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Civil Partnerships

A Guide

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A GUIDE TO CIVIL PARTNERSHIPS

The first civil partnership under the Civil Partnership Act 2004 took place in December 2005. Since then, more than 50,000 couples have formed civil partnerships, which give them broadly the same rights as married couples.

According to the latest figures from the Office for National Statistics, published in July 2012, by the end of 2011 there had been 53,417 civil partnerships – far more than original government estimates, which had suggested an upper figure of 22,000 people in civil partnerships by 2010.

In 2011 alone, there were almost 7,000 civil partnerships. In the same year, almost 700 civil partnerships ended in dissolution, the equivalent of divorce.

This guide provides an overview of issues to consider in entering into a civil partnership; pre-partnership and post-partnership agreements and the dissolution of a civil partnership.

It is for general guidance only and expert legal advice is an essential step for anyone considering entering into a civil partnership-related agreement or seeking to end a civil partnership.

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ENTERING A CIVIL PARTNERSHIP

A civil partnership is a legal relationship formed by two single people of the same sex. Both must be aged at least 16 and anyone under the age of 18 will require written consent from a parent or guardian.

A civil partnership can take place in any register office in England or Wales or at any venue approved to hold civil partnership ceremonies and civil weddings.

The process starts by both partners giving notice in person of their intention to register a civil partnership at a local register office, in the area where they have lived for at least seven days. Details of the date and place where the civil partnership is to be registered will be required as part of giving notice.

Also required will be documentary evidence of the partners' names, address or addresses, ages, nationality and whether they have been married or in a civil partnership before. Further documentary evidence will be necessary if either partner is subject to immigration control.

Notices are publicised by the registrar for 15 days, after which the civil partnership can be registered, provided there have been no objections and there are no legal reasons to prevent this. The register office will supply a document called a civil partnership schedule, which is needed in order to register the civil partnership.

If the civil partnership is not registered within the next 12 months, the process outlined above has to start again.

The civil partnership will be formed once the couple have signed the civil partnership document before a registrar and two witnesses. The signing of the document can be incorporated into a civil partnership ceremony, although these ceremonies cannot have any religious content. However, it may be possible to arrange a separate religious blessing ceremony after at a different venue, if the couple is able to arrange this with the celebrant.

Some same-sex couples may have already secured legal recognition of their relationship outside the UK. A same-sex relationship that been recognised in this way will, in certain circumstances, be treated as a civil partnership under the Civil Partnership Act 2004.

Each partner in the civil partnership can keep their own name or one may change their surname to their partner's. Alternatively, the partners may choose to merge their names to create a double-barrelled surname. Any name changes will need to be made through a deed poll.

Before entering a civil partnership – or during the relationship – couples may wish to set out arrangements about finances and property by putting in place a pre-partnership or post-partnership agreement. The next section of this guide looks at these types of agreement in more detail.

Making a Will is also important, as there is a common misconception that under the rules of intestacy, a civil partner – like a husband or wife – would inherit everything if their partner died without making a Will. This is not the case.

In a civil partnership, as in a marriage, the surviving partner is the first person entitled to inherit their late partner's estate but will not necessarily inherit the whole estate.

For more information on the benefits of making a Will, and what is involved, please see our Guide to Making a Will.

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PRE-PARTNERSHIP AND POST-PARTNERSHIP AGREEMENTS

A pre-partnership agreement in civil partnerships is the same as a pre-nuptial agreement in marriages. Both are an agreement between the two partners, prior to their formalising their relationship, setting out their financial arrangements and protecting their property if they end their civil partnership or marriage.

Pre-partnership (and pre-nuptial agreements) in England and Wales are not binding on the courts but were given legal weight by the Supreme Court ruling in the case of *Radmacher v Granatino* in October 2010.

Although that case involved a multi-millionairess, such agreements are not only for the very wealthy. People tend to form civil partnerships later in life. According the Office for National Statistics' latest figures, published in 2012, the average age for men entering a civil partnership was just over 40 and for women just over 38. At this time of life the parties tend to have more individual assets that they may wish to keep outside the partnership "pot" that could be divided between them if the relationship breaks down.

