

The Civil Partnership Bill

Introduction

1. The Civil Partnership Bill, first announced in the Queen's Speech in November 2003, proposes to introduce the concept of civil partnerships into England and Wales and Northern Ireland law. Scotland's parliament has voted in favour of a Sewell motion allowing Westminster to legislate for Scotland in this Bill and so the Bill also proposes appropriate amendments to Scottish Law. The Bill's full text was revealed on 31st March 2004.
2. The proposed civil partnerships are to be made available for same-sex couples only, not for different sex ones.
3. The proposed new legislation will have no impact on the property rights of unmarried heterosexual partners or unregistered same-sex couples. Nor will it affect the outcome of property disputes arising in the context of 'non-couple' relationships.
4. Speaking in June 2003, Jacqui Smith, MP, Minister for Equality:

“Same-sex couples often face a range of humiliating, distressing and unnecessary problems because of a lack of legal recognition. Civil Partnership registration would underline the inherent value of committed same-sex relationships. It would support stable families and show that we really respect the diversity of the society we live in. It would open the way to respect, recognition and justice for those who have been denied it for too long”.

5. Kees Waaldijk in his article “Chronological overview of the main legislative steps in the process of legal recognition of homosexuality in European Countries” submits that:

“most countries, at different times and different paces, go through a standard sequence of legislative steps recognising homosexuality. The first steps are taken by the criminal law: permitting homosexual acts between male adults and then removing age and other

distinctions between same – and opposite-sex sexual activity. The next steps are taken by the civil law: prohibiting discrimination against homosexuals in employment, and in the provision of goods, education, housing and other services. The final steps are taken by family law, extending laws applicable to unmarried heterosexual couples to homosexual couples, recognising the parental relationship between homosexual parents and their own, their partners or even other people’s children, providing for registered civil partnerships and finally providing for civil marriage”.

Historical Overview

6. **1533** - King Henry VIII begins the English common law tradition of sodomy laws, proclaiming sodomy, then-defined as any non-procreative sexual activity, a crime.
7. **1885** – Parliament adopts the Criminal Law Amendment Act . During the passage of the Bill, Henry Labouchere introduced a clause late on the night of August 6 that was accepted without debate and was rushed through the third reading the following night, August 7 1885. It was passed and became Section II of the Act. This provided for a term of imprisonment not exceeding two years, with or without hard labour, for any male person guilty of an act of gross indecency with another male person in public or in private.
8. **1957** - The “*Report of the Departmental Committee on Homosexual Offences and Prostitution*” (“*the Wolfenden Report*”) published on 3rd. September: The Wolfenden committee recommended that "*homosexual behavior between consenting adults in private should no longer be a criminal offence*". This led to the passage of the 1967 Sexual Offences Act.
9. **2001** - The Sexual Offences Act 2000, removing age discrimination, came into force in January 2001.

Regulation for Same-Sex Couples

10. Family Law Act 1996 included protection from domestic violence for ‘spouses’, ‘cohabitants’ (defined heterosexually)¹ and ‘associated persons’ (defined widely enough to encompass same-sex couples)².
11. After an amendment in 1995 the Inheritance (Provision for Family and Dependents) Act 1975 allowed a same-sex partner to make a claim against the estate of his deceased partner but only if dependence immediately prior to death was established; different-sex couples were only required to prove cohabitation with the deceased to succeed in a similar claim.
12. *Fitzpatrick v Sterling Housing Association Ltd* [1999] 4 All E.R. 705 majority of their Lordships held that the same-sex partner of the deceased could be treated as a member of his family for the purposes of inheriting an assured tenancy under the Rent Act 1977 (sch.1 para.3). However, the gender specific discussion of spouse in the statute – requiring a person to be either an actual spouse or ‘living with the original tenant as his or her wife or husband’ prevented Fitzpatrick from inheriting the more generous statutory tenancy of the home.
13. *Mendoza v Ghaidan* [2002] All E.R. where the Court of Appeal and later the House of Lords held that as a public body obliged to interpret legislation to comply with the Convention, it could widen the scope of the phrase used in the schedule to include a same-sex partner.
14. Statutory interpretation rejected by the House of Lords in *Bellinger v Bellinger* [2003] UKHL 21 when they ruled that a marriage between a man and a transsexual fell in breach of the wording of section 11(c) of the Matrimonial Causes Act 1973 which provides that a marriage is void, unless the parties are respectively “male and female”.

¹ Family Law Act 1996, s62(1)(a)

² Family Law Act 1996, s62(3); the definition includes a wide variety of people who share or have shared a home, or are or were related as spouses or (different-sex) cohabitants.

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15. The purpose of the Civil Partnership Bill is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership which they may do by registering as civil partners of each other provided:

- they are of the same sex;
- they are not already in an existing civil partnership or lawfully married;
- they are not within the prohibited degrees of relationships; and
- they are both over the age of eighteen or are over sixteen and have consent of the appropriate people or bodies (in England and Wales and Northern Ireland) or are sixteen or over in Scotland;

16. There is of course much need for amendment of existing legislation and this is to be found in the case of property, particularly in Schedule 4, amending legislation concerning Wills, Administration of Estates and Family Provision and Schedule 8 which deals with amending legislation pertaining to Housing and Tenancies.

