

**Law Society of Ireland and  
Irish Human Rights Commission**

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**Emerging Human Rights Issues  
LGBT issues**

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**MURIEL WALLS  
McCann FitzGerald  
Solicitors  
Riverside One  
Sir John Rogerson's Quay  
Dublin 2  
MGW/2284212**

## **Emerging Human Rights Issues**

Theme - The Civil Partnership Act 2010 – implications for same sex couples and their children.

### **1. Critical Milestones**

- 2002: Equality Authority Report calls for equal access to civil marriage
- 2004: Fine Gael Civil Partnership policy – open to opposite sex and same-sex
- 2005: Joint Oireachtas Committee on the Constitution recommends civil partnership
- 2004 and 2006 Law Reform Commission propose equality in presumptive and redress schemes
- 2006 Colley Group (Government Working Group on Domestic Partnership) was tasked with presenting options relating to relationships outside of marriage. The group split relationships into three broad categories: same-sex, opposite-sex and non-conjugal. It was clear that one legal framework for all categories would suit no one.

It recommended two options for same-sex couples, marriage and full civil partnership.

- 2006 Green Party publish Civil Marriage Policy
- 2006 Zappone/Gilligan High Court Case
- 2007 Labour Party Civil Unions Bill
- 2008 Heads of Bill on Civil Partnership
- 2009 Civil Partnership Bill Published
- 2010 Civil Partnership Act Enacted

### **2. What does registering a Civil Partnership actually mean?**

Once a partnership is registered the rights, duties, responsibilities and protections between the couple are almost identical to civil marriage. It is important that same sex couples realise the extent of the commitments that they are making to each other

### **3. Who can register?**

Civil Partnership is a statutory civil partnership registration scheme for same sex couples only.

Both parties must be over the age of 18. They must both be of the same sex. Neither party can be in a subsisting marriage or in a subsisting civil partnership. Both parties must be of sufficient mental capacity to understand the full nature, purposes and consequences of the contract.

#### **4. How do you register?**

The registration requirements are identical to those required for a civil marriage.

Three month's notice must be given to the Registrar. If this is not done or if there is insufficient time to do so an exemption from this three month's notice requirement can be obtained from the Circuit Court.

A meeting must take place with the Registrar at least five days in advance where identification documents such as passports etc must be furnished.

The registration ceremony must be performed in public by a properly appointed Registrar. The ceremony will take place in the office of the Registrar or in a public building which has been designated as appropriate for this purpose e.g. hotels or buildings of historic interest. There must be at least two witnesses present. Both parties and the two witnesses must sign the civil registration form in the presence of the Registrar.

#### **5. What are the rights and duties of civil partnership?**

Between the couple

- (a) Both parties must live together in a shared home.
- (b) Both parties are obliged to support and maintain each other financially.
- (c) The non-owning partner is protected in the shared home.
- (d) Protection under the Domestic Violence Legislation.
- (e) Pension rights and equivalence with spouses.
- (f) Inheritance rights.

Generally

- (g) Equality in the workplace.
- (h) Equivalence in all procedures for example hospitals.

#### **6. What happens if a Civil Partnership relationship breaks down?**

Inevitably the relationships of some couples who register their civil partnership will break down and they will go their separate ways.

The only way to exit a civil partnership is through the Courts, on application to it for a decree for dissolution.

The parties must have lived apart from each other for two years out of the previous three years before they can apply. The Court, before it grants a decree of dissolution, must ensure that proper (financial) provision exists for the parties and the Court can make the following ancillary financial relief orders:-

- (a) Maintenance Orders
- (b) Lump sum payment Orders

- (c) An Order for the sale of the shared home
- (d) An Order for the transfer of the shared home
- (e) Pension adjustment orders
- (f) Orders regarding inheritance rights

The Court will take into account a wide variety of factors almost identical to those that the Court consider in the context of separation and divorce including:-

- Income and financial resources of both parties
- The financial needs and obligations of both parties
- The standard of living of the parties
- The age of the parties
- The length of the civil partnership and the length of time that the parties have lived together **but only subsequent to the registration of the civil partnership**
- The accommodation needs of the parties
- Physical or mental disability of either of the parties
- The value of any benefits forfeit
- The extent to which one partner may have supported the other and/or the extent to which one partner may have looked after the shared home, the extent of which one partner may have prejudiced their career and employment prospects to provide for the other
- **The rights and obligations to any other person including a child to whom either civil partner owes an obligation of support.**
- Conduct but only if gross and obvious and unjust to disregard it.

