

# Civil Partners and Cohabitants Life Assurance Issues

## LIFE ADVISORY SERVICES

Our society today is changing and more and more people are living together in 'non-married' situations. With the implementation of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, rights similar to those of a married couple have been conferred on registered civil partners and qualified cohabitants. The changes made by the Finance (No 3) Act 2011 have also had a positive impact on the tax treatment of these 'non-married' couples.

In this document we want to update you on some of the changes in succession rights and taxation treatment which might be of interest to your non-married customers.

Firstly we need to be aware of the new definitions for non-married relationships introduced by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010:

### **Civil Partner**

A civil partner is either of two persons of the same sex who are;

- Parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity or,
- Parties to a legal relationship of a class that is the subject of an order made under section 5 (Recognition of registered foreign relationships) that has not been dissolved or the subject of a decree of nullity.

Under the Act a civil partnership cannot be registered if;

- The parties are within the prohibited degrees of relationship,
- Either of the parties are already in a civil partnership,
- Either of the parties are under age 18,
- Either of the parties does not give consent,
- The parties are not of the same sex,
- Either of the parties are already married.

### **Cohabitant**

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

In deciding whether or not two adults are cohabitants the following will be taken into account;

- The duration of the relationship,
- The basis on which they live together,
- If any financial dependence exists,
- Any joint financial arrangements,
- Whether or not there are dependant children, and the support arrangements for any children,
- Whether the parties present themselves to others as a couple.

### **Qualified Cohabitant**

A qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period;

- Of two years or more, in the case where they are the parents of one or more dependant children, and
- Of five years or more in any case.

## Succession and Inheritance Tax

### Civil partners

Rights similar to legal spouses have now been extended to registered civil partners in the event of death. Under the Succession Act a civil partner is now automatically entitled to a portion of their deceased civil partner's estate, subject to the needs of any children being met. (See revised Succession Act information provided).

Also, as a result of separate legislation in the Finance (No 3) Act the 'spouse' exemption from Capital Acquisitions Tax (Gift and Inheritance Tax) has also been extended to registered civil partners. So now civil partners are entitled to a portion of their deceased partner's estate, and they can inherit it tax free.

### Cohabitants

The same rights on death have not been granted to cohabitants. A qualified cohabitant now has the legal right to apply for provision out of their deceased cohabitants estate within six months of the grant of representation. However, it is not an automatic right, as in the case of a civil partner, and the cohabitant is only entitled to an amount after the spouse and civil partner's rights have been satisfied.

It is also worth mentioning that, while the surviving cohabitant partner now has the legal recourse to claim from the estate of their deceased cohabiting partner, no change has been made to the capital acquisitions tax legislation which governs the payment of inheritance tax on the transfer of those assets. So while the surviving cohabitant may receive an award on foot of their application they may still have to pay inheritance tax on the value of the assets.

### Financial Compensation Orders

Similar provisions to those in the Family Law Acts which allow a legal spouse to apply for a Financial Compensation Order dictating the treatment of life assurance contracts within 12 months of the date of the decree have been granted to registered civil partners. There is no restriction on when an application for such an order must be made.

The same facility to apply for a Financial Compensation Order has not been granted to qualifying cohabitants.

### Other taxes

Following the tax changes made to legislation registered civil partners now have much the same tax treatment as a married couple (see Summary provided). Some examples of interest might be exemption from exit tax on the transfer of ownership of a life assurance policy, exemption from stamp duty on the transfer of ownership of 'property' and relief from certain fees arising on the change of ownership between registered civil partners of a shared home, such as court fees, registry of deeds fees or land registration fees.

Cohabitants however have not been granted the same reliefs. The only reliefs extended to this group will be restricted to the tax treatment of maintenance payments and transfers of property following the court order on the termination of a cohabitants agreement.

