



CIVIL PARTNERSHIP=GAY MARRIAGE?

Marriage is “the voluntary union for life of one man to one woman to the exclusion of all others” *Hyde v Hyde and Woodmansee (1866)*

“Marriage requires the participation of two persons, one a man, the other a woman”
Rayden on Divorce 17th Edn

Are such definitions relevant today when the Civil Partnership Act comes into force?

In December 2005 the Civil Partnership Act 2004 (the “Act”) is likely to come into force. It creates a new legal status for same sex couples and is arguably one of the most significant pieces of family legislation in recent years. Civil partners will acquire a raft of new rights and responsibilities which, subject to some key differences will place them on the same legal footing as married couples. The Act adopts a model based closely on marriage. It is true to say that the model is closer to that of marriage than the registered partnership models in other EU states, whilst falling short of actual same sex marriages as is permitted in e.g. Netherlands and Belgium.

Same-sex couples can be in long term stable relationships sometimes for their whole lives, but until recently had no pension rights, often had their homes threatened or lost to inheritance tax and had no status as next of kin in the event of the death of one partner.

How are civil partnerships formed?

So how do same sex couples register their partnerships? Can they go into a church or other religious establishment and effectively “get married?” The answer is no. The registration of a civil partnership must take place in England and Wales and may not be in religious premises. “Religious premises” is defined as places that are used solely or mainly for religious purposes. Civil partnerships will be formed when two people (not of the opposite sex, not already a civil partner or married, not under 16 and not within prohibited degrees of relationship) have signed a “civil partnership document” in the presence of each other, the registrar and two witnesses. The witnesses and the registrar must then sign the “civil partnership document”. Civil partnerships will be formed without the exchange of vows. These formalities will be carried out at a registry office or any other premises that are licensed for that purpose.

How are civil partnerships ended?

The simple answer is that they are ended in a very similar manner to the ending of a marriage. Instead of divorce civil partnerships are dissolved and as with marriage, civil partnerships cannot be dissolved within their first year. Again, as with divorce

the sole ground for dissolution is that the partnership has irretrievably broken down. As evidence that the civil partnership has irretrievably broken down the applicant must satisfy the court of one or more of the four facts as set out in the Act. These are in essence the same as the divorce facts; unreasonable behaviour, 2 years separation with consent, 5 years separation and 2 years desertion. However, missing from this list is adultery. This is because adultery as defined in Rayden And Jackson on divorce and Family Matters (17 edn) requires “at least partial penetration of the female by the male for the act of adultery to be proved.”

Financial provision on dissolution

The Act makes provision for financial relief for civil partners generally. The Act makes it clear that Schedule 5, which contains the financial provisions “corresponds to provision made for financial relief in connection with marriages by the Matrimonial Causes Act 1973.” This is a clear indication that the purpose of the civil partnership regime is to extend the rights and responsibilities in marriage as regards financial provision to same sex couples who choose to register their partnerships.

Available orders, as in divorces deal with maintenance, lump sums, property adjustment, sale of property and pension sharing.

Children & Adoption

At present a non birth parent has to apply to court for permission to make an application for contact and residence in relation to a child. The Act now provides that any civil partner in a civil partnership is entitled to apply for such orders without having to seek the prior permission of the court.

Formally a joint application for an adoption order could only be made by a married couple. However, the Adoption and Children Act 2002 (“The 2002 Act”) provided that an adoption application could be made by a “couple”. This is defined as “two people (whether of different sexes or the same sex) living together as partners in an enduring family relationship”. The Act has amended the 2002 Act so that it is explicitly stated that this includes two people who are civil partners of one another.

Tax

Civil partners will be taxed like married couples. For example, the inter spousal inheritance tax exemption and exemptions for lifetime gifts and transfers will apply to civil partners. In respect of capital gains tax it is envisaged that civil partners will be restricted to a single principal private residence exemption (as for married couples), but that the no gain/no loss rule on transfers between married couples during the fiscal year of separation will be extended to civil partners.

Immigration

It is envisaged that the Immigration Rules will be amended to treat civil partners in the same way as married couples. Also, civil partners will have the same rights as spouses to acquire or resume British nationality by registration or naturalisation and to renounce British nationality.

Death

If a civil partner dies without a valid will he/she will have similar rights on intestacy as a surviving spouse. For example, if the deceased leaves no children the civil partner will be entitled to receive the personal possessions, £200,000 and half the residuary, the other half of the residue going to other relatives.

Conclusion

The Act no doubt allows same sex couples to publicly express their commitment to each other and arguable remedies a deficiency in the law which was seen by many as discriminatory. According to the Government the Act is an equality measure, not to introduce same sex marriage, because of the religious connotations of holy matrimony, but to introduce a twenty first century approach, a new legal institution, equivalent and parallel to civil marriage.

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