

Civil Partnership and Older People

It is expected that many older lesbian and gay couples will register a civil partnership after the legislation comes into force in December 2005. This bulletin aims to provide information about civil partnership which may be of specific relevance to older couples, to help them understand the implications of the legislation are for them.

Civil partnership, a new legal relationship for same-sex couples, comes into force on 5 December 2005. The first civil partnerships registered in England and Wales under the standard procedure will take place on 21 December 2005. In some special circumstances, civil partnerships may be registered from 5 December 2005. Registering a civil partnership brings with it a wide range of rights and responsibilities similar to marriage for those couples who choose to register. Some changes will affect all gay and lesbian couples that live together, regardless of whether they register a civil partnership.

An 8 page booklet about civil partnership can be obtained by calling 08450150010 and quoting URN05/1485.

Detailed information and guidance about civil partnership, including on how to register and on the main rights and responsibilities of civil partners is available at www.womenandequality.gov.uk/civilpartnership.htm

This bulletin contains information on:

SPECIAL ARRANGMENTS FOR REGISTERING A CIVIL PARTNERSHIP:

**In event of a serious illness
When a person is housebound/cannot be moved
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REGISTERING A CIVIL PARTNERSHIP

In England and Wales, a civil partnership is registered when two adults of the same sex sign the official document in front of the registrar and two witnesses. At least 15 days before this, each person must give

notice of their intention to register at a register office in the area where they live. Full information about how to go about registering a civil partnership can be obtained from a local Register Office or the General Register Office for England and Wales (www.gro.gov.uk).

There are a number of circumstances where the normal procedure for registering a civil partnership can be varied:

Serious illness

If one of the couple is seriously ill and not expected to recover, then the civil partnership can take place right away, without the 15-day waiting period, and it can be registered at any time of day or night (normally civil partnerships can only take place between 8am and 6pm, as is the case for marriage).

A doctor's certificate has to be provided stating that the person is seriously ill and not expected to recover, that they cannot be moved to a place where civil partnerships usually take place and that they understand the nature and purpose of registering a civil partnership.

In this situation, the couple should contact the register office for the area where the civil partnership is to take place (which is the area where the ill person is currently resident) to make arrangements. Register offices have long standing arrangements in place for marriages in similar circumstances.

If a person is housebound/cannot be moved

If one of the couple cannot be moved there are special procedures to allow them to register a civil partnership at wherever it is they cannot be moved from, for example, at home, in a care home, or in hospital. The couple has to provide a statement, made by a doctor no more than 14 days before notice of intention to register is given, confirming that the person ought not to be moved and that this condition is likely to continue for the next three months. The normal 15 day waiting period applies between giving notice of intention to register and the civil partnership registration. Contact your local register office for more information.

Capacity to register

The civil partnership registrar will need to be satisfied that at the time of the registration both proposed civil partners understand that by signing the civil partnership document, they are entering into a civil partnership with each other. Any doubt may mean that the registration cannot proceed or may have to be postponed.

RIGHTS AND RESPONSIBILITIES

TAXATION

For tax purposes civil partners will be treated the same as married couples. From 5 December 2005 tax charges and reliefs and anti-avoidance rules will apply equally to married couples and civil partners.

This means that a bereaved civil partner will be able to inherit their deceased civil partner's property in the same way as a widow or widower without being liable for inheritance tax.

Information is available from local tax offices and HM Revenue and Customs web site www.hmrc.gov.uk

PENSIONS

Survivor benefits in occupational and personal pension schemes

A surviving civil partner will be entitled to a pension based on the pension rights accrued by their deceased civil partner. The new rules for civil partners mean that a surviving partner will benefit from a survivor's pension based on the contracted-out pension rights accrued by their deceased partner from 1988 to the date of retirement or date of death if this occurs before retirement. This is the rule which currently applies to widowers' pensions. This new rule will apply to all contracted-out occupational and personal pension schemes.

Similar rules will apply to public service pension schemes such as the NHS, local government, teachers, fire service, police and Armed Forces pensions schemes.

