



When friendly legal advice is needed

On the 5th December 2005 one of the most significant and radical pieces of social policy legislation for several years will take effect. The Civil Partnership Act 2004 (“the Act”) creates a new category of legal relationship for same-sex couples who register their relationship. Whilst the Act technically falls short of allowing same-sex couples to marry, it does introduce what may reasonably be called quasi-marriage. Registered civil partners will have very similar rights and responsibilities to those of married couples and will also be able to dissolve their civil partnership on similar grounds to that of divorce. What is so remarkable about the Act is the lack of controversy or media attention it received amid the passing of the Hunting Act on the same day.

How will a civil partnership be created?

Any couples wishing to form a civil partnership will be able to give notice of their intention to register their partnership at a registry office from the 5 December 2005. The couple must then wait 15 days before being able to form the partnership. It is therefore anticipated that the first civil partnerships are likely to be formed on 21 December. The West Berkshire Register Office have already received five bookings within the first three days of the Act taking effect from couples who wish to register their partnership.

The essential requirements of the Act are that the parties to a proposed civil partnership should be:

- of the same sex;
- not already parties to a civil partnership or a marriage;
- both over the age of 18;
- not within the prohibited degrees of relationship (the Act lists these and include parents, grandparents, siblings or sibling’s children amongst others).

The civil partnership is formed when two people sign a civil partnership document in the presence of each other, the registrar and two witnesses.

What are the advantages of entering into a civil partnership?

Following registration, the Act introduces the following rights for new civil partners:

- employment and pension benefits, such as pension sharing orders;
- recognition under intestacy rules;
- recognition for immigration and nationality purposes;
- the right to be assessed in the same way as spouses for child support;
- the right to be assessed in the same way as spouses in relation to National Insurance and means tested benefits;
- protection from domestic violence;
- the ability to apply for parental responsibility on the same basis as step-parents;
- the ability to claim maintenance, lump sum and property adjustment orders, if the civil partnership is formally dissolved;
- equitable treatment for the purposes of life assurance;
- access to fatal accidents compensation.

How can a civil partnership be dissolved?

The dissolution of a civil partnership will take place by a formal court based process with the grounds being similar to divorce with the exception of adultery. The civil partnership must have lasted for one year before a dissolution can be applied for and can only be made on the basis that the partnership has irretrievably broken down. Any one of the following four facts may be used as evidence of the breakdown:

- behaviour
- two years separation with consent
- desertion
- five years separation

Orders for dissolution are initially conditional; they may be made final after the expiration of a period of six weeks from the date the order was made conditional. Upon the dissolution of the partnership the court will have considerable powers to make provision for financial relief that corresponds with those applicable to divorcing couples. This is in line with the basic underlying philosophy of the Act, which is to extend all the rights, responsibilities, and obligations which marriage confers as regards financial issues to same-sex couples who register their civil partnerships.

The future?

The passing of the Act is another step in redefining the notion of the family. In the past 25 years, the concept of the family has changed dramatically with many more couples now choosing to forgo marriage, even where children are involved. Despite these changes the legal consequences today for unmarried couples who decide to set up home together remain very much the same as in the 1980's. An unmarried couple who separates does not have the same rights as a married couple nor will they have the same rights as a registered same-sex couple. For many it may come as a very big shock to find out that common law marriage has not existed in England since 1753!

With the numbers of cohabiting couples predicted to soar from two million today to 3.8 million over the next 25 years, the Act is likely to increase pressure to allow unmarried couples the same legal recognition as same-sex couples. Stronger rights for cohabitants is not yet formal government policy, but a consultation paper is planned for Spring 2006, with final recommendations and a draft Bill proposed for July 2007. The Act is likely to have a significant impact on many areas of society. Not only will it provide a means by which same sex partners can be more open about their relationship to the world at large; the Act is also likely to give hope to all those unmarried couples who wish to express a legal commitment to each other, but do not wish to do so by marriage. For further information about the Civil Partnership Act please contact Lesley Clay at Dickins Hopgood Chidley Solicitors on 01488 683555 or email her at:

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