

DRAFT COHABITANTS BILL 2006

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

1. Short Title and commencement
2. Interpretation
3. Cohabitant and qualified cohabitant

PART 2

AGREEMENTS BETWEEN COHABITANTS

4. Validity of certain agreements between cohabitants
5. Tax treatment of certain transactions involving qualified cohabitants

PART 3

ADDITIONAL STATUTORY ENTITLEMENTS FOR COHABITANTS

6. Social Welfare
7. Residential tenancies
8. Fatal accident actions
9. Enduring powers of attorney
10. Domestic violence

PART 4

APPLICATIONS BY QUALIFIED COHABITANTS FOR REDRESS

11. Succession
12. Application by economically dependent qualified cohabitant
13. Property adjustment orders
14. Compensatory maintenance orders
15. Pension adjustment orders and pension splitting orders
16. Mediation and other alternatives to proceedings
17. Limitation period
18. Procedure
19. Transitional provisions

ACTS REFERRED TO

Capital Acquisitions Tax Consolidation Act 2003	2003, No. 1
Civil Liability (Amendment) Act 1996	1996, No.42
Civil Liability Act 1961	1961, No.41
Civil Liability and Courts Act 2004	2004, No. 31
Domestic Violence Act 1996	1996, No.1
Powers of Attorney Act 1996	1996, No.12
Residential Tenancies Act 2004	2004, No. 27
Social Welfare Consolidation Act 2005	2005, No.26
Stamp Duties Consolidation Act 1999	1999, No. 31
Succession Act 1965	1965, No.27

DRAFT COHABITANTS BILL 2006

ENTITLED

AN ACT TO PROVIDE FOR THE MAKING OF CERTAIN AGREEMENTS BETWEEN COHABITANTS, TO CONFER ADDITIONAL STATUTORY ENTITLEMENTS ON COHABITANTS, TO AMEND VARIOUS ENACTMENTS FOR THIS PURPOSE, TO PROVIDE FOR APPLICATIONS TO COURT BY CERTAIN QUALIFIED COHABITANTS AND FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short Title and commencement

1.- (1) This Act may be cited as the Cohabitants Act 2006.

(2) This Act shall come into force on such day or days as the Minister shall by Order provide.

Interpretation

2.- In this Act, unless the context otherwise requires -

“cohabitant” has the meaning given in *section 3(1)*;

“cohabitant agreement” has the meaning given in *section 4(2)*;

“court” means the High Court or the Circuit Court;

“financial matters” includes one or more of the following: the property of the cohabitants or either of them, the financial resources of the cohabitants or either of them, and household expenses;

“Minister” means the Minister for Justice, Equality and Law Reform;

“qualified cohabitant” has the respective meanings given in *sections 3(4) and 11(1)*.

Explanatory Note.

The definitions of “cohabitant agreement,” “court” and “financial matters” in this section implement the recommendations in paragraphs 3.08 and 3.20.

Cohabitant and qualified cohabitant

3.- (1) For the purposes of this Act, unless the context otherwise requires, “cohabitants” means two adults (whether they are of the same sex or the opposite sex) who live together as a couple in an intimate relationship, and who are not married to each other or related to each other within a prohibited degree of relationship; and “cohabitant” means one of such two adults.

(2) In determining whether two adults are living together as a couple within the meaning of *subsection (1)*, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular context -

- (a) the duration of the relationship,
- (b) the nature and extent of common residence,
- (c) whether or not a sexual relationship exists,
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the cohabitants,
- (e) the joint purchase of an estate or interest in land or the joint acquisition of personal property,
- (f) the degree of commitment to a shared life,
- (g) the care and support of children,

- (h) the performance of household duties, and,
- (i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in *subsection (2)*, or in respect of any combination of them, is to be regarded as necessary for the purpose of determining that two adults are cohabitants; and in determining whether they are cohabitants, regard may be had to those matters, and to attach such weight to those matters, as is appropriate in the circumstances.

(4) For the purposes of this Act (with the exception of *section 11*), “qualified cohabitant” means -

- (a) a cohabitant who has been living in such a relationship for 3 years, or,
- (b) where there is a child of the relationship, a cohabitant who has been living in such a relationship for 2 years;

(5) Notwithstanding *subsection (4)*, a cohabitant may make an application under this Act where the cohabitant establishes that, otherwise, serious injustice would arise.

Explanatory Note.

This section implements the recommendations in paragraphs 2.08, 2.15, 2.18, 2.26 and 2.28.