17. *Clause 63* of the Bill deals with the contribution by a civil partner to property improvement and provides that where a civil partner has made a substantial contribution in money or money's worth to the improvement of property in which either or both the civil partners have an interest he or she is to be treated as having acquired a share or an enlarged share in that property. The extent of the share will be determined by any agreement made between the parties or, if there is no agreement, it will be determined by what may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of either of the civil partners arises. The acquiring of a share or an enlarged share will be subject to any agreement made or implied between the civil partners to the contrary.

18. *Clause 64* of the Bill specifically enables civil partners to refer disputes over property to court. It provides that civil partners may apply to the High Court or to a county court in respect of any question relating to the title to or the possession of property. The court

- may make such order with respect to the property as it thinks fit, including an order for the sale of the property.
19. *Clause 65* of the Bill: allows one civil partner (A) to make an application under clause 64 where the other civil partner (B) no longer has the money or property concerned or (A) does not know whether (B) still has the money or property. The power of the court to make orders under clause 64 includes the power to order (B) to pay to (A) such sum of money as seems appropriate or to make any other order which it could have made under clause 64.
 20. *Clause 67* of the Bill: deals with Assurance policies taken out by a civil partner for the benefit of the other civil partner etc. This clause extends the application of section 11 of the Married Women's Property Act 1882 (c.75) to civil partners, so that if a civil partner takes out a life assurance policy to provide for his or her civil partner or children the money payable under the policy is not to form part of the estate of the insured.
 21. *Clause 68* deals with Wills, administration of estates and family provision. This clause refers to Schedule 4 of the Bill which contains provisions amending Acts relating to wills, the administration of estates and family provision to give the same treatment to civil partners as exist for married people.
 22. *Schedule 4* makes provision for amending the Wills Act 1837, Public Trustee Act 1906, Administration of Estates Act 1925, Intestates' Estates Act 1952, Family Provision Act 1966, and Inheritance (Provision for Family and Dependants) Act 1975, so that civil partners are given the same rights as those that exist for married people.
 23. *Paragraph 2* inserts new sections 18B and 18C in the Wills Act 1837. The effect of these amendments is that, with the same limited exceptions as apply to marriage, a will is revoked when the testator forms a civil partnership with someone. They will also - once the civil partnership has been dissolved, annulled or made the subject of a presumption of death order - prevent former civil partners, where named as executors in the will, from becoming executors, and former civil partners named as beneficiaries in the will, from inheriting, unless the will provides otherwise.

24. *Paragraph 5* provides that the deceased's civil partner has priority over the issue of the testator should the testator bequeath the same gift separately to both of them.
25. *Paragraph 6* amends section 6 of the Public Trustee Act 1906 to place surviving civil partners in the same position as surviving spouses in having priority over the Public Trustee in being granted probate or letters of administration.
26. *Paragraph 7* amends section 46 of the Administration of Estates Act 1925 to allow surviving civil partners to inherit the estate of their deceased civil partner under the intestacy rules in the same way as surviving spouses, and so that the fact that an intestate person does not leave a surviving civil partner is taken into account as is the fact that there is no surviving spouse in determining the succession to his real and personal estate.
27. *Paragraph 8* amends section 47 of the 1925 Act so that an intestate's residuary estate is held on trust for those of his children (or their issue if they predecease the intestate) who reach the age of 18, or marry, or form a civil partnership, under that age.
28. *Paragraph 9* amends section 47A of the 1925 Act so as to provide that surviving civil partners shall have the same right as surviving spouses to redeem their life interest in their share of the intestate's residuary estate.
29. *Paragraph 14* amends section 1 of the Family Provision Act 1966 to allow increases in the fixed net sum which a surviving civil partner may receive from the estate of their deceased civil partner.
30. *Paragraph 15* amends section 1 of the Inheritance (Provision for Family and Dependants) Act 1975 by adding civil partners and former civil partners to the class of persons entitled to make an application for reasonable financial provision from the estate of their deceased civil partner.
31. *Schedule 5 Part 2* - This Part allows for property adjustment orders to be made on or after dissolution, nullity or separation. This provides for property to be transferred from one civil partner to the other or to a child of the family or to another person for the benefit of a child of the family. It also allows for a settlement for specified property to be made for

the benefit of the other civil partner and/or children of the family. An order for a relevant settlement can be varied and the interest extinguished or reduced. Variation of property adjustment order may be made even if there are no children of the family. In the case of a dissolution or nullity order the property adjustment or settlement can only take effect after the dissolution or nullity order has been made final.

32. One matter that is noticeable by its absence is proposed legislation concerning Inheritance Tax. The Inland Revenue has stated that the Government has made a tax commitment to tax parity between civil partners and married couples. The inheritance tax and capital gains tax exemptions for spouses would therefore be extended to civil partners. This will be dealt with in the first Finance Bill after the Civil Partnership Bill receives royal assent.

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