



Seirbhís Sláinte
Níos Fearr
á Forbairt

Building a
Better Health
Service



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informing unmarried parents

Cohabiting Parents

Opposite and Same Sex



Tel: 01 670 0120

Cohabiting Parents

Who are cohabitants?

Cohabitants are two opposite or same sex adults who are:

- living together in an intimate and committed relationship
- not married to each other
- not in a registered civil partnership
- not related to each other.

Children of cohabiting parents

Children of cohabiting parents have the same succession and maintenance rights as children born to married parents.

Mothers

An unmarried mother has automatic guardianship rights in respect of her child. See 'guardianship' at www.treoir.ie.

Fathers

When his child is born a father does **NOT** have automatic guardianship rights, even if his name is on the child's birth certificate - see 'fathers' at www.treoir.ie.

A father can obtain 'guardianship rights' by doing one of the following:

- by signing a Statutory Declaration with the mother, if she consents. This form can be downloaded from the 'guardianship' section of our website www.treoir.ie
- by satisfying the cohabitation period: A father who, lives with the child's mother for at least 12 consecutive months including not less than three months after the child's birth, will automatically be the guardian of his child. The three months period does not have to take place directly after the birth of the child; it can be fulfilled any time before the child turns 18 provided it is part of the 12 consecutive months during which the parents have lived together. The cohabitation period can only be calculated going forward from 18th January 2016.
- by applying to the local District Court to be appointed a guardian
- by marrying the mother.

Redress Scheme

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 came into effect on 1st January 2011. This Act introduced rights and obligations for qualified cohabitants under the Redress Scheme. The Redress Scheme is a legal safety net for 'qualified cohabitants' in long-term relationships who may otherwise be very vulnerable financially at the end of their relationship. The Redress Scheme only applies to cohabitants whose relationship ends on or after 1st January 2011. You can apply to court for compensatory maintenance, pension adjustment, property adjustment orders or provision from the estate of a deceased cohabitant (in that order). See below.

Who is a qualified cohabitant?

You are a qualified cohabitant if you have been cohabiting:

- for at least 5 years, or 2 years if you have a child with your partner, **and**
- are financially dependent on the other cohabitant.

Where one of the cohabitants is still married, neither of the cohabitants will be considered a qualified cohabitant unless the married cohabitant has lived apart from his/her spouse for at least 4 of the previous 5 years.

Maintenance

For cohabitants: If a cohabiting relationship comes to an end, neither cohabitant has a responsibility to provide financially in respect of each other. However, if you are a qualified cohabitant and can show the court at the end of your relationship that you are financially dependent on your ex-partner, you can apply for a Compensatory Maintenance Order, which is an order for regular maintenance or a lump sum. The court order will no longer apply if the qualified cohabitant, in whose favour maintenance is paid, goes on to marry. See 'Cohabiting Parents' at www.treoir.ie.

For children: Both parents have a responsibility to provide financially for their child up to the child's 18th birthday or up to age 23 if the child is in full-time education. Where maintenance is not being paid, either parent may apply to the court for a maintenance order against the other parent in respect of a dependent child. Where a parent or a person who has the day-to-day care of a child (in loco parentis) is in a cohabiting relationship with someone other than the parent of the child and that relationship comes to an end, he/she can seek maintenance for the child (through the court) from his/her former cohabitant. This only applies where the former cohabitant is a guardian of the child. If ordered to pay maintenance the order will remain in place up until the child's 18th birthday (unless the court orders otherwise). See 'maintenance' at www.treoir.ie

Pension adjustment

Check your pension scheme to see if it is possible to name your partner as a beneficiary. If you are a 'qualified cohabitant' and can show the court at the end of your relationship that you are 'financially dependent' on your ex-partner you can apply for a Pension Adjustment Order which is an order for a payment from the other cohabitant's pension scheme.

Property

Cohabiting families do not have the benefit of the Family Home Protection Act 1976 which applies only to married families. A property owned by one parent only, and being used as a family home, can be sold without the consent of the other parent. If purchasing a property jointly, consider checking with a solicitor whether Joint Tenancy or Tenancy in Common is the best ownership option as regards the property. If you are a qualified cohabitant and can show the court at the end of your relationship that you are financially dependent on your ex-partner you can apply for a 'Property Adjustment Order' - an order which transfers or settles a property from one cohabitant to another.

Inheritance

Cohabiting partners do not have automatic inheritance rights from each other. Cohabiting partners pay tax at 33% on gifts/inheritance over €16,250. Children of cohabiting parents have the same succession rights as children born to married parents, i.e. they can receive gifts and inheritance from a parent up to a maximum of €320,000 tax free. If you are a qualified cohabitant you can apply for provision from the net estate of the deceased within six months after the probate or administration is first granted.

It is not necessary to show financial dependence if your partner dies during the relationship. An order under this section shall not affect the legal rights of a surviving spouse or civil partner. Principal Residence Relief allows an individual to receive a gift or inheritance of a residential property free from capital acquisitions tax (CAT), popularly known as inheritance tax or gift tax, if the following conditions are met:

- The premises is/was the beneficiary's principal private residence for three years prior to the gift or inheritance
- The individual has no beneficial interest in any other residential property in the State.

- The individual remains living in the property for six years after the gift or inheritance. This does not apply if you are over 55 years of age.

Cohabitants' Agreements

Cohabitants can make a 'Cohabitants' Agreement' to regulate their financial affairs. The agreement can include a full or partial opt-out of the Redress Scheme. Both cohabitants must get independent legal advice before making an agreement. This agreement will be recognised as valid and enforceable unless, in exceptional circumstances, a court rules that putting it into effect would cause serious injustice. An order under this section shall not affect the legal rights of a surviving spouse or civil partner.

Social Welfare

Cohabitants are treated in the same way as married families for social welfare purposes. Both incomes will be taken into account when assessing income for the means test. However, cohabitants do not qualify for the Widowed or Surviving Civil Partner Grant.

Income Tax

Cohabitants cannot claim income tax relief in respect of each other.

Qualified Informant

A cohabitant is a qualified informant for the purposes of signing the register in relation to the death of their cohabiting partner.

For information in relation to Domestic Violence and more - see 'Cohabiting Parents' at www.treoir.ie.

Useful Contacts:

The Legal Aid Board: LoCall 1890 615 200 / www.legalaidboard.ie

Free Legal Advice Centres: 01 874 5690 / www.flac.ie

If you would like to talk through your individual situation, call Treoir on our confidential helpline at: 01 670 0120



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