

Civil Partnerships

What is a civil partnership?

It is a same-sex relationship registered in line with legal requirements, giving recognition and legal status to the relationship. A civil partnership is not identical to a marriage but it gives same-sex couples (in the UK) the opportunity to formalise their relationship and acquire many legal rights and benefits previously enjoyed by married couples only.

My partner and I would like to register. Can we do this now?

Yes. Same-sex couples have been able to give notice of their intention to register as civil partners from 5th December 2005. The law requires a 15-day waiting period, meaning that the first civil partnerships were registered on 21st December 2005.

What are the legal consequences of forming a civil partnership?

Civil partners enjoy many rights previously not available to them, making civil partnership and marriage very similar. For example:

- ▶ It is essential to review wills shortly before or after registration as an existing will is revoked unless made with registration in mind.
- ▶ If a civil partner dies intestate (without leaving a will) the surviving civil partner has some entitlement to share in the estate, but so will any surviving children or next of kin of the deceased; this uncertainty can be avoided by making a new will.
- ▶ Civil partners are likely to be assessed as a couple for social security purposes.
- ▶ Civil partners are generally treated in the same way as married couples for tax purposes: there is no inheritance tax (IHT) payable on gifts in wills to surviving civil partners, and no capital gains tax (CGT) on a transfer of property between civil partners (although as a couple they will only be permitted one main residence for CGT purposes); with careful planning it may be possible to reduce IHT and CGT.
- ▶ Civil partners are entitled to similar pension benefits payable to a spouse upon death of a pension holder.
- ▶ A civil partner is entitled to live in the home shared with his or her partner, even if the partner owns the home outright, and this entitlement may be registered at the Land Registry (which is useful if problems develop in the relationship).

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The most fundamental consequence of forming a civil partnership may be the right to make financial claims against your partner if the relationship breaks down.

Can I protect my financial position before entering into a civil partnership?

Yes. If you want to register as civil partners but want to limit the financial claims your partner could pursue if the relationship breaks down, you can enter into a pre-registration agreement. You may have good reasons for doing this, such as having children (from a previous relationship) whose financial position you want to protect, or substantial assets which you wish to preserve. A pre-registration agreement is similar to a pre-nuptial agreement signed before a marriage, but it is more likely to be upheld by the court because civil partnership, unlike marriage, is not necessarily supposed to be a commitment to a lifelong union. It is necessary to follow good practice to ensure the pre-registration agreement is upheld. This means:

- ▶ Planning in advance.
- ▶ Each partner taking independent legal advice.
- ▶ Full disclosure of each partner's financial circumstances.
- ▶ Avoiding pressure or influence on either partner.
- ▶ Avoiding obviously unfair terms.

If the relationship breaks down, the court will still have wide powers to make financial orders between the partners, and may overturn the terms of the pre-registration agreement if there has been a significant change in circumstances or a significant injustice would be caused by upholding the agreement. It is recommended that the terms of the agreement are reviewed as time goes by.

And what if it does all go wrong?

A civil partner may apply to the court for dissolution of the partnership provided at least one year has passed since the partnership was registered. To succeed, it will be necessary to show that the civil partnership has irretrievably broken down by reference to the same legal grounds available for divorce, with the exception of adultery, briefly:

- ▶ The other partner's behaviour.
- ▶ Two years' separation with consent to the dissolution.
- ▶ Five years' separation.
- ▶ The other partner's desertion for at least two years.



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And what about the money?

If a civil partnership is dissolved, the court has the same powers to deal with finances and property as it has with a couple who have divorced. For example, the court is able to make orders for the transfer of property, the payment of lump sums, maintenance and pension sharing. The court will take the same approach as it takes in divorce proceedings to reach its decision - it has to make an order that is fair and reasonable in all the circumstances of the case. This is a very wide discretion and, if you find yourself in this predicament, there is no substitute for expert legal advice.

I have children from a previous relationship. Will my civil partner have rights in relation to them?

A civil partner of a parent will be in the same position as a step-parent. The only automatic right this gives is the right to apply for a 'Section 8 Order' under the Children Act 1989 without permission from the court. However, a civil partner may also acquire parental responsibility if both natural parents agree or if the court orders it, and same-sex couples (not just civil partners) are able to adopt a child jointly after 30th December 2005. These are changes made by the Adoption and Children Act 2002.

Please note: *The material contained in this fact sheet is provided for general and summary purposes only and does not constitute legal advice. Before acting on it, appropriate legal advice should be taken.*

