



**Submission to the**

**Working Group on Domestic Partnership**

The national federation of services for  
unmarried parents and their children



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## Introduction

Treoir is the National Federation of Services for Unmarried Parents and their Children. It is the co-ordinating body of both statutory and non-governmental organisations. Its aim is to promote the wellbeing of unmarried families.

The following are the core principles under which Treoir operates :

*Treoir recognises the diversity of family life in Ireland*

*Treoir recognises that all families, including unmarried families, have the same rights to respect, care, support, protection and recognition*

*Treoir supports and promotes the rights of all children as outlined in the United Nations Convention on the Rights of the Child*

*Treoir believes that all children have a right to know and be loved and cared for by both parents*

Treoir's client group consists of parents who are not married to each other. Cohabiting parents are therefore part of this client group and it is from their perspective that this submission is being presented.

The Census data for 2002 shows that cohabiting couples accounted for 8.4% of families and 29,700 of these families had children. Clearly it is no longer acceptable to deny such families and children some of the family rights which are afforded to married families.

Treoir has over the years expressed concern at the disadvantaged legal and welfare position of unmarried cohabiting parents and consequently wholeheartedly welcomed the publication of the Law Reform Commission's consultation paper "*Rights and Duties of Cohabitees*"<sup>1</sup> in April of this year.

Treoir consulted its members on the key issues raised in the Consultation Paper and this submission is based on the views of member agencies of Treoir who provide services to unmarried parents and their children.

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<sup>1</sup> Law Reform Commission: Consultation Paper Rights and Duties of Cohabitees, Dublin 2004

## **Irish Constitution**

In its recent submission to the All Party Oireachtas Committee on the Constitution Treoir recommend that parental rights, if enumerated in the Irish Constitution, should apply equally to all parents: mothers, fathers, married or unmarried, and be subject to the principle that children's rights are paramount.

## **Recognition of Cohabitees**

Treoir members agree that cohabitation should be legally recognised. The majority believe that a presumptive approach in itself was not sufficient and that some type of a registration/contractual system should also be put in place. As one member pointed out *“who makes the presumption? One partner could maintain that the other partner merely came and went. The Registration approach seems to me more definitive and would encourage couples to consider their legal situation at the early stage”*.

It was felt that if couples registered their cohabitation that certain legal rights and duties could flow from such registration and if couples did not register, rights could be applied for based on the presumption of cohabitation. There would however need to be clear definitions as to when one is considered to be living in a cohabiting relationship.

Treoir members agree with the time period proposed after which a presumption of cohabitation would arise – three years or two where there are children.

In addition the majority of respondents agreed that parties should not be a party to an existing marriage. However it was felt that having a legal separation should be sufficient proof and it should not be necessary to have a divorce.

## **Parental Rights**

Treoir recommends that where a cohabitation is registered and children are born into that relationship then guardianship rights and duties should flow to the father of the child/ren.

## **Property Rights**

As stated earlier Treoir believes that a possibility should also exist for registering cohabitation and if such a facility existed then the provisions of the Family Home Protection Act should extend to Registered Cohabitees.

Treoir members agree that based on the presumptive approach legislation should be enacted providing for property adjustment orders for qualified cohabittees. Members also agreed that application should have to be made within one year though it was suggested by some that one year was too short a period and it may compel families to seek legal redress above other forms of conflict resolution.

### **Succession Rights**

The members of Treoir believe that where there is a presumptive scheme of cohabitation a discretionary scheme should be established whereby a qualified cohabitee can make an application to court where s/he feels that proper provision has not been made for her or him in the deceased's will or under the rules of intestacy. Qualified cohabittees should also be allowed to extract a grant of administration intestate or a grant of administration with will annexed to the estate of their deceased partner. Members also agree that a qualified cohabitee should be placed above siblings of the deceased in the list of persons entitled to extract the grant. based on the system of presumption of cohabitation.

However succession rights should flow from Registration of Cohabitation.

### **Maintenance**

Treoir believes that cohabiting parents should have a right to apply for maintenance.

### **Social Welfare**

Treoir members fully support the retention of the current arrangements for cohabittees under the social welfare code.

### **Pensions**

Treoir members recommend that private schemes, which do not already allow dependant cohabittees to be included within the class of potential beneficiaries, should amend their rules and allow them to do so.

The provisions of the public service spouses and children's schemes should be amended to allow for the payment in circumstances where there is no legal spouse and where a valid nomination has been made

### **Taxation**

Treoir believes that cohabiting parents should be treated in the same way as married parents for income tax purposes.

### **Health and other miscellaneous issues**

Members of Treoir suggest that consideration be given to including cohabittees within the category of persons with whom a doctor treating a seriously ill patient, who is unable to communicate or understand, should confer.

### **Domestic Violence**

Treoir believes that the residency requirement in respect of safety orders should be abolished.

### **Conclusion**

Treoir believes that a presumptive scheme, which would impose certain legal rights and duties on cohabittees who live together in a marriage-like relationship for a continuous period of three years or two years where there is a child of the relationship, should be introduced. However Treoir believes that in addition to the presumptive scheme there should also be a registration scheme.

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