



# Missing Pieces

A comparison of the rights and responsibilities gained from civil partnership compared to the rights and responsibilities gained through civil marriage in Ireland

**MARRIAGE EQUALITY**

Civil Marriage for Gay and Lesbian People

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## Foreword

How do we measure equality? It is tempting to regard this audit as an exercise in counting rights and responsibilities. Having read it you might conclude perhaps that gay and lesbian families are now 80% or 90% equal to their heterosexual counterparts in the eyes of the law. But that is not really the point. The point is to reveal that through civil partnership the Irish State has created a separate and unequal institution on many levels. Most profoundly the relationship between children and their gay and lesbian parents is not part of the civil partnership package. Marriage Equality has consistently argued that the complex (ongoing) process of creating a lesser substitute for marriage was unnecessary. The Government and Oireachtas chose to amend a raft of legislation, leaving many discriminatory provisions intact as this audit demonstrates. The better path was to remove the ban on marriage for same-sex couples. This call was met with arguments about the constitutionality of any such move. Yet there was no proposal to amend the Constitution. Surely legislating around the projected opinion of the Supreme Court is not the way to do things in a democracy? Forcing courts to resolve questions about the most important aspects of our personal lives is an abdication of legislative responsibility.

This audit valuably highlights gaps in the changes brought about to date through legislation. It does not address the constitutional picture. Many, and increasing numbers of us, whatever our nationality, whether heterosexual or gay, whether parenting together, alone or not at all, are not part of that picture. We are not recognised as families under the fundamental human rights provisions of our Constitution. This must change. The State's energies should be focused on supporting all families to provide love and care to each other; it should stop penalising children and adults for happening to belong to the 'wrong' type of family.

Judge Albie Sachs wrote of "a radical rupture with a past based on intolerance and exclusion" in finding that the marriage ban in South Africa violated that country's Constitution. "Small gestures in favour of equality, however meaningful, are not enough" he observed<sup>1</sup>. It is time for us to realise that vision in this country too.

**Judy Walsh, BCL,LLB,LLM,BL**

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## Executive Summary

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Civil Partnership Act) was signed into law on 19 July 2010, with the first civil partnerships being recognised by the State in January of 2011. A full audit of all the rights, responsibilities and obligations that flow from marriage was not undertaken by the State prior to enacting this civil partnership legislation. Therefore this work represents the first review of the differences in treatment between heterosexual married couples and same-sex registered civil partners under current Irish legislation. The audit did not include a review of other legal provisions which affect couples, including various constitutional rights and common law (judge-made case law or precedent) rules.

### Report's aim

The aim of this report is to highlight key findings from the audit process, which show that in stark contrast to claims that civil partnership provides most or all the rights of marriage, same-sex couples who register a civil partnership will be denied a range of rights which they would be entitled to if they could legally marry.

### Audit process

Laws which contain special treatment for married couples are extensive and auditing such extensive legislation was a considerable undertaking. To achieve this review the process involved over thirty legal professionals through two phases. The first phase involved identifying specific legislative provisions relating to married couples and their equivalent provisions, if any, in the Civil Partnership Act. For the second phase, Marriage Equality sought the legal opinions of lawyers with specific expertise in the categories of law under review, and it is their legal opinions which form the basis of the analysis contained in this report.

### Report findings

#### Chapter 1: Introduction

Chapter 1 articulates the context and rationale for the report and provides an overview of the audit findings. The audit found 169 differences<sup>2</sup> in treatment covering rights and protections across a range of legislation including: family law, immigration, housing, court procedure, inheritance, taxation, freedom of information and other miscellaneous provisions which apply to married heterosexual couples, but not to same-sex couples who are registered civil partners.

#### Chapter 2: Family home

The chapter covers the family home and the protections afforded to it under Irish family law. There were 25 differences found under this section, including the different terminology used to describe the home of civil partners as a 'shared home' and not as a 'family home'.

Findings in this chapter demonstrate that under the Family Home Protection Act, the definition of a dependent child extends beyond biological or legally adopted children, and includes non-biological children, 'where one spouse has knowingly treated a child as a member of the family'<sup>3</sup>. However, despite this existing broad definition, dependent children are omitted from such protection in the shared home provisions of the Civil Partnership Act. The result of this omission means the protection of a child and the child's home are not achieved by the shared home provisions.

Other differences outlined in this chapter reveal the lack of family home protections for civil partners who are deserted, and the omission of provisions which include the hardship suffered by a spouse, in the assessment of certain relief housing grants.

### Chapter 3: Finance

Chapter two covers a wide range of provisions which fall under the umbrella term of finance. Areas of legislation examined include taxation, employment, pensions, and other miscellaneous provisions which deal with financial matters. Importantly this part of the audit included a review of more recent legislation, including the Finance Act (No. 3) 2011. This review found that, while the current Government appears to be taking a more progressive approach to extending rights to registered civil partners and their children, Civil Partnership as a separate unequal institution, is of itself a structural barrier to achieving equality, with 18 differences found in the finance section.

### Chapter 4: Immigration

The findings outlined in the immigration chapter, highlight the current gap between official policy, which states that civil partners will be treated equally to spouses for immigration purposes, and the legislative reality which shows over 22 differences in treatment under immigration law and regulations. Differences include, civil partners not being included under the definition of 'qualifying family members' in regulations which transposed EU free movement provisions. This may mean the Irish Government are in breach of their obligations under this EU directive.

As a result of the approach taken to deal with civil partnership through immigration policy rather than by amending immigration legislation, the report highlights that civil partners are left without the protection and certainty of the law. Rather they are reliant on measures of policy that may change in a way that does not apply to legislation.

### Chapter 5: Legal procedures

The audit of Legal Procedures covered a broad range of legislation governing the formation of marital relationships, and provide for how that relationship can be formally dissolved, if it breaks down. There were 62 differences found, including the very large gap in social status, tradition and religious meaning existing between the two institutions. This gap is demonstrated by findings which include the fact that there is no legal equivalent to engagement for civil partners or that civil partnerships cannot be conducted by a religious body.

Inequitable treatment of LGBT people who are already married is also evident. Examples include, provisions which demote foreign marriages of same-sex couples to civil partnerships; and the problems that will arise for married transgender people, if a proposed new scheme for gender recognition is introduced<sup>4</sup>, which would require a married transgender person to divorce before they can be eligible to apply for legal recognition of their preferred gender.

Where there is relationship breakdown, the lack of judicial separation for civil partners is a significant difference. With no other legal route available to resolve issues arising from their separation, couples have no choice but to apply for dissolution of their civil partnership.

### Chapter 6: Parent and child

The audit findings in relation to the legal relationship between a parent and their child reveals that the Civil Partnership Act leaves intact the legal vacuum affecting children being raised in same-sex headed families. A total of 25 differences were found in this section, including the deliberate omission of existing provisions in family law which recognise non-biological children (for example step children) as dependent children, within married families. This report supports the view of the Ombudsman for Children, who has already drawn attention to the serious consequences for children that this approach will have and that this differential treatment of children under the Act, especially when compared with the relationship between children and step-parents under Irish law, could violate international human rights instruments, to which the State is party<sup>5</sup>.



## **Chapter 7: Miscellaneous**

The final section of the audit covered all remaining provisions identified in the review of existing legislation. The 17 differences found focus mainly on the age of majority, and administrative provisions in relation to the making and keeping of records by the State. On the age of majority, the report highlights that, as civil partnership is only available to people 18 years and over, the rights which flow to a person under the age of 18 and who is married, are not accessible to young LGBT people in the same situation. While the audit of administrative provisions revealed the fact that civil partners do not have the same rights under the Freedom of Information Act, a serious issue particularly following the death of a partner.

## **Concluding Remarks**

The report closes with an appeal to the current Government to recognise that while their commitment to addressing anomalies and omissions in civil partnership is very welcome, this will not achieve equality for same-sex couples. Even if the two institutions are indistinguishable in terms of the legal rights they offer, they will still differ greatly in terms of the social meaning and status they confer on a family. The issue at stake is not simply that same-sex couples be given the right to marry, it is more than that. It is the fact that LGBT people and their children are being treated as second class citizens, and that their right to dignity and equality are being compromised by the existing marriage ban.





*Chapter 1*

**Introduction**



## Chapter 1: Introduction

**The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Civil Partnership Act) was signed into law on 19 July 2010, with the first civil partnerships being recognised by the State in January of 2011. This report outlines the findings of an audit of the rights and responsibilities gained by same-sex partners who register their relationship under this Act, compared to the legislative rights and responsibilities currently available to heterosexual couples, gained through civil marriage.**

In other jurisdictions, for example in the UK, the State carried out a review of all the rights, responsibilities and obligations that flow from marriage, prior to enacting same-sex partnership registration legislation there<sup>6</sup>. However this approach was not followed by the Irish Government prior to its enactment of civil partnership legislation and therefore this work represents the first review of the differences of treatment between heterosexual married couples and same-sex registered civil partners under current Irish legislation. The audit did not include a review of other legal provisions which affect couples, including various constitutional rights and common law (judge-made case law or precedent) rules<sup>7</sup>.

Marriage Equality's aim in publishing this work is not to undermine Civil Partnership or the rights and protections it offers to same-sex couples. Rather our aim is to highlight that, in stark contrast to claims that civil partnership provides most or all the rights of marriage in all but name, same-sex couples who register a civil partnership will be denied a range of rights which they would be entitled to if they could legally marry. The report also demonstrates that having the option to register as civil partners does not replace having the option to marry. Marriage matters to same-sex couples in similar ways that it matters to everyone else, they want to make a lifetime commitment to the person they love and to protect their families. All couples regardless of their sexuality should be able to make that commitment to one another, if they so choose.

### Key Findings of the Audit

The audit found 169 differences<sup>8</sup> in treatment covering rights and protections across a range of legislation including in the areas of family law, immigration, housing, inheritance, taxation, freedom of information, and other miscellaneous provisions, which apply to married heterosexual couples, but not to same-sex couples who are registered civil partners.

Some of these differences signify the very large gap in social status, tradition and religious meaning existing between the two institutions. For example, there is no legal equivalent to engagement for civil partners nor can a civil partnership be conducted by a religious body<sup>9</sup>. While these rights may not matter to every couple, for those couples who hold strong religious beliefs or value the tradition associated with engagement and marriage, they are denied the opportunity to celebrate their commitment in the same way as opposite sex couples can.

Further omissions from the Act have potentially major implications for civil partners particularly at times of uncertainty or great distress. Examples of these can be seen throughout this report and include; the lack of family home protections for civil partners who are deserted; the omission of equivalent provisions that apply to certain housing grants; and the fact that civil partners do not have the same rights under the Freedom of Information Act, a serious issue particularly following the death of a partner.

Other differences present financial or practical challenges for same-sex couples if their relationship breaks down. For example, there is no recourse to judicial separation for civil partners, leaving them with less legal avenues to deal with their break up. Separated civil partners must wait to acquire a court ordered dissolution before qualifying for favourable tax treatment which is available to opposite sex couples once they have agreed to separate.

A striking outcome of the Civil Partnership Act is the complete lack of recognition of the family rights of civil partners and their children. The audit confirms the view of the Ombudsman for Children of the serious consequences for children that this approach will have<sup>10</sup>. These omissions may have major implications for same-sex couples and their families in a range of areas including; dissolution of civil partnerships; adoption; guardianship; custody and access rights; and the financial provisions to be made for children.

