



informing unmarried parents

# Cohabitants

New legal rights and obligations  
for opposite and same sex couples.

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# Cohabitants

New legal rights and obligations for opposite and same sex couples.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 introduced new rights and obligations for cohabiting couples, whether opposite or same sex:

## Redress Scheme

There is a Redress Scheme for certain financially dependent cohabitants at the end of their relationship, through death or separation.

## Cohabitants' Agreements

Where cohabitants have a written agreement on their financial affairs this will be legally recognised at the end of their relationship, through death or separation.

**The Act does not change the law in relation to children.**

**The Act came into effect on 1st January 2011.**

## Q1. 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 (which is only available to same sex couples)
- not related within the prohibited degrees of relationship (broadly speaking, relationships which would make them ineligible to marry each other or enter a civil partnership)

# Cohabitants

New legal rights and obligations for opposite and same sex couples.

If you apply to court for an order under the Redress Scheme (see Q2 and Q4) the court in deciding whether or not you qualify, will consider:

- (a) how long the relationship has existed
- (b) the basis on which the couple live together
- (c) how financially dependent either adult is on the other and any agreements they have regarding their finances
- (d) what financial arrangements they have including any joint purchases
- (e) whether there are dependent children
- (f) whether one of the adults cares for and supports the children of the other
- (g) how they present themselves to others as a couple

## Q2. Who are qualified cohabitants?

You are a qualified cohabitant for the purpose of the Act if you have been cohabiting (as described in Q1):

- for at least 5 years or 2 years if you have had a child together
- and*
- are financially dependent on the other cohabitant

If a cohabitant is still married, she/he must have lived apart from her/his spouse for at least 4 of the previous 5 years.



### Q3. What is the Redress Scheme?

The Redress Scheme is a legal safety net for cohabitants in long-term relationships who may otherwise be very vulnerable financially at the end of a relationship.

You can apply to court for compensatory maintenance, pension adjustment, property adjustment orders or provision from the estate of a deceased cohabitant. You must be a qualified cohabitant (see Q2) and you must satisfy the court that you are financially dependent on the other cohabitant.

You do not have any automatic right to get such orders.

There is a specified priority in the legislation regarding the orders that can be made:

- a. A court will consider maintenance first.
- b. If the court thinks the maintenance is not enough it will consider making a pension adjustment order.
- c. If these two are not considered enough only then will the court consider making a property adjustment order as well as or instead of the other orders.

The Redress Scheme applies only to those qualified cohabitants whose relationship ends after **1st January 2011**, but the time spent cohabiting immediately before that is taken into account.

#### **Q4. What can I, as a qualified cohabitant, apply for under the redress scheme?**

##### **Compensatory maintenance order**

This is an order for the payment of regular maintenance or a lump sum. Payments will be dated from the date you apply to the court. If you have built up expenses in maintaining yourself before applying for maintenance you may also apply to have these paid.

The court may at the same time make an attachment of earnings order, which would mean that the maintenance payments are taken directly from your ex-partner's earnings.

The maximum amount of maintenance that you can get in the District Court is €500 per week. If you want to apply for a larger amount, apply to the Circuit Court or the High Court.

Either of you can apply to the court for a variation of the Compensatory Maintenance Order should your financial circumstances change.

##### **Pension adjustment order**

This is an order for a payment from the other cohabitant's pension scheme. The court may consider it more appropriate to make a compensatory maintenance order.

##### **Property adjustment order**

This is an order to transfer or settle a property from one cohabitant to another. The court may consider it more appropriate to make a compensatory maintenance order or a pension adjustment order.

##### **Inheritance**

If your partner dies during the relationship you can apply for a portion of her/his estate but it is not necessary to show that you are financially dependent on her/him.

If your ex-partner dies, you can apply for provision from her/his net estate. You must do this within six months after the probate or administration is granted.

**None of these orders affects the legal rights of a surviving spouse or civil partner of either cohabitant**

### **Q5. What does the court take into account before making these orders?**

In making a decision, the court must take into account a number of things including:

- The financial needs and obligations of each cohabitant
- The rights of others (including the rights of spouses, former spouses, civil partners, former civil partners and dependent children of either partner)
- The duration and nature of the relationship
- The contribution made by each to the relationship, financial and otherwise

Where the relationship breaks down the court may adjourn proceedings so that the cohabitants, if they wish, can try to get back together or to reach an agreement.

