

UK marriage, civil partnership or cohabitation? That is the question

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#ModernFamilies

'We want to raise our children as equal partners and feel that a civil partnership – a modern, symmetrical institution – sets the best example for them.'

'The legacy of marriage' did not appeal to Ms Steinfield and Mr Keiden, who met in 2010. Following the landmark decision in their case where the Supreme Court ruled that it was discriminatory that civil partnerships are not available to different-sex couples, from August this year all couples (opposite sex and same sex) in England and Wales will be able to choose between civil partnership and marriage.

So what, apart from the terminology, are the differences between them, and what protection do they provide on relationship breakdown, that [cohabitation](#) doesn't? In this blog, I outline the differences and the similarities between marriage, civil partnership and cohabitation, so that you can decide which might suit you and your partner best.

What happens before we 'formalise' our relationship?

If you were to choose to get married or become civil partners, you could consider a pre-nuptial agreement or a [pre-civil partnership agreement \('PNA'\)](#). Strictly speaking, they are highly persuasive rather than legally enforceable in England and Wales but PNAs can save much heartache if it doesn't work out (particularly in respect of inheritance). You will both need independent legal advice and to ensure the terms of any PNA governed by English law are 'fair'.

For a cohabiting couple, you can sign a [cohabitation agreement \('CA'\)](#). If you are purchasing property together, or one of you will be living in property owned by the other, it is particularly important to document your respective interests and record your intentions and understanding about whether this is to change, going forward.

What happens when we 'formalise' our relationship?

For marriage, you may choose a religious or civil ceremony. There are certain formalities, for example, you both need to live within the marital registration district for 7 days before giving notice of your intention to marry; you must sign the marriage certificate before two witnesses and a registrar. For a civil partnership there can be no religious ceremony, just a civil one. You both sign a civil partnership document in front of two witnesses and a registrar.

Cohabitation involves no formalities at all (bar opening the champagne on moving in together!)

What happens if we live abroad?

Most countries recognise a marriage which has taken place in England and Wales thanks to international conventions, but same sex marriage is not recognised in some countries. Many countries recognise civil partnerships, but again, same sex civil partnerships are not recognised in others.

Some countries attribute rights to cohabitants if they have lived together for a certain period – for example, the Republic of Ireland.

What happens if we separate?

Provided you have been married for at least a year, one spouse can petition the court for a divorce. Currently one person may be 'blamed' for the divorce, eg adultery or unreasonable behaviour but there are other ways to separate, eg two years' separation by consent and soon parties will be able to apply for a no fault divorce either together, or by themselves.

As with marriage, the civil partnership can be dissolved along broadly the same lines.

For cohabiting couples, there are no formal requirements to separate (subject to anything specific in a CA) as you were never in a formalised relationship.

What happens to our finances on separation?

Upon breakdown of the marriage or civil partnership, you will both benefit from statutory protection and will potentially be able to make financial claims, eg for maintenance for yourself and for your children, housing/property, capital and pension, based on needs and fairness. Seek a fair agreement about how to allocate your collective assets – subject perhaps to you having a PNA. A court's starting point may be a 50/50 division but seek legal advice to consider if your situation differs.

Cohabiting couples have no entitlement to claim maintenance nor any share in their ex-partner's assets, or in any family home no matter the length of cohabitation and can only make claims for children (see below). Each party retains the assets they legally own.

What happens to our children post-separation?

If you were married or in a civil partnership at the time of your child's birth, you will both have 'parental responsibility' (ie rights, duties, powers and responsibilities) regarding your children. Where parents are not married or civil partners at the time of a child's birth, the mother automatically has parental responsibility. A father may acquire this by being registered on the birth certificate, reaching an agreement with the mother, or by court order. The court operates a 'no order' policy regarding children when parents separate – hopefully you can make suitable arrangements between yourselves. Where that is not possible, there are numerous options and avenues to seek help.

Whether married, civil partners or only cohabiting, every parent has equal financial responsibility for his/her child, even if unnamed on the birth certificate. In financial settlement discussions provision for children is prioritised and the Child Support Act applies in most cases.

What happens if one of us dies without a Will?

Provided you are still married or in a civil partnership at the time of death, under the intestacy rules the surviving spouse would inherit all the personal possessions of the deceased; £250,000 of the estate; and half of the remaining estate.

If cohabiting, the surviving cohabitee would not be entitled to anything specific under the intestacy rules, but may make a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

Will people still marry? Yes: there remains an inherent social value attributed to it. Will the government legislate on rights to protect cohabiting couples? Unlikely to anytime soon. Will there be more civil partnerships? Hopefully and Ms Steinfeld and Mr Keidan have illustrated society values a modern way to formalise your relationship.

FOOTNOTES

R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for the International Development (in substitution for the Home Secretary and the Education Secretary) (Respondent) [2018] UKSC 32.

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