With marriage equality a reality in an increasing number of countries around the world<sup>11</sup>, a consideration must also be given to those same-sex couples who married in another jurisdiction<sup>12</sup>. Irish civil partnership legislation demotes these legal marriages to a civil partnership with fewer rights than marriage. While a further cruel consequence of the ban on same-sex marriage means that, if a proposed new scheme for gender recognition is introduced<sup>13</sup>, a married transgender person will have to divorce their spouse before they can be eligible to apply to have their preferred gender recognised.

## Audit Process

The audit compared the rights and responsibilities gained through marriage under current Irish laws versus the rights and responsibilities conferred on same-sex civil partners through the Civil Partnership Act. Laws which contain special treatment for married couples are extensive and include such diverse legislation as the Abattoirs Act 1988, through to legislation more associated with married couples, such as the Family Home Protection Act 1976. The audit did not include a review of other legal provisions which affect couples, including various constitutional rights and common law (judge-made case law or precedent) rules & EU law (as referred to on page 8). See appendix 1 for a full list of the legislative differences found by the audit.

The first phase, undertaken by legal graduates on behalf of Marriage Equality, involved reviewing current legislation to determine specific provisions relating to married couples. These provisions were then crosschecked with the provisions contained in the Civil Partnership Act and the results categorised into six broad themes covering the family home, parent and children's rights, finance and employment, immigration, legal procedures and a miscellaneous section.

The second stage drew on the legal expertise of ten lawyers with specific experience in the categories of law under review. Marriage Equality sought their professional opinion on the initial audit results and what the findings will mean in practice for civil partners and their families. It is their legal opinions which form the basis of the analysis contained in this report. The Barristers who gave opinions for this project were: Inge Clissmann S.C., on the Family Home; Kevin Darcy B.L., and Trevor Redmond B.L., on the Parent and Child legal relationship; Dearbhla Cunningham B.L., Marguerite Bolger S.C., Justine Quinn B.L., on the Finance provisions; Patrick Dillion Malone B.L., on Immigration; Dr Fiona de Londras, on Legal Procedures; and Natalie McDonnell B.L., on the Miscellaneous provisions.

## Structure of this report

Differences in treatment between married couples and civil partners are divided into six chapters dealing with the legislation and differences as follows:

1. Family Home - Focuses on the family home and protections regarding it. Other housing legislation and relevant family law are also included in this section.
2. Finance – Reviews relevant legislation on taxation, pensions, employment and other financial matters.
3. Immigration – Covers immigration provisions that affect same-sex couples who have registered a civil partnership and married couples and their families and highlights the current gap between legislation and policy in this area for both groups.
4. Legal Procedures – Focuses on the differences in a broad range of legislation that governs relationship formation, dissolution and other legal procedures which provide special treatment for married partners.
5. Parent and Child – Covers a review of the rights and obligations between a parent and child under Irish legislation and the lack of legal recognition of the relationship between same-sex parents and their children.
6. Miscellaneous – This section covers all remaining provisions identified in the review. The findings focus mainly on the age of majority and on provisions relating to administration.





*Chapter 2*

**The Family Home**



## Chapter 2: The Family Home

This section of the audit focuses on the family home, and the protections regarding it, compared to the protections set out in the Civil Partnership Act. One of the key pieces of legislation reviewed in this section is the Family Home Protection Act 1976 (as amended), here and after referred to as the FHPA which in essence generally prohibits the sale or mortgage of the family home by a spouse without the written consent of the other spouse.

There were 25 differences found under this section, including some provisions which have not been extended to civil partners or which create different treatment for them. Based on the legal opinion received, the key differences and their potential implications for same-sex couples who have registered a civil partnership with or without children are outlined below.

### The Family Home Protection Act

#### Terminology

The FHPA defines the dwelling in which a married couple ordinarily reside as the 'family home', whereas the Civil Partnership Act defines the dwelling in which civil partners ordinarily reside as the 'shared home'. While the difference in terminology does not in itself alter the legal protections afforded through both Acts, the language used ensures that same-sex couples who have registered a civil partnership are not recognised as or even called a family.

#### Protection for Dependent Children of the Family

The protections afforded to married spouses under the FHPA, also extend to dependent children of the family. Importantly, under the Act, the definition of a dependent child extends beyond biological or legally adopted children and includes non-biological children, 'where one spouse has knowingly treated a child as a member of the family'<sup>14</sup>.

Due to such a broad definition in the FHPA, this provision could easily have been applied to civil partners with children however dependent children are omitted from such protection in the shared home provisions. In practice this means that the needs of dependent children of civil partners do not have to be taken into account by a court.

So, for example, where a couple, who have entered into a civil partnership have a child and all live together in their home, in a break up, the non-biological parent could apply to the court to dispense with the partner's consent to sell their home. In this situation the court would have to consider the needs of the other partner before dispensing with their consent, but does not have to consider the needs of the child. Whereas, if this couple were married, and one of the spouses acted in loco parentis (was in fact a parent) to their partner's child, the court would have to take the needs of this child into account, in the same type of application.

#### Desertion & Consent

In situations where one spouse deserts the other spouse, the court can dispense with the deserting spouse's consent to sell the family home. This provision was omitted from the Civil Partnership legislation, leaving a deserted civil partner without the protection afforded to a spouse in this situation. It is also worth stating that 'desertion' is dealt with elsewhere in the Civil Partnership Act, therefore it is not that the legislature did not accept that a civil partner cannot be deserted, but omitted this element from the 'Shared Home' protection. In practice this means that a deserted civil partner will still need the consent of his or her deserting partner before selling their home, causing them more difficulty in selling the property than if they were a spouse in that situation.

## Protection of Residence in the Home & Compensation

Provisions dealing with conduct leading to the loss of the family home are largely mirrored in the Civil Partnership Act however, again, omitting any references to children. The implications of these omissions are worrying and mean the protection of a child and the child's home are not achieved by the Shared Home provisions, with the possible consequences for children being that they may be left without their home or other suitable accommodation. Furthermore the court can make an order to compensate a child of a married couple (whether or not both spouse are her/his parents) for the loss of his or her home due to the conduct of a spouse. This protection does not exist for children of civil partners.

## Other Housing Legislation

### Housing Grant

Where a house is severely damaged by fire, explosion or Act of God, hardship to a spouse is taken into account in determining the payment of a relief housing grant<sup>15</sup>. These provisions have not been extended to civil partners, potentially leaving them almost literally out in the cold if they find themselves in this unfortunate situation.

### Certificate for Land Transfers

Civil partners are not exempt from the requirement to produce a certificate when they are transferring land (subject to a land purchase annuity) to create a joint tenancy in respect of their shared home. This results in unnecessary bureaucracy and expense for civil partners, which is eliminated for a married couple.

## Family Law

The District Court can make allowances for an urgent maintenance hearing to be heard and determined for married couples. A corresponding rule for the maintenance of civil partners has not been included in legislation therefore a dependent civil partner will not be given such urgent consideration as regards their maintenance.

## Conclusion

The legal differences revealed in this chapter demonstrate a range of issues from additional 'red tape', to a serious lack of protection and support for civil partners and their families at times of crisis e.g. if one partner deserts the family. This section also highlights the first of a number of legal definitions (in this case in the FHPA) which already includes a broad definition of dependent children. This pre-existing definition recognises that all children in a married family, whether they are the biological children of a couple or not, are dependent children and therefore need protection. However this broad definition was not applied to civil partners with children, and given the possible consequences, its failure to take into account the needs of dependent children is a fundamental flaw in the Act.

A photograph of two women smiling warmly. The woman on the left has short brown hair and is wearing a black top. The woman on the right has dark curly hair and is wearing a blue patterned top. The woman on the left has her hand on the shoulder of the woman on the right. The background is a plain wall with a green plant.

*Chapter 3*

**Finance**



## Chapter 3: Finance

The audit of this section encompassed a wide range of provisions which we have collated under the umbrella term of finance. Areas of law which were covered include taxation, employment, pensions, and other miscellaneous provisions which deal with financial matters. There were 18 differences found in the finance section, including some provisions which have not been extended to civil partners or which create different treatment for them.

Many of the provisions reviewed were not covered by the Civil Partnership Act, but were dealt with by the Finance Act (No.3) 2011 which provided for changes to the existing tax legislation following the Civil Partnership Act.

### Taxation

#### The Finance Act

The Finance Act (No.3) 2011 provided for changes to existing tax legislation following the Civil Partnership Act, to provide for the same tax treatment for registered civil partners as that of married couples under all tax categories. Broadly speaking the Act does achieve this aim and civil partners are now treated the same way as spouses in most areas of taxation. Significantly, the Finance Act also provides for the same tax treatment of a child whose parents are in a civil partnership as that of a child of a married couple, except in relation to maintenance payments. However the audit has identified twelve provisions where full equivalence has not been achieved, specifically in relation to the breakdown of civil partnerships, maintenance payments for children, and the definition of relatives. The implications of these differences are outlined in more detail below.

#### Breakdown of civil partnerships

In the Irish tax system a favourable tax regime exists to deal with tax issues, for example in relation to the tax treatment of maintenance payments arising on the break-up of a marriage. This favourable tax regime has also been extended to the dissolution of a civil partnership however the range of circumstances to which it applies is more limited.

In particular, how quickly this treatment can be accessed is significantly different. In the case of a married couple, spouses are able to access this tax treatment once they have a deed of separation, which means they do not need to wait for a Court ordered separation or divorce. However in the case of civil partners, the tax treatment can only be triggered on the court ordered dissolution or annulment of the partnership. In reality this means separated civil partners may have to wait a much longer period of time to qualify for this tax treatment.

The legislative definition of separation is also different between spouses and civil partners, with the definition in the case of spouses broad enough to include a situation where the spouses, although separated, live under the same roof<sup>16</sup>.

This broad definition has not been extended to civil partners. This is significant given the economic reality that many couples now face, that they may be forced to live together for a period of time following their separation. Again the practical implication of this difference means separated civil partners cannot access the tax regime available on dissolution until they can afford to live apart for the required time period, to satisfy the statutory conditions for dissolution or annulment.

#### Maintenance Payments in relation to Children

In the case of married couples the legislation expressly sets out how maintenance payments are to be treated if those payments relate to the maintenance of children of the marriage. Specifically it outlines that the payment is not taxable and therefore is not deemed to be income of the person who receives it or regarded as income of the child<sup>17</sup>. However there is no equivalent provision in the case of the children of civil partners and therefore it is not clear how maintenance payments for children will be treated for tax purposes. This omission is probably due to the fact that there is no statutory obligation for a civil partner to support their non biological dependent child.



## Definition of Relative

The definitions of 'relative' and 'family' are used throughout tax legislation and, apart from some exceptions where the definition is supplemented or specifically defined, the meaning of 'relative' and 'family' are based on blood or marriage. Therefore, relatives and family of civil partners needed to be expressly referenced in the legislation and a number of sections failed to do so or do so inadequately. One example of this is in the case of stamp duty consanguinity relief<sup>8</sup>, which provides for a reduced rate of stamp duty for transfers between relatives. In terms of this relief the amendments made to include family and relatives of civil partners are not as broad as those covering spouses and therefore do not achieve equivalence.