Those entering a civil partnership after an earlier civil partnership or marriage are also likely to want to protect any settlement arising from that relationship. If there are children from a previous civil partnership, marriage or relationship, the children's parent may wish to make sure that any money or property they have when they enter their new civil partnership is preserved for those children, rather than going to their new partner.

Where a couple has entered a civil partnership, whether they have a pre-partnership agreement or not, they can also put in place a post-nuptial agreement during the course of the partnership to set out financial and other arrangements in the event of a dissolution. As circumstances change during the civil partnership, whether through the birth of children or inheriting wealth, it is advisable to keep any agreement up to date.

In the *Radmacher v Granatino* case, Lord Phillips, President of the Supreme Court, said that the court should give effect to a pre-nuptial (or pre-partnership) agreement that had been freely entered into by the partners, with a full appreciation of the implications, unless in the prevailing circumstances it would not be fair to hold them to their agreement.

Other key issues affecting pre and post-nuptial and partnership agreements include whether either partner was pressurised into signing and whether all relevant financial circumstances were disclosed.

The decision to put in place a pre or post-partnership agreement is one that requires careful consideration and this approach will not be every couple's choice. In making the decision, some points to bear in mind are:

- allow plenty of time for the drawing up of an agreement – the recommended minimum is 21 days before a civil partnership ceremony.
- both partners should take independent legal advice (and, if necessary, accountancy advice) before entering into a pre or post-partnership agreement. This protects both partners against any future claim that they were pressurised into such an agreement.
- both parties must be prepared to fully disclose all their assets and financial circumstances.
- the agreement should make it clear what happens to the assets belonging to each partner before the civil partnership, as well as those accumulated during the relationship.
- it should cover what happens to the couple's home, in terms of who lives there and division of the proceeds if it has to be sold. It should also contain review clauses, for example, on the birth of a child or after a specified period of time.

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DISSOLUTION OF A CIVIL PARTNERSHIP

A legal dissolution (the equivalent of a divorce) is required to bring a civil partnership to a legal end under the Civil Partnership Act 2004 but you cannot apply for a dissolution until your civil partnership has lasted for at least a year.

Dissolution is a two-stage process. Providing both parties consent, the court will grant a conditional order and later make a final order.

To begin court proceedings known as an application for dissolution order, either partner can apply to the court for the order.

The application must be made on the grounds that the civil partnership has broken down irretrievably. This has to be supported by one of the following four facts:

- unreasonable behaviour
- desertion for a period of two years or more
- two years' separation, with the partner's consent
- five years' separation, without the partner's consent.

Unlike divorce, because of the strict legal definition of the term adultery, adultery is not a fact that can be relied upon for the purposes of dissolution of civil partnerships. If one party is unfaithful during the relationship, it will be open to the other party to rely on the fact of unreasonable behaviour.

A judge will consider the dissolution application and if the judge agrees that the parties are entitled to a dissolution order, the court will set a date for the pronouncement of the conditional order.

The final order is applied for by the applicant six weeks after the date of the pronouncement of the conditional order. The final order is the last stage of the legal process that ends the civil partnership. Once this has been granted, the civil partnership is legally brought to an end. It is only at this point the parties are free to enter into another civil partnership.

The court will only grant the final order when the judge agrees that all arrangements for any children are satisfactory. Any financial order will also only come into force after the decree has been made final.

The dissolution can take as little as four to six months from beginning to end, if both parties are agreed, make arrangements quickly and court processes are efficient.

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FINANCIAL RELIEF

The financial proceedings are separate to the dissolution proceedings. To start these proceedings, a document known as Form A must first be filed at court.

The court will then draw up directions and both parties have to disclose their financial circumstances to the other by way of a Form E. At any time the parties can set about seeking a financial settlement without the court's involvement.

If no financial settlement can be reached between the parties, the matter will proceed to the First Directions Appointment (FDA).

This hearing is to ensure that the parties have disclosed their full financial position, supported by documentation. At this hearing, the judge will give directions as to any other documents that need to be filed, such as valuations of properties.

If the parties have made full disclosure, then this hearing may be used as a Financial Dispute Resolution Hearing (FDR). If not, then the judge lists an FDR for a future date. An FDR is a without prejudice hearing where both parties and their representatives attend court to try and achieve a settlement, with the assistance of a judge.

No financial order can be made by the court at this point without the consent of both parties.

