

Splitting up and legal family formats in the UK: Scotland

by Kenneth Norrie 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

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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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¹ Professor Kenneth Mck. Norrie (Professor of Law, University of Strathclyde, Glasgow, Scotland) is grateful for the useful comments that Dr Brian Sloan (College Lecturer, Director of Studies and Fellow in Law, Robinson College, Cambridge) 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.



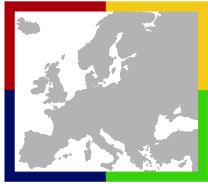
³ Institut national d'études démographiques, Paris, France, www.ined.fr.



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Disclaimer

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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 Scotland

The answers concerning Scotland 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 in the UK: Scotland by Kenneth Norrie (Section 1)

Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper 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: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Divorce (Scotland) Act 1976. Marriage and Civil Partnership (Scotland) Act 2014.		References to legal sources: Civil Partnership Act 2004, arts. 117-125.			
Explanations and nuances: It has been possible since the Reformation in Scotland to bring a marriage to an end by court decision, finding that one of the grounds of divorce, now set out in the 1976 Act, has been established.		Explanations and nuances: Civil partnership in Scotland can be brought to an end through court decision that one of the grounds of dissolution, set out in art. 117 of the 2004 Act, has been established.			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	2016 N/A 0000	2016 No, but 2014	X	X
	N/A 0000		No 0000	X	X
References to legal sources: Divorce (Scotland) Act 1976.		References to legal sources: Marriage and Civil Partnership (Scotland) Act 2014, arts. 10 - 11. Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Regulations 2014 (SSI 2014/361).			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Court process is the ONLY way in which a marriage can be terminated in Scotland before death.</p>		<p>Explanations and nuances: Generally speaking court process is the only way in which a civil partnership can be terminated in Scotland. However, a technical dissolution of civil partnership is effected by its conversion to marriage (through administrative process: see answers at questions 5.7 and 5.8 below). This has been available since marriage was opened to same-sex couples by the 2014 Act.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Divorce (Scotland) Act 1976.		References to legal sources: Civil Partnership Act 2004. Marriage and Civil Partnership (Scotland) Act 2014.			
Explanations and nuances: Court decision is the ONLY way in which a marriage can be terminated in Scotland before death.		Explanations and nuances: Court decision is the primary way in which a civil partnership can be terminated in Scotland before death. Termination of civil partnership by administrative conversion to marriage (see answers to question 5.7 below) requires mutual agreement.			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Divorce (Scotland) Act 1976.		References to legal sources: Civil Partnership Act 2004.			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	2016 N/A 0000	2016 No 2005	X	X
	N/A 0000		N/A 0000	X	X
References to legal sources: Divorce (Scotland) Act 1976.		References to legal sources: Civil Partnership Act 2004.			
Explanations and nuances:		Explanations and nuances:			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2005	X	X
X	X		N/A 0000	X	X
		References to legal sources: Civil Partnership Act 2004, art. 86(1)(c).			
		Explanations and nuances: A person who is presently in an extant civil partnership is ineligible to contract a further marriage or civil partnership: 2004 Act, art. 86(1)(c). If such a person purports to marry someone else the second "marriage" or "civil partnership" is invalid and the original civil partnership remains valid.			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	2016 N/A 0000	2016 Yes 2014	X	X
	N/A 0000		No 2005	X	X
			N/A 0000	X	X
References to legal sources:		References to legal sources: Marriage and Civil Partnership (Scotland) Act 2014, arts. 10-11. Marriage Between Civil Partners (Procedure for Change and Fees) (Scotland) Regulations 2014 (Scottish Statutory Instrument 2014/361).			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Though same-sex couples are entitled either to marry or to register a civil partnership, and those who register a civil partnership may convert their relationship to marriage, it is not possible for a married (same-sex) couple to convert the marriage to a civil partnership. And since civil partnership remains exclusively same-sex, it is not possible for a married (opposite-sex) couple to convert to a civil partnership.</p>		<p>Explanations and nuances: A civil partnership (necessarily involving a same-sex couple) may be converted into a (same-sex) marriage, either by the couple marrying each other, or by registering the change with the District Registrar under the 2014 Regulations. This will bring the civil partnership to an end, but accrued rights are carried forward to the new marriage. Prior to 2014 conversion was not possible because marriage was limited to opposite-sex couples.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 2014	X	X
X	X		No 2005	X	X
X	X		N/A 0000	X	X
		<p>References to legal sources: Marriage (Scotland) Act 1977.</p> <p>Marriage and Civil Partnership (Scotland) Act 2014, art. 11.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
		<p>Explanations and nuances: Conversion from (necessarily) same-sex civil partnership to marriage was not possible until marriage was opened to same-sex couples by the 2014 Act, and since that Act came into force civil partners have been able to marry each other under the Marriage (Scotland) Act 1977, the effect of which is to bring the civil partnership to an end and for the couple to be treated as having been married from the date of the registration of the civil partnership.</p>			

