

## **A Synopsis of The Civil Partnership Act 2004 – A Marriage in All But Name**

by Deborah Levy

As from 5 December this year, the Civil Partnership Act 2004 (“the Act”) will permit two people of the same sex to register as Civil Partners.

Whilst the change in the law relates to family matters, it is also a civil rights or equality measure.

Prior to the passing of the Act, there were a number of injustices which were rectified (where possible) by Case Law.

For example in the case of *Fitzpatrick v Stirling Housing Association Limited* the Court decided that there was no distinction between a homosexual and heterosexual couple and that the statutory tenancy should pass to the survivor on death.

The Act creates Civil Partnerships for same sex couples. It does not permit marriage between people of the same sex which is permitted in Holland, Spain and Belgium.

The British Government was not ready to put at risk the institution of marriage. It has therefore permitted same sex couples to register their relationship if they choose to. An extension of the provisions under the Civil Partnership Act to non gay relationships is expected in the future.

There are however very few differences between the consequences of Civil Partnership and Marriage.

A Civil Partnership is formed when two people have signed the Civil Partnership document in the presence of each other. The place at which the two people register the document must not be religious premises.

A “Civil Partnership” is defined as a relationship between two people of the same sex, having been formed by registration in England and Wales or, a relationship which has been formed overseas but is afforded recognition in England and Wales because of the Act.

A Civil Partnership can be ended only by death, dissolution or annulment and provisions for termination are included in the Act.

Certain rights and responsibilities flow from forming a Civil Partnership.

In order to be eligible to register a Civil Partnership, the parties must not be:-

1. of the opposite sex;
2. already a Civil Partner or already married;

3. under 16; or
4. within prohibited degrees of relationship.

People within prohibited degrees of relationship are not permitted to register as Civil Partners. This reflects the doctrine of consanguinity in marriage. Two people are in prohibited degrees of relationship if one falls in the list below in relation to the other:-

1. Adoptive child;
2. adoptive parent;
3. child;
4. former adoptive child;
5. former adoptive parent;
6. grandparent;
7. grandchild;
8. parent;
9. parent's sibling;
10. sibling; or
11. sibling's child.

“Sibling” means brother or sister or half brother or sister.

### **Procedure**

In order to register a Civil Partnership, there are 4 distinct procedures one of which must be followed:-

1. Standard procedure.
2. Procedure for housebound persons.
3. Procedure for detained persons.
4. Special procedure (where one person is terminally ill).

Registration must take place in England and Wales. The place used must be open to anyone wishing to attend the registration and must be agreed by the registration authority.

### **The Standard Procedure**

Each of the would be Civil Partners must give notice of the proposed partnership to a registration authority. The partners can choose in which registration authority they wish to register their partnership.

The registration authority may require a proposed civil partner to provide evidence of name, surname, age, any former civil partnerships or marriage and proof of their termination, nationality and residence in England and Wales for the 7 days preceding the giving of the notice of the proposed Civil Partnership.

As soon as the prescribed waiting period is over (the waiting period being the period of 15 days beginning with the day the notice was recorded), the

Registrar is under a duty, at the request of one or both of the proposed civil partners, to issue a Civil Partnership Schedule, provided there has been no objection recorded and no lawful impediment to the formation of the Civil Partnership.

### **Termination of a Civil Partnership**

A Civil Partnership may be terminated on the grounds of nullity, or terminated by either party bringing an action for dissolution or legal separation or apply for a presumption of death order.

### **Dissolution**

As with divorce, no Application may be made for a Dissolution Order before a year has elapsed from the date of the formation of a civil partnership.

An Application for a Dissolution Order may be made to Court by either party to a Civil Partnership, on the ground that the Partnership has irretrievably broken down.

This ground may be proved only by the existence of one of four facts, and the Court may make enquiries into any fact alleged by the Applicant and the Respondent.

The four facts are:-

1. Behaviour such that the Applicant cannot reasonably be expected to live with the Respondent.
2. The parties have lived apart for a period of 2 years and the Respondent consents to the dissolution.
3. The parties have lived apart for 5 years; or
4. Desertion.

### **Nullity**

A Civil Partnership will be void if the parties to the Civil Partnership were not eligible to register as Civil Partners, or if there was a procedural irregularity of which both parties were aware at the time of registration.

A Civil Partnership will be voidable as opposed to void if:-

1. Either of the parties did not validly consent to its formation (e.g. as a result of duress, unsoundness of mind or some other reason).
2. At the time of formation of the Civil Partnership either party was suffering from a mental disorder of such a kind or to such an extent to be unfit for Civil Partnership.
3. At the time of the formation, one of the parties was pregnant by another person other than the other party to the partnership.
4. After the time of formation, an interim gender recognition certificate has been issued under the Gender Recognition Act 2004.