If the finances still cannot be resolved, then the financial application will be heard at a final hearing, when the court's order will be imposed and be binding upon the parties.

The court can make a number of orders relating to financial matters, which may include maintenance for one party and/or children, a lump sum for one party and/or children, a property adjustment or transfer of property order (such as selling the house or transferring it into one person's name) or allocating one party a share of the other person's pension fund.

Either party, regardless of who initiated the dissolution proceedings, can claim financial relief.

Such a claim can be made at any time and occasionally many years after the dissolution.

If you need help deciding whether you can apply for financial relief, it would be wise to seek legal advice. Even if you think you can reach an agreement with your former partner, talking to a solicitor will make sure your interests are protected.

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CHILDREN

When a relationship ends in dissolution, the welfare of any children involved is paramount, as is reflected in the Children Act 1989.

During what will be a difficult and stressful time, most parents would ideally wish to put their differences aside to agree the arrangements for their children.

The courts are unlikely to interfere in a voluntary arrangement, as the law considers that these are more likely to succeed than those imposed on the parties. If you and your former partner cannot agree about arrangements for your children, the involvement of a solicitor experienced in these matters can prove effective.

A solicitor can also assist if it does become necessary to apply to court for a specific order. The following are the most common:

Residence order: this involves asking the court to decide upon the arrangements for where the child(ren) will live. The court can make a residence order in favour of:

- one parent or partner. This means that the child(ren) must live with a particular parent or partner
- both parents. A shared residence order can be made for both parents, even if they do not live together. The order will usually specify how much time the child will live with each parent

Contact order: this sets out how much contact an absent parent can have, including writing to the child or talking to the child over the phone or via Skype.

Orders can also be sought to prevent certain things from happening **(a prohibited steps order)** or to deal with issues including education, medical attention, religion or change of name **(specific issue order)**.

Orders can also be made to allow contact between the child and other relatives, such as grandparents. Any proceedings involving children are likely to be stressful and emotionally demanding, but your solicitor can help you by providing practical, professional advice that is designed to help you reach a solution that is in your children's best interests.

Even if you feel that you have no alternative but to go to court, the experience of a family solicitor may help to settle the problem before it goes that far.

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SEPARATION

Sometimes couples wish to separate without dissolving their civil partnership, for example where one or both parties are not yet ready to finally end the relationship, where the marriage or civil partnership has lasted less than a year or there are no grounds for dissolution.

Separation usually involves living apart, although you can live in the same property and still be separated if you no longer sleep and eat together or do any domestic chores, such as ironing or washing, for each other. If you decide to separate, you can:

1. live separately and apart without any agreement relating to children, money, property or other issues.

2. live separately and apart, putting in place an informal agreement covering issues such as financial arrangements, property and arrangements for children, which may not be legally binding.

3. sign a legally binding document setting out the terms of the separation, called a Deed of Separation, which a solicitor should prepare.

4. put in place a separation order. This is a court order and is virtually the same as a dissolution of a civil partnership, but the partners cannot marry again or enter another civil partnership nor obtain a final financial order dismissing all claims against each other (a “clean break”). If the partners decide at a later date that they want to dissolve their civil partnership, they will still have to go through the formal process.

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WORKING WITH YOUR SOLICITOR

While seeking legal advice may be a new experience for you, at what is a potentially difficult time, obtaining such advice will be a wise investment saving you time, money and anxiety.

Whether you are dissolving a civil partnership or separating, your solicitor's job is to look after your best interests, and those of any children involved, giving you practical, professional advice that is focused on what is best for you and your circumstances.

To find out more about how we can help you, please contact us:

Alison Green

Alison Green heads the Family Law Team at Mackrell Turner Garrett's London Office. She is a specialist family law practitioner with over 20 years experience in all aspects of family law and in particular international issues.

As a member of Resolution, she is committed to resolving issues, where appropriate, outside court and always with the issue of costs firmly in mind.

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Jennifer Herbert

Jennifer Herbert is an assistant solicitor at Mackrell Turner Garrett and a member of Resolution. She specialises in the relationship breakdown aspect of family law and in particular, the validity of a particular union and how that union can legally be brought to an amicable conclusion. She also advises on the consequences of relationship breakdown as far as children of the parties are concerned.

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