



## IFA SUBMISSION ON THE COHABITANT PROVISIONS OF THE CIVIL PARTNERSHIP BILL

### Introduction

The Civil Partnership Bill makes major reforms in social policy by establishing:

1. A statutory **civil partnership registration scheme** for same sex couples, together with a range of rights, obligations and protections consequent on registration, and the manner in which civil partnerships may be dissolved; and
2. A **redress scheme for cohabiting couples** (opposite sex or same sex) who are “qualified cohabitants”, defined as couples who have:
  - Lived together for at least three years or
  - Lived together for two years where there is a child of the relationship.

The redress scheme allows the courts to make maintenance and/or property orders on application by a cohabitant following the end of a relationship.

### Summary of the Bill’s Provisions relating to Cohabitants

**Cohabitants:** Cohabitants are broadly described as 2 adults living together as a couple in an intimate and committed relationship (Section 170). (Persons who would be prohibited from marrying each other, such as brothers and/or sisters living together, are excluded.)

- The courts are to take into account all the circumstances of the relationship and have regard to several factors in determining whether people are cohabitants including:
  - o Duration of the relationship
  - o Basis on which the couple live together
  - o Degree of financial dependents and any agreements on finances
  - o Degree and nature of any financial arrangements
  - o Whether there are children and
  - o Degree to which the adults present themselves to others as a couple

- The Bill provides that a relationship does not cease to be an intimate relationship merely because it is no longer sexual in nature.

**Court application:** At the end of a relationship, whether by break-up or by death, a qualified cohabitant may sue their former partner by applying to the courts for a range of orders against them or their estate (Section 171).

The court may make orders where it is satisfied the person involved is **financially dependent** on the other co-habitant. Factors the court must consider include:

- The financial circumstances, needs and obligations of each cohabitant, the rights of others, the duration and nature of the relationship, and the contribution made by each, financial and otherwise.

An applicant may reapply to the court and the court may vary an order in the event of changed circumstances.

The court may adjourn proceedings to allow both sides to attempt to reconcile or to agree the terms of their separation (Section 191).

Each side is required to give the other full details of income and property (Section 194).

**Court orders:** The powers of the court under the redress scheme are extensive and include powers to make a property adjustment order, a periodical payments order, a lump sum order, an attachment of earnings order, a pension adjustment order or an order granting a share of the net estate of the deceased cohabitant. The court is authorised to make an order against an estate up to whatever provision would have applied had the couple been married and the deceased cohabitant died intestate (Section 192).

**Cohabitant agreements:** The Bill provides for signed cohabitant agreements allowing couples to regulate their financial affairs or to **opt out** of the redress scheme. These will be recognised as valid only if the cohabitants have each received independent legal advice or have waived their right to independent legal advice and have received legal advice together (Section 199). The courts may set aside or vary a cohabitant agreement in exceptional circumstances.

## **IFA's Concerns regarding the Cohabitant Provisions of the Bill**

### **No public demand for cohabitant rights, no debate or scrutiny:**

- The Bill makes important and far-reaching changes in social policy without proper public debate and scrutiny on the airwaves or in the printed media
- Insofar as the general public has any understanding of the Civil Partnership Bill, this relates only to the recognition of same sex couples
- There is no evidence of significant public support, or campaigning by cohabiting couples, for the introduction of cohabitant rights
- The cohabitant provisions should be withdrawn to allow an informed public debate to take place.

**Legal liabilities are being imposed on cohabiting couples without their knowledge or consent:**

- The Bill has far-reaching consequences for over 120,000 cohabiting couples, who will find themselves in a legal web not of their own making
- Where relationships break down, cohabitants will be open to maintenance and property claims quite similar to those arising following a marriage break-up, even where no children are involved
- Couples getting married, or registering a civil partnership, expressly consent to accepting legal obligations to each other, whether in a church ceremony or civil registration
- Cohabitants have chosen not to opt for civil registration or church marriage in order to avoid legal implications and their decision should be respected
- This legislation violates the fundamental principle of consent and is an attack on personal freedoms. There is no basis to presume that legal liabilities are accepted by people living together without their express agreement.

**Legal costs and scope for legal disputes:**

- The redress scheme has been criticised as creating a “windfall for lawyers but for no one else except the gold-digger” (Prof Ruth Deech, Gresham College, London quoted in the Irish Times 23 March 2010)
- Couples living together, who wish to remain free of legal liabilities, are being penalised by being forced to pay for legal advice and to conclude a cohabitant agreement in order to opt-out of the legislation
- Through a reversal of normal principles, the onus to act and the legal cost is placed on those who do not wish to be covered by the redress scheme, instead of those who do
- It is likely that most people living together will not make cohabitant agreements. Where no agreement exists, there is extensive scope for legal disputes over the definition of cohabitants, the determination of relationships, arguments over financial and other contributions, claims of financial dependency and over the appropriate extent of court orders
- Defendants may feel pressurised into settling a case in order to avoid difficult, adversarial and costly legal proceedings, and uncertainty over the outcome.

**If the cohabitant provisions are not withdrawn, the redress scheme should be made optional**

- Provision should be made to allow couples living together, who wish to do so, to opt in to the scheme by signing a standard form, and this arrangement could be widely advertised.

**Reported changes by Minister for Justice do not address the flaws in the Bill**

Media reports suggest that Minister Dermot Ahern is planning to:

- Change the name of the Bill to The Civil Partnership and Cohabitants Bill
- Delay the commencement of the cohabitation rules for up to six months once the Bill is passed and run an information campaign
- Extend the time couples must live together from three to five years.

However, IFA maintains that these changes fail to address the clear flaws in the Bill, namely

- the absence of any public debate or demand for cohabitant rights
- the imposition of legal liabilities on people living together without their consent and
- the legal costs involved in opting out of the scheme and defending court proceedings.

The fact that only 3% of cohabiting couples, according to a British study, are still living together after 10 years shows that this Bill is not balanced or proportionate in creating rights after three or five years.

April 2010