### **Q6. Do we both have to live in Ireland to apply for any of these orders?**

In order to apply for orders under compensatory maintenance, pension adjustment, property adjustment or provision from an estate you must have been resident in the State for a year before your relationship ended and:

- one of you must be legally domiciled in the State on the date you apply to court
- or
- be resident in the State throughout the year that ends on the date you apply to court.

### **Q7. Is there a time limit within which I must apply for these orders?**

Yes. You must apply for a property adjustment order, a compensatory maintenance order or a pension adjustment order within 2 years of your relationship ending, unless there are exceptional circumstances.

When a cohabitant dies, the remaining qualified cohabitant can apply for provision out of the deceased cohabitant's net estate within six months after the probate or administration is granted.

If your relationship ended two years or more before the death of your ex-partner you may only apply for provision from the estate if you were financially dependent on

your deceased partner, for example, if you had been getting a maintenance payment or had applied for a maintenance, property or pension adjustment order.

## Q8. What are cohabitants' agreements?

Cohabitants can make a cohabitants' agreement which will be legally recognised. See Q1 for a definition of cohabitants. Agreements made before the Act came into force are also legally recognised.

### What can be in the agreement?

Cohabitants' agreements can only be about regulating joint financial matters during your relationship and for when your relationship ends.

The agreement can include an "opt out" of some or all of the Redress Scheme described in Q3. This means you both agree that neither of you will apply for any of the orders described in Q4.

### Can I still go to court even if I have made an agreement?

Yes. The court may vary or set aside an agreement or part of an agreement in exceptional circumstances if putting it into action would cause serious injustice.

### Are there any special conditions to making an agreement?

A cohabitants' agreement is only valid if

- both cohabitants have received independent legal advice before entering it, or
- both cohabitants have received legal advice together and waived the right to independent legal advice in writing.

The cohabitants' agreement must be in writing and signed by both cohabitants and the general law of contract must be complied with.

### Other relevant information

- The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 clarifies definitions of cohabitants in the Residential Tenancies Act 2004, the Civil Liability Act 1961 and the Powers of Attorney Act 1996.
- For Social Welfare purposes cohabitants (opposite and same sex) are treated in the same way as married couples and civil partners.
- Cohabitants are treated as single people for Income Tax purposes and as strangers for Inheritance Tax purposes.

- Payments of compensatory maintenance and pension adjustments will end if you get married, enter a civil partnership with another person or if either qualified cohabitant dies.
- Civil Partnership is not available to opposite sex couples.

**This legislation is very complex.  
Don't hesitate to contact Treoir if you need any further  
information.**



# Useful contacts

## Treoir

National Federation of services for unmarried parents and their children

LoCall: 1890 252 084

[info@treoir.ie](mailto:info@treoir.ie) [www.treoir.ie](http://www.treoir.ie)

*Treoir has a free comprehensive leaflet for cohabiting parents.*

## GLEN

Gay and Lesbian Equality Network

01 6728650

[info@glen.ie](mailto:info@glen.ie) [www.glen.ie](http://www.glen.ie)

*Gives comprehensive information on Civil Partnership*

## The Legal Aid Board

LoCall: 1890 615 200

[legalaide@eircom.net](mailto:legalaide@eircom.net)  
[www.legalaideboard.ie](http://www.legalaideboard.ie)

## Free Legal Advice Centres

01 8745690

[info@flac.ie](mailto:info@flac.ie) [www.flac.ie](http://www.flac.ie)

## The Citizens Information Board

*has information on the Act for cohabitants:*

<http://www.citizensinformation.ie>

*If you want to download the Act you can do so here:*

<http://www.oireachtas.ie>

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**Information Pack for Unmarried Parents**

**Family Links, steps and stages**

*For parents who are helping their children to understand their family situation.*

**Being there for them**

*For grandparents of children whose parents are not married to each other.*

**Reproductive Health Information for Migrant Women**

*Available in 7 languages*

**Taking the Stand**

*A guide for unmarried parents resolving disputes regarding care of their children.*

**Young Parents Survival Guide**

*Issue One &  
Issue Two*

**Information Leaflets**

- Guardianship
- Custody/Access
- Fathers' Rights
- Cohabiting Parents
- Maintenance of Children
- Establishing Paternity
- Registration of Births
- Passports
- Child Abduction
- Shared Parenting
- Family Relationships
- Step-parent adoption

These publications and more  
are available to download at:  
[www.treoir.ie](http://www.treoir.ie)



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