

CIVIL PARTNERSHIPS

Same sex couples, have in the past, always been denied the right to formalise their relationship (and this included denying them the various tax and other advantages given to married couples, such as rights over pensions, insurance and inheritance).

The introduction of civil partnership in 2005 is a major legal and social landmark. It has brought huge advantages to couples who want to make a lifelong commitment to each other and provide a secure legal framework for lesbian and gay families. It is also expected to have a wider impact by helping to eliminate discrimination against the lesbian and gay community more generally.

Henley Law is a legal firm committed to fairness and equality. By taking on cutting-edge cases and championing reform. Our Anti discrimination Policy is very important to us. We will not discriminate against Clients or Client Groups on the basis of race, religion, ethnic origin, disability, age, sex or sexual orientation. We are particularly aware of many of the problems faced by gay people and aim to provide advice in a wide range of matters providing expert advice on relationships and parenting, challenging discrimination and across a range of legal issues.

A Civil Partnership is a new legal relationship, which can be registered by two people of the same sex, allowing legal recognition. Civil partners now have equal treatment in a wide range of legal matters with married couples, including:

- Tax, including inheritance tax
- Employment benefits
- Most state and occupational pension benefits
- Income-related benefits, tax credits and child support
- Duty to provide reasonable maintenance for your civil partners and any children of the family
- Ability to apply for parental responsibility for your civil partner's child
- Inheritance of a tenancy agreement
- Recognition under intestacy rules
- Access to fatal accidents compensation
- Protection from domestic violence
- Recognition from immigration and nationality purposes.

As a result of the introduction of the Civil Partnership Act there will be important changes affecting same-sex couples who claim income-related benefits, regardless of whether the couple decide to form a civil partnership.

If a civil partnership is to be registered outside of the area of residence, you and your partner will still need to give notice in the area(s) where you live. When you each give notice, you will be asked to give the date and place where the civil partnership registration is to take place so these details will need to have been first agreed with the local authority where the registration is going to take place.

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For example

If you live in Liverpool and your partner lives in Manchester, but you want to register a civil partnership in a country house hotel near Chester, you will have to give notice to your local registration office in Liverpool and your partner at Manchester register office. When you give this notice, you will both have to be able to give the date and the place where the civil partnership is to be registered, which means that you will have to have arranged this already with the venue and the Chester registration authority.

What is the waiting period for Civil Partnership?

There is a 15-day waiting period once you have given notice of intention to register, before the civil partnership can be registered. In exceptional circumstances, where there are compelling reasons to do so, the 15-day waiting period may be reduced.

How do I change my name on my employment records?

As with marriage, there is no legal requirement to change your surname. This can be done by informing the appropriate departments of the name(s) you wish to be known by. (You may be required to provide a copy of your civil partnership for their records).

Who can register?

You can register if you are:

- Two people who are of the same sex aged 16 or over (with consent if under 18)
- Not already married or in a civil partnership
- Meet relationship criteria

IF A CIVIL PARTNERSHIP BREAKS DOWN

Statistics currently say that one in two relationships break down. These relationships cover the whole spectrum of sexual orientation. We can therefore expect that a fair proportion of people who register as civil partners will seek to dissolve their civil partnership at some time in future. Although not a 'romantic' view, it is worthwhile considering the likely consequences of such dissolution. Although civil partnership is not 'gay marriage', it nonetheless confers rights and responsibilities "akin to marriage". There is nothing in the legislation which states that way in which the law relating to civil partners is applied will be the same as the way in which the law relating to married couples is applied. However, it is envisaged that the courts will follow the existing law, adapting it to fit the circumstances of the same-sex couple's relationship.

Dissolution Process

To formalise the separation and dissolve the civil partnership, the process is similar to divorce. Either of you can start the dissolution. The only ground for dissolution is that the civil partnership has broken down irretrievably. If you start the dissolution yourself, the only way to show that the civil partnership has irretrievably broken down is to prove one of four facts:

- That your civil partner has behaved in such a way that you cannot reasonably be expected to live with them.
- That your civil partner has deserted you for two years or more.
- That you have been separated for two years and you both agree to the dissolution.
- That you have been separated for five years.

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If people do not want to wait for two years, they can only base the dissolution on “behaviour” even if they both agree to the dissolution. “Behaviour” does not need to be violence or other extreme behaviour. A combination of other behaviour can be sufficient. Often issues like working too much (or not working enough), showing too much (or too little) affection, combined with a number of other similar factors are used. Although there is no corresponding fact to “adultery” in divorce, a relationship or sex with another person could form the basis of an application based on behaviour. Any behaviour you want to rely on has to have happened in the six months before you separated or since you separated.

