



Civil Partnership

The Civil Partnership Act came into force in December 2005 and provides same sex partners, who register their relationship, with many of the rights enjoyed by married couples.

To register a partnership each party has to be unmarried, not be in an existing registered partnership and be outside of the "prohibited degrees of relationship". Obviously they must be of the same sex and aged 18 or over, or over 16 with parental consent.

The Act brought in a number of changes to Social Security Law, meaning that cohabiting same sex partners may be treated the same as cohabiting partners of the opposite sex and there were some changes to adoption and to the acquiring of parental responsibility in relation to children of one of the partners.

One very beneficial consequence of registration of the partnership is that a registered partner will be treated in the same way as a spouse for the purpose of the rules that operate when someone dies without having left a Will. Potentially difficult issues can arise over recognition of foreign registrations and dissolutions here.

Unregistered same sex partners have always had the same rights to claim against their partner's estate on death as opposite sex cohabiters. Even more importantly gifts to a surviving registered partner are as free from Inheritance Tax as gifts to a spouse.

Couples should beware that registration operates in the same way as marriage to revoke any existing Wills that have been made, and Wills can be made in contemplation of registration in the same way as they can in contemplation of marriage.

One downside on the tax front is that same sex couples who registered lost the ability to each have Principal Private Residence relief for Capital Gains Tax purposes on separate houses.

There are detailed provisions as to rights on termination. Difficult issues can again arise over recognition of foreign registrations and dissolutions.

In the same way as with divorce no termination can take place within 12 months of registration, and the grounds for termination will be the same as for divorce, except there is no provision equivalent to adultery. Hence unreasonable behaviour is the only "immediate" ground.

When you take dissolution proceedings a Court will have available to it the full menu of Orders for maintenance, lump sum payments, Property Adjustment Orders and Pension Sharing Orders as are available following a divorce. As on divorce the Court is under a duty to try and achieve a clean break between the parties and it seems likely that most of the divorce case law and principles that have evolved will apply in future same sex cases.

Pre-nuptial agreements may be very important.

As at the date of this article (August 2008) there are no reported financial cases however.

Civil partners or former civil partners can apply as of right for Contact and Residence Orders where a child has been treated by them as a child of the family.

One thing that should be considered before registration where there is a substantial imbalance of assets is whether it would be appropriate for one partner to seek signature of a pre-registration agreement along the same lines as a pre-nuptial agreement to protect their position on separation.



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