



The Civil Partnership Act explained

What is the Civil Partnership Act?

Civil partnership allows same-sex couples aged 16 and over (if under 18, they must gain parental consent), resident in the UK and Northern Ireland and not already married or in a civil partnership, to become 'registered Civil Partners'. As with married couples, you do not need to be living together in order to register your partnership. Unlike marriage, no physical consummation of the relationship is necessary for the registered partnership to be legal and binding.

Although this is not a marriage, has no religious element and the ceremony cannot take place in church, it means the couple will gain legal recognition for their relationship and will be protected by a package of rights.

What does the process entail?

The Civil Partnership Act came into force on the 5th December 2005, allowing ceremonies to take place from 21st December 2005 onwards. You give notice of your intention to register your partnership in any premises licensed to carry out registrations, not just a registry office.

For a list of licensed venues, contact your local authority, or the General Register Office: <http://www.gro.gov.uk/gro/content/civilpartnerships/>. You should be able to sign a civil partnership register 15 days later, so long as you have lived in England/Wales for 7 days immediately before giving the notice.

The Act does not require a ceremony and it actually prevents any religious service from taking place as part of the registration process. That said, there is no rule to say that you cannot mention God or any other faith, but if a Christian service is required, you will have to organise a separate blessing. Just as with marriage, couples will be able to arrange a ceremony following the registration procedure if they want to, and local authorities will be encouraged to allow such ceremonies should you want one.

If you do decide to have a ceremony, you should discuss what you want to say with the registrar.

If the ceremony is being offered by the local authority, they will need to agree the content. The words themselves will have no legal significance.

Will our details be made public when we register our partnership?

Currently, if a heterosexual couple gives notice, their names, occupations and addresses are made public, the marriage register being a public document. The Government recognises that this may be of concern for some same sex couples, so current plans are therefore to publish only names and occupations, and not addresses.

Can I change my name to that of my partner?

Legally you will become 'civil partners' but under the Act you will not automatically take your partner's surname. UK law allows an adult (over 18) to change their name simply by using a new one. No official notification is necessary for this to happen and it is usual for a person to use this method to try out a new name.

At some point, however, organisations such as banks, the Inland Revenue and the Passport agency will need to be notified. They usually require evidence of the name change in written form. Wards Solicitors can prepare this document, making sure that any other issues arising out of it are explained to you.

What if my partner is not a British citizen?

If your partner is not British, they can stay in the country as part of a registered civil partnership. A foreign partner will be given permission to enter the UK if they are engaged and a civil partnership ceremony is planned. Furthermore, if a civil partnership ceremony has already taken place abroad, for example, in Belgium or the Netherlands, it will be recognised in the UK.

What are the new rights?

General

Civil partners will be taxed the same way as married couples; the ability to gain parental responsibility for each others' children; recognition for immigration purposes; protection from domestic abuse has been strengthened and they will be exempt from testifying against each other in court, just like married couples. One disadvantage of the new law is that if you're in receipt of state benefits, once you become a registered civil partner you would lose your single person benefits and be treated as married, for the purposes of determining your entitlements.

Rights on the death of one partner

Civil partners also gain next of kin rights, so avoiding problems regarding hospital visiting rights and medical treatment if a partner is unable to communicate their wishes. If one partner dies, the other will have the right to register their death and organise the funeral. If there is no Will in place, the normal intestacy rules apply and, depending on the circumstances, the surviving partner will inherit part or all of the estate.

They will also be able to exercise tenancy succession rights, and claim a survivor pension in public service schemes and contracted-out pension schemes from 1988. In addition, they will be eligible for bereavement benefits and compensation for fatal accidents or criminal injuries.

Life Insurance

Registered couples can now insure their own lives and that of their partner. Before the legislation, same sex couples could only insure their own lives. Unlimited policies can be taken out when the legislation is in force leaving a partner a lump sum upon death.

What are the tax consequences of entering into a civil partnership?