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 1985	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No 0000	2016 No 0000
No 0000	N/A 0000		N/A 0000		
References to legal sources: Family Law (Scotland) Act 1985, arts. 8 - 14, 24 & 25.		References to legal sources: Family Law (Scotland) Act 1985, arts. 8 - 14, 24 & 25, as amended by Civil Partnership Act 2004, Schedule 28.		References to legal sources: Family Law (Scotland) Act 2006, art. 28. Gow v Grant [2012] UKSC 29 (UK Supreme Court 4 July 2012).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Possessions acquired by parties to a marriage since the date of the marriage remain in the individual ownership of each spouse (1985 Act, art. 24), except that "household goods" are presumed, if the matter is in doubt, to be owned equally by both (1985 Act, art. 25). Also, the court on divorce will allocate the property between the ex-spouses so that each receives a "fair" share, which is presumed (unless the contrary is shown) to be a 50-50 sharing: this achieves a similar effect as if the acquired property were jointly owned.</p>		<p>Explanations and nuances: Possessions acquired by parties to a civil partnership since the date of the partnership's registration remain in the individual ownership of each partner (1985 Act, art. 24), except that "household goods" are presumed, if the matter is in doubt, to be owned equally by both (1985 Act, art. 25). Also, the court on dissolution will allocate the property between the ex-civil partners so that each receives a "fair" share, which is presumed (unless the contrary is shown) to be a 50-50 sharing: this achieves a similar effect as if the acquired property were jointly owned.</p>		<p>Explanations and nuances: At separation the court may be asked to make an award of property from one ex-cohabitant to the other but this is not done on the basis that the property acquired during the relationship is joint property: it is based on the court's view of "fairness". But there is no presumption of equal sharing, as there is for separating spouses and civil partners.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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, but 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 No 0000	2016 No 0000
	N/A 0000		N/A 0000		
References to legal sources: Family Law (Scotland) Act 1985, arts. 1 - 7; 8 - 14.		References to legal sources: Family Law (Scotland) Act 1985, arts. 1 - 7; 8 - 14, as amended by Civil Partnership Act 2004, Schedule 28.		References to legal sources: Family Law (Scotland) Act 2006, art. 28.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: When the couple split up, an action for what Scots law calls "aliment" may be raised before the couple divorce under arts. 1 - 7 of the 1985 Act so that one spouse pays for the upkeep of the other. But on divorce that obligation comes to an end. The divorce court may make an award of a "periodical allowance" in certain limited circumstances under arts. 8 - 14 of the 1985 Act, and this will normally be for a specified period of time.</p>		<p>Explanations and nuances: When the couple split up, an action for what Scots law calls "aliment" may be raised before the dissolution of the civil partnership under arts. 1 - 7 of the 1985 Act so that one partner pays for the upkeep of the other. But on dissolution that obligation comes to an end. The dissolution court may make an award of a "periodical allowance" in certain limited circumstances under arts. 8 - 14 of the 1985 Act, and this will normally be for a specified period of time.</p>		<p>Explanations and nuances: Cohabitants do not owe each other an obligation of aliment in Scots law. Ex-cohabitants similarly owe no obligation of aliment to their ex-partners: although art. 28 of the 2006 Act allows the court to make a financial award from one ex-cohabitant to the other this will always be of a capital sum and never an on-going payment of aliment.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Splitting up and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-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 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 0000	2016 Yes 0000
	N/A 0000		N/A 0000		
References to legal sources: Children (Scotland) Act 1995, arts. 1 - 3, 11.		References to legal sources: Children (Scotland) Act 1995, arts. 1 - 3, 11.		References to legal sources: Children (Scotland) Act 1995, arts. 1 - 3, 11.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Parents have "parental responsibilities and parental rights" under arts. 1 - 3 of the 1995 Act irrespective of whether they are married to each other, and these responsibilities and rights are not affected by the spouses splitting up. If there is no dispute between the parties on separation then it is these rules that apply. If there is a dispute as to with which partner the child is to live, or how much contact the non-resident partner is to have, or any other aspect of parental responsibilities and parental rights, anyone may raise an action under art. 11 of the 1995 Act and the matter will be determined by regarding the child's welfare as the paramount consideration.</p>		<p>Explanations and nuances: Parents have "parental responsibilities and parental rights" under arts. 1 - 3 of the 1995 Act irrespective of whether they are civilly empartnered to each other, and these responsibilities and rights are not affected by the partners splitting up. If there is no dispute between the parties on separation then it is these rules that apply. If there is a dispute as to with which partner the child is to live, or how much contact the non-resident partner is to have, or any other aspect of parental responsibilities and parental rights, anyone may raise an action under art. 11 of the 1995 Act and the matter will be determined by regarding the child's welfare as the paramount consideration.</p>		<p>Explanations and nuances: Parents have "parental responsibilities and parental rights" underarts. 1 - 3 of the 1995 Act irrespective of whether they are married or civilly empartnered to each other, and these responsibilities and rights are not affected by the couple splitting up. If there is no dispute between the parties on separation then it is these rules that apply. If there is a dispute as to with whom the child is to live, or how much contact the ex-cohabitant is to have, or any other aspect of parental responsibilities and parental rights, anyone may raise an action under s. 11 of the 1995 Act and the matter will be determined by regarding the child's welfare as the paramount consideration.</p>	