate pension provision will be made for members' spouses, civil partners and children where the scheme member dies in service. It is possible also that the scheme will provide for a lump sum payment to be paid into the member's estate following death in service (thereby indirectly benefitting the surviving civil partner). Many schemes also provide a pension for a surviving spouse/civil partner where the member of the scheme dies after retirement.</p>		<p>Explanations and nuances: Social welfare pensions such as the widow's/widower's/surviving civil partner's pension and the widowed or surviving civil partner's grant are not available to surviving cohabitants.</p> <p>Whether a private pension scheme makes provision for a surviving cohabitant depends on the terms of the particular pension scheme. Many pension schemes only make provision for surviving spouses and civil partners. A cohabitant may benefit from a lump sum paid out of a pension scheme to the estate of the deceased, but this will only benefit the cohabitant if he or she has been named as a beneficiary in the deceased's will.</p>	

Jurisdiction: Ireland

Source: F. Ryan, "Death 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-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: 6 - Death

Question: 6.06 - Wrongful death

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

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1961	2016 Yes 2015	2016 N/A 0000	2016 Yes 2011	2016 Yes, but 1996	2016 Yes, but 2011
Yes 1846	N/A 0000		N/A 0000	No 0000	Doubt 1996
					No 0000
<p>References to legal sources: The Civil Liability Act 1961, arts. 47 and 48.</p> <p>McMahon and Binchy, <i>Law of Torts</i> (4th edn, Bloomsbury Professional 2013), Chapter 42.</p>		<p>References to legal sources: The Civil Liability Act 1961, arts. 47 and 48 as amended by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 105.</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation</i> (Round Hall 2011), 170-171.</p>		<p>References to legal sources: The Civil Liability Act 1961, art.48 as amended by Civil Liability (Amendment) Act 1996 as amended by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, art. 204.</p> <p>F. Ryan, <i>The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 Annotation</i> (Round Hall 2011), 322-323.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A person is entitled to sue for wrongful death in respect of the death of his or her spouse.</p> <p>The Civil Liability Act 1961, art. 48 stipulates that where "...the death of a person is caused by the wrongful act of another such as would have entitled the party injured, but for his death, to maintain an action and recover damages in respect thereof, the person who would have been so liable shall be liable to an action for damages for the benefit of the dependants of the deceased."</p> <p>'Dependants' include the spouse and civil partner of a person as well as other family members. Previous legislation dating back to 1846 contained a similar right for spouses.</p>		<p>Explanations and nuances: A person is entitled to sue for wrongful death in respect of the death of his or her civil partner.</p> <p>With effect from January 2011, civil partners were included in the definition of dependants entitled to sue for wrongful death. Civil partners are treated the same as spouses for this purpose.</p>		<p>Explanations and nuances: A cohabitant may sue for wrongful death in respect of the death of his or her cohabitant, but certain conditions apply. The cohabitant must have been living with the deceased as his or her cohabitant at the time of death for a continuous period of not less than three years before the death.</p> <p>Cohabitant means one of two adults (whether of the same sex or opposite sex) who live together in a committed and intimate relationship, but does not include close relatives (namely those persons who fall within the prohibited degrees of relationship for marriage or civil partnership).</p> <p>The 1996 Act extended the right to sue for wrongful death to cohabitants, but appeared initially to confine the right to sue to opposite-sex cohabitants. The Act, as enacted, referred to a person "who was not married to the deceased but who, until the date of the deceased's death, had been living with the deceased as husband or wife for a continuous period of not less than three years". This appeared (though the point was never tested) to confine the right to sue to opposite-sex cohabitants. It is possible that a same-sex cohabitant could have claimed relief, but the gender opposition implied by the definition meant that there was at least a doubt as to whether the same-sex cohabitant would succeed.</p> <p>This apparent gap has been resolved, however, by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, which amended the definition of dependant to include "a person who was not married to or a civil partner of the deceased but who, until the date of the deceased's death, had been living with the deceased as the deceased's cohabitant...".</p> <p>Cohabitants may be of the same sex or opposite sex. The parties must have been living together at the time of death for a continuous period of at least three years.</p>	