

Cohabiting Couples with or without children

For Opposite-Sex and Same-Sex Couples



Introduction

Cohabiting Couples with or without children are couples that live together and for whatever reason decide not to get married are not recognised as a family in the Irish constitution. Many people in Ireland believe that cohabiting couples in Ireland have equal rights and responsibilities as married couples. Similarly the concept of a 'common-law marriage' where couples living together for a certain period of time gain the same rights as formally married couples does not exist in Ireland but is a persistent myth.

Others believe that cohabiting couples in Ireland can opt-in for civil partnership to formalise their relationship without getting married. However, unlike in other countries, Ireland no longer allows new civil partnerships. After the Marriage Act 2015 passed which gave same-sex couples the right to marry, no new civil partnerships could be registered after 16 November 2015. Civil Partnerships registered before 16 November 2015 are still recognised and have similar but not identical rights to married couples.

This booklet aims to clarify the legal situation for cohabiting couples with or without children and dispel the myths surrounding what rights they have.

This booklet will cover:

- Who are cohabitants?
- Children of cohabiting parents
- Guardianship, Access & Custody for Opposite-Sex Cohabiting Parents
- Cohabiting Couple's Redress Scheme
- Stepparents and Cohabitation
- Registering a Partner's Death,
- The Bereaved Partner's Pension: (Contributory)
- The Bereaved Partner's Pension: (Non-Contributory)
- The Bereaved Parent Grant
- Private Pensions & Life Insurance
- The Family Home and Property for Cohabiting Couples
- Taxes for Cohabitants
- Useful Contact

Who are cohabitants?

Cohabitants are two opposite-sex 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.

Guardianship, Access & Custody for Opposite-Sex Cohabiting Parents

Mothers

An unmarried mother has automatic guardianship rights in respect of her child that can only be taken away if the child is put up for adoption. An unmarried mother also has automatic sole custody of the child meaning that she is legally responsible for the child's welfare and day-to-day care and decides who has access to the child and under what circumstances unless a court order states otherwise.

Fathers

Guardianship: When a child is born an unmarried father does not have automatic guardianship rights, even if his name is on the child's birth certificate.

An unmarried father can obtain guardianship rights by doing one of the four following:

1. By agreement with the mother

A father and mother can complete and sign the statutory declaration for joint guardianship ([S.I. No. 210 of 2020](#)).

This form declares that:

- the parents have not married each other
- they are the parents of the child and
- they agree to the appointment of the father as a joint guardian.

The [S.I. No 210 of 2020](#) form can be downloaded from Treoir's website or ordered from Treoir by calling 01 6700 120. The form needs to be signed and witnessed by a) solicitor b) peace commissioner who will do it for free c) commissioner of oaths d) birth registrar within 2 weeks of parents registering the child's birth.

Once completed, this form needs to be kept in a safe place as it is the only evidence that the father is a guardian. There is no central register for these Statutory Declarations where state bodies can look up who is the guardian of the child. Therefore, the father must be proactive when looking to exercise his guardianship rights.

2. By satisfying the cohabitation period

A father who lives with the child's mother after, **18 January 2016**, for at least **12 consecutive months including at least 3 months with the child**, 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 if it is part of the 12 consecutive months during which the parents have lived together. **While not mandatory, fathers in this situation can and should seek a formal declaration from the court that the 'living together' test has been satisfied and that the father is a guardian of the child.** A declaration that a person is (or is not) a guardian can be applied for through the courts.

The person applying ticks the box 'Application for a declaration that a person is a guardian' on page 6 of the [court form 58.1](#). Any evidence of the cohabitation should be brought to the court hearing. The application can be made by the father or the mother seeking proof of his guardianship.

Either parent could use this form to apply for a declaration that a father is not a guardian of the child by ticking the box 'Application for a declaration that a person is not a guardian' on page 6. If parents disagree about the length of cohabitation the court shall make a declaration will use the evidence to make a declaration on the balance of probabilities.

3. Going to court

The father can apply to the local District Court to become a joint guardian of his child, regardless of if his name is on his child's birth certificate. A father should tick the box 'Appointment of a parent as a guardian' on page 5 of [court form 58.1](#). While the mother's views are considered by the court in deciding, the fact that she may not consent does not mean that the court will refuse an order for guardianship. The decision of the court will be made with the best interests of the child being the first and most important consideration. If you are not happy with a decision made by the court, you have 14 days in which to appeal.

4. Marriage following the birth

If the parents of a child marry each other following the birth of their child, then the father automatically becomes a joint guardian.

Access: An unmarried father, regardless of cohabitation, has no automatic right to custody or access to his child. If an unmarried father would like access to his child, he will need the mother's permission or to secure a court order for access or custody.