PART 2

AGREEMENTS BETWEEN COHABITANTS

Validity of certain agreements between cohabitants

4.- (1) For the avoidance of doubt, and notwithstanding any rule of law to the contrary, cohabitants may enter into a cohabitant agreement.

(2) For the purposes of this Act, a cohabitant agreement means an agreement between two cohabitants which makes provision for financial matters (and only such matters) during the relationship or on its ending (whether by death or otherwise).

(3) A cohabitant agreement shall be valid and enforceable if it is in writing, it is signed by both cohabitants, and that, before the

agreement is signed by either of them, each cohabitant has received legal advice independently of the other cohabitant.

(4) Subject to the provisions of this section, a cohabitant agreement shall also comply with the general law of contract, whether common law or statutory.

(5) Nothing in a cohabitant agreement affects the power of the court to make an order in respect of the right to custody of, maintenance of or access to or otherwise in relation to the children of the cohabitants.

(6) A cohabitant agreement may provide that the provisions of Part 4 shall not apply to the cohabitants entering into the agreement.

(7) Without prejudice to *subsection (6)*, in exceptional circumstances a court may, on application set aside a cohabitant agreement where its enforceability would cause serious injustice.

Explanatory Note.

This section implements the recommendations in paragraphs 3.08 and 3.20.

Tax treatment of certain transactions involving qualified cohabitants

5.- (1) Schedule 1 of the *Stamp Duties Consolidation Act 1999* is amended by the insertion of “or a qualified cohabitant within the meaning of *section 3(4) of the Cohabitants Act 2006*” after “sister” where it last appears in paragraph 15 of the Heading entitled “CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance” in Schedule 1.

(2) Schedule 2 of the *Capital Acquisitions Tax Consolidation Act 2003* is amended by the insertion of “, or a qualified cohabitant within the meaning of *section 3(4) of the Cohabitants Act 2006*,” after “deceased child” in paragraph 1(a)(i) of Part 1 of Schedule 2.

Explanatory Note.

This section implements the recommendations in paragraphs 3.29 and 3.31.

PART 3

ADDITIONAL STATUTORY ENTITLEMENTS FOR COHABITANTS

Social Welfare

6.- (1) In this section, “Act of 2005” means the *Social Welfare Consolidation Act 2005*.

(2) Section 142(4)(a), section 144, section 217(3) and paragraph 4(4) of Part 3 of Schedule 3 of the Act of 2005 are amended by the substitution of “cohabitants within the meaning of *section 3* of the *Cohabitants Act 2006*” for “a man and woman who are not married to each other but are cohabiting as husband and wife” in the definitions of “couple” in those provisions of the Act of 2005.

(3) Section 3(10)(b), section 152(b), section 227, section 262, section 298, and Part 1 of Schedule 3 of the Act of 2005 are amended by the substitution of “a cohabitant within the meaning of *section 3* of the *Cohabitants Act 2006*” for “a man and woman who are not married to each other but are cohabiting as husband and wife” in the definitions of “spouse” in those provisions of the 2005 Act.

(4) Section 3(11)(b) of the Act of 2005 is amended by the substitution of “a cohabitant within the meaning of *section 3* of the *Cohabitants Act 2006*” for “a man and woman who are not married to each other but are cohabiting as husband and wife” in the reference to “spouse” in the definition of “qualified adult.”

Explanatory Note.

This section implements the recommendations in paragraph 4.08.

Residential tenancies

7.- Section 39 of the *Residential Tenancies Act 2004* is amended by the substitution of “was a cohabitant with the tenant within the meaning of *section 3* of the *Cohabitants Act 2006*” in subsection (3)(a)(ii) for “cohabited with the tenant as husband and wife”.

Explanatory Note.

This section implements the recommendations in paragraph 4.11.

Fatal accident actions

8.- Section 47 of the *Civil Liability Act 1961*, as amended by section 1 of the *Civil Liability (Amendment) Act 1996*, is amended by the substitution in subsection (1)(c) of “cohabitant within the meaning of *section 3* of the *Cohabitants Act 2006*” for “husband or wife”.

Explanatory Note.

This section implements the recommendations in paragraph 4.32.

Enduring powers of attorney

9.- The First Schedule of the *Powers of Attorney Act 1996* is amended by the insertion of the following additional class after paragraph 3.(1)(h): “(i) the donor’s cohabitant, within the meaning of *section 3* of the *Cohabitants Act 2006*.”

Explanatory Note.

This section implements the recommendations in paragraph 4.41.

Domestic violence

10.- (1) In this section, “Act of 1996” means the *Domestic Violence Act 1996*.

