

Introduction

The Civil Partnership Act 2004 allows a same sex couple to gain **legal recognition for their relationship** by creating a **civil partnership**.

Civil partnerships are therefore now **a feature of financial planning** within the UK. The first registrations of civil partners took place between 19th and 21st December 2005 depending on which part of the UK the couple lived. The **most famous of the first civil partnership registrations** was between Sir Elton John and David Furnish.

The government estimates that **between 11,000 and 22,000 people** will be in a civil partnership by 2010.

A registered civil partnership is designed to be very much **equivalent to a marriage** for same sex couples. It carries both **rights and responsibilities**. In broad terms, registered civil partnerships will be treated for legal and tax purposes as a traditional marriage. The Finance Act 2005 enables the necessary taxation legislation changes to be made.

Practical Issues

It is important to note that a civil partnership **must be registered** in order to fall within the new rules. A heterosexual couple living together in a so-called 'common-law' relationship do not benefit from the protections afforded to a married couple. In the same way, **a same sex couple will be treated no differently under the new law** unless their relationship is registered.

Such registration must be made **in the presence of a Civil Partnership Registrar** and will require two witnesses. As with a marriage, the intention to register a civil partnership must be announced, publicly, 15 days (England and Wales) prior to the registration.

Both parties to the partnership have to be **single and over age 18** (or 16 with appropriate consent), so that **previously married individuals will need to obtain a divorce**. This is an important point as many individuals will not have bothered to seek a divorce until now since no form of legally recognised relationship was previously available.

Civil partnerships **will be dissolvable in much the same way and with similar grounds, as divorce**. As with divorce, the civil partnership will only be capable of dissolution after one year.

The Civil Partnership Act 2004

Forming a civil partnership is designed to help same sex couples organise their lives together by **providing a number of important rights and responsibilities**. Provisions include:

-  **next of kin rights** for couples, such as in their dealings with hospitals
-  a duty to provide **reasonable maintenance** for a civil partner and any children of the family
-  civil partners to be assessed in the same way as spouses for **child support**
-  equitable treatment for the purposes of **life assurance**
-  **employment and pension** benefits
-  recognition under **intestacy rules**
-  access to fatal accidents **compensation**
-  protection from **domestic violence**
-  and recognition for **immigration and nationality** purposes

To refer to the full details of the Civil Partnership Act 2004 please refer to the government's website:

www.opsi.gov.uk/acts/acts2004/20040033.htm

or to a booklet from the Citizens' Advice Bureau:

www.adviceguide.org.uk/f_rights_of_same_sex_couples.pdf

Areas Affected

The civil partnership legislation **affects virtually every aspect of financial planning**.

Civil partners have been given rights, similar to those for a married couple, to assume **parental responsibility**, legal guardianship, adoption etc.

There are detailed provisions covering **UK nationals forming a civil partnership outside the UK** as well as overseas relationships that are to be treated as civil partnerships.

Civil partners have been given the same rights as married couples in respect of **social security**, child support and tax credits.

State pension schemes have been updated so that civil partners are treated in the same way as married spouses.

The Act also empowers the government to amend enactments relating to **pensions legislation**.

Civil Partnership in Other Countries

Denmark introduced the first civil partnership status in 1989. The following countries now have **some form of civil partnership registration**: Belgium, Canada (Quebec, Nova Scotia), Denmark, Finland, France, Germany, Iceland, Netherlands, New Zealand, Norway, Sweden, USA (Vermont, Connecticut). The rights and responsibilities attached to the different arrangements vary.

The legislation in the Netherlands and Belgium specifically allows 'gay marriage' and Spain is expected to do so shortly.

Is This a Gay Marriage?

The UK legislation **does not refer to a civil partnership as being a right of marriage** for gay and lesbian couples. Although there are many similarities with a marriage there are also some differences.

Unlike a marriage, **registration of a civil partnership can take place in private** (although the record of the partnership is an official public document kept by the General Registry Office in England and Wales (and its equivalents in Scotland and Northern Ireland). Furthermore, **marriage has religious connotations**, even if a ceremony is only civil. Marriages can be conducted by Church of England clergy without any civil preliminaries being required. **Civil partnerships are only conducted by registrars.**

It is generally expected that **the distinction from marriage will blur with time**. Some religious leaders had already been involved in 'blessings' for gay couples before the law allowing civil partnerships was introduced.

Wills and Intestacy

New civil partners need to be aware their registration as such **will automatically revoke any will** written under the law of England and Wales and Northern Ireland. This is not the case where such a will was made **in anticipation of forming the partnership**. Scottish wills are not revoked in this way.

Where a will ignores the surviving partner, **it is unlikely that registration will increase significantly the chances of such a will being challenged** under the Inheritance (Provision for Family and Dependents) legislation. This is simply because such a challenge **is already available to those in long term unregistered partnerships.**

All intestacy provisions relating to the protection of a spouse now apply equally to a registered civil partner.

Any same sex couple contemplating registering a civil partnership **should ensure that they review their wills**. This is particularly important where children are involved and/or the will reflects any inheritance tax planning.