## Conclusion on Taxation

Tax legislation can only operate within the confines of general law, which means where the Civil Partnership Act does not achieve equivalence, tax changes are subject to these limitations also. This goes some way to explaining the differences outlined above and was the reason given by the Minister for Finance for rejecting proposed amendments to address these inequalities, prior the Bill's enactment<sup>19</sup>. Therefore without equal access to civil marriage, the consequence for same-sex couples appears to be that civil partnership has created a structural barrier to achieving full equality, in the area of taxation.

## Employment Law, Pensions and other finances

### Employment and Pensions

It would appear that equality has been achieved for civil partners in the area of employment law and is a welcome finding of this audit. The legal expert in this area, Marguerite Bolger BL, having reviewed the rights conferred on a person based on their marital status, is satisfied that all of these rights have been extended to civil partners. Furthermore, the concept of marital status has now been replaced by a new ground of civil status under both the Employment Equality Acts and the Equal Status Acts. This means that a person who is discriminated against on the grounds of having entered into a civil partnership, is now protected under legislative provisions in terms of access to employment and vocational training, treatment at work, termination of employment and access to goods and services

Similarly positive results were found in relation to the audit of pension provisions, with all of the provisions examined achieving equivalence in treatment for civil partners when compared to spouses.

### Other Finances

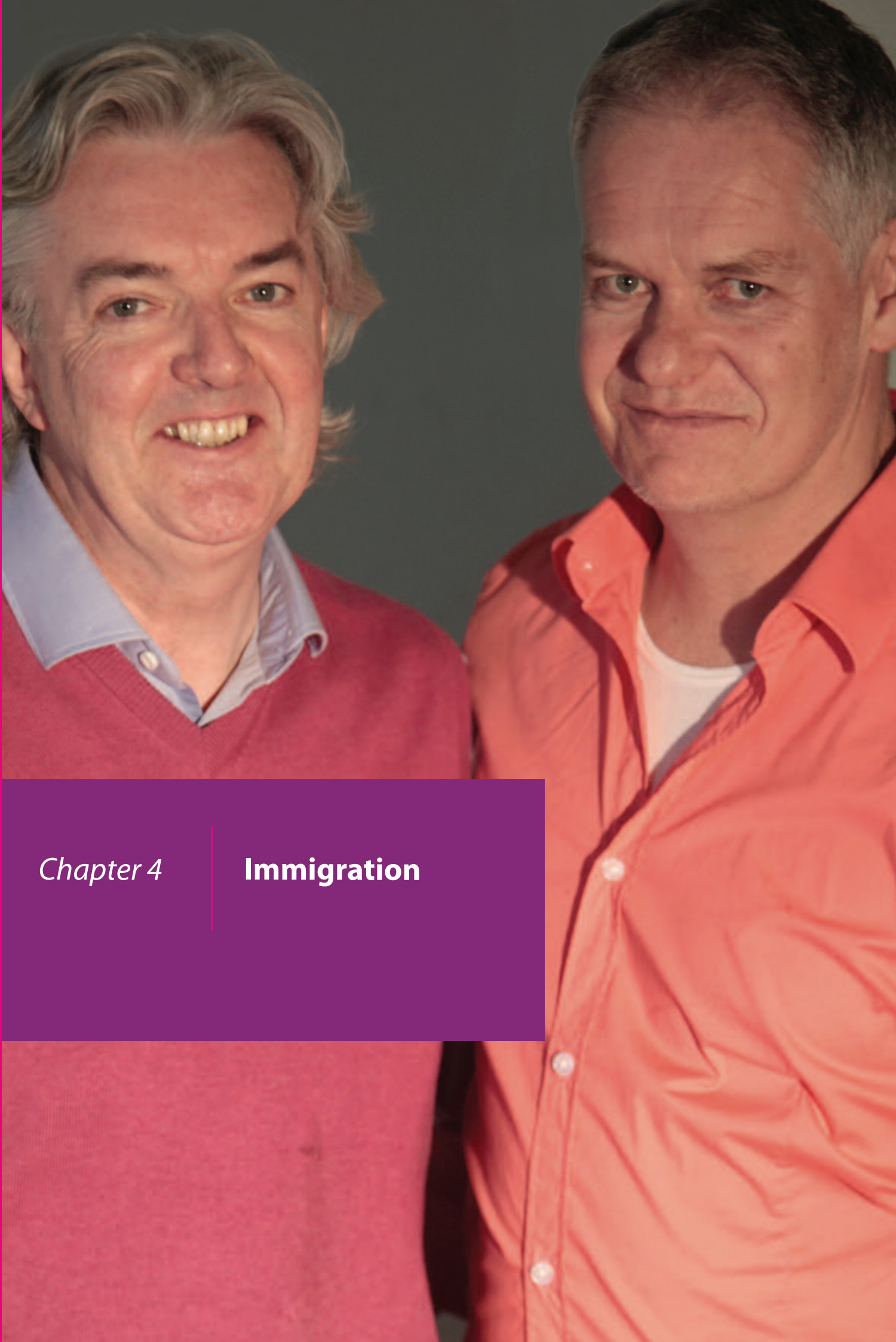
The audit of the other miscellaneous provisions examined found six differences in treatment. Four of these differences are in relation to provisions regarding civil legal aid. One of the provisions<sup>20</sup> sets out a specific exemption for engaged or cohabitating opposite sex couples, which allows them to apply for legal aid in respect of a property dispute. This exemption has not been extended to same-sex couples, who have an agreement to register as civil partners, i.e. are engaged, or to same-sex couples who are cohabitating.

Again this difference highlights a structural inequality between civil partnership and civil marriage as, with no legal concept of engagement for civil partners, it is not possible to replicate this important exemption. The lack of equivalence for cohabiting same-sex couples seems to be based on the wording of the section of the Civil Legal Aid Act, which defines cohabitating, as two persons who are living together as man and wife.

## N.B. Social Welfare

A review of the Social Welfare Code was also to be included in this section and changes to incorporate civil partners and cohabitants within the code by the Social Welfare and Pensions Act 2010 have been examined in some detail. However, Social Welfare Code is unlike any other legislative area, with significantly more legislative amendments and regulations enacted each year. This made the audit of this area particularly challenging and more time is needed to ensure that every regulation and act that remains in force, has been examined. Therefore this part of the audit is ongoing and a separate report on the findings will be published in the early part of 2012.





*Chapter 4*

**Immigration**



## Chapter 4: Immigration

This section of the audit focuses on Irish immigration law and the way in which same-sex registered civil partners and their families are treated differently to married couples. It is important to note at the outset that immigration law in Ireland is informed by a high degree of discretion, and laws which do provide protections and safeguards to spouses and their children are limited in number and in scope. However, where legislative protections do exist for married couples, these help to alleviate some of the financial and emotional burdens associated with immigration issues.

There are only two sections in the Civil Partnership Act that relate specifically to the immigration status or entitlements of civil partners. The first relates to diplomatic immunity<sup>21</sup>, extending the protections enjoyed by a spouse of a person entitled to diplomatic immunity, to civil partners. The second provision also extends to civil partners family unification provisions under the Refugee Act 1996. In relation to all other immigration law, the equal treatment of civil partners is reliant on immigration policy and the non-statutory exercise of discretion, rather than legislative entitlement. Thus, while it may be stated policy that civil partners will be treated equally to spouses for immigration purposes<sup>22</sup>, the audit uncovered a reality that shows over 22 differences in treatment under immigration legislation and regulations, leaving civil partners dependent on policy rather than legal rights enshrined in legislation.

### EU Directive on the Rights of EU citizens

A significant finding of the audit is that the State may be in breach of its obligations under the EU Directive on the Right of Citizens of the European Union and their family members to move and reside freely within the EU and EEA member states<sup>23</sup>. In failing to amend the regulations designed to transpose this EU Directive to include civil partners in the definition of qualifying family members, our legal expert believes, Ireland may now be in breach of its obligations under this Directive. It is also the opinion of Patrick Dillion-Malone B.L., that in any enforcement action which may be taken against the State, it will be no defence that the relevant protections of the Directive have been extended to civil partnerships as a matter of policy.

### Citizenship and Naturalisation

#### The Civil Law Bill 2011

The Civil Partnership Act did not extend provisions enjoyed by non-Irish spouses of Irish citizens, which means they have less onerous conditions to meet in applying for Irish citizenship than are applicable to other people. However, an amendment to the Civil Law (Miscellaneous Provisions) Bill 2011 has now extended equal treatment to civil partners in relation to Irish citizenship. This is a welcome legislative step and a positive result of the intensive research undertaken for this audit, which informed the proposed amendment.<sup>24</sup>

### European Free Movement Provisions

As outlined above the legal expert has identified that the State has failed to properly transpose the Citizenship Directive<sup>25</sup> into Irish law, in particular regarding the definition of qualifying family members which does not make any reference to couples in a registered civil partnership. Specific ways in which the omission gives rise to differences in treatment include the possibility that, while the non-EU spouse of a European Union citizen may not be refused entry to the State except in certain circumstances<sup>26</sup>, the non-EU civil partner of a European Union citizen may be refused entry as they are not defined as a 'qualifying family member'.

Furthermore, in the event of divorce or annulment between a non-EU and EU citizen, the regulations provide for the retention of the right of residence by family members. The Regulations are silent however, on the position of a non-EU or EU citizen on the dissolution of a civil partnership. This essentially means that, an ex-civil partner of an Irish citizen could be deported upon the dissolution of their registered civil partnership, and therefore is reliant on discretionary immigration policy to ensure that is not the case.

## Asylum and Protection

Article 16 of the European Communities (Eligibility for Protection) Regulations provides for family reunification procedures and criteria, for 'members of the family' and 'dependant members of the family'; for persons entitled to subsidiary protection<sup>27</sup>. However the definitions of 'members of the family' and 'dependant members of the family' have not been extended to include civil partners, which means civil partners are not entitled to apply for family reunification under these provisions.

## Conclusion

What emerges from the review of this area is that there is at present a very large gap between stated policy of the State, to treat civil partners equally to married couples for all immigration purposes, and the legislation and regulations which are in force. This leaves same-sex couples who are registered civil partners without the protection and certainty of the law but rather with measures of policy that may change in a way that does not apply to legislation.

In a recent statement in relation to the gaps in legislative protections, the Minister for Justice, Equality and Defence reiterated the State's intention to treat civil partnerships in the same way as marriages in the area of immigration, until the relevant amendments could be made "at a future date"<sup>28</sup> as the Minister said. This statement is welcome, particularly given that the Immigration and Residence and Protection Bill 2010 if amended and enacted, presents a significant opportunity to equalise rights between civil partners and married couples.



*Chapter 5*

**Legal Procedures**



## Chapter 5: Legal Procedures

A broad range of legislation governs the procedures for forming a marital relationship and provide for how that relationship can be formally dissolved if it breaks down. Married partners are also treated differently to other persons in the context of certain legal proceedings. For the audit's purposes these various laws have been collated under what are broadly referred to as 'legal procedures'. The audit uncovered 62 differences between the treatment of married and civil partner couples under this section. Looking at the legislation governing relationship formation and dissolution some of the main differences are outlined below.

### Relationship Formation

#### Engagement

There is no equivalent legal status to engagement for civil partners. In terms of the law, this means that provisions within the Family Law Acts which provide a legal route to resolve disputes in relation to gifts and property of an engaged couple who end their relationship, have not been extended to same-sex couples planning to register a civil partnership. This is despite the fact that prospective civil partners are just as likely to receive gifts and share property as an engaged couple.