## 7. Differences

- There is difference in language. A civil partnership will be registered – a civil marriage is solemnised. On breakdown civil partners will be granted a decree of dissolution not divorce. The home in which the civil partners live is called a shared home not a family home.
- There has been no audit of all of the legislation that has not been amended to specifically include civil partners. While 120 pieces of legislation are amended in the Act no full audit of all other legislation has been done and there are many gaps.
- The Civil Partnership Act contains no section providing safeguards to ensure that an applicant or respondent is aware of alternatives to dissolution proceedings and to assist attempts at reconciliation. In both the separation and divorce legislation each solicitor acting for an applicant or respondent must certify that they have discussed with their client the possibility of reconciliation and give them the names and addresses of

suitably qualified persons to help. They must also discuss with their client the possibility of engaging in mediation to help effect and agree the terms of separation and give them the names and addresses of suitably qualified persons. They must discuss with their client the possibility effecting a separation by way of deed or agreement. The solicitor must sign a certificate certifying that these discussions have taken place. There is no similar provision in the Civil Partnership Act which suggests that the safeguarding of civil partnership relationships does not merit this measure and are not worthy of protection in the same way.

- Civil partners cannot access the judicial separation procedures to enable them come to arrangements prior to the granting of a decree of dissolution.
- Civil partners only need to be living apart for two years out of the previous three to get a decree of dissolution which contrasts with living apart for four years out of the previous five in the context of divorce.
- In relation to the factors that will guide the court in making ancillary financial relief the court will only be able to look at the length of the living together after the civil partnership has been registered which is likely to cause significant injustice for those couples who have lived together for a long time prior to the registration of their partnership.
- In separation or divorce the contribution that a person makes to the welfare of the family and children of the marriage is a significant factor that is taken into account by the court. There is no similar factor in the Civil Partnership Act.
- In the Succession Act provisions the legal right share of a civil partner to a minimum of one third of the estate of the other partner can be encroached upon on application to the Court by children of the deceased civil partner. In a marriage situation the legal right share of a spouse is absolutely protected.

## **8. What about the children?**

- In integral part of the separation and divorce legislation is the definition of dependent member of the family which is a child of the marriage and/or a child to whom one spouse stands in loco parentis. In the context of separation and divorce the court must take into account the needs of the children both in terms of their welfare and financially. All of the very specific provisions in relation to children are not mirrored in the Civil Partnership Act except for the single reference to them in terms of the factors to be taken into account by the Court at Section 129(I) (i.e. the rights of other persons ..... including a child to whom either civil partners owe an obligation of support).
- The Civil Partnership Act does not deal with the issue of guardianship of children of civil partnered couples, one of whom is not the biological parent.

In the context of Oireachtas debates it is hoped that the Law Reform Commission, when it publishes its report on the legal aspects of family relationships, will recommend extending guardianship to stepparents and to extend the definition of step parent to include a civil partner of a biological parent. It is hoped that the Law Reform Commission will also

look at the definition of stepparents generally and also clarify the meaning of the term in loco parentis and to extend and embrace within that definition the partner of a same sex couple who has lived with a child with whom has no biological link.

These are very significant matters as the parent with whom a child has no biological link has no automatic rights to inherit or to maintenance and support for life, education and general advancement.

- Adoption – The Civil Partnership Act made no changes in relation to adoption. Civil partners will not be able to adopt a child jointly, although as currently is the case, either party may adopt as an individual. Many same sex couples currently foster children where they are denied the possibility of adopting that foster child (if all of the other circumstances and criteria were met).

## **9. Miscellaneous**

This paper was prepared for a workshop session attached to this one day conference. It is by no means a comprehensive analysis of the Civil Partnership and certain rights and obligations of Co Habitants Act 2010. There are important areas not covered in this paper. It does not deal with the nullity of a civil partnership, the taxation consequences of registration of a civil partnership although it is anticipated that these will be announced in the forthcoming Finance Bill and will give civil partners identical taxation status to married couples. The paper does not deal with any Social Welfare issues which it is understood are being examined to ensure equivalence with married couples. This paper does not deal with immigration which is the subject matter of a separate workshop but it was heartening to see the Minister for Justice and Law Reform, Dermot Ahern TD, tabling amendments to the Immigration, Residence and Protection Bill that provide for equal treatment between married couples and civil partners in immigration law.

Finally, this paper does not deal with any of the provisions of the rights and duties of cohabitants section of the Act which apply to both same sex and heterosexual couples.

Muriel Walls

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