(2) Section 2 of the Act of 1996 is amended by the substitution of “is a cohabitant, within the meaning of *section 3* of the *Cohabitants Act 2006*, of the respondent” in subsection (1)(a)(ii) for “is not the spouse of the respondent but has lived with the respondent as husband and wife for a period of at least six months in aggregate during the period of twelve months immediately prior to the application for the safety order, or”.

(3) Section 2(1)(a) of the Act of 1996 is amended by the insertion after paragraph (iv) of “ or (v) is a parent of whom there is a child with the respondent;”.

(4) Section 3 of the Act of 1996 is amended by the substitution of “is a cohabitant, within the meaning of *section 3* of the *Cohabitants Act 2006*, of the respondent” in subsection (1)(b) for “is not the spouse of the respondent but has lived with the respondent as husband and wife for a period of at least six months in aggregate during the period of nine months immediately prior to the application for the barring order, or”.

Explanatory Note.

This section implements the recommendations in paragraphs 4.16, 4.19, 4.23, and 4.28.

PART 4

APPLICATIONS BY QUALIFIED COHABITANTS FOR REDRESS

Succession

11.- (1) In this section, a qualified cohabitant means a cohabitant who:

- (a) was living as a cohabitant with the deceased for 3 years immediately prior to the deceased's death, or,
- (b) where there is a child of the relationship, was living as a cohabitant with the deceased for 2 years immediately prior to the deceased's death.

(2) Where, on an application by or on behalf of a qualified cohabitant, on notice to the respondent, the court is of the opinion that the deceased failed to make adequate provision or no provision for the qualified cohabitant in accordance with his or her means, whether by his or her will or otherwise, the court may order that such provision shall be made for the qualified cohabitant out of the net estate of the deceased as the court considers just and equitable.

(3) In making an order under this section, the court shall make what provision is reasonable in the circumstances, having regard to the factors set out in *section 12 (5)* and also the following factors –

- (a) the interests of the beneficiaries of the estate,
- (b) any benefit received or to be received by the qualified cohabitant on, or as a result of, the deceased's death other than out of the net estate, and
- (c) the provision (if any) made for the qualified cohabitant through orders made under *sections 13, 14 or 15*.

(4) For the purposes of this section, “net estate” means the estate as remains after provision for the satisfaction of -

- (a) capital acquisitions tax (or the equivalent of such tax however described);
- (b) other liabilities of the estate having priority over legal rights and the prior rights of a surviving spouse within the meaning of the *Succession Act 1965*, and

(c) the legal rights and the prior rights, if any, of any surviving spouse.

(5) An order under this section shall not affect the legal right of a surviving spouse within the meaning of the Succession Act 1965, or any devise or bequest to the spouse or any share to which the spouse is entitled on intestacy.

(6) Rules of court shall provide for the conduct of proceedings under this section in a summary manner.

(7) An application under this section shall be made within 6 months from the first taking out of representation of the deceased's estate or 12 months from the date of death, whichever is the latest.

Explanatory Note.

This section implements the recommendations in paragraph 5.15, 5.18, 5.20, 5.22, and 5.26.

Application by economically dependent qualified cohabitant

12.- (1) For the purposes of this Part, “applicant” means a qualified cohabitant who also comes within the requirements of *subsection (3)*, and “respondent” means the adult person with whom the applicant lived, within the meaning of *section 3*.

(2) An applicant may apply to the court, on notice to the respondent, seeking to have an order or orders made under *sections 13, 14 or 15*, or under any of those sections or any combination of them.

(3) In applying for any order under *sections 13, 14 or 15*, the applicant shall establish to the satisfaction of the court that, arising from the ending of the relationship (including where it ended through death), he or she is economically dependent.

(4) An order under *sections 13, 14 or 15* shall only be made where the court considers it is just and equitable to do so.

(5) Before making an order under *sections 13, 14 or 15*, the court (having been satisfied that the applicant is economically dependent within *subsection (3)*) shall have regard to the following factors -

(a) the rights and entitlements of any spouse,

- (b) the rights and entitlements of any child of a previous relationship, or of any child of the relationship between the applicant and the respondent or of any child treated by them as their child,
- (c) the rights and entitlements of any former spouse,
- (d) the nature and duration of the relationship,
- (e) the size and nature of the estate,
- (f) the financial needs, obligations and responsibilities which the applicant has or is likely to have in the foreseeable future,
- (g) the contributions and sacrifices which the applicant made or is likely to make in the foreseeable future to the welfare of the respondent and any child referred to in *paragraph (b)*, including any contribution made to the income, earning capacity, property and financial resources of the respondent and any sacrifice made by looking after the home or caring for the respondent and any child referred to in *paragraph (b)*,
- (h) the effect on the earning capacity of the applicant of the responsibilities assumed during the period he or she lived together with the respondent, including the degree to which the future earning capacity of the applicant was impaired by reason of having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the respondent and any child referred to in *paragraph (b)*,
- (i) any physical or mental disability of the applicant, and
- (j) any other matter which the court may consider relevant in the particular circumstances.

