

“ Plain speaking legal advice ”

**The Civil Partnership Act
Taking Equality To The Extreme?**

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The implementation of the Civil Partnership Act 2004 ('the Act') on 5th December 2005 marked a milestone for same sex couples who wish to be recognised in law as a couple.

As a result of the Act, couples of the same sex can now register their relationship by way of a 'Civil Partnership'. The Government has emphasised that this is not a religious act and should not be confused with marriage. 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.

However, couples that 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. This is affecting many areas of the law including pensions, inheritance and tax credits, to name but a few.

To be able to enter into a Civil Partnership, certain criteria need to be fulfilled –

- Partners must be of the same sex.
- Partners cannot not be a close relations or an adoptive child or parent or a former adoptive child or parent.
- Both partners must have resided in England or Wales for at least 7 days before giving notice to a registration authority of the intention to proceed with the Civil Partnership.

But interestingly...

- Partners do not have to have been in a relationship for any minimum length of time.
- there is no requirement that partners live together.

There is of course no minimum length of time for a relationship to have been in existence between couples of the opposite sex before marriage takes place, neither is there a law dictating that couples intending to marry must live together.

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Consider the following scenarios –

Scenario 1

Mrs Jones is widowed and Mrs Cole is divorced. Both are retired, live near each other, are good friends, and have made Wills leaving their homes and possessions to each other on death. It is perfectly legal for them to enter into a Civil Partnership. But why bother?

The spousal inheritance tax exemption will apply to Mrs Jones and Mrs Cole, so that when Mrs Jones dies, Mrs Cole will inherit without any inheritance tax being payable. Being civil partners, this is a perfectly legitimate way of avoiding paying tax. If Mrs Jones had not made a Will the intestacy rules would apply in the same way as it does to spouses.

This set up may sound odd, but imagine a slightly different scenario – Mr Jones and Mrs Cole. They can get married, and on death benefit from the inheritance tax spousal exemption in the same way as the civil partners.

Scenario 1

Mr Hobbs and Miss Penn have been in a relationship for 10 years and have lived together for the past 5 years in a house owned in their joint names and worth over £800,000. They also have modest savings in a joint bank account. They do not wish to marry as they do not associate themselves with any particular religion. They do however want to formalise their relationship to become a recognized couple in the eyes of the law. They would like to enter into a Civil Partnership. But the Civil Partnership Act makes no provision for co-habiting opposite sex couples, and there is no other Act at present that offers similar protection.

Unfortunately Miss Penn dies. The house is held by way of a ‘Joint Tenancy’, which means that Miss Penn’s share of the house automatically passes to Mr Hobbs, as do the monies in the bank account. As there is no spousal exemption with regard to inheritance tax, Mr Hobbs has a large inheritance tax bill to pay. No way of avoiding Gordon Brown this time.

Unfair?

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Couples of the same sex have the opportunity to be afforded status as a married couple in the eyes of the law, but couples of the opposite sex do not, if they do not marry. If marriage is not something that the couple believes in, there is no alternative. However, currently the Inheritance (Provision for Family and Dependents) Act 1975 makes some provision for cohabitants; on death the survivor has an opportunity to make a claim for financial provision on the deceased's estate, should this be necessary. To be eligible to make a claim they must have lived together for 2 years immediately prior to death, as a couple. This is little comfort for those who want a range of laws in place for cohabitants.

One argument against establishing a range of laws for couples of the opposite sex is that to introduce laws would make a mockery of the sanctity of marriage. With the law in its current state, there certainly are legal benefits to marrying. But with 1 in 3 marriages ending in divorce today, one could be forgiven for thinking that people are marrying for the wrong reasons.

Now that civil partners have a place in law, Parliament has decided to review the issues surrounding cohabitation of couples of the opposite sex and its place within the English Legal System. Attention is being focused on financial hardship suffered by cohabitants, or their children, in the event of the relationship breaking down or on death. If this results in cohabitants being afforded protection in the eyes of the law, will this result in marriage being a thing of the past?

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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