

Civil Partnership: An Overview



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The Civil Partnership Bill 2009 was published June 26, 2009. While it is not yet law, its implementation will make profound changes to the law as it affects same-sex couples. It will also make other significant changes to the law applying to unmarried cohabiting couples, both opposite sex and same-sex.

Is this Bill significant?

The provisions of the Civil Partnership Bill 2009 are significant and extensive, particularly when compared to the current state of Irish family law. Arguably, the Bill represents the most far-reaching reform of family law in a generation, reshaping considerably the landscape of Irish family law. Irish family law as currently constituted is significantly out-of-step with the reality of family life in modern Ireland. In particular, the current law makes minimal provision for the increasing number of families not based on the institution of marriage, and makes next to no provision for families consisting of or led by same-sex couples.

Broadly, what does the Bill propose?

The provisions of the Bill are complex and intricate. The Bill as initiated is 118 pages long, and contains 206 separate sections as well as a lengthy Schedule with five separate parts. The Bill seeks to amend over 130 separate (and often complex) pieces of legislation that confer rights or place obligations on spouses. The broad effect of these amendments is to provide equivalent protection for civil partners, and to a lesser extent to provide for cohabitants.

The Bill proposes the introduction of *two separate schemes*:

A ***civil partnership registration scheme*** confined to same-sex couples

A **cohabitation scheme** for unmarried, unrelated cohabitants, whether of the same sex or the opposite sex.

These two schemes are quite distinct and should not be confused. The first applies only to same-sex couples who register their civil partnership under the Bill. By contrast, the second applies to unregistered, unmarried couples, both of the same sex and of the opposite sex. Both schemes, however, share an important feature: the parties must not otherwise be closely related to each other. Brothers and sisters, for instance, cannot become either civil partners or cohabitants under the legislation.

Who will be affected by these reforms?

While the first of these schemes – civil partnership itself – is the more significant in terms of the rights and obligations conferred, potentially it is the second ‘cohabitation scheme’ that will impact on the greater number of families. The 2006 census estimated that there are over 120,000 cohabiting couples in the State, about one-third of whom have dependent children residing with them. Thus while the Bill has profound implications for same-sex couples who choose to enter into a civil partnership, it is also of importance to a significant constituency of opposite-sex and same-sex couples whose relationships are not based on marriage or civil partnership.

Am I eligible for civil partnership?

In order to enter into a civil partnership, both partners must be of the **same legal sex**, must be aged **18 or over** and must **not** already be in an existing civil partnership or marriage with other people. The parties **must not be closely related**.

We are already civil partners in Scotland. Will we be recognised in Ireland?

The Bill makes provision for the recognition in Ireland of certain classes of legal relationship entered into abroad between same-sex couples (including same-sex marriages and foreign civil partnerships).

We are a same-sex couple and are married in Spain. Will we be recognised in Ireland?

The Bill allows the State to treat as civil partners couples who have contracted same-sex marriages abroad.

How do I enter into a civil partnership?

The procedure for entering into a civil partnership is very similar to that for civil marriage, the main difference being that a civil partnership may only be celebrated by a civil registrar and not by a religious minister. The parties must give **three months' written notice** of their intention to enter into a civil partnership. At least five days before the ceremony, moreover, they must make declarations to the effect that there are no legal impediments to their civil partnership. Once these conditions are met, the parties are given a civil partnership registration form. In order to give effect to the civil partnership, the parties must make certain declarations in public, before a registrar and two witnesses. The parties then sign the registration form, and are deemed to be civil partners.

Generally, how will the introduction of the Bill change the law for civil partners?

The proposals in this Bill will, if enacted, change the law profoundly:

Civil partners will be entitled to seek **maintenance** (financial support) from each other during the currency of their relationship.

As is the case with married couples, the **shared home** of the couple cannot ordinarily be sold, leased or mortgaged by one civil partner without the consent of the other civil partner.

On the legal dissolution of a civil partnership, the former civil partners will be entitled to seek **various court-ordered remedies** relating (amongst other things) to financial support and the ownership of property, as well as various important remedies relating to succession and pension entitlements.

On the **death** of either partner, the surviving civil partner will be entitled to claim from the estate of the deceased in a manner similar to that enjoyed by widows and widowers.

Civil partners will be entitled to seek relief for **domestic violence** and **wrongful death** of a civil partner in the same manner as spouses.

Civil partners will be recognised for the purpose of succeeding to a **protected tenancy** and to **rent-controlled tenancies**.

Equality: An employer as well as a provider of goods or services will not be permitted to discriminate against a person because they are or were a civil partner. For the purpose of determining **eligibility for a pension**, moreover, civil partners will be treated in a manner identical to the treatment of a husband and wife of the holder of pension entitlements.

For the purpose of determining whether a person has a **conflict of interest** or must disclose certain financial or other interests, a person with a civil partner will be treated the same as a married person.

Similarly, the Bill amends over 130 pieces of legislation in such a way as to require civil partners to be treated the same as spouses, for the purposes of those Acts.

How does civil partnership differ from marriage?

The rights and obligations conferred by civil partnership are, in most cases, **the same as or similar** to those rights and obligations that apply to married couples. Indeed, the Civil Partnership Bill is closely modelled on (and is in most cases identical to) several pieces of legislation that apply only to married couples, for instance, legislation relating to maintenance, succession, the family home and divorce.