#### Minimum Age

Civil partnership is only available to people who are 18 years and older, however, someone under the age of 18 can marry where they acquire a waiver from the court<sup>29</sup>. There is no provision under the Civil Partnership Act for a person under the age of 18 to acquire such a waiver to enter into a civil partnership. While there may be a broader question of whether a person under 18 ought to be permitted to enter into either a civil partnership or a marriage, the existence of a pathway to marriage for a minor and the corresponding absence of a pathway to civil partnership is a difference in treatment, with potentially significant implications in a number of situations. For example, under prison rules there is a requirement to inform the spouse of a minor inmate if they become seriously ill. In the same situation a minor's same-sex partner would not have the legal right to be informed if they became seriously ill.

#### Registration by Religious Body

Marriages can be conducted by religious bodies as well as by registrars. In contrast religious bodies cannot register civil partnerships. So, for example, even if a religious body, such as the Unitarian Church, wanted to register a civil partnership, they are not legally permitted to do so.

#### Foreign Marriages and Civil Partnerships

Unlike marriage law, the courts are not enabled to recognise foreign civil partnerships and same-sex marriages<sup>30</sup>. Instead, that power is reserved for the Minister for Justice. The Civil Partnership Act allows the Minister to designate certain classes of relationships entered into abroad as having the same legal effects as an Irish civil partnership.<sup>31</sup>

However, the Minister is not under a duty to recognise a class of foreign relationship, rather he or she has a power to do so. This means that same-sex couples who wish to have their foreign civil partnership or marriage recognised in Ireland (from a jurisdiction not already listed in the statutory instrument) must wait until the Minister makes a decision on whether or not to recognise their civil partnerships or marriages, and publishes the appropriate statutory instrument. In the event of a delay in this process a couple may be obliged to take legal action to seek to compel the Minister to act. In any event, a foreign same-sex marriage will only be recognised as a civil partnership.

## Transgender People

Currently in Ireland there is no legal mechanism to recognise a person's preferred gender identity other than the gender that was recorded for them at birth. However the Gender Recognition Advisory Group (GRAG), established to advise the Government on gender recognition legislation for Ireland, have recently published their report and propose establishing a scheme for legal recognition. Disappointingly their proposals include a recommendation that applicants who are married be excluded from the scheme, which means that an already married transgender person will have to divorce their spouse before they can have their preferred gender legally recognised. Likewise, any transgender person who is in a registered civil partnership will need to dissolve their civil partnership, if they wish to apply under the scheme<sup>32</sup>.

Interestingly, the report also provides a clear statement highlighting that registered civil partners acquire less protection from registering their partnership than spouses acquire from civil marriage. In outlining their argument to exclude a civil partner from the right to apply to be recognised in a different gender, the group stated that "such a scenario would effectively result in a state-recognised opposite sex relationship that does not benefit from the full protection afforded to marriage"<sup>33</sup>.

## Separation and Dissolution

### Judicial Separation

While married couples can execute a deed of separation, obtain a judicial separation, or obtain a divorce, the Civil Partnership Act makes no provision for civil partners to apply to court for a judicial separation. This means that, while civil partners can execute a deed of separation, if no such agreement can be reached they have no choice but to apply for dissolution of their registered civil partnership. In practice separated opposite sex couples do not always opt for the finality of a divorce and prefer instead to legally separate. This may have to do with the economic dependency of one partner on the other or where children are involved, to avoid further distress or change for them. Whatever the reason judicial separation provides these couples with a mechanism to legally sort out the issues surrounding their separation, however this mechanism is not available to civil partners who wish to separate.

### Period of Separation

Civil partners must be living apart for 2 of the previous 3 years in order to apply to dissolve their partnership, whereas spouses must be living apart for 4 of the previous 5 years to apply for a divorce. While this is not equal treatment, it may be more sensible treatment and partly helps to make up for the lack of option to apply for a judicial separation in the Act. However this also reinforces the greater importance afforded to marriage by the Irish State, with more onerous criteria to be met in order to dissolve a marriage when compared to a civil partnership.

### Mediation Requirement

In order to obtain a divorce there is a constitutional requirement for a couple to consider mediation and in fact divorce legislation obliges solicitors to advise clients about the mediation services on offer. There is no such requirement for civil partners who wish to dissolve their partnership and therefore no such obligation on solicitors, again showing the greater importance afforded to marriage by the State.

### Children

An example of the almost total lack of provisions relating to the children of civil partners also emerged in this section under the laws governing dissolution. However, as they have been dealt with in detail in the parent and child (on page 26) section of this report we will not expand on them further here.



## **Criminal Trials**

Other differences which fall under the legal procedures category include laws relating to criminal trials and the giving of evidence. Legislative provisions relating to the giving of evidence in a criminal trial highlight serious differences in treatment of the marital relationship versus civil partnerships.

The principle that spouses cannot be compelled to testify against one another is significant due to the two main justifications for this treatment. The first justification is the principle of unity, i.e. the principle that for some purposes (although not all) husband and wife were considered as one by the law. The second justification is that there is a public interest in avoiding discord within the marital relationship, which recognises that testifying against one's spouse, particularly when compelled to do so, would run the risk of creating disharmony within the relationship. These provisions have not been extended to civil partners which means a civil partner may be compelled to give evidence against his or her partner, despite the potential problems this may create between the couple.

## **Conclusion**

Many of the differences highlighted in this section have symbolic significance as well as legal and practical implications for same-sex couples who have registered a civil partnership. From the fact that same-sex couples intending to register a civil partnership cannot in the eyes of the law become engaged, to the omission of the protection afforded to married couples from having to testify against their spouse. The cultural, social and legal gap between civil partnership and the institution of marriage goes far beyond the rights and entitlements gained by civil partners through the Act.

Moreover, the omission of judicial separation, as a structural difference between civil partnership and civil marriage, has significant practical implications for couples and is shown to be a barrier to equitable treatment in other areas of law, such as taxation.





*Chapter 6*

**Parent and Child**



## Chapter 6: Parent and Child

**“It should be borne in mind that this is not a hypothetical problem. The omission of robust protections for the children of civil partners will have real consequences for the young people concerned and it is in their interests that the law reflect and provide for the reality of their lives” (Ombudsman for Children, July 2010) <sup>34</sup>**

This section of the audit reviewed the rights and obligations between a parent and child under Irish law, and found that, contrary to the advice of the Ombudsman for Children, the Civil Partnership Act leaves intact the non-recognition of the relationship between parents and children being raised in same-sex headed families. A total of 25 differences were found in this section, with the majority relating to rights and obligations which have not been extended to civil partners and their children, including deliberate omission of existing provisions in family law which recognise non-biological children (for example step children) as dependents within married families.

On reviewing this section, the legal experts have advised that in their opinion, the deliberate omission of children from the Civil Partnership Act, will have major implications in practice for same-sex couples and their families in such diverse areas as; dissolution of civil partnerships; adoption; guardianship; custody and access rights; and the financial provisions to be made for children. The major differences and their potential implications for couples and their families are outlined in more detail below.

### Adoption

The Civil Partnership Act has not amended the provision in the Adoption Act 2010, which provides that only married couples may apply to jointly adopt. Therefore it remains the case that civil partners cannot apply to adopt jointly as a couple, even if such a proposed adoption application were of a same-sex parent wishing to adopt their partner’s biological child. This restriction also applies in respect of intercountry adoptions. This means that, even if a foreign jurisdiction permits adoption by civil partners jointly, the State will not recognise an intercountry adoption order for the adoption of a child by more than one person, other than in favour of a married couple.

This finding is disappointing and out of step with the advancements in parental rights for same-sex couples in other European countries. With 8 countries<sup>35</sup> in Europe now providing for joint adoption by same-sex couples and 11 countries<sup>36</sup> providing for second parent adoption<sup>37</sup>.

### Guardianship <sup>38</sup>

Guardianship rights have not been extended by the Civil Partnership Act nor has any other equivalent regime been introduced. Therefore the situation remains that there is no way to confer parental rights or responsibilities on a civil partner who is not the biological or adoptive parent of a child but is in fact parenting a child or children within their family unit.

Furthermore, provisions relating to the appointment of a testamentary guardian have not been amended. This means while a civil partner can be appointed testamentary guardian of their deceased partner’s biological or adopted child in his or her will, some difficulties could arise as the Guardianship of Infants Act makes it clear that the testamentary guardian shall act jointly with the surviving parent (provided that parent is already a legal guardian of the child or children). As the surviving parent/guardian has a right to object to the appointment of the surviving civil partner as joint guardian, the court may be called on to adjudicate on the appointment.

## Custody and Access

The right to make an application to the court regarding custody has not been extended to include a civil partner who is not the biological parent of the child<sup>39</sup>. Applications for access can be made by any person who 'has acted in loco parentis to a child'<sup>40</sup>. However such applications are burdensome because they involve two separate court applications and the civil partner must first apply to the court for permission to make an application for access. If that stage is successful the actual access hearing takes place.

## Maintenance

Under the Family Law (Maintenance of Spouses and Children) Act 1976, the definition of 'dependent child' includes children to whom "either spouse is in loco parentis, where the other spouse, being aware that he/she is not the parent of the child, has treated the child as a member of the family"<sup>41</sup>. However references to dependent children are omitted from the provisions governing maintenance in the Civil Partnership Act.

This means the court can make an order against a spouse to support their step child (or non-biological child) but a maintenance order cannot be made against a civil partner, who is not the biological parent, for the support of a dependent child.

Furthermore in deciding on the amount of any maintenance payment in respect of civil partners, unlike with spouses, there is no requirement that the court be satisfied that the agreed amount adequately provides for the needs of any dependent children of the partnership. While it is hoped that in practice the courts will take into account the needs of a civil partner in respect of his or her children, there is no legal requirement to do so.

These omissions are likely to cause considerable distress and anxiety for families in the event of a breaking up of a civil partnership.

## Dissolution of a Civil Partnership

As with the definition of dependent children in relation to maintenance, under divorce law the definition of a dependent member of the family includes any child of either spouse in respect of whom either spouse is in loco parentis. However, again, references to dependent children are omitted from equivalent provisions governing dissolution of civil partnerships, which means:

In order to obtain a divorce the court must be satisfied that proper provision has been made for any dependent children. By contrast, no such requirement exists in respect of dissolution of civil partnership and again the court is not required to ensure that any proper provision has been made for any children who are dependent on the civil partner.

In granting a judicial separation or divorce the court can also make directions in relation to the welfare, custody and access of the children of the relationship. However there is no equivalent provision which allows a court to make any orders in respect of any child being raised by the civil partners.

## Inheritance

The Civil Partnership Act does not extend inheritance rights to a non-biological child of a deceased civil partner parent. This means that such children are excluded from the rules of inheritance that apply where a person dies without making a valid will<sup>42</sup>. Under those rules children receive a defined portion of their deceased parent's estate. Similarly, where a parent does leave a will the right to challenge it for failing to provide adequately for a child does not apply to non-biological children even when the deceased civil partner acted in loco parentis.



## Passport Application

Under the provisions of the Passport Act an application for a passport may generally be made only by a parent or guardian of the child. However as the term 'parent' is not defined by the Passport Act 2008, it is possible the term 'parent' could be construed as including a civil partner who is not the biological or adoptive parent of a child but where the child is being raised jointly by the civil partners. However if a court does not interpret 'parent' to include civil partners, then a non-biological parent can only apply for a passport for the child they are parenting under the provisions, which allows 'any other person who has an interest in the welfare of the child', however passports under this provision are only granted in exceptional circumstances.

