

Carter Lemon Camerons LLP

Solicitors



Family Department

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 when entering into a civil partnership, pre-partnership and post-partnership agreements, and the dissolution of a civil partnership.

This guide is to be used as an outline only and expert legal advice is an essential step for anyone considering entering into a civil partnership, any related agreement or seeking to end a civil partnership.

Entering into 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 that notice.

Documentary evidence will also be required to confirm the partners' names, addresses, ages, nationality and whether they have been married or have entered a civil partnership before. Further documentary evidence will be necessary if either partner is subject to any immigration controls.

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 12 months after notice has been given, the process outlined above will need to start again.

The civil partnership will be formed once the couple have signed the civil partnership register 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 in addition, at a different venue.

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

Each partner to a civil partnership can keep their own name, or either of them may choose to change their surname to that of their partner. 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 change of name deed.

Making a Will is also important, as there is a common misconception that under the rules of intestacy, a civil partner 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, please contact our Wills and Probate team.

Pre-partnership and post-partnership agreements

Pre-partnership agreements in civil partnerships are the same as a pre-nuptial agreement in marriages. Both are an agreement between the two partners, prior to them formalising their relationship, which sets out the financial arrangements which will apply if their civil partnership or marriage ends.

Pre-partnership (and Pre-nuptial) agreements are not binding on the courts in England and Wales but were approved of by the Supreme Court ruling in the case of *Radmacher v Radmacher* (formerly *Granatino*) in October 2010. Although this case involved a multi-millionaire, such agreements are not only for the very wealthy. People tend to form civil partnerships later in life. According to 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 assets, which they may want to keep out of the partnership "pot", thereby avoiding the division of such assets between them if the relationship breaks down.

Those entering a civil partnership after an earlier civil partnership or marriage may want to protect any settlement arising from that earlier relationship. If there are children from a previous civil partnership, marriage or relationship, the children's parent may wish to ensure that any money or property they have when they enter their new civil partnership, is preserved for those children rather than 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-partnership agreement during the course of the partnership to set out the financial and other arrangements in the event the civil partnership ends. 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 by periodical reviews.

The courts have indicated that the law should give effect to a pre-marital (or pre-partnership) agreement freely entered into by the partners with a full appreciation of the implications, unless it would not be fair to hold them to that agreement.

The court might however refuse to accept the agreement if either partner was pressurised into signing or failed to fully disclose their financial circumstances.

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, there are some basic requirements for a valid agreement:

- allow plenty of time for the drawing up of any pre-partnership agreement – at least 21 days before the civil partnership ceremony;
- both partners should take independent legal advice (and, if necessary, financial 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 fully disclose all of their assets and financial circumstances for both types of agreement;
- any pre-partnership agreement should make it clear what happens to the assets belonging to each partner prior to the civil partnership, as well as those accumulated during the relationship;
- any agreement should cover what happens to the couple's home, particularly who lives there and how any proceeds of sale will be divided if it is to be sold. It should also contain review clauses, for example, on the birth of a child or after a specified period of time.

Dissolution of a civil partnership

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

Dissolution is a two-stage process. Providing both parties consent, the court will initially grant a conditional order, thereafter making a final order to conclude the dissolution proceedings.

Either partner can apply to the court for a dissolution order to begin the proceedings. 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:

- your partner has behaved in such a way that you cannot reasonably be expected to live with them.
- your partner has deserted you for a continuous period of two years or more.
- you and your partner have been living separately for two years or more and your partner agrees to the dissolution.
- you and your partner have been living separately for five years or more, whether or not your partner agrees to the dissolution.

Because of the strict legal definition of the term there is no provision for a dissolution on the basis of adultery. However, if one party is unfaithful during the relationship, this would amount to unreasonable behaviour.

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

The applicant can apply for the final order after a period of six weeks following the pronouncement of the conditional order. The final order is the last stage of the legal process. Once this has been granted, the civil partnership is legally brought to an end. It is only at this point that the parties are then free to enter into another civil partnership or marriage.

Any financial order will come into force after the final order has been made. Where matters are amicable, the dissolution can take as little as five to six months from beginning to end.

Financial remedies

Either party can claim financial remedies as part of the dissolution; the remedies are similar to those available to married couples on divorce and are kept separate to the dissolution proceedings. To start proceedings for a financial remedy one party must file an application with the court.

The court will then give directions as to how the case should proceed; these directions will include a requirement that both parties disclose their financial circumstances to the other by completing a Financial Statement, a document known as "Form E". This is a detailed statement of your current financial position and will provide an opportunity to include any other information which you may feel the court should take into account when dividing your money and property. You must attach various documents (such as bank statements and pension valuations) to your Form E in order to prove your financial position. It is extremely important to provide full and frank disclosure of all assets as any agreed financial order can be rendered invalid if anyone has lied or provided misleading information on the Form E.

The Form E and accompanying documents must be filed with the court and a copy provided to your partner or their solicitor.

A Judge will consider both parties' Financial Statements at an initial court hearing, known as a "First Directions Appointment". At this hearing the Judge will ensure that the parties have each made a full disclosure of their financial positions supported by the relevant documentation. The Judge will decide what other documents may need to be obtained or disclosed for the case to be progressed, perhaps, for example, a valuation of property.

If each party has already made a full disclosure of their financial position and nothing further is required, then this hearing may become a "Financial Dispute Resolution Hearing", when the Judge will hear a summary of each party's case, what they are hoping for and why they think their proposals would represent a reasonable settlement. The Judge may comment on each party's position and will encourage them to negotiate.

If the parties reach an agreement at this hearing, the Judge will record the agreement in a court order (a "Consent Order"), bringing the case to an end.

If, despite some negotiation and the Judge's comments, the parties cannot reach agreement, then a final hearing will be fixed when the court will decide the matter. The court will make an order which will be final and binding upon both parties.

The court can make a number of orders in financial remedy proceedings. These could include maintenance for either party and/or children, a lump sum for either party and/or children, a property adjustment or transfer order (such as selling the family home or transferring it into one person's name) or allocating either 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, including after the dissolution has been finalised.

If you need help deciding whether to apply for a financial remedy order, or what the likely outcome may be, 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.

Children

When a relationship ends in dissolution, the welfare of any children involved is paramount.

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 specialist solicitor, experienced in these matters, can prove effective. A solicitor can also assist if it does become necessary to apply to court for an order.

For more help and assistance in connection with children matters, please view our 'Guide to children matters' via our website.

Contact Carter Lemon Camerons for advice

The specialist family team at Carter Lemon Camerons can assist you with all family-related issues including civil partnerships.

Please contact Lisa Ginesi for further information:



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This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents.

This guide was correct at time of publication and is not a substitute for legal advice.