



MARRIAGEQUALITY

Civil Partnership Analysis Summary

October 2009

Introduction

The Government published the Bill on Civil Partnerships in June of 2009. We asked a Barrister for his professional opinion of what the Bill will mean for same-sex couples and those with children if it becomes law in its current state. This is a quick guide to what he told us. The full text of his professional opinion is also available under the publication section of our website.

The context

On 24 June 2009, the Civil Partnership Bill was presented by the Department of Justice, Equality and Law Reform as its first stage to becoming law. Over the coming months, TDs will debate it in the Dáil (second stage) and at Committee level (third stage). It is at these stages that TDs can try to make changes to what it says in the Bill.

There are two more stages after that, including being debated in the Seanad, before the President signs it into law. Then, the Minister provides a start date, when the law will come into force, in another document called a Statutory Instrument.

This Bill does not deal with tax or social welfare issues. Any changes in those must wait for other Bills.

We believe that this Bill does not go far enough in providing us with equal rights. We believe that all adults in Ireland deserve the right to marry if they want to. So we have asked barrister Brian Barrington BL for his professional opinion on the Bill: what it means to couples and to their children.

Legal opinion on the Bill

The legal opinion goes through the Bill and highlights both its good and bad points. This is a short guide, highlighting some of the issues we think you need to know. While some of these might be small issues, we include them all to show that there are already practical differences in the Bill about how couples are treated.

Civil Partnership is not marriage

'Aren't they practically the same thing?' people ask. The answer is that they are not – and that is the problem. Civil partnership is only for same-sex couples with marriage being only for opposite-sex couples. This allows the State to give rights to one group and not to the other, both in this Bill and in the future.

The children of your relationship

What comes up time and again in the Bill is the raw deal that the children of civil partners will get. The bill denies the existence of and the need for protection of children of same sex relationships.

Whether we have children ourselves or not, we need to speak up on behalf of all children who are affected. This summary talks about 'your children' but refers specifically to the children in your family born to your partner. In the event of something unforeseen happening, it is these children who you have been caring for and parenting, that will be most affected.

These children are written out of the picture in this Bill. In particular they are missing from the sections on Shared Home Protection, in the section on inheriting tenancies and in the sections around maintenance – especially where the other partner is dead or has deserted. In many cases, stepchildren, adopted children and foster children all seem to have rights denied to your children.

The Bill does not recognise that children must be provided for if a partnership dissolves. The Bill does not provide for the birth expenses or funeral expenses of dependent children. If you do not make a will, your children will not inherit what ought to be due to them. Also, your child - unlike a step-child - can't sue on your behalf for your wrongful death. While it is not clear how your children will be treated in tax and social welfare in the promised future legislation, it's not looking good in those areas either if this is anything to go by.

There are also issues around family reunification in the Refugee Act. You can also not get custody or guardianship of your child while your partner is still alive. Yet, on what we would consider less vital issues, your children are recognised. One example here is 'ethics and conflict of interest'; you would need to declare that you are 'connected' to your child for ethical reasons.

Inheritance rights

If a married person leaves a will, their surviving partner gets at least one-third of the inheritance - regardless of what's in the will. For civil partners, however, children can apply to the Courts to have that share reduced. There is also no clear provision to protect a surviving civil partner if someone dies insolvent.

If a married person leaves **no will**, the surviving partner gets two-thirds of what they have with the rest being divided among children. For civil partners, children can apply to get more than the one-third due to them.

Protecting against violence

In protecting against domestic violence, a married person can apply for a number of court orders at the same time. A civil partner, in the same situation, must apply for each order separately. The rules on barring orders are not the same for each type of couple.

Adoption guardianship and custody

As a single lesbian or gay man, you can apply to adopt but you cannot apply together as civil partners. The Bill does not resolve this contradiction. You also cannot get custody or guardianship of your children while they are alive. The best you can hope for is access.

Registering a partnership

All couples need to give three months notice before marrying / civil partnering. You can apply for an exemption to this rule, for example if one of you is terminally ill. The conditions on these exemptions are different for marrying couples and civil partners. Also, the HSE must approve the venue of your partnership ceremony even if one of you is too ill to attend an approved venue. This extra red tape is not required by marrying couples.

There are also differences in providing ‘free and informed consent’ between people getting married and people entering civil partnerships. There are also no exemptions for someone under-18 wanting to become a civil partner, which there are for marrying people.

Splitting up

While nobody likes to consider it, an important part of any legal protection is what happens when things go wrong. Unlike married couples, civil partners cannot have a judicial separation. On the other hand, the time that civil partners must live apart is shorter before they get a dissolution – it’s two out of three years for civil partners instead of, for married couples, four out of five years. Also, there is also no need for civil partners to prove that there is no reasonable chance of reconciliation.