5. If one of the parties is a person whose gender at the time of the formation of the Civil Partnership had become the acquired gender under the Gender Recognition Act 2004.

The Courts of England and Wales will have jurisdiction to hear proceedings for dissolution, nullity or a Separation Order.

If in any proceedings for a dissolution, nullity or Separation Order it appears to the Court that there are children of the family in respect of which the Court has been or is likely to be asked to exercise any of its powers under the Children Act 1989, the Court must take into account the circumstances of the case and consider, whether it is in a position to exercise its power without giving further consideration to the case and if there are any exceptional circumstances which make it desirable in the interest of the child that the Court should give a direction. It may be that the Order is not to be made final or, in the case of the Separation Order is not to be made until the Court orders otherwise.

### **What are the Financial Consequences of Dissolution, Nullity or Separation?**

Section 72 of the Act makes provision for financial relief for Civil Partners.

These provisions correspond to those made for financial relief in connection with divorce pursuant to the Matrimonial Causes Act 1973. The purpose of the Civil Partnership regime is to extend all the rights and responsibilities applicable to a married couple in relation to finances to same sex couples who choose to register a civil partnership.

Those forms of relief are:-

1. Periodical payments to a civil partner or person for the benefit of a child of the family or to a child of the family.
2. The payment of a lump sum or sums to a civil partner or to any person for the benefit of a child of the family or to a child of the family.
3. Property adjustment.
4. Variation of settlement.
5. Sale of property and;
6. Pension sharing.

When exercising its powers in relation to Financial Orders made on the termination of a Civil Partnership, the Court must consider a number of factors and these factors are practically identical to those factors which are taken into account under the Matrimonial Causes Act.

It is very likely that Case Law followed in matrimonial matters will also be followed in the dissolution of a Civil Partnership.

### **What are the Financial Consequences of Termination?**

## **Property and Financial Arrangements**

Outside any proceedings for termination of the Civil Partnership, the Court may make an Order in relation to property where a civil partner has contributed to the improvement of real or personal property and where either or both of the Civil Partners has an interest in the property or proceeds of sale.

The contribution has to have been of a substantial nature and the contributing partner will be treated as having acquired by virtue of the contribution of a share (or a larger share as the case may be) in the property in such shares as may seem, in all the circumstances, just. This may however be overridden by any agreement, either express or implied to the Civil Partners to the contrary.

Where there is a dispute between Civil Partners about the title or possession of property, either party may apply to Court for determination of their application and the Court may make such Order as it deems fit for the property. This could include an Order for sale.

The Court will be able to make an Order even where the Applicant does not have a property in his or her possession or under his or her control or where the Applicant does not know where the property is. This will be particularly useful for example where the Respondent's Civil Partner has sold a property but the Applicant does not know the whereabouts of the sale proceeds. Provided the Civil Partner has a beneficial interest in the sale proceeds, or a share of them, it does not matter how that beneficial interest was acquired.

Where the Respondent has disposed of property and has money or other property in which the Applicant has a beneficial interest and has not made an appropriate payment or disposition to the Applicant, the Court may make an Order to redress the balance.

## **Children and Miscellaneous Areas**

The Act makes provision for the acquisition of Parental Responsibility for the children of civil partners akin to the mechanism used for the acquisition of Parental Responsibility by step-parents after marriage.

The civil partner will be able to acquire Parental Responsibility either by agreement if he or she is the sole person having Parental Responsibility of the child or with the agreement of both parents. In the absence of agreement, the stepparent could acquire Parental Responsibility by Order of the Court.

The Act also provides that a Civil Partner is entitled to apply for a Residence or Contact Order in relation to the Civil Partnership to whom the child is a child of the family, without having to seek the Court's permission.

## **Conclusion**

The state of marriage affects almost every aspect of life and of law. Any difference between marriage and Civil Partnership will have to be justified objectively. The whole purpose of the Act is to ensure equality between married heterosexual couples and partners who have registered their partnership under the Act.

The Act covers other areas such as occupation of the family home, injunctions, adoption, child abduction, death in service benefits, a survivor's pension and the revocation of Wills.

The policy of the Act is that Civil Partnership is treated equally to the rights spouses enjoy wherever possible.

In "The Times" of Monday 27 June 2005 the headlines read:-

"Couples who live together to get more legal rights".

Given the sweeping changes which the Civil Partnership Act is about to bring about, it will not be too long before some, if not all of these provisions will affect heterosexual couples. A draft bill is likely to be in existence by the Summer of 2007.

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