**We have included a summary of the tax treatment of the different types of non-married situations at the end of this document which we hope you will find useful.**

## Summary of Tax Treatment

		Legal Spouse	Registered Civil Partners	Qualified Cohabitants
<b>Inheritance Tax</b>	Unlimited exemption for benefits taken on death or gift.	<b>Yes</b>	<b>Yes</b>	<b>No</b> – treated as ‘strangers’, Class 3 threshold applies.
<b>Succession Act Rights</b>	Certain automatic minimum rights to their respective estates under a Will or intestacy.	<b>Yes</b>	<b>Yes</b> – see updated Succession Act.	<b>No</b> – see updated Succession Act.
<b>Income Tax</b>	Entitled to each other’s tax credit, certain reliefs and allowances can be shared.	<b>Yes</b>	<b>Yes</b>	<b>No</b> – treated as single person
<b>Social Welfare Benefits</b>	Qualify for State Widow’s / Widower’s contributory pension.	<b>Yes</b>	<b>Yes</b>	<b>Various</b> – see <a href="http://www.welfare.ie">www.welfare.ie</a>
<b>Pension Scheme Death Benefits</b>	Entitled to option of spouse’s pension on death in service or retirement.	<b>Yes</b>	<b>Yes</b>	<b>No</b> – unless they can show financial dependence
<b>Financial Compensation Order</b>	Entitled to apply to court following the date of decree	<b>Yes</b> – within 12 months of the date of decree	<b>Yes</b> – no time frame specified	<b>No</b>
<b>Pension Adjustment Order</b>	Entitled to apply to the court for an order	<b>Yes</b>	<b>Yes</b>	<b>Yes</b> – but subject to proof of financial dependence
<b>Capital Gains Tax</b>	Treated as one unit for the purposes of calculation	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Exit Tax</b>	Exemption on assignments	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Stamp Duty</b>	Unlimited exemption on the transfer	<b>Yes</b>	<b>Yes</b>	<b>No</b>

## Revised Succession Act Information

When a person dies all their property devolves to their “**personal representatives**” to transfer to the individual’s successors. The way property is transferred will depend on whether or not the deceased had made a **Will**. If there is a valid Will the personal representatives “**the executors**”, distribute the assets in accordance with the terms of the Will. If there is no Will the individual is said to have died “**intestate**” and the property is distributed by the personal representatives “**administrators**” in accordance with the provisions of the **Succession Act 1965**.

The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

<b>NO WILL - where a person dies "intestate"</b>	
Spouse or civil partner and no children :	Spouse or civil partner entitled to full estate.
Spouse or civil partner and children:	Spouse or civil partner gets 2/3rds Civil partners entitlement is subject to the financial needs of any children being met 1/3 equally between children.
No spouse or civil partner but children:	Estate is divided equally between children.
No spouse or civil partner and no children:	Parent(s) if living, otherwise brothers / sisters

Where an individual dies "intestate" leaving neither spouse, civil partner nor children, his / her assets will pass to parents, if his / her parents are deceased to his / her brothers and sisters, otherwise to wider family - the Act provides a hierarchical list.

<b>WILL -a "testate" death (Entitlement regardless of provisions of will)</b>	
Spouse or civil partner and no children:	Spouse or civil partner entitled to 1/2 of estate.
Spouse or civil partner and children:	Spouse or civil partner entitled to 1/3 of estate. Civil partners entitlement is subject to the financial needs of any children being met as directed by the courts

An individual can make a Will any way he / she wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the Will provides.

Children do not have a right to a particular share of the estate under a Will. However, Section 117 of the Act gives a child the right to apply to the Court for a share of the estate under a Will if in the Court’s opinion “the testator has failed in his moral duty to make proper provision for the child in accordance with his means.”

It is worth mentioning that while this right of the child to apply to the Courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

**This document details the changes in legislation introduced as part of the Civil Partnership and Certain Rights of Cohabitants Act 2010 and Finance (No 3) Act 2011.**

**We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client’s personal circumstances.**

## CONTACT US

**E-MAIL:** [advisoryservices@irishlife.ie](mailto:advisoryservices@irishlife.ie)

**WEBSITE:** [www.irishlife.ie](http://www.irishlife.ie)

**WRITE TO:** Irish Life, Lower Abbey Street, Dublin 1

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LAS (01/20)

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