All tax legislation has been amended so that if you are registered civil partners, you are treated the same way as married couples for tax purposes. For example:

- The current married couple's tax allowance, where one spouse was born before 6 April 1935, is extended so that it applies to civil partners where one partner meets that age criteria.
- All anti-avoidance legislation that applies to

transfers between spouses will be extended to include civil partners.

- Transfers between civil partners during their lifetime or on death are exempt from inheritance tax.
- Transfers of assets between civil partners who are living together on a no-gain, no-loss basis do not attract an immediate CGT charge.
- Private Residence Relief - only one property owned by civil partners, whether it is solely or jointly owned, may be treated as the principle private residence for Capital Gains Tax (CGT) purposes and will thus qualify for private residence relief. If you each own your own property, you should take tax advice now (ideally before entering into a registered partnership) to minimise CGT on their properties in the future.
- The exemption from Stamp Duty and Stamp Duty Land Tax for transactions carried out in connection with divorce, such as the transfer of shares or the transfer of the marital home is extended to include the dissolution of a civil partnership.

How do I protect my assets if the partnership fails?

You would be well-advised to consider whether or not you should enter into a formal agreement to protect your assets in case the partnership does not work out. In the same way that people marrying will consider a pre-nuptial agreement, same-sex partners should consider a pre-partnership agreement, as they have the potential to save a lot of acrimony and expense if a partnership breaks down and you cannot agree on a fair division of your joint assets.

Whilst pre-nuptial agreements are not currently enforceable in law and pre-partnership agreements will not be either, the government is considering them and they may become legally binding. In the meantime, there have been a number of cases in which the courts have attached significant weight to pre-nuptial agreements, particularly where both parties received independent legal advice, gave financial disclosure before entering into the agreement and the agreement is perceived to be fair.

What happens if a Civil Partnership does not work out?

If a civil partnership fails it has to be formally

dissolved by the courts in the same way a marriage is ended by divorce. The terms on which dissolution can take place are very similar to that of marriage. It is not possible to dissolve a civil partnership in the first year and to be dissolved, it must have broken down irretrievably. In addition, one of the following factors must have occurred: unreasonable behaviour; separation for two years with consent, or; separation for five years without consent.

The procedure is relatively simple if undefended and can usually be dealt with in 4-5 months from start to finish. The dissolution will involve fair arrangements for property division, financial relief, residence arrangements and appropriate contact with children.

On dissolution, a civil partner will have the same potential claims as a spouse does on divorce. These include claims for all form of financial provision, including the power to make orders to pay maintenance and/or a lump sum, property to be transferred and pension sharing orders.

As a result, those who have been living together for many years need to carefully consider the implications of entering into a civil partnership because they could find themselves having to part with a great deal of their wealth on dissolution.

Until the partnership is formally dissolved, any conditions contained in an existing Will remain valid in the event of the death of that partner. Wards Solicitors have seen unfortunate cases where a spouse died before a divorce was finalised and the estranged spouse and her step-children inherited the estate instead of the deceased's children from his first marriage. If you are going through a partnership dissolution, you should review your Will (or make one), to ensure that your revised wishes are taken into account.

Should we make a Will?

Simply put, yes! Under the rules of intestacy, where a Will is not in place, the civil partner may not automatically receive their partner's full estate. It is advisable to make a Will to keep control and provide valuable protection and peace of mind.

From February 1st 2009 the survivor automatically receives the initial £250,000 of the estate. If there are children, they will receive 50% of the remaining sum in the estate and a life interest in half of the remainder. If there are no children then the first £450,000 passes to the surviving civil partner with wider family members also benefitting from the remainder.

Once a registered partnership is in place, it also revokes any previous Will that may have been made, so any instructions contained in that Will are legally void. It is good practice to make a Will, not only to avoid intestacy issues but also to ensure that you have a say over legacies and gifts, as well as outlining any wishes regarding funeral arrangements.

Also, if you have children from a previous relationship, a Will gives you the chance to protect their interests, should you want. With no Will in place, Courts are likely to give priority to the needs of the registered partner than those of any children. A carefully drawn-up Will can also include provisions regarding the appointment of guardians for any under-age children, if there is no parental responsibility agreement in place.