## Conclusion

There is profound injustice in the failure of the Civil Partnership Act to recognise the relationship between children and their lesbian or gay non-biological parents and omitting protections afforded to non-biological children of marital couples from children with same-sex parents in a registered civil partnership. In the opinion of the Ombudsman for Children, this differential treatment of children under the Act, especially when compared with the relationship between children and step parents under Irish law, could violate international human rights instruments, to which the State is party.<sup>43</sup>

The potential implications of these omissions for families are all too real, and are supported by other research carried out by Marriage Equality, on the experiences of children from lesbian and gay headed households. In this study the children provided many real life examples of how the lack of legal recognition of their relationship with their non-biological parents, had significant impact on their lives. In the end what mattered most to the children in this study, was that their family relationships be recognised and protected, and that no other generation of children with LGBT parents, should experience the pervasive homophobia that they had experienced.<sup>44</sup> Unfortunately however, given the complete failure of the civil partnership legislation to extend protections to same-sex families, their wishes remain unheard and discrimination against children based on their parents sexuality, remains a reality in Ireland today.



*Chapter 7*

**Miscellaneous**



## Chapter 7: Miscellaneous

All other rights, duties and obligations identified during the review which did not neatly fit into other sections of this report, have been grouped together here under the heading of 'miscellaneous'. Provisions reviewed under this section include amendments to the Companies Act 1964-1990, Non Fatal Offences against the Person Act 1997, Health (Nursing Homes) Act 1990, and the Electoral Acts, among others. The audit identified 17 differences under this section. These omissions can be grouped into two broad categories; Age of Majority, and Administration.

### Age of Majority

As outlined in the legal procedures chapter, civil partnership is only available to people who are 18 years and over, however someone under the age of 18 can marry if they acquire a waiver from the court. Further rights which flow from this difference include provisions under the Age of Majority Act 1985, which allow for early accession to 'full age' if a person is married.

In practice this means that a person who is under eighteen but is married may be exempt from certain restrictions which apply to other people of their age. For example, a person under 18 who is, or has been married, is exempted from requirements in relation to obtaining the consent of their guardian in making a passport application.

### Administration

The term 'administration' for the purposes of the audit covers provisions in relation to the making and keeping of records. An example of differences under the category of administration is seen in relation to the Freedom of Information Act 1997. Under this Act an application can be made by a spouse to correct personal information, held by the State about their spouse, which is misleading, incorrect or incomplete. This provision is particularly important where the person to whom the record relates is deceased. This right of application has not been extended to civil partners.

### Conclusion

Again the omissions identified in this chapter show that equality has not been achieved by the Civil Partnership Act, and that structural differences between the two institutions, such as the age restriction applying to civil partnership, leads to further inequitable treatment of same-sex couples in certain situations.



*Chapter 8*

**Concluding Remarks**



## Chapter 8: Concluding Remarks

**“The exclusion of same-sex couples from the benefits and responsibilities of marriage, accordingly is not a small and tangential inconvenience.....it represents a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples.....It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than of heterosexual couples.”<sup>45</sup>**

Justice Sachs of the South African Supreme Court

Given the many differences in treatment highlighted in this audit and their potential implications for civil partners and their families, it is welcome that the current Government has committed to amending the Civil Partnership Act to address any anomalies or omissions, including those relating to children<sup>46</sup>. However even if these amendments are made, and it is greatly hoped that they will be, this will not achieve equality for same-sex couples. Even if the two institutions are indistinguishable in terms of the legal rights they offer, they will still differ greatly in terms of the social meaning and status they confer on a couple.

The issue at stake is not simply that same-sex couples be given the right to marry, it is more than that. It is the fact that lesbian, gay, bisexual, and transgender people and their children are being treated as second class citizens, and that their right to equality and dignity are being compromised by the existing marriage ban.

Marriage Equality is keenly aware of the desire among a majority of same-sex couples to have the option to marry. Furthermore, we know that the general public support equal marriage rights for same-sex couples and the equal treatment of their children, with a recent poll showing an overwhelming 73% of people in favour of same-sex couples having the right to marry.<sup>47</sup>

Enough Oireachtas time has been spent amending rafts of legislation which still leaves many discriminatory provisions intact. The Irish people are ready for marriage equality and the time for inspiring leadership is now. Let's not be left behind international progress towards Marriage Equality, instead let's be inspired by Prime Minister Zapatero's words following the end of the exclusion of same-sex couples from marriage in Spain:<sup>48</sup> "We were not the first, but I am sure we will not be the last. After us will come many other countries, driven ... by two unstoppable forces: freedom and equality."

*"We were not the first, but I am sure we will not be the last. After us will come many other countries, driven ... by two unstoppable forces: freedom and equality."*

*- Prime Minister Zapatero*



## *References and appendices*

## References

- 1 *Fourie and Bonthuys v Minister for Home Affairs and Director General of Home Affairs*, Case CCT 60/04 (Constitutional Court of South Africa, 1st December 2005), at [59].
- 2 This number reflects the omissions and differences found through the review of provisions identified by this audit and on the legal opinions received. However, while the audit aimed to be as comprehensive as possible, this number is subject to the caveat that there may be other differences which have not been identified by this review.
- 3 See definition of "dependent child of the family" in The Family Home Protection Act 1976.
- 4 See the Gender Recognition Advisory Group - Report to the Joan Burton T.D. Minister for Social Protection, 15 June 2011.
- 5 See, Ombudsman for Children (July 2010) *Advice of the Ombudsman for Children on the Civil Partnership Bill*. <http://www.oco.ie/publications/advice-to-government.html>
- 6 This review was undertaken by the Women and Equality Unit based in the Department for Trade and Industry, this unit has now been replaced by the Government Equalities Office: <http://www.equalities.gov.uk/>
- 7 It is important to appreciate that only married couples are recognised as a family under the Irish Constitution. As a result, the bundle of rights and responsibilities that flow from that status do not extend to other types of family. Other laws that may affect couples include European Union legal provisions and case law developments that have yet to become part of Irish law.
- 8 This number reflects the omissions and differences found through the review of provisions identified by this audit and on the legal opinions received. However, while the audit aimed to be as comprehensive as possible, this number is subject to the caveat that there may be other differences which have not been identified by this review.
- 9 A person who is a registered solemniser and who is recognised by the religious body of which he or she is a member (see the Civil Registration Act 2004, Part 6, Section 45) can conduct a wedding ceremony. By contrast a registered solemniser of a religious body cannot conduct a civil partnership.
- 10 See, Ombudsman for Children (July 2010) *Advice of the Ombudsman for Children on the Civil Partnership Bill*. <http://www.oco.ie/publications/advice-to-government.html>
- 11 Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina; The United States & Mexico are a further 2 countries which allow marriages between same-sex couples on part of their territory.
- 12 See, Marriage Equality (February 2010) *International Progress towards Marriage Equality*. <http://www.marriageequality.ie/getinformed/fulllist/progress-towards-marriage-equality/>
- 13 See the Gender Recognition Advisory Group - Report to the Joan Burton T.D. Minister for Social Protection, 15 June 2011.
- 14 See definition of "dependent child of the family" in The Family Home Protection Act 1976.
- 15 See Housing (Miscellaneous Provisions) Act, 1979, S. 4 (4)
- 16 In *Holmes v Mitchell* it was held that husband and wife might be separated even though they were living under the same roof if they had ceased to be one household and had become two households. The facts of that case were that from 1972, the taxpayer and H had lived as separate households under the same roof and the taxpayer's declaration of his intention of seeking a divorce in December 1982 had made the circumstances of the separation such that it was likely to be permanent. Accordingly, H could not be treated as living with the taxpayer during the relevant years of assessment.
- 17 <http://www.revenue.ie/en/tax/it/leaflets/it3.html#maintenance>
- 18 Stamp Duties Consolidation Act 1999 (schedule 1, para 5)
- 19 See the debate on amendments proposed by Senators Fiach MacConghail, Marie-Louise O'Donnell, Jillian Van Turnhout, Katherine Zappone, in the Seanad at Committee Stage - Seanad Éireann Debates 19th July 2011 (Vol.209 No.10)
- 20 See Civil Legal Aid Act 1995, S.28 (9) c (ii)
- 21 Refers to an amendment to the Aliens Act 1935 for the protection of civil partners of persons entitled to diplomatic immunity.
- 22 <http://www.inis.gov.ie/en/INIS/Pages/Civil%20Partnership>
- 23 European Parliament and Council Directive 2004/38/EC
- 24 The amendment was proposed by Senator Katherine Zappone. Senator Zappone was briefed on the issue by Marriage Equality following the audit of immigration legislation.
- 25 European Parliament and Council Directive 2004/38/EC on the right of the citizens of the EU and EEA Member States.
- 26 In the case of a health or public security risk.
- 27 Subsidiary protection is a type of protection which may be available to a person who does not qualify for full refugee status.
- 28 Non-Irish People in civil unions to get same rights – The Irish Times, 13th April, 2011.
- 29 Under section 33 of the Family Law Act 1995.
- 30 S.29 of the Family Law Act 1995
- 31 Statutory Instrument No. 649/2010 – outlines 27 jurisdictions and the legal relationship classifications which are entitled to be recognised in Ireland as civil partnerships.
- 32 Gender Recognition Advisory Group - Report to the Joan Burton T.D. Minister for Social Protection, 15 June 2011.
- 33 Gender Recognition Advisory Group - Report to the Joan Burton T.D. Minister for Social Protection, 15 June 2011, p.31.
- 34 Ombudsman for Children (July 2010) *Advice of the Ombudsman for Children on the Civil Partnership Bill*. <http://www.oco.ie/publications/advice-to-government.html>
- 35 Belgium, Denmark, Iceland, Netherlands, Norway, Spain, Sweden, UK.
- 36 Belgium, Denmark, Finland, Germany, Iceland, Netherlands, Norway, Slovenia, Spain, Sweden, UK.
- 37 A second parent adoption is a legal procedure that allows a same-sex parent to adopt a partner's biological or adoptive child without terminating the legal rights of the first parent.
- 38 Guardianship is a legal relationship between a parent and their child or children. Guardianship permits a person to make all major decisions relating to the child, for example where the child will live, the right to apply for a passport for the child and in what religion the child will be raised.
- 39 Custody involves having responsibility for the day-to-day care of a child.
- 40 Access is the right of a parent and child who do not live together to spend time with one another (e.g. on a weekly basis, overnight, or over school and summer holidays).
- 41 S.3 of the Family Law (Maintenance of Spouses and Children) Act 1976 (as amended).
- 42 The Succession Act 1965.
- 43 Ombudsman for Children (July 2010) *Advice of the Ombudsman for Children on the Civil Partnership Bill*. <http://www.oco.ie/publications/advice-to-government.html>. P.10.
- 44 *The Voices of Children*. Marriage Equality, Dublin, 2010.
- 45 To Have and To Hold: *The Making of Same-Sex Marriage in South Africa*, Gala and OUT LGBT Well-Being, 2008
- 46 Government for National Recovery 2011 – 2016, p.55. [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2011/Programme\\_for\\_Government\\_2011.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf)
- 47 Sunday Times Red C Poll finding that 75% of people surveyed are in favour of gay marriage. 20th March 2011
- 48 [http://www.marriageequality.ie/download/pdf/progress\\_towards\\_marriage\\_equality.pdf](http://www.marriageequality.ie/download/pdf/progress_towards_marriage_equality.pdf)

## Appendix 1 - List of Differences

A full list of the legislative provisions reviewed in the audit is available on [www.marriagequality.ie/marriageaudit/full-list](http://www.marriagequality.ie/marriageaudit/full-list).