Explanatory Note.

This section implements the recommendations in paragraphs 6.34.

Property adjustment orders¹

13.- (1) On an application by an applicant within the meaning of *section 12*, on notice to the respondent, the court may make a property adjustment order.

(2) A property adjustment order may provide for one or more of the following matters:

- (a) the transfer by either of the cohabitants to the other cohabitant, to any dependent child of the relationship or to any other specified person for the benefit of such person of specified property, being property to which the first-mentioned cohabitant is entitled either in possession or reversion,
- (b) the settlement to the satisfaction of the court of specified property, being property to which either of the cohabitants is so entitled as aforesaid, for the benefit of the other cohabitant and of any dependent child of the relationship or of any or all of those persons,
- (c) the variation for the benefit of either of the cohabitants and of any dependent child of the relationship or of any or all of those persons of any agreement within the meaning of *section 4* (subject to the terms set out in *section 4(7)*) or other settlement (including such a settlement made by will or codicil) made on the cohabitants,
- (d) the extinguishment or reduction of the interest of either of the cohabitants under any such agreement (subject to the terms set out in *section 4(7)*) or settlement.

Explanatory Note.

This section implements the recommendations in paragraph 6.31.

Compensatory maintenance orders

14.- (1) On an application by an applicant within the meaning of *section 12*, on notice to the respondent, the court may make a compensatory maintenance order.

¹ The Commission notes that section 13 of the draft Bill contains the essential elements of its recommendations on this matter and that more detailed provisions concerning the meaning and scope of a property adjustment order will be required.

(2) The purpose of a compensatory maintenance order is to restore financial independence to the applicant.

(3) An order for compensatory maintenance may, as the court considers appropriate, require the respondent to make periodical payments or lump sum payments to the applicant.

Explanatory Note.

This section implements the recommendations in paragraph 6.32.

Pension adjustment orders and pension splitting orders²

15.- (1) On an application by an applicant within the meaning of *section 12*, on notice to the respondent, the court may make a pension adjustment order or pension splitting order, or both.

(2) Before making an order or orders under this section, the court shall be satisfied that it is not possible to make just and equitable financial provision for the applicant within the meaning of *section 12(4)* for the applicant by means of a property adjustment order or maintenance order.

Explanatory Note.

This section implements the recommendations in paragraphs 6.33 and 6.34.

Mediation and other alternatives to proceedings

16.- Before instituting any proceedings under this Act, a solicitor acting for any cohabitant shall:

- (a) discuss the possibility of a reconciliation and give to him or her the names and addresses of persons qualified to effect a reconciliation between them,
- (b) discuss the possibility of engaging in mediation to help to effect a settlement of any intended proceedings on a basis agreed between the cohabitants and give to them the names and addresses of persons qualified to provide a mediation service, and

² The Commission notes that section 15 of the draft Bill contains the essential elements of its recommendations on this matter and that more detailed provisions concerning the meaning and scope of a pension adjustment order and a pension splitting order will be required.

- (c) discuss the possibility (where appropriate) of effecting a settlement of any intended proceedings by means of an agreement in writing between them.

Explanatory Note.

This section implements the recommendations in paragraph 7.04.

Limitation period

17.- Proceedings under this Act shall, save in exceptional circumstances, be instituted within 2 years of the ending of the relationship between the cohabitants, whether through death or otherwise.

Explanatory Note.

This section implements the recommendations in paragraph 7.07.

Procedure

18.- (1) Subject to the provisions of section 40 of the *Civil Liability and Courts Act 2004*, proceedings under this Act shall be heard otherwise than in public.

(2) The costs of any proceedings under this Act shall be at the discretion of the court.

Explanatory Note.

This section implements the recommendations in paragraph 7.09.

Transitional provisions

19.- (1) *Section 4* shall only apply to agreements entered into after the commencement by Order of that section.

(2) Part 4 shall only apply to cohabitants whose relationship has come to an end (whether by death or otherwise) after the commencement by Order of Part 4 but, subject to that, account may be taken of time prior to such commencement in calculating the duration of the cohabitation relationship in accordance with *section 3(4)*.

Explanatory Note.

This section implements the recommendations in paragraph 7.11.