

“ Plain speaking legal advice ”

The effect of the Civil Partnership Act 2004

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Elton John and his long-term partner David Furnish ‘tied the knot’ because a major change in the law has taken place, allowing couples of the same sex to register the relationship by way of a ‘Civil Partnership’. However, the Government has been quick to point out that this is not to be confused with marriage as there are distinct differences – marriage is formed when words are exchanged whereas Civil Partnership is formed when paperwork is signed; Non-consummation is not a ground for annulment of Civil Partnership; Civil Partnership cannot be dissolved on the grounds of adultery. The Civil partnership Act 2004 (‘the Act’) came into effect on 5th December 2005.

1. What effect does the Act have?

Lawyers have noted that this Act creates more amendments to existing legislation than any other Act has done in the past. The Act has a far-reaching effect in many other areas of the law. For example, where an Act refers to a married couple, reference to civil partners should also be included.

2. Who can enter into a Civil Partnership?

- Parties of the same sex
- Parties not already married or in a Civil Partnership
- Parties over aged 16 years

3. And who cannot enter into a Civil Partnership?

- Parties of the opposite sex
- Parties within the ‘prohibited degrees of relationship’. Prohibited degrees of relationship include, for example, child, parent, adoptive child or parent, former adoptive child or parent, grandparent, sibling or half-sibling.

4. What is the effect of registering a Civil Partnership?

Couples like Elton and David, who have entered into a Civil Partnership, will now be afforded the same rights and responsibilities as married couples. Any legislation that refers to married couples will also apply to civil partners, affecting, for example: pensions, inheritance and tax credits, to name but a few.

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5. What about Benefit payments?

Now that the Act is in force, the Inland Revenue will take the income position of the same-sex partner into account when assessing the level of Benefit payable, whether a Civil Partnership is in place or not. This includes tax credits and could mean that people find their payments are reduced.

There is also the possibility that people will have to pay money back to the Inland Revenue where overpayments have been made because they have not declared that they are co-habiting in a same-sex relationship.

6. Can Elton and David adopt?

Under the old law, Elton and David could adopt, although the application could be made by one party only. Now, the couple can adopt jointly.

7. Where one partner has their own child how does a non-parent fit into that child's life?

In a heterosexual relationship, married couples have Parental Responsibility. Parental Responsibility means 'the parental rights and duties' (The Children Act 1975). This could include, for example, making decisions about medical treatment for the child or where the child is to live.

Unmarried fathers have automatic Parental Responsibility if their name is on the birth certificate for a child born after 1st December 2003. If the child was born before this date - even if the father's name is on the birth certificate, or the father's name is not on the birth certificate after 1st December 2003 - then there is no automatic Parental Responsibility.

In a same-sex relationship, one party will not be the biological parent. They may however want to have Parental Responsibility, as the child is likely to be treated as a child of the family. If the couple has registered a Civil Partnership, then the following can be done allowing the partner to obtain Parental Responsibility:

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- An agreement lodged at Court between those who have Parental Responsibility already and the civil partner or,
- The civil partner making an application to the Court.

If the couple has not entered into Civil Partnership the only way the non-parent can obtain Parental Responsibility is by applying to the Court for a shared Residence Order. This is because Parental Responsibility exists where a person has a Residence Order in their favour.

8. What else do Elton and David need to think about?

Elton and David will need to revisit their Wills. This is because when the Civil Partnership was registered, any Will made by either of them prior to the Partnership became void, unless they made a Will in contemplation of Civil Partnership. Something the couple may also like to note for the future is that a Will also becomes void on dissolution of Civil Partnership.

The spousal inheritance tax exemption will apply to Elton and David, so that should Elton die, David will inherit without any inheritance tax being payable. If Elton has not made a Will the intestacy rules will apply in the same way as it does to spouses.

9. What if the relationship breaks down?

Couples in a Civil Partnership have to wait at least one year before dissolution of Partnership can be applied for, in the same way that married couples have to wait a year. Couples cannot register a new Partnership under the Act until dissolution of an existing Partnership.

If you wish to discuss the issues above further in relation to your particular circumstances please contact Rachael House on 01252-322451.

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