* For the rights and responsibilities of same-sex parents in relation to their children (guardianship, access, custody, maintenance), the legislation is regularly changing and can be very specific depending on the family formation.

For the most up-to-date information on this, call Treoir or go to <https://treoir.ie/groups/lgbt-parent/>.

Rights in relation to the cohabiting couple's redress scheme, stepparents, pensions, property, inheritance, and social welfare (see below) are the same regardless of whether it's an opposite-sex or same-sex couple.

Cohabiting Couple's 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**. The court can order any and all of the following as compensation: 1) a maintenance order (different and separate from a child maintenance order) 2) property adjustment order and/ or 3) a pension adjustment order after a relationship breakdown or from the estate of a deceased cohabitant. Generally, you must apply for the Cohabiting Couple's Redress Scheme in the **Circuit Court** within **2 years** of the relationship ending. When attending the Circuit Court, it is advised to have legal representation. Couples who want to protect their financial interests and do not plan to marry can draw up a cohabitation agreement. It is a voluntary, signed agreement and can cover the day-to-day costs but also how assets will be separated in case of the relationship ending. It can also include a provision to say that the redress scheme does not apply, though this can be overruled by a judge in exceptional circumstances.

It will be valid in court **only** if 1) it is signed 2) it is a contract 3) both parties have secured independent legal advice.

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 children

Both parents have a responsibility to provide financially up until the child turns 18 or up until 23 if they are in fulltime 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. If a parent is in a new cohabiting relationship and their partner becomes a guardian of the child through the courts and the relationship later ends, the parent can seek child maintenance from this former partner. If another family member such as a kinship carer has taken over the care of the child, they can seek child maintenance from either or both biological parents.

Stepparents and Cohabitation

If a parent who has both guardianship and custody of a child enters a new relationship, the new partner does not automatically have any rights or a legal relationship in relation to the child.

If the couple would like to formalise the relationship between the stepparent and the child, they must meet certain criteria.

Firstly, the stepparent must be either married to, in a civil partnership with or cohabiting for **3 years** with the parent who has custody and guardianship. Secondly, the stepparent must be able to show that they have been involved in the day-to-day care of the child for at least **2 years**. They can then apply to the courts as an eligible guardian. Their partner will be summonsed. The other parent will need to be notified of the application if they are not guardian. If the other parent is a guardian, then their consent will be needed to make the stepparent a guardian, though a judge can overrule this requirement in some cases. A judge can also grant a stepparent guardian some but not all guardianship rights.

Registering a Partner's Death, the Bereaved Partner's Pension: (Contributory) & (Non-Contributory) and the Bereaved Parent Grant

If a cohabiting partner dies during your relationship, the surviving cohabitant is a qualified informant for signing the register in relation to the death.

Since July 2025, the Bereaved Partner's (Contributory) & (Non-Contributory) Pension (previously the Widow/ Widower's/ Surviving Civil Partner Pension) and Bereaved Parent Grant (previously Widowed or Surviving Civil Partner's Grant) have been extended to cohabiting couples. You can only apply for the Bereaved Parent Grant via post but you can print out the application form from the Department of Social Protection's website. It is not necessary to apply for the Bereaved Parent Grant if you have applied for the Bereaved Partner's (Contributory) Pension.

Bereaved Partner's (Contributory) Pension

The Bereaved Partner's (Contributory) Pension is a weekly payment to the partner of a deceased person.

If your partner died before July 2025, you may still

qualify. A partner can be a husband, wife, civil partner or cohabitant. To qualify for the Bereaved Partner's

(Contributory) Pension, a cohabitating couple must be

living together for a continuous period of at least **5 years** (or **2 years** if you have dependent children together).

You can get Child Support Payments (previously called

Increases for Qualified Children) with your pension - these

remain payable while the child is aged under 18 and they

may continue to be paid until age 22 if the child is in full-

time education. You can earn from other sources and

get the Bereaved Partner's (Contributory) Pension. The

payment is not means tested but is taxed.

To qualify for the Bereaved Partner's (Contributory) Pension either you or your partner must have enough social insurance contributions (PRSI). The required number of PRSI contributions are:

- At least 260 paid contributions paid before the relevant date*

And

- An average of 39 paid or credited contributions in either the 3 or 5 years before the death of your partner or before they reached pension age (66)

Or

- A yearly average of at least 24 paid or credited contributions from the year of first entry into insurance until the year of death or reaching pension age. If this average is used then an average of 24 will entitle you to a minimum pension, you will need an average of 48 per year to get the full pension.