No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
1	Family Home Protection Act	1976	27	2(1)	Definition of Family Home	Cf 27	Dwelling in which civil partners ordinarily reside defined as "shared home"
2	Family Home Protection Act	1976	27	1 (1) (a)(b)	Definition of dependent children,	Cf 29	No provision for dependent children in Shared Home provisions.
3	Family Home Protection Act	1976	27	4 (2) (a)	Dispense with consent	Cf 29	Parallel regime but with no reference to children.
4	Family Home Protection Act	1976	29	4 (3)	Dispensing with consent on desertion		No equivalent provision for Civil Partners (CPs)
5	Family Home Protection Act	1976	29	4 (4)	Dispense with consent- incapable of consenting by reason of unsoundness of mind or other mental disability.	29 (4)	A consultant psychiatrist must certify that the civil partner is incapable of giving consent.
6	Family Home Protection Act	1976	27	5 (1)	Conduct as may lead to loss of family home	Cf 30 (1)	Parallel regime but with no reference to children.
7	Family Home Protection Act	1976	27	5 (2)	Compensate the applicant spouse and any such child for their loss.	Cf 30 (2)	Parallel regime but with no reference to children.
8	Family Home Protection Act	1976	27	9	Section 9 of the 1976 Act prevents a spouse from disposing of "household chattels"	Cf 34	No reference to any dependent children.
9	Family Home Protection Act	1976	27	15	Attachment of earnings order	Cf 38	Difference that the court does not have the power to direct that an employer will not be liable.
10	Family Home Protection Act	1976	27	14	No land registration fee creating a joint tenancy	No	Not amended to apply to CPs
11	Family Law Act	1981		5 (1)	Engagement: special regime for dealing with property	No	No equivalent regime for CPs
12	Housing (Miscellaneous Provisions) Act	1979	27	4(2)(e)	Any house previously built or purchased by the spouse of an applicant is taken into account as part of the means test for a housing grant.	No	Not amended to apply to CPs
13	Housing (Miscellaneous Provisions) Act	1979	27	4(4)	Hardship to a spouse is taken into account in payment of grant	No	Not amended to apply to CPs
14	Housing Act	1966	21	26 (1)	The income of a spouse is taken into account for determining eligibility for a housing allowance.	No	Not amended to apply to CPs
15	Housing Regulations	1980	S.I. 296	47 (b)	Penalty for lease or transfer of a house purchased under the scheme, except if it is let or transferred to a spouse, among other specified family members.	No	Not amended to apply to CPs
16	Housing Regulations	1980	S.I. 296	11 (2)	Previous ownership of house by spouse taken into account in determining the eligibility for a grant.	No	Not amended to apply to CPs
17	Housing Regulations	1980	S.I. 296	32A	Income eligibility formulae for the aforementioned loans take the income of a spouse into account.	No	Not amended to apply to CPs
18	Housing Regulations	1980	S.I. 296	53A	Income eligibility formulae for the aforementioned loans take the income of a spouse into account.	No	Not amended to apply to CPs

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No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
19	Housing Regulations	1980	S.I. 296		The amount of a loan may exceed stated amounts where the house is for occupation by the surviving spouse of a non-commissioned member in the Permanent Defence Force.	No	Not amended to apply to CPs
20	Land Act	2005	24	5	Requirement of certificate on annuity payments waived	No	Not amended to apply to CPs
21	Land Act	1933	38	32 (3,5)	Provision relating to compulsory acquisition of land	No	Not amended to apply to CPs
22	Land Act	1933	38	41	Advances made by the spouse of proprietor, for the purchase of land.	No	Not amended to apply to CPs
23	Occupiers' Liability Act	1995	10	1, 4	Occupier's liability: A recreational user does not include a member of the occupier's family.	No	Not amended to apply to CPs
24	Family Law (Maintenance of Spouses and Children) Act, 1976 Rules	1976	S.I. 96	Rule 5	District Court Rules – urgent maintenance hearings		There is no equivalent provision made by the Act
25	Land Purchase Acts Rules and Order Under Section 3 of The Land Act	1933	S.I. 18	Sch.3 (form 102)	Land Purchase Acts Rules and Orders		Appears t be no amendment in 2010 Act.
26	Finance Act	1983		4(1)(2)	Maintenance payments are not included in total income.		Civil partners can access on dissolution only, therefore not as broad as for spouses
27	Finance Act	1997	22	145 (1)	Relief on interest paid – includes on the sole or main residence of the former or separated spouse of the individual		Civil partners can access on dissolution only, therefore not as broad as for spouses
28	Finance Act	1983	15	3(2)	Payments made under a maintenance agreement relating to marriage for the benefit of a spouse shall be tax deductible.		Civil partners can access on dissolution only, therefore not as broad as for spouses
29	Income Tax Act	1967	6	138 (a)	Income tax deductions are allowed for a husband who does not live with his wife but can prove she is wholly or mainly maintained by him.	No	Definition of what constitutes living apart is different for CPs
30	Income Tax Act	1967	6	138A	Tax deductions for the maintenance of a child	No	Tax treatment not expressly set out
31	Taxes Consolidation Act	1997	39	1028 (5) & 1030 (2) & 1031 (2)	No CGT on disposal of assets – transferring on deed of separation	No	Civil partners can access on dissolution only, not as broad as for spouses.
32	Taxes Consolidation Act	1997		s.10	The definition of 'control' includes a reference to relative.	No	Definition not amended to take into account relative's of a taxpayer's civil partner.

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33	Taxes Consolidation Act	1997		s123(3)	The term relative is also used in this section.	No	Definition not amended to take into account any relative of the civil partner.
34	Taxes Consolidation Act	1997		s193(1) (a)(ii)	The term relative is also used in this section.	No	The amendment failed to include family of the civil partner.
35	Taxes Consolidation Act	1997		s598 (1)(a)	Insertion of definition of 'family of the civil partner'.	No	The amendment does not mirror the family and relative definition in s598 (1) (a) of the TCA.
36	Stamp Duties Consolidation Act	1999		ss27 (2)(b)(i)	The term relative is also used in this section.	No	Does not refer to relatives of civil partner other than child of civil partners
37	Stamp Duties Consolidation Act	1999		sch 1, Para 5	Deals with consanguinity relief which provides for a reduced rate for transfers between relatives	No	The amendment for civil partners is not equivalent . See full list- taxation row 74 for more details.
38	Circuit Court (Fees) Order	2008	S.I. 201	Reg. 4 (a, b)	Exempting family law or any matrimonial cause or matter from fees	No	Unclear if CPS will be exempt.
39	District Court (Fees) Order	2008	S.I. 202	Reg. 6 (a, b)	Exempting family law or any matrimonial cause or matter from fees	No	Unclear if CPS will be exempt.
40	Civil Legal Aid Act	1995	32	28 (9) c (ii)	Specific exemption for engaged couples which provides that legal aid may be granted for proceedings arising out of a dispute about property	No	Specific exemption not extended to same-sex couples planning CP
41	Civil Legal Aid Regulations	1996	S.I. 273	Reg. 14 (4)	The assessment of income for the purpose of legal aid shall take the income of a spouse into account if the spouses are living together and subject to certain conditions.	No	Income assessment provision mentioned here is not amended by the Act.
42	Civil Legal Aid Regulations	1996		Reg. 16 (1)(a), (2)	An allowance of €3,500 per annum in respect of the applicant's spouse is subtracted from income for the assessment	No	As above, this provision is not amended by the Act.
43	Civil Legal Aid Regulations	1996		Reg. 16 (4)	An extra allowance in respect of their separated spouses accommodation costs is subtracted	No	As above, this provision is not amended by the Act.
44	Aliens Act	1935	14	8	A licence is required for aliens to change their names, except in the case of a woman assuming her married name.	No	No equivalent provision for CPs
45	Refugee Act	1996	17	20 (1)	Marriage certificate, inter alia, explicitly listed in non-exhaustive list of official national or UN identity documents.	No	No equivalent provision for CPs
46	Refugee Act	1996	17	22 (1) (a), Dublin Convention Art. 4, 9	Members of a family based on marriage can require a state which has recognised their family member as a refugee to examine their application for refugee status.	No	No equivalent provision for CPs
47	Immigration Act	2004		4(10)©	While an immigration officer is not precluded from taking family-relationships based around a same-sex couple into account, there is no express reference to do so.	No	No express provision for CPs
48	Immigration Act 2004 (Registration Certificate Fee) Regulations	2008	SI 336	Regulation 3,4	While the fee for an immigration application is waived for married couples, the fee is not waived for same-sex couples, who have to pay €150.	No	No equivalent provision for CPs

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No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
49	International Criminal Court Act	2006	30	60; Sch. 2 Arts 15, 16 (f)(i)	ICC officials and their families, in the absence of a waiver, shall enjoy diplomatic privileges and immunities to the extent necessary to carry out their functions.	No	No equivalent provision for CPs
50	EC (Free Movement of Persons) Regulations	2006	S.I. 656	2	qualifying family member', in relation to a Union citizen	No	There is no express provision for the inclusion of civil partners within the definition of 'qualifying family member'
51	EC (Free Movement of Persons) Regulations	2006	S.I. 656	4 (2)	The non-EU spouse of a European Union citizen may not be refused entry to the State except in the case of a health or security risk,	No	No equivalent provision for CPs
52	EC (Free Movement of Persons) Regulations	2006	S.I. 656	4 (3)(b)	The non-EU spouse of a European Union citizen requiring a VISA shall benefit from an accelerated process and receive a VISA free of charge.	No	No equivalent provision for CPs
53	EC (Free Movement of Persons) Regulations	2006	S.I. 656	4 (4)	An immigration shall not place a stamp in the valid immigration documents of the non-EU spouse of a European Union citizen.	No	No equivalent provision for CPs
54	EC (Free Movement of Persons) Regulations	2006	S.I. 656	See full list – immigration section for specific details.	Provisions which allow non-EU Spouse of EU citizen & union citizen spouse stay in the country for less than 3 months without examination of circumstances – as qualifying family members.	No	There is no express provision for the inclusion of civil partners within the definition of 'qualifying family member'
55	EC (Free Movement of Persons) Regulations	2006	S.I. 656	10 (1)	Retention of the right of residence by EU family members of EU citizens in the event of divorce or annulment of marriage.	No	There is no express provision for the inclusion of civil partners within the definition of 'qualifying family member'
56	EC (Free Movement of Persons) Regulations	2006	S.I. 656	10 (2)	Retention of the right of residence by non-EU family members of EU citizens in the event of divorce or annulment of marriage, under certain conditions.	No	No equivalent provision for CPs
57	EC (Free Movement of Persons) Regulations	2006	S.I. 656	13 (3)	Conditions as to length of residence or activity required for application for permanent residence do not apply where the spouse of the EU citizen concerned is an Irish citizen or has renounced his or her Irish citizenship on marriage to the EU citizen	No	No equivalent provision for CPs
58	EC (Free Movement of Persons) Regulations	2006	S.I. 656	13 (7)	An Irish citizen who had renounced citizenship on marriage to a now deceased EU citizen is entitled to remain permanently in the State under certain conditions.	No	No equivalent provision for CPs
59	EC (Free Movement of Persons) Regulations	2006	S.I. 656	20 (5)c)	The immigration officer is not required to notify the HSE of the detention of the person with custody of a child under 18 where that child is married.	No	No equivalent provision for CPs
60	EC (Free Movement of Persons) Regulations	2006	S.I. 656	24	Cessation of entitlements because of acquisition by fraudulent means explicitly includes marriages of convenience.	No	No equivalent provision for CPs
61	EC (Eligibility for Protection) Regulations	2006	S.I. 518	16(3)(b) and 16(4)(b)	Family reunification procedures and criteria for 'members of the family' and 'dependant members of the family' of persons entitled to subsidiary protection.	No	The respective definitions of these terms do not extend to civil partners, or to children of civil partners.