Court Procedure

In addition to the application for dissolution, the “petition”, there are other documents you or your solicitor need to prepare, including a statement about the arrangements of any children. None of these are of great significance for the dissolution itself though. You can only start a civil partnership dissolution in a limited number of courts, namely in the Principal Registry of the Family Division in London and the county courts in Birmingham, Brighton, Bristol, Cardiff, Chester, Exeter, Leeds, Manchester and Newcastle.

The dissolution is a two-stage process. The court will first grant a conditional order, and later make that order final. The court process starts when the court gets the dissolution petition, the civil partnership certificate and other documents and the fees. It will then allocate a number to the case, open a file and send the papers to your civil partner, unless your solicitor asked the court to return the papers to send them to your civil partner or their solicitor direct.

Sending the Papers to the Other Civil Partner

When your civil partner receives the dissolution papers, they have to fill in a form confirming that they have received the papers and whether or not they agree with the dissolution and return it to the court. The court will send a copy to you or your solicitor. If your civil partner does not return the form, it may eventually be necessary to arrange for another set of the documents to be served personally unless you can prove in some other way that they have received the petition and accompanying documents from the court. This may for example be done by a process server (usually a private detective) giving it to them personally.

Conditional Dissolution Order

If your civil partner agrees to the dissolution going ahead, you can then swear a statement confirming that everything in the dissolution petition is true, whether anything in the meantime has changed and so on. With that statement, you can apply for the conditional order. There is no fee at that stage. The district judge will then look at your dissolution papers and if the judge agrees that you are entitled to a dissolution, the court will set a date for the formal pronouncement of the conditional order, which may be a week to a month or so after the district judge has approved your dissolution. This is only the first dissolution order and you remain civil partners until the final order.

Final Order

You can apply for the final order six weeks after the date of the pronouncement of the conditional order. There is another fee of £40 for that application. The court should process that application within a week or so, but it often takes longer.

In all, the dissolution can take as little as four to six months from start to finish. However, it can take a lot longer if either or both of you delay in taking particular steps during the proceedings, or if there are problem with the court.

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Finances

The court will not automatically look at any issues surrounding maintenance, pensions or capital division, even if these claims are made in the dissolution petition, which is customary. If you think that there is no way that you will be able to come to an agreement on finances, you may want to get the court involved at an early stage. There may be other reasons, such as the need for immediate maintenance or an order to freeze a bank account. You can start the financial court proceedings on the same day that you start your dissolution at court or you could wait and start them at any other time during your dissolution proceedings or even after the final order.

If you come to an agreement, the court can approve that agreement and make an order reflecting it. This will give both of you security that there is no come-back in case one of you changes your mind. The court does not automatically rubber-stamp any agreement, but in most cases the judges approve the agreement reached. The earliest the courts can approve an agreement is after the conditional order has been made. Therefore, if you want the security of a court order, you may want to consider starting a dissolution earlier rather than wait for two or five years' separation.

A solicitor can draft the order for you and explain to you what other papers need to be sent to the court. There are no set forms for the order, although solicitors have standard precedents for most parts of the agreement.

If it comes to court proceedings, the way the English courts deal with finances on the dissolution of a civil partnership is very similar to how they deal with finances on divorce. See ancillary relief.

Children of Civil Partners

The effect of registering as civil partners will put a civil partner who is not a biological parent in the same position as a step-parent. On termination, where only one partner, the biological parent, has what is known as 'parental responsibility' (enabling him or her to make major decisions regarding the child's upbringing) the other civil partner can acquire parental responsibility in a number of ways i.e.

By agreement – this will usually be in the form of the parties signing a prescribed legal form whereby the biological parent with parental responsibility consents to parental responsibility for the other partner.

By order of the court It should be understood that the parties do not need to wait until the relationship is likely to be terminated before applying for parental responsibility. This can be done on registration or any time after.

In addition to the above the non-biological parent can also apply to the court for parental responsibility 'without leave' where he or she has previously been obliged to apply to the court for an order that the child resides (lives) or has contact with him or her. As a consequence of these provisions, future arrangements for any child will be an important issue to be considered by registered civil partners. Developing a good relationship between parents and co-parents after separation will remain an important goal and couples will be encouraged to work towards this. Mediation will be encouraged and this may become an increasingly important route to resolving disputes concerning children for civil partners in particular.

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