A registered civil partner now has the same rights as a married spouse or former spouse to claim reasonable financial provision under the law, from the deceased partner's estate. Previously, the surviving same sex partner could only claim if they were maintained by the deceased immediately before his or her death.

What about inheritance tax issues?

One of the key benefits of the civil partnership is that registered partners can now take advantage of the same tax exemptions as married couples. But without inheritance tax planning advice, you may end up paying the Government more tax than needed on death.

The pre Budget Report of 9th October 2007 has removed inheritance tax planning opportunities in part through Wills. However there are still tax planning measures to consider if you wish to leave legacies upon the first death or if you have significant agricultural or business assets.

If you have in excess of twice the individual exemption (currently £650,000 as the individual exemption is £325,000 for the tax year 2015/2016) then we can advise you regarding inheritance tax mitigation.

You may also need advice on the issue of Private Residence Relief as only one property owned by civil partners, whether it is solely or jointly owned, may be treated as the principle private residence for Capital Gains Tax (CGT) purposes. If you each own your own property, you should take tax advice now (ideally before entering into a registered partnership) to minimise CGT on the properties in the future.

What happens if one of us becomes mentally incapacitated?

There are key ways that you can ensure your wishes are adhered to if you become unable to express them due to ill-health or mental incapacity.

Lasting Powers of Attorney

From the 1st October 2007, you are able to make a power of attorney, called a 'lasting power of attorney' (LPA). A power of attorney is a legal document where a person gives another person or persons (the attorney) authority to make certain decisions on his or her behalf.

Types of LPAs

There are two types of LPAs:

- A property and affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify
- A health and welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment

Your Attorney

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case they die or otherwise cannot act for you.

When can the Attorney act?

The attorney will only be able to act when the LPA has been signed by you and your attorney, certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm there has not been any fraud

or another reason why you cannot make the power. It must then be registered with the Office of Public Guardian before it can be used. The financial LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

Existing Enduring Powers of Attorney

Any enduring power, validly made before 1st October 2007, will continue to be able to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a welfare LPA.

What happens if you have not made a LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a welfare LPA.

Living Wills

We often receive enquiries about Living Wills, which are also referred to as Advance Directives. The purpose of a Living Will is to make your wishes clear about your own medical care, should you for any reason be unable to communicate them in the future. It is not about taking an active step to hasten one's death (euthanasia is illegal in this country) but it expresses a desire for life not to be prolonged unnecessarily.

You can always change the wishes stated in your Living Will and it is sensible to review it regularly, as you would a traditional Will. Following the Mental Capacity Act 2005 it is very important to review your Living Will. A Lasting Power of Attorney can now cover health, welfare and end of life decisions. It could suit your needs better.

For further information, please contact:

jenny.pierce@wards.uk.com

or telephone 0117 929 2811

You may also find these websites of use. Please note, however, that Wards Solicitors accepts no responsibility for the content of these external sites.

Government equalities office:

for the Government's proposal regarding CPA please follow the link www.gov.uk/government/organisations/government-equalities-office

General Register Office:

www.gro.gov.uk

The Pension Service:

www.thepensionservice.gov.uk.

The Inland Revenue:

taxation changes www.inlandrevenue.gov.uk

Jobcentre Plus:

information on benefits www.jobcentreplus.gov.uk

Home Office Immigration and Nationality Directorate:

www.ind.homeoffice.gov.uk

Advisory, Conciliation and Arbitration Service (ACAS):

www.acas.org.uk

Citizens Advice Bureaux (CAB):

www.adviceguide.org.uk

The UK Lesbian and Gay Immigration Group:

www.uklgig.org.uk

AHRB Centre for Law, Gender and Sexuality:

www.kent.ac.uk/clgs/

Rights of Women:

www.row.org.uk

Stonewall:

www.stonewall.org.uk

The International Lesbian and Gay Association:

www.ilga.org

Gay Parent magazine:

www.gayparentmag.com

Pink Parents:

www.pinkparents.org.uk

Christiangays.com:

www.christiangays.com

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