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No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
62	EC (Right of Residence for Non-Economically Active Persons)	1997	S.I. 57	7	Residence permits may be granted to non-economically active non EU-citizen EEA-citizens if applicant is able to support their spouse and provide medical insurance.	No	No equivalent provision for CPs
63	EC (Right of Residence for Non-Economically Active Persons)	1997	S.I. 57	11 (b), c)	Residence permits may be withdrawn if non-economically active non EU-citizen EEA-citizens if applicant is no longer able to support their spouse and provide medical insurance.	No	No equivalent provision for CPs
64	EC (Right of Residence for Non-Economically Active Persons)	1997	S.I. 57	12 (3)	Spouse of the holder of a residency permit has permission to work.	No	No equivalent provision for CPs
65	European Bank For Reconstruction and Development Act	1991	1	2, Sch. Art. 52(2)	Spouses of people working for the bank in foreign countries shall be accorded opportunity to take employment in that country.	No	No equivalent provision for CPs
66	Family Law (Maintenance of Spouses and Children) Act	1976	11	5	Court may make an order (maintenance order) for the support of the applicant spouse and of each of the dependent children of the family.	S.44	Parallel provisions but does not allow for the making of a maintenance order in relation to children
67	Succession Act	1965	27	67	If an intestate dies leaving no issue the spouse shall be entitled to the whole estate; two thirds if there is issue	S.72	Parallel regime with different arrangements for the rights of the child(ren) of the deceased
68	Succession Act	1965	27	111	If a testator leaves a spouse and no children the spouse shall be entitled to one half of the estate; if children, one third	Cf 83,86	Parallel regime with different arrangements for the rights of the child(ren) of the deceased.
69	Succession Act	1965	27	112	The right of a spouse under s. 111 shall have priority over devises, bequests and shares on intestacy	Cf 82	Parallel regime with different arrangements for the rights of the child(ren) of the deceased.
70	Succession Act	1965	27	117	An order for provision for children of the deceased does not affect the legal rights of the surviving spouse or, if the latter is the parent of the child, the rights under testate or intestacy.	Cf 86	Parallel regime with different arrangements for the rights of the child(ren) of the deceased.
71	Adoption Act	2010	33	(1)(a)	Unless the prospective adopters are a married couple, an adoption order can only be made in respect of one person.	No	Not amended by CP Act
72	Adoption Act	2010	20	20(1)	Where the applicants for an adoption are a married couple the order shall be for the adoption of the child by them jointly.	No	Not amended by CP Act
73	Children Act	2001	4	118(19)(d)	A day centre order in respect of a married child shall be sent to his or her spouse	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
74	Children Act	2001	4	119(4)c)	Where a day centre order is varied in respect of a married child a copy of the varied order shall be sent to his or her spouse	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
75	Children Act	2001	4	124(8)c)	A probation order in respect of a married child shall be sent to his or her spouse	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
76	Children Act	2001	4	124(8)c)	A probation order in respect of a married child shall be sent to his or her spouse	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.

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No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
77	Children Act	2001	4	69	Where a child is married, then S.64 of the act will not apply. This means Parents and guardians can't be named in a summons and be required to attend court.	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
78	Children Act	2001	4	144	Where a child is married, their spouse is entitled to give evidence at a deferment of detention hearing.	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
79	Children Act	2001	4	75, (4) (a)	Where a child is married, they are entitled to consult with their spouse when deciding whether or not to give their consent to be or not be tried by a Jury.	No	Not amended by CP Act , as Civil Partners must be at least 18 years of age.
80	Family Law (Maintenance of Spouses and Children) Act	1976	11	21A	One spouse has the right to compel the other spouse, who is not necessarily the parent of the child concerned, to make a contribution towards the birth or funeral expenses of a dependant child of the family.	No	No equivalent provision for CPs
81	Family Law (Maintenance of Spouses and Children) Act	1976	11	8	Written agreement spouse undertakes to make periodical payments towards the maintenance of the other spouse or of any dependent children of the family	No	No equivalent provision for CPs
82	Guardianship of Infants Act	1964	7	2, 6(1), 6A	The married mother and father of a child shall be joint guardians. Provision is also made for appointment of the unmarried father of a child as guardian.	No	No amending or equivalent provision for CPs
83	Guardianship of Infants Act	1964	7	7(1)(2)	A spouse has the power to appoint a guardian for his or her marital child which guardian, on the death of the first spouse, has joint guardianship of the child with the surviving spouse.	No	No amending or equivalent provision for CPs
84	Guardianship of Infants Act	1964	7	7 (3)(4)(5)	A surviving spouse may object to having joint guardianship of his or her marital child.	No	No amending or equivalent provision for CPs
85	Status of Children Act	1987	26	46	Presumption of paternity, i.e. that the husband of the mother is the father of the child, under certain conditions.	No	No amending or equivalent provision for CPs
86	Succession Act	1965	27	116	Where a testator has made permanent provision for his spouse in his lifetime by way of contract, this may be counted as satisfying the legal right of that spouse	No	No amending or equivalent provision for CPs
87	Succession Act	1965	27	120 (4)	A person who was guilty of any offence against the deceased or his spouse shall be precluded from taking his share in the estate as a legal right	No	No amending or equivalent provision for CPs
88	Succession Act	1965	27	46 (3,4)	A deceased person's solvent estate shall be administered to account for funeral expenses etc but this shall not affect the legal right of the deceased's spouse	No	No amending or equivalent provision for CPs
89	Succession Act	1965	27	72A	If a person disclaims an estate and is not a spouse or direct lineal ancestor under the act, that the estate shall be distributed as if that person had died without leaving issue.	No	Not amended by the Civil Partnership Act,
90	Succession Act	1965	27	63	Advancements made to a child during the lifetime of a parent to be taken into account in determining his or her share on the death of a parent include a marriage portion.	No	Not amended by the Civil Partnership Act



No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
91	Powers of Attorney Act	1996	12	5 (7), Sch. 2 Pt 1 s. 2A	Power of Attorney and spouses.	104 (2) (b)	Difference in recognition of the fact that there is no judicial separation for civil partners.
92	Family Law Act	1995	26	36	Provision for the summary determination of questions between spouses or former spouses in relation to property, subject to certain conditions.	Cf 104	Excludes provision for the child of a surviving spouse
93	Family Law (Divorce) Act	1996	33	5 (1)(a)	Cf Article 41.3.2.i of the Constitution. Divorce may only be granted where a couple have been living apart for four of the previous five years.	Cf 108 (a)	Dissolution - where a couple have been living apart for two of the previous three years.
94	Family Law (Divorce) Act	1996	33	5 (1)©	Divorce may only be granted where proper provision has been made for the spouses and children.	110(b)	Parallel provision excluding reference to children.
95	Family Law (Divorce) Act	1996	33	7	Certain communications regarding reconciliation or agreement on terms of a divorce or separation are inadmissible as evidence.	Cf 110	No provision for judicial separation for civil partners.
96	Family Law (Divorce) Act	1996	33	10	Where the court grants a decree of divorce, the marriage, the subject of the decree, is thereby dissolved and a party to that marriage may marry again.	Cf 111	Not amended to explicitly reflect the possibility of entering into a civil partnership, although this is understood.
97	Family Law (Divorce) Act	1996	33	11	In application for divorce, the court, in the same proceeding may grant (a) a barring order (b) an order under section 11 of the Guardianship of infants Act of 1964 or (c) an order under section 5 or 9 of the Family Home Protection Act, 1976	Cf 113	Excluding orders relating to children.
98	Family Law (Divorce) Act	1996	33	12	The court may make an order for maintenance	Cf 114	Excluding reference to children.
99	Family Law (Divorce) Act	1996	33	13	On granting a decree of divorce or at any time thereafter, the court, make one or more of the following orders (a) a periodical payments order, (b) a secured periodical payments order	Cf 115	Excluding reference to children.
100	Family Law (Divorce) Act	1996	33	14	Provision for property adjustment orders on divorce.	Cf 116	Parallel provision excluding reference to children.
101	Family Law (Divorce) Act	1996	33	15	Provision for miscellaneous ancillary orders on divorce.	Cf 117	Parallel provision excluding reference to children.
102	Family Law (Divorce) Act	1996	33	16	On granting a decree of divorce or at any time thereafter, the court, may make a financial compensation order in respect of one spouse in favour of the other	Cf 118	Parallel provision excluding reference to children.
103	Family Law (Divorce) Act	1996	33	17	The court may make pension adjustment orders in respect of one spouse in favour of the other spouse where a decree of divorce has been granted	Cf 119	Parallel provision excluding reference to children.
104	Family Law Act	1995	26	39	Domiciled rules – in relation to deceased spouse	Cf 140 (3)	Not equivalent for CPs
105	Judicial Separation and Family Law Reform Act	1989	6	30, 32-36	Special rules- notably guaranteeing privacy and informality and giving the court discretion over costs.	Cf 138, 141-145	No similar rules made for children