*The relevant date is the earliest of the following dates:

- The date your partner died
- The date of the insured person's 66th birthday (the social insurance record used to qualify)
- If the insured person was born on or after 1 January 1958, the date when the last qualifying or voluntary contribution was paid (if after their 66th birthday, but before the date of death)

Backdated payments for cohabitants and the (Contributory) Pension

If your partner died before 22 January 2024 and you qualify for the Bereaved Partner's (Contributory) Pension, your payment will be backdated to 22 January 2024. If your partner died on or after 22 January 2024 and you are eligible for the Bereaved Partner's (Contributory) Pension, it will be backdated to the date of death.

You have 6 months from 21 July 2025 to apply and get the payment backdated to the 22 January 2024 or date of death, if later. If the application is not made within this period, then the maximum backdating of the payment will be 6 months from the date of your application.

Bereaved Partner's Non-Contributory Pension

The Bereaved Partner's Non-Contributory pension is a payment for surviving partners who 1) **do not have any dependent children** 2) and you are not eligible for the (Contributory) pension. People with dependent children should apply for the One-Parent Family Payment or Jobseeker's Transitional payment. It is a means-tested payment and is taxable. A cohabitant will only qualify for the Bereaved Partner's (Non-Contributory) Pension if their partner's death occurred on or after 21 July 2025.

To qualify:

- You must be a spouse, civil partner, or cohabitant of the deceased. If you are a cohabitant, must have been living with them for at least 5 years.
- You must be habitually resident in Ireland
- You must pass a means test

- You must be under aged 66 (after that you can apply for the State Non-Contributory Pension)

Exclusions from the Bereaved Partner's **(Contributory) & (Non-Contributory)** Pension: If you are not living with your partner or have not been in an intimate and committed relationship for the 2 years before their death, you will not be eligible for the contributory pension.

If you marry or begin to cohabit with someone else, you will not be eligible for the pension anymore.

Bereaved Parent Grant

The Bereaved Parent Grant is a once-off payment of €8,000 to widows, widowers, surviving civil partners and surviving cohabitants **with dependent children**. You can also qualify if you have a child born within 10 months of the death of your spouse or partner. **Surviving cohabitants will only qualify for the Bereaved Parent Grant if their partner's death occurred on or after 21 July 2025.**

To get the Bereaved Parent Grant you must be:

- A widow, widower, surviving civil partner or surviving cohabitant **with dependent children**. Dependent children are A) under 18 or under 22 and in full time education in a recognised school B) Normally resident in the state C) living with you.
- in receipt of one of the following social welfare payments: One-Parent Family Payment, Bereaved Partner's (Contributory) Pension, State Pension (Contributory and Non-Contributory) or the Death Benefit (under the Occupational Injuries Scheme).

Private Pensions & Life Insurance

Check you or your cohabiting partner's pension scheme to see if cohabitants are included on the policy or if not, if it is possible to change that so a cohabitant can be named as a beneficiary.

Cohabiting couples are treated as strangers for Inheritance and Gift Tax purposes. The stranger threshold for Inheritance Tax is currently €20,000. Inheritances of more than €20,000 are subject to tax at 33%.

The Family Home and Property for Cohabiting Couples

The Family Home Protection Act 1976 applies to married families only, not cohabiting couples. If only one of the cohabitants owns the property, even if it is being used as a family home, they can sell the property without the consent of the other partner. If a cohabiting couple is planning to purchase a property together, they should check with a solicitor if they should opt for a Joint Tenancy or a Tenancy in Common ownership option.

Joint Tenancy means that both cohabitants own the property in equal shares. The partners do not have to be paying the same amount. Neither of you can sell or rent the property without the other's consent. If one partner dies, the other partner will automatically own all the property, regardless of the deceased partner's will. The surviving cohabitant may to pay Capital Acquisitions Tax.

Tenancy in Common means that each cohabitant owns a defined share of the property. For example, one partner owns 40% and the other partner owns 60%. Each person can leave their share of the property to whoever they wish (including their partner), but they must make a will stating this.

The partner's share of the property becomes part of their estate when they die. The surviving partner does not have any automatic right to the deceased partner's share of the property.

Taxes for Cohabitants

1. Cohabitants cannot claim income tax relief in respect of each other.
2. 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 €400,000 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 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.



April 2026

While every effort has been made to ensure that the information in this leaflet is accurate, no responsibility can be accepted by Treoir for any error or omission.

treoir

Keep informed.

Follow us on

 facebook.com/treoir

 [@treoir.bsky.social](https://twitter.com/treoir.bsky.social)

 [@Treoir1976](https://www.instagram.com/Treoir1976)

CHY: 8877

RCN: 20022211

info@treoir.ie

www.treoir.ie

