

Same sex relationships : civil partnerships

Preliminary Matters

Until recently it has not been possible for same sex couples to obtain any formal recognition of their relationship. The Civil Partnership Act 2004, which came into force on 5 December 2005, has made significant changes. This Act enables same sex couples to obtain legal recognition of their relationship.

Previously same sex couples were treated differently to married couples in a large number of areas irrespective of the length of their relationship and the level of commitment. Following the enactment of the Civil Partnership Act, a same sex couple who register their relationship will gain the same rights and responsibilities as married couples in almost every way.

Registration

Same sex couples will now be entitled to register their relationships in a formal way. This is the equivalent to heterosexual couples marrying. Relationships which are registered overseas will also, in some circumstances, be recognised in England and Wales as a '**Civil Partnership**'. A 'Civil Partnership' is defined as a relationship between two people of the same sex which is registered.

There are a number of eligibility criteria which are almost identical to the eligibility criteria for marriage. Both parties must be 16 or over. For parties who are under 18, the consent of their parent or guardian is required. Both parties must be single, i.e. neither is married nor already registered as the civil partner of someone else. There are also prohibitions against the registration of the relationship of certain relatives. A

registration ceremony may not take place within religious premises.

Before a Civil Partnership can be registered, 15 days notice must normally be given to a Registration Authority. Both parties must have resided in England and Wales for at least seven days prior to the giving of the 15 days notice.

Parental Responsibility for Children and Adoption

Before the Civil Partnership Act came into force, same sex parents and step-parents were treated differently to parents and step-parents who were of an opposite sex. Parental Responsibility refers to all the rights, duties, powers, responsibilities and authority which a parent has for a child. The Civil Partnership Act now extends the acquisition of Parental Responsibility to civil partners.

Where one partner has Parental Responsibility for a child and is in a civil partnership the second partner can acquire Parental Responsibility by :

- the written agreement of the partner who already has Parental Responsibility if he or she is the only person who has Parental Responsibility for the child;
- the written agreement of both the parents of the child; or
- an Order of the Court

The Civil Partnership Act also now enables current and former civil partners to apply for Residence and Contact Orders in relation to a 'child of the family'. Further, civil partners may apply jointly for an Adoption Order. (Please refer to the information sheet

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headed 'A Brief Guide to the Children Act 1989' for further information in respect of applications relating to children).

Rights of Occupation of Family Home and Domestic Violence

The Civil Partnership Act gives civil partners the same rights as a spouse to occupy a property which the other partner is entitled to occupy. Civil partners can apply for an Occupation Order and a Non-Molestation Order. An Occupation Order is an Order of the Court which regulates the rights of both parties to enter and occupy a dwelling house. A Non-Molestation Order is an Order preventing one party from assaulting, threatening, molesting, interfering with or harassing the other party.

Dissolution of a Civil Partnership

In the same way that married spouses can divorce, a party to a civil partnership can apply to the Court for their civil partnership to be dissolved. The law and procedure with regard to the dissolution of a civil partnership is almost identical to Divorce Proceedings. Parties must wait until 12 months after the civil partnership is registered before Court Proceedings can be brought to dissolve the partnership.

An application for the dissolution of a civil partnership must be based upon the irretrievable breakdown of the relationship. The party applying for the Dissolution Order must rely upon one of four facts in order to show to the Court that the relationship has irretrievably broken down.

The person who makes the application for the Dissolution Order will be referred to as 'the Applicant' and the person who receives

the application will be described as 'the Respondent'.

The four facts are as follows

- 1 The Respondent behaving in such a way that it is unreasonable to expect the Applicant to continue to live with the Respondent.
- 2 The Respondent deserting the Applicant, i.e. leaving and living apart, without this being by agreement, and throughout the period of living apart the Applicant being willing for the Respondent to return. This desertion must be for a period of two years at least, prior to the application being made to the Court for a Dissolution Order.
- 3 Two years' separation with the Respondent's consent, to which the consent is absolutely vital and may be withdrawn at any time prior to the grant of a conditional Dissolution Order.
- 4 Five years' separation. In this case, either partner may apply to the Court and no consent is required. However there is a specific defence to this ground if a Dissolution Order would cause grave financial or other hardship to the Respondent and it would in all the circumstances be wrong to dissolve the civil partnership.

When it is intended to base the application on the Respondent's unreasonable behaviour, it should be noted that if the couple live together for a period or periods of six months or more after the date of the last incident of unreasonable behaviour, the Court will treat the Applicant as having forgiven the Respondent, and it is extremely

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unlikely that a Dissolution Order will be granted.

