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**Submission to the  
Law Reform Commission**

**in response to the  
Consultation Paper**

**on the**

**Rights and Duties of Cohabitees**

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.

Its aim is to promote the rights and welfare of unmarried families in Ireland.

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, be loved and cared for by both parents.*

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

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 couples and children family rights which are afforded to married families.

***"The Rights and Duties of Cohabitees Discussion Paper"*** addresses many complex issues and it will be useful in informing the debate that needs to take place before final recommendations can be made. Treoir believes that a number of issues which are pertinent have not been dealt with e.g. *the possibility of parental rights flowing on the establishment of cohabitation, and the lack of protection or recognition of cohabiting unmarried families under the Irish Constitution.*

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 the organisation. This

submission is based on the views of fifteen organisations who are involved in providing services to unmarried parents and children.

## **Recognition of Cohabitees**

*The Commission proposes a presumptive scheme, which would impose certain legal rights and duties on cohabitees 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.*

All respondents agreed that cohabitation should be legally recognised.

The majority believed 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 asked “*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.

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

*The commission is of the view that, in order to qualify for the scheme proposed by this paper, a cohabitee must not be a party to an existing marriage.*

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. There would however need to be clear definitions as to when one is considered to be living in a cohabiting relationship.

## **Property Rights**

Treoir concurs with the Commission's view that such organisations as the Family Mediation Service should endeavor to increase public awareness of co-ownership agreements through education and training.

***The Commission is of the view that the provisions of the Family Home Protection Act 1976 should not be extended to qualified cohabitees.***

It is suggested that if the presumptive approach is the one being employed (as recommended by the Commission) and there is no formal registration of cohabiting relationships this would prove a conveyancing nightmare for the Irish conveyancing system. 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

***The commission recommended the enactment of legislation providing for property adjustment orders for qualified cohabitees in exceptional circumstances where the court considers it just and equitable to do so.***

Treoir members agree that based on the presumptive approach legislation should be enacted providing for property adjustment orders for qualified cohabitees. 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.

As stated above those in a Registered Cohabitation would benefit from the Family Home Protection Act.

## **Succession Rights**

***The Commission recommends that a discretionary scheme be established whereby a qualified cohabitee can make an application to court where he/she feels that proper provision has not been made for him or her in the deceased's will or under the rules of intestacy.***

***The Commission is also of the view that Order 79 of the Rules of the Superior Courts should be amended to allow a qualified cohabitee to extract a grant of administration***

*intestate or a grant of administration with will annexed to the estate of their deceased partner.*

*The Commission is also of the view that a qualified cohabitee should be placed above siblings of the deceased in the list of persons entitled to extract the grant.*

The members of Treoir agree with all of the above based on the system of presumption of cohabitation. However succession rights should flow from Registration of Cohabitation.

## **Maintenance**

*The Commission does not recommend that:*

- *legislation be introduced to allow qualified cohabitees a general right to maintenance*
  - *qualified cohabitees should be entitled to claim rehabilitative maintenance*
  - *qualified cohabitees should be entitled to claim custodial maintenance.*
- Rather the court should take into account the costs incurred by the custodial parent when making an order under the Family Law (Maintenance of Spouses and Children) Act 1976.*

The majority of Treoir respondents agreed with the above, based on a presumptive scheme. However under a Registration Scheme rights should flow to partners on the breakup of a relationship.

*The Commission recommends the court should be given a discretionary power to make an award of compensatory maintenance in exceptional circumstances where it considers it just and equitable to do so. The Commission recommends that a qualified cohabitee seeking such an order must issue proceedings within one year of the breakdown of the relationship.*

Treoir fully supports the above recommendations based on a presumptive scheme only. However Treoir favours a registration scheme.

## **Social Welfare**

*The Commission recommends the retention of the current arrangements for cohabitees under the Social Welfare code. The only change the Commission would recommend is that same-sex cohabitees be regarded as being capable of cohabiting for the purposes of social welfare.*

Treoir members fully support this recommendation.

## **Pensions**

*The Commission recommends no change to the current law regarding private sector pensions.*

Treoir members fully support this recommendation and agree with the Commission that private schemes, which do not already allow dependant cohabitees to be included within the class of potential beneficiaries, should amend their rules and allow them to do so.

*The Commission is of the view that 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.*

Treoir is in agreement with this recommendation.

## **Taxation**

*In light of the current policy of individualisation, the Commission does not recommend any change to the income tax treatment of cohabiting couples.*

Members of Treoir do not agree with this recommendation.

Treoir has been highlighting an anomaly for some time whereby the Revenue Commissioners treat cohabiting couples as two separate individuals while the Department of Social and Family Affairs treat cohabiting couples in the same way as married families.

There is a real disincentive for couples with children where one is working and one is in receipt of Social Welfare to form a family as the working partner does not receive a tax credit for the dependant partner and the dependant partner cannot claim social welfare.

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

***The Commission does not recommend that qualified cohabitees should receive a total exemption from Capital Acquisition Tax as is applicable to married spouses.***

Treoir members agree with this recommendation, based on a presumptive scheme. As stated earlier a registration scheme is desirable.

***The Commission recommends that qualified cohabitees should be placed in group threshold 1 for the purposes of CAT.***

Treoir supports this recommendation.

***The Commission does not recommend any change to the current law governing Capital Gains Tax.***

***The Commission believes that it would be inappropriate to extend to cohabitees the spousal exemption from stamp duty.***

The majority of respondents did not agree with these recommendations.

***The Commission recommends that qualified cohabitees should be entitled to the same relief as related persons in respect of stamp duty.***

Treoir supports this recommendation.

## **Health and other Miscellaneous issues**

***The Commission suggests that consideration be given to including cohabitees within the category of persons with whom a doctor treating a seriously ill patient, who is unable to communicate or understand, should confer.***

Members of Treoir concur with this view.

## **Domestic Violence**

*The Commission does not recommend that the requirement, in respect of a barring order, that the applicant have an equal or greater share in the property, be removed.*

Based on the presumptive scheme the members would agree however if there was a Registration System for cohabitation then a barring order could be granted to a person who did not have an equal or greater share in the property.

*The Commission recommends that the residency requirement in respect of barring orders for cohabiting couples of 6 months out of the previous 9 should be reduced to 3 months out of the previous 12 months.*

Treoir fully supports this view.

*The Commission recommends that the residency requirement be removed for a cohabitee seeking a barring order where the cohabitee has the sole ownership or tenancy in the property.*

Treoir agrees with this recommendation.

*The Commission is of the view that the residency requirement in respect of safety orders should be abolished.*

Again Treoir fully agrees.

*The Commission is of the view that the category of persons entitled to apply for an order under the 1996 Domestic Violence Act be extended to include a dependant child.*

The majority of Treoir members support this view.



## **Conclusion**

Treoir welcomes the proposal of the Commission of a presumptive scheme, which would impose certain legal rights and duties on cohabitees 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. However Treoir believes that in addition to the presumptive scheme there should also be a registration scheme.

Treoir looks forward to the debate around the issues raised in the *Consultation Paper on the Rights and Duties of Cohabitees* and the responses to the report.

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