Issues do arise around your home and providing for children. Dependent children are not protected (or even mentioned) enough in this Bill around the problems of dissolution.

Divorced people can apply to the courts to resolve property issues, but civil partners whose partnership has been dissolved cannot. Also, unlike married couples, there is no automatic right to stop someone selling off the household assets (like furniture) during a break-up. You can apply for the right to stop it, but it doesn't kick in automatically.

Recognising foreign same-sex marriages

A foreign same-sex marriage can only be recognised as a civil partnership here, rather than a marriage. Also, the Minister has to first decide if your marriage is worthy of being called a civil partnership here. Unlike marriages or UK civil partnership law, the courts do not have the power to recognise foreign marriages, only the Minister... and only when he gets around to doing so.

Also, the Minister has the right to refuse to recognise all of the civil partnerships from a country if he's not satisfied with one aspect of their partnership law.

For those of you already married abroad, your union will only be recognised as a civil partnership 21 days after the Minister makes the order to say that he recognises the unions of that country.

Recognising foreign same-sex divorces / dissolutions

The Bill does recognise if your marriage or partnership has been dissolved overseas (but not if it has been annulled or you have got a judicial separation). Again, though, you must wait for the Minister to recognise that country's marriage or civil partnership laws first. And you cannot apply to the courts for recognition of that fact – unlike married people. There are also no rules set out to cover foreign dissolutions of Irish civil partnerships.

Also, if your partner dies before the Minister gets around to recognising the partnerships of your country (+ 21 days), you are not recognised as a surviving civil partner under the law and so don't have any of the rights you would otherwise have.

Issues for transgender people

As a person undergoing gender reassignment, you are probably aware that the Supreme Court still has to rule on recognising your gender. Once your gender is legally recognised in Ireland, your current marriage will probably stop being legally recognised. You could, of course, arrange to become civil partners but, as we can see, this would be a downgrading of your status.

Religious bodies and the law

If you're a member of a Church that recognises your relationship and wants to solemnise your partnership, it cannot. Religious bodies can marry you (and it's legally binding) but only a State-sponsored registrar can 'civil partner' you.

Inequalities that have not been addressed

There are a number of inequalities that have not been sorted by this Bill. The tax and social welfare codes refer a lot to people who live together as husband and wife. The Government have committed to publishing Tax and Social Welfare legislation to give civil partners "equivalent" rights to married couples. We will have to wait to see. There needs to be a full trawl of the law to systematically sort out the inequality that may occur here. For example, in certain circumstances, legal aid cannot be granted to civil partners but can to people who have lived together as husband and wife.

Engaged couples have certain rights around property and gifts that do not apply to those engaged to be civil partners. Also, your civil partner will not be covered under the Irish Nationality and Citizenship Act 1956. In other words, the Minister cannot grant your civil partner Irish citizenship in the way they could if you were married. Another issue is if you're an EU-citizen, your non-EU partner will have to pay and wait longer than a married partner to be recognised by the State.

Other laws where equalisation has not happened are:

- Mental Health Act 2001;
- Health Act 2008;
- Irish Nationality and Citizenship Act 2001;
- Defence (Amendment) Act 2007;
- Criminal Justice (Theft and Fraud Offences) Act 2001;
- Data Protection Act 1988;
- Diplomatic Relations and Immunities Act 1987;

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- Land Act 2005;
- Parental Leave Act 1996;
- Passports Act 2008;
- Proceeds of Crime Act 1996.

And there may be others.

How equality could be ensured

It is clear that the children of civil partners are in a difficult situation. Apart from that, the Bill still does not equalise civil partners with married partners. The Bill has, in many cases, equalised the situation of a civil partner, but not completely. It has also indirectly amended laws by laying down a principle that will govern other laws in areas like pensions.

One way could be to change the Interpretation Act 2005, which clarifies certain terms for legal purposes, so that, from now on, 'spouse' would include 'civil partner' and 'marry' would include 'register a civil partnership'. The State could also have the term 'child' to include the 'child of a civil partner'. This would, at least, make discrepancies less likely in future laws.

Another way would be for the Minister to state the principle that the rights of spouses and civil partners are the same and, in the Bill, include the power to change any other legislation accordingly. There is still debate about the constitutionality of that move. The UK legislation also covers EU directives on spouses or marriage, which our Bill does not.

What you can do now

Now is the time that your local TDs can have a real impact on this Bill. If you want equal treatment under the law, you now have to make it clear to your TD what the issues are and how they can make a difference in your life and the lives of thousands of other people around the country.

Call us for our 'TD Campaign' pack or go to 'Get Involved' and 'TD Campaign' on our website – <http://www.marriagequality.ie/getinvolved/tdcampaign.html>.



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