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106	Civil Registration Act	2004	3	46 (1) (a), 48 (1)(4)	Three months notice required for marriage with provision for an exception.	Cf 16	Exemption seems not to carry over after six months for future civil partners as it does for future spouses.
107	Civil Registration Act	2004	3	64 (7)	Provision for cancelling the record of a purported marriage where the parties were of the same-sex or one party was a minor and did not get an exemption.	Cf 19	No provision for exemption for minors.
108	Marriage Act	1835		2	Marriages are prohibited on certain grounds of sanguinity and affinity.	Cf 26	Civil partnerships are only prohibited on the grounds of sanguinity.
109	Civil Registration Act	2004	3	2 (2)(d) Cf ss 51(3), 51(5), 58, 69(10)(i)	Impediments to marriage	Cf 7(3), 16	Include the wider grounds
110	Children Act	2001	4	92	Provides that it may be possible that a spouse may be entitled to be in the married child's company during the conveyance to and from court.	No	No equivalent provision for CPs
111	Children Act	2001	4	106	Court may give the Spouse of a married child the opportunity to give evidence in a trial.	No	No equivalent provision for CPs
112	Civil Registration Act	2004	3	2 (2) Cf ss 51(3), 51(5), 58, 69(10)(i)	Impediments to marriage where the parties are of the same-sex. Failure to make a declaration is an offence	No	Issue for Transgender people who are already married, if gender recognition laws are introduced.
113	Civil Registration Act	2004	3	51 (1)(3)c), 53 (1) (4)(a)	A marriage can be solemnised by registered religious bodies as well as by registrars, in a ceremony approved by the religious body concerned.	No	No equivalent for CPs
114	Courts of Justice Act	1953	32	31	Certain proceedings may be brought by a married woman in the jurisdictional in which her husband resides.	No	No equivalent for CPs
115	Criminal Evidence Act	1992	12	22(1), 25	The spouse of the accused is not compellable as a witness against the accused except in certain proceedings	No	No equivalent for CPs
116	Criminal Evidence Act	1992	12	22(2), 25	The former spouse of the accused is not compellable as a witness against the accused	No	No equivalent for CPs
117	Criminal Evidence Act	1992	12	24(1)(a), 25	The spouse of the accused is not compellable as a witness against the person co-accused with their spouse except in certain proceedings.	No	No equivalent for CPs
118	Criminal Evidence Act	1992	12	24(1)(b), 25	For offences committed while the marriage was subsisting, the former spouse of the accused is not compellable as a witness	No	No equivalent for CPs
119	Criminal Evidence Act	1992	12	26	Privilege may be claimed by spouses in so far as necessary to protect the Constitutional right to marital privacy.	No	No equivalent for CPs
120	Criminal Justice (Theft and Fraud Offences) Act	2001	50	19(4)	Inadmissibility of evidence disclosed about stolen property in criminal proceedings against the discloser or spouse other than proceedings for withholding evidence.	No	No equivalent for CPs
121	Criminal Justice Act	1984	22	15(4)	Certain info disclosed to Garda re. Fire arm, may not be admissible against him or her, or their spouse.	No	No equivalent for CPs

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122	Criminal Justice Act	1984	22	16(4)	Certain info disclosed to Garda re. Stolen property, may not be admissible against him or her, or their spouse.	No	. No equivalent for CPs
123	Criminal Justice Act	2006	26	182 (6)	Inadmissibility of evidence -in criminal proceedings against the discloser or spouse.	No	No equivalent for CPs
124	Data Protection Act	1988	25	27 (2)	Information supplied by a person - not be admissible as evidence against that person or his or her spouse	No	No equivalent for CPs
125	District Court Rules	1997	S.I. 93	Order 37 (8)	Possibility for summary trial on indictable offence only when a child has had the opportunity to consult with, among others, an adult spouse.	No	No equivalent for CPs
126	Domicile and Recognition of Foreign Divorces Act	1986	24	5(1)	A divorce shall only be recognised if granted in the country where either spouse is domiciled.	No	Recognised by ministerial order, with no legal protections regarding domicile requirements.
127	Family Law (Divorce) Act	1996	33	5(1)(b), 6, 7	Constitutional requirement - a couple must show that there are no reasonable prospects of reconciliation with a requirement to consider mediation before a divorce granted.	No	No Equivalent provision for CPs
128	Family Law Act	1981	22	3	Gifts given to couples engaged to be married as wedding gifts are presumed to be the joint property of the couple.	No	No equivalent legal status to engagement for CP there is no such provision.
129	Family Law Act	1981	22	4	Presumed that the gift should be returned if the wedding does not take place	No	As there is no equivalent legal status to engagement for CP there is no such provision.
130	Family Law Act	1995	26	29 (1)(d,e), 30	Provision for making a declaration regarding the recognition of a foreign dissolution.	No	Not extended to CPs, instead this power is reserved for the Minister.
131	Family Law Act	1995	26	29 (4)(5)(6)(8)	Provision for the involvement of the AG in the making of declarations concerning marriages and foreign dissolutions, in which case the decision is binding on the State.	No	Not extended to CPs, instead this power is reserved for the Minister.
132	Family Law Act	1981	22	6	Provision relating to where an agreement to marry is terminated, and a third party applies to the court	No	No equivalent legal status to engagement for CP there is no such provision.
133	Family Law Act	1981	22	7	Provision relating to where an agreement to marry is terminated and right to apply to court by reason of the agreement expenditure of a substantial nature	No	No equivalent legal status to engagement for CP there is no such provision.
134	Health (Mental Services) Act	1981	17	41(5)	Only the spouse and certain other eligible relatives of a person in detention in a psychiatric centre can appeal the decision of a review board to continue detention.	No	See full list – legal procedures section row 107 for full detail.
135	International Criminal Court Act	2006	30	58 (1); Sch. 1 Art. 84(1)	Under certain circumstances, spouses, children or parents have the automatic right to appeal a conviction on the death of the accused.	No	Not expressly amended but may be interpreted to allow family to include civil partner.
136	International Criminal Court Act	2006	30	49; Sch. 1 Art. 79 (1)	Trust fund established for victims and the families of victims, to which the Irish State must submit any monies recovered under an ICC order, if the Court so orders.	No	Not expressly amended but may be interpreted to allow family to include civil partner.

## Appendix 1 - List of Differences

A full list of the legislative provisions reviewed in the audit is available on [www.marriagequality.ie/marriageaudit/full-list](http://www.marriagequality.ie/marriageaudit/full-list).

No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
137	International Criminal Court Act	2006	30	59(1)(a)(i); Sch. 1 Art. 87 (4)	The Court may take measures to ensure the well-being of victims, potential witnesses and their families, with which the Irish State pledges to cooperate.	No	Not expressly amended but may be interpreted to allow family to include civil partner.
138	International Criminal Court Act	2006	30	14; Sch. 1 Art. 68 (5)	Special procedures for submitting a summary of evidence where witnesses or their families may be put in danger by the use of the evidence.	No	Not expressly amended but may be interpreted to allow family to include civil partner.
139	Judicial Separation and Family Law Reform Act	1989	6	2	Provision for granting judicial separation under certain circumstances.	No	No judicial separation for CPs
140	Jurisdiction of Courts and Enforcements of Judgments Act	1998	52	9	Enforcement of enforceable maintenance orders	No	No amendment for CPs
141	National Monuments (Amendment) Act	1987	17	20 (3)	Evidence given in compliance with s. 20(1) inadmissible against a person or the person's spouse	No	No amendment for CPs
142	Prison Rules	2007	S.I. 252	5 (2)	Requirement to inform the spouse of a minor who on committal or readmission to or upon transfer of prison.	No	No amendment for CPs
143	Prison Rules	2007	S.I. 252	41 (4)	Where a Garda representative visits a minor prison inmate for identification purpose, all reasonable efforts shall be made to inform his or her spouse.	No	No amendment for CPs
144	Prison Rules	2007	S.I. 252	47 (3)	Requirement to inform the spouse of a minor prison inmate who falls seriously ill or dies.	No	No amendment for CPs
145	Prison Rules	2007	S.I. 252	5 (2)	Requirement to inform the spouse of a minor prison inmate of the time and place of release.	No	No amendment for CPs
146	Proceeds of Crime Act	1996	30	14C (6)	Evidence given in accordance with an order for information regarding property held in trust may not be used in evidence against a person's spouse.	No	No amendment for CPs
147	Proceeds of Crime Act	1996	30	16B(6)	Evidence regarding property holdings given by order of the court inadmissible in proceedings against the provider of the information or his or her spouse, except in proceedings for perjury in the affidavit.	No	No amendment for CPs
148	Proceeds of Crime Act	1996	30	9(2)	Any information given by a person in compliance with an order under this section is not admissible in evidence in any criminal proceedings against the person or his or her spouse.	No	No amendment for CPs
149	Criminal Law (Sexual Offences) Act	2006	15	1, 3 (1)	A "sexual act", unless rape, aggravated sexual assault, with a person under the age of 17 is an offence, except when the parties to the Act are married.	No.	No amendment for CPs
150	Family Law Act	1995	26	38	The Circuit court, when hearing proceedings under this Act, shall be known as the Circuit Family Court.	No. Cf 137.	No amendment for CPs

No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
151	District Court (Social Welfare – Contribution towards benefit or allowance rules)	1992	47		Definition of close relative: his or her spouse, spouse of the parent or child or certifying officer etc.		No amendment for CPs
152	District Court Rules	1997	S.I. 93	Order 84	A person under 18 who has been married is treated as an adult for the purpose of rule 84.		No amendment for CPs
153	Age of Majority Act	1985	2	2(1)	If a person marries before the age of 18, he or she attains majority on marriage. If not, he or she attains majority at 18.	No	No amendment for CPs
154	Children Act	2001	4	91	Where a child is married, the parents will not be arrested for non attendance at certain proceedings	No	No amendment for CPs
155	Defence Act	1954	18	76(1)	Provision for parentally ordered discharge of a member of the Defence Forces who is under 18 and unmarried.	No	No amendment for CPs
156	Electoral Act	1992	23	111 (2)(b)	A specified document for proof of identity on voting includes a marriage certificate when accompanied by proof of address.	No	No amendment for CPs
157	Family Law Act	1995	26	31 (b), 33	A marriage between people under 18 is valid where an exemption to the requirement of majority is granted.	No	No amendment for CPs
158	Freedom of Information Act	1997	13	17	A spouse or former spouse can make an application for the amendment of personal information on behalf of a deceased person.	No	No amendment for CPs
159	Garda Síochána Act	1989	1	4	Provision for making records of the death of the spouse of a member of the Garda Síochána or of any other family members specified in the Regulations.	No	No amendment for CPs
160	Garda Síochána Act	2005	20	57(b)	Provision may be made for keeping a record of the death of a member's spouse or any other such relatives as may be specified in the regulations.	No	No amendment for CPs
161	Married Women's Status Act	1957		9(3)	Requirement of permission of DPP for criminal proceedings taken by a person against their spouse.	No	No amendment for CPs
162	Passports Act Number	2008	4	2, 14	A person under 18 who is or has been married does not need to comply with conditions around the consent of children and guardians to be issued a passport, in contrast with unmarried minors.	No	No amendment for CPs
163	Passports Act Number	2008	4	2, 15	A parent or guardian may not apply for an emergency travel document on behalf of a person under 18 who is or has been married, in contrast with unmarried minors.	No	No amendment for CPs
164	Passports Act Number	2008	4	2, 6	A parent or guardian may not apply for a passport on behalf of a person under 18 who is or has been married, in contrast with unmarried minors.	No	No amendment for CPs

No.	Act	Year	No.	Section	Summary	Amd by Act	Notes on Amd
165	Passports Act Number	2008	4	10 (2)	The Minister may, issue a passport to applicant in his or her name that incorporates the surname of his or her spouse or former spouse	No	No amendment for CPs
166	Protection of Young Persons (Employment) Act,	1996	16	6, 9 (1, 2)	Provision for making regulations to exclude close relatives, inter alia spouses, from protections for young people in employment.	No	No amendment for CPs
167	Protection of Young Persons (Employment) Act,	1996	16	9 (1) (2), 10	Provision for making regulations to exclude close relatives, inter alia spouses, from the prohibition of double employment of young people.	No	No amendment for CPs
168	Protection of Young Persons (Employment) Act,	1996	16	9 (1) (2), 11	Provision for making regulations to exclude close relatives, inter alia spouses, from the calculation of vocational training as working time.	No	No amendment for CPs
169	Protection of Young Persons (Employment) Act,	1996	16	9 (1) (2), 5	Provision for making regulations to exclude close relatives, inter alia spouses, from procedural duties accompanying the employment of a young person.	No	No amendment for CPs





## MARRIAGE EQUALITY

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