Inheritance Tax

The **spouse exemption and gifts in consideration of marriage exemption** are effectively amended by the Civil Partnership Act to include civil partners and registration of civil partnership respectively.

Civil partners will therefore **be able to make inheritance tax exempt gifts**, during lifetime or on death, to their partners, on a par with the spouse exemption for married couples. Such gifts or bequests can be **of unlimited value if the receiving civil partner is UK domiciled** (if non-UK domiciled the exemption is capped at £55,000 where the donor is UK domiciled).

This exemption will enable civil partners to also take **full advantage of inheritance tax planning based around use of the nil rate band**. This includes using a discretionary will trust on first death with any residual amounts passing to the surviving partner.

This means that **some inheritance tax planning which has already taken place**, such as setting up single life policies in trust to meet first death inheritance tax liabilities, **will no longer be necessary.**

A civil partner would **also be able to benefit from assets that they have gifted outright to their partner**, without being caught under the gift with reservation of benefit provisions.

Civil partners have **unlimited insurable interest in each other** as do spouses. It is therefore **now possible to arrange life of another policies and joint life policies** within these relationships. This will be of particular importance where one of the partners has children who are intended to benefit on the second death.

All inheritance tax planning undertaken by same sex couples **will need to be reviewed** following registration of a civil partnership. This is because **many new opportunities are now available** to them via trusts (including will trusts) and insurance based plans.

Not all other countries will recognise a UK civil partnership as equivalent to a marriage for either tax or intestacy purposes. This is true even if that country has equivalent legislation. In view of this care must be taken where overseas property (as well as non-domiciled partners) is involved.

Capital Gains Tax

Civil partners **can transfer assets between themselves** on the usual 'no gain/no loss' basis which applies to spouses so that there is an effective capital gains tax exemption. The exemption will also apply **in the tax year in which permanent separation** takes place.

This will **also assist with inheritance tax and income tax planning** since, as is the case with married couples, the transfer of assets to equalise estates or income can be completed without a tax charge.

It is important to be aware that registration of civil partnership will, potentially, **mean the loss of the capital gains tax exemption on the home** of one of the partners.

As is usual with married couples, election of one principal residence should be made within two years of registration. This **would become an issue for couples who intend to retain separate homes** after registering their partnership.

Income Tax

Civil partners will be **eligible for the married couple's allowance** provided that at least one partner was born before 6 April 1935.

A person will be **a connected person of their civil partner** and the partner's close relatives for income tax purposes. This could, for example, **have implications for certain businesses**. Where, for example, a business is owned by a civil partner, who is the main fee earner, and dividends are paid to the other partner (or another connected person), as a shareholder in the company.



Such structures have come under attack for married couples where the non-main fee earner **receives higher dividends than are considered justifiable** by their contribution to the business. The main fee earner, who inevitably pays tax at a higher rate than their partner, **may be taxed on the excessive amount of dividends**.

The Married Women's Property Act

The proceeds of life assurance policies written under trust in accordance with the Married Women's Property Act (MWPA) 1882 **fall outside of the settlor's estate for inheritance tax** purposes.

Such proceeds are also **normally protected from creditors** in the event of the settlor's bankruptcy. The Civil Partnership Act extends the scope of this section to include civil partners.

For a policy to be eligible under the MWPA it must be:

-  a policy of assurance on the **civil partner's own life**, and
-  for **the benefit of his or her civil partner**, or of his or her children, or of his or her civil partner and children, or of any of them.

Overseas Issues

As we saw earlier, in introducing the civil partnership legislation **the UK is not breaking new ground**. Nine other EU countries already have broadly similar legislation as do a number of American and Australian States.

Some overseas partnerships will be recognised by the UK and some other countries will recognise UK registered civil partnerships. Couples should **check the validity of their partnership on every change of residence** (ie where a change of country is involved) and **may need to re-register** in order to continue to receive legal recognition for their partnership.

Company Tax Issues

As civil partners are treated as connected persons, companies individually owned by each partner could, subject to certain criteria, **become associated companies and be taxed accordingly**. This could have the effect of increasing the rate of corporation tax payable by a company where the combined profit is taxable at a higher rate than would apply to that company in isolation.

A company **could become a 'close' company** if, for example, two directors formed a civil partnership and between them they owned over 50% of the company's share capital.

Risk Factors

These notes are intended as a guide only. The information given in this Fact Sheet is based on our understanding of current legislation and practice.

Whilst we believe our interpretation of current law and practice to be correct, we cannot be responsible for the effects of any future legislation or any change in interpretation or treatment.

In particular you are warned that levels of tax and tax reliefs are subject to alteration and, in any case, the value of such reliefs and benefits may depend on an individual's circumstances.

You should not take action based on these notes without talking through your personal situation with an independent financial adviser or your accountant.

For Further Info

If you have a particular query concerning civil partnerships please ask your usual Arch adviser or contact us via one of the following:

Tel: **01483 204600**
Email: **enquiries@arch-fp.co.uk**
Online: **www.arch-fp.co.uk**

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