Some critical differences, however, do arise. These relate mainly to the relationship between **a civil partner and her partner's children**, a relationship that is not generally acknowledged for the purpose of the Bill. There are some key differences also in the grounds for **dissolution** and **annulment** of a civil partnership when compared with divorce and the annulment of marriages. Civil partners, moreover, will not be able to access a judicial separation, though they may enter into a separation agreement. Other more minor differences arise although, substantially speaking, the Bill confers on the civil partners most of the rights and obligations that apply to married couples.

Although the Bill itself does not directly deal with **taxation, social welfare and immigration**, it is understood that these matters will be dealt with in a Finance Bill, Social Welfare Bill and in the Immigration, Residence and Protection Bill 2008 respectively, once civil partnership is enacted. Indeed, the Government has stated that for the purposes of taxation, social welfare and immigration, civil partners will be treated the same as spouses.

How do I get out of a civil partnership?

A civil partnership is terminated on the death of either civil partner, or on **dissolution** of the relationship. A dissolution may be obtained where the parties have lived apart for two of the previous three years, provided proper provision has been made for both civil partners. A civil partnership may also be **annulled** if it is void, although this may only be done on very narrow grounds. The parties may also **separate** by agreement.

Does the Bill change the law in respect of children living with civil partners?

One major deficiency in the Bill is that it does not address comprehensively the rights of children who live with a couple who are civil partners. A child, of course, has full rights in respect of a person who is his or her biological parent. Nevertheless, neither the current law nor the Bill provides the child with significant rights in respect of the civil partner of the child's parent. In particular, the child will not be able to seek maintenance from the non-biological parent, and will have no rights of succession if the civil partner of the child's biological parent dies. The non-biological parent, moreover, cannot seek guardianship or custody of the child during the lifetime of the other guardians. The civil partners will also not be to adopt the child jointly (though either civil partner may adopt as an individual).

The Bill also fails to recognise the interests of children in respect of the shared home of the civil partners. Furthermore, unlike divorce, dissolution of civil partnership can be granted without regard to the interests of dependent children, though the court must consider the existing rights of children when making various orders *after* dissolution.

Nonetheless, children are recognised for a number of purposes:

A non-biological parent who has co-parented a child may seek **access** in respect of the child, if the child is in the custody of the other civil partner.

In **maintenance** cases involving civil partners, the courts must take into account a civil partner's obligations towards his or her own biological children. The same principle applies where a court is making various orders **after the dissolution** of a civil partnership. While this falls far short of requiring support for the child by a non-biological parent who is a civil partner, it means that in determining the appropriate level of relief for each civil partner, the court will be obliged to consider that one of the partners has parental obligations. In practice, this may result in a greater diversion of resources to the biological parent.

The overriding requirement that an order cannot be made on dissolution **unless it would be in the interests of justice to do so** arguably provides an important safeguard for the children of civil partners. Clearly, a judge could not consider an order in favour of either civil partner to be in the interests of justice if the best interests of a child of either partner are prejudiced thereby.

Notably, a civil partner will be able to apply for an order under the **Domestic Violence Acts** in order to protect any dependent child who lives with the civil partners. The applicant must either be the biological or adoptive parent of the child, or a person *in loco parentis* (in the place of a parent) in relation to the child.

Theoretically, this would allow a person to seek a barring order against his or her civil partner to protect either the applicant's biological child or that of the civil partner against whom the order is being sought.

The relationship between a person and her civil partner's child is recognised for certain **conflicts of interest** rules and other ethical provisions.

Section 206 of the Bill generally requires that when making any order under the Bill, the court shall have regard to the **rights of any other person** with an interest in the matter. This may feasibly include the child of either civil partner.

Generally, how will the introduction of the Bill change the law for cohabitants?

The rights and obligations of unregistered cohabitants, though more limited than those of civil partners, are significant. A 'cohabitant' is a person living in an "intimate

and committed relationship” with a person who is not his or her spouse or civil partner. Cohabitants may be of the same sex as each other or of the opposite sex but may not be close relatives.

Cohabitants generally will be recognised for a variety of purposes, including domestic violence legislation, wrongful death and succession to residential tenancies. Special rules apply, however, to couples who are deemed to be ‘qualified cohabitants’, that is, where they have lived together for at least three years, or for two years if they have had a child or children together. A qualified cohabitant who is financially dependent on his or her cohabiting partner may seek a variety of remedies if their relationship ends or if one of the partners dies. These include orders for financial support, for property adjustment and for the adjustment of pension entitlements. A qualified cohabitant may also seek provision from the estate of a deceased partner, provided certain conditions are met. The right of a qualified cohabitant to seek maintenance or a property or pension adjustment order can be waived (given up) by written agreement between the cohabitants.

Conclusion

Full equality undoubtedly demands equal access to civil marriage. This Bill, however, represents a robust and comprehensive step in the right direction. Both practically and symbolically, these measures will (if implemented) represent real and substantial progress in the recognition and protection of non-traditional families. This is not to underestimate, however, the drawbacks in the Bill, most notably the apparent reluctance to tackle the rights and responsibilities of same-sex couples who co-parent children. While some improvements could certainly be made (and have been suggested), the Bill is undoubtedly significant and substantial.

Note: A detailed and comprehensive analysis of the Bill, also by Dr. Fergus Ryan, is available at www.glen.ie