

Family news - summer: The Civil Partnership Act 2004

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CATEGORY:

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The Civil Partnership Act received Royal Assent on 18 November 2004 and came into force on 5 December 2005. The first civil partnerships were made on 21 December 2005. Civil Partnership is a 21st century approach, a new legal institution, equivalent and parallel to civil marriage.

Eligibility

In order to enter into a civil partnership, the proposed civil partners must be over 16 and of the same sex. They must not be already married or related by a family relationship.

Formation

A civil partnership is formed when two people have signed a civil partnership document in the presence of each other, the registrar and two witnesses. There is no provision in the Act for any words to be

said. In fact, a civil partnership could be formed in complete silence! If a couple choose a form of words, they will not have any legal effect, and must be entirely secular. The registration of a civil partnership may not be in religious premises. Instead, registration authorities simply make the facilities currently available for civil marriages available to those wishing to register a civil partnership. The procedure for registering a civil partnership is similar to that for registering a civil marriage.

Dissolution and financial matters

Like marriage, a civil partnership may be terminated on the grounds of nullity, or it may be terminated by either party bringing an action for dissolution (similar to divorce). The fact that a civil partnership can only be terminated in these ways is a sign of how serious a commitment civil partnership is intended to be. The grounds for termination are the same as with marriage. There must be an irretrievable breakdown in the relationship.

Financial claims on dissolution

Each civil partner can make a claim against the other on dissolution for financial provision, like on divorce. This may include claims for maintenance, or property adjustment. The court may also vary a relevant settlement in the same way that it currently has the power to vary a nuptial settlement. This is very important from a tax planning perspective. The tax benefits of civil partnership are outlined below, but it should be borne in mind that, as with tax planning for married couples, there may often be a conflict between that tax planning and divorce planning.

Recognition of foreign civil partnerships

Civil partnerships formed in accordance with local law abroad will be recognised here but there is no mutual recognition. There are no guarantees that civil partnerships in this country will be recognised anywhere else except in this country.

Children issues

Civil partners will become step parents of their civil partner's children, where those children were born outside the civil partnership. Where those children are 'children of the family' – i.e. children of the civil partnership – each civil partner will have parental responsibility, and the non-biological parent may adopt the child. Dealing with children of a civil partnership will require some attentive drafting in the context of Wills and Trusts.

Death and taxation

A civil partnership will revoke a Will. The provisions on intestacy reflect the provisions in relation to spouses. The same rights afforded to spouses under the Inheritance (Provision for Family and Dependants) Act 1975 have been extended to civil partners.

No changes to tax are effected by the Civil Partnership Act (save council tax). However, the Government committed itself to treat civil partners in the same way as spouses. Section 106 of the Finance Act 2005 gave the Government power to make regulations for the purpose of ensuring that the formation of a civil partnership is treated in the same way as a marriage and that the treatment of persons who are, or have been, or may in the

future be civil partners, is the same as the treatment of persons who are, have been or may in the future be husband and wife. There are now regulations which bring in these equalising measures and which came into force with the Act.

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