In those cases where it is intended to rely upon separation or desertion, a period or periods of up to six months are allowed for attempts at a reconciliation, i.e. the couple may live together again for a period or periods totalling no more than six months. If there has been a period of living together, then that same period must be added to the period of separation or desertion so that a full two years or five years, as the case may be, of separation or desertion is involved. So if the civil partners spend a total of, say, three weeks trying to reconcile, then the period over which the separation or desertion will be calculated will be two years and three weeks or five years and three weeks.

In both cases 3 and 4 above, there is a further provision that the Respondent may ask to have his or her financial position considered by the Court which has the effect of delaying the pronouncement of the final Dissolution Order.

The procedure with regard to the issue of an application for a Dissolution Order is almost identical to the procedure for obtaining a divorce. There is a separate information sheet entitled 'Divorce Procedure - A Brief Guide'.

There are two stages in the Proceedings, the conditional Dissolution Order and the final Dissolution Order. It is only once the final Dissolution Order has been made by the Court that the civil partnership is formally dissolved and the parties are free to enter into a new civil partnership or marriage. A period of at least six weeks has to elapse between the date of the

conditional Dissolution Order and the final Dissolution Order.

At any time after an Application has been made for a Dissolution Order, either partner may initiate the procedure, which ultimately in the absence of an agreement being reached, will result in a Hearing to resolve the financial repercussions of the breakdown of the civil partnership. The Courts will follow the same procedure and principles in dealing with the financial matters as they do in respect of Divorce proceedings (although the authority comes from the Civil Partnership Act rather than the Matrimonial Causes Act 1973).

Please refer to the information sheets entitled "**Financial Provision on Divorce - The New Procedure**" and "**The Matters to be considered by the Court when deciding an Application for Financial Provision on or following Divorce**".

Some of the terminology used in the two Acts is different, but the information sheets will give you a summary of how the Courts will deal with financial applications following dissolution of a Civil Partnership. There are separate information sheets, which also consider the position of child maintenance under the terms of the Child Support legislation.

Separation

A Separation Order may be made by the Court on the basis of the same facts as dissolution. The Civil Partnership does not have to have broken down irretrievably, but rather the Court will consider the circumstances of the facts alleged in the Application for the Separation Order.

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The principal differences between a Dissolution Order and a Separation Order are that one partner continues to be treated as the civil partner of the other party. Neither partner can enter into a new Civil Partnership or marry.

After a Separation Order has been made, if either civil partner dies intestate, and at the date of death the civil partners were still separated, the assets of the civil partner who has died will be dealt with as if the other civil partner had already been dead. The surviving civil partner will not, therefore, inherit the deceased civil partner's assets.

Civil partners can also regulate their separation by entering into a formal Deed or Agreement in writing. The partners may agree to live apart and have the terms of their separation recorded in a formal Deed, formal Agreement, or exchange of solicitors' letters. A Solicitor would normally prefer there to be a Deed setting out the precise terms, because of its clarity and lack of ambiguity.

The separating partners may come to an agreement about the financial repercussions of their separation which is intended to last for a specific period, or throughout the period of their separation, or throughout the rest of their lives, as they choose.

But an agreement of this nature would not prevent the Court having the power to review the financial issues within any later Application for a Dissolution Order, if one of the partners makes an Application to the Court for this to take place. The Court would not review it automatically. So an adjustment in previously agreed capital provision may only take place if there has been a major change in the parties'

circumstances when compared with those that prevailed at the time of the Agreement. If the Deed or Agreement shows that what was intended by the partners was to be a full and final settlement of their respective claims against each other for capital provision and there has been no major change or other significant reason for a Judge to go behind that Agreement, then it should stand.

Death of one Civil Partner

In general, the Civil Partnership Act puts the surviving partner of a registered Civil Partnership in the same position as a widow or widower.

- a An existing Will is automatically revoked upon the registration of a Civil Partnership, unless the Will was made in contemplation of the registration of that Civil Partnership. Further, a surviving Civil Partner will be in the same position as a widow or widower as far as the Intestacy Rules are concerned. Any assets passing either outright or on a life interest to a surviving Civil Partner will be free of all Inheritance Tax.
- b A surviving Civil Partner will have exactly the same entitlements in respect of the State Pension as widows or widowers.
- c Surviving Civil Partners will have the same right as a widow or widower to make a claim against the estate of the deceased Civil Partner under the Inheritance (Provision for Family and Dependents) Act 1975.

Note : This information sheet contains only a very brief summary of the provisions of the Civil Partnership Act 2004. It has been prepared to highlight some of the key issues arising from the registration of a same sex relationship. It is intended to be for general

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guidance only, and is not a substitute for specific advice. It is based upon our understanding of the legal position as at December 2005, and may be affected by subsequent changes in the law.

For more specific legal advice on the issues covered, please contact Joanna Pratt by email at joanna.pratt@ts-p.co.uk or call on 01892 510000.

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