Any questions about how forming a civil partnership will affect pension rights should be made to the employer.

State pensions

From 5 December, civil partners will enjoy most of the same state pension rights as husbands and widowers, and they will be treated the same as married couples after 2010 when the treatment of men and women will be equalised. For more information contact The Pension Service on 0845 6060265

SOCIAL SECURITY

Income Related Benefits

From 5 December 2005 there will be important changes affecting all same-sex couples who live together and where either one claims income related benefits. From this date the income of a civil partner or cohabiting same-sex partner will be taken into account when calculating entitlement to income related benefits. These include Income Support, Jobseeker's Allowance (income based), Pension Credit, Housing Benefit and Council Tax Benefit. A person who lives with a same-sex partner (whether in a civil partnership or not) and is receiving Income Related Benefits should contact their benefit office.

Bereavement Benefits or Widow's Benefit

A surviving civil partner will be treated in the same way as widows and widowers for bereavement benefit from the implementation date.

If someone is in receipt of Bereavement Benefit or Widow's Benefit and forms a civil partnership, or is living together as part of a couple with a same-sex partner, they need to contact the office that is dealing with their benefit.

Other benefits

If a person receives benefits such as Incapacity Benefit, Carer's Allowance, Maternity Allowance, Severe Disablement Allowance and Unemployability Supplement and an adult dependency increase is payable for a

spouse, they may be able to get extra for their civil partner. Contact the **Benefit Enquiry line** on **0800 882200** for more information

Tax credits

From 5 December the income of a civil partner or a co-habiting same sex partner will be taken into account when calculating entitlement to the child and working tax credits. A person who lives with a same-sex partner (whether in a civil partnership or not) and is receiving child or working tax credits should contact the **Tax Credits Office** or call the **Tax Credits helpline** on **0845 300 3900**.

TENANCY RIGHTS

Succession of Tenancy

The Civil Partnership Act has important consequences for the housing rights of people who have registered a civil partnership or who are living together as if they were civil partners.

The general effect in relation to tenancies is to give rights to civil partners and their families that are equal to those currently enjoyed by married couples and their families. The Act also equalises the rights of same-sex partners who are living together as if they were civil partners and their families with those of unmarried opposite-sex cohabitants and their families.

Tenants of Local Authorities

In most cases same sex partners, including civil partners who are tenants of local authorities will be able to succeed to the tenancy on the death of their partner if their partner was the named tenant and the property is their only or main residence.

Tenants of registered social landlords

In most cases, someone who is the same-sex partner of a tenant of a Registered Social Landlord (as long as they were occupying the property as their only or main home immediately prior to their partner's death) should be able to succeed to the tenancy. This will apply equally whether they are civil partners or living together as though they were civil partners.

Private sector tenants

Same-sex partners and civil partners of an assured tenant or an assured shorthold tenant will also be able to succeed a tenancy. Same-sex partners of sole protected or statutory tenants will have similar rights to succeed a tenancy.

Adding a partner to the tenancy agreement

In most cases, if two people register a civil partnership or live together as civil partners and one is a tenant, he or she may be entitled to add the partner's name to the tenancy.

Right to Buy

If a person has the Right to Buy their rented home, they have the right to share the Right to Buy with their civil partner, or with a partner they have been living with as if they were civil partners for the past 12 months. This includes the preserved right to buy and the right to acquire.

For further information on Housing and Tenancies visit www.odpm.gov.uk or email an enquiry to the Office of the Deputy Prime Minister on enquiryodpm@odpm.gsi.gov.uk Further information on rights in relation to Registered Social Landlord tenancies is available at www.housingcorp.gov.uk

People in care homes

If one of a civil partnered couple goes into a care home, Local Authorities will be required to disregard property for the purposes of assessing the person's ability to contribute to the cost of their care in the care home, if it is still occupied by the person's civil partner.

There will be no requirement for civil partners to support each other in residential care under the liable relative rules that exist for spouses. Government intends to repeal these rules at the earliest available opportunity therefore it would not be appropriate to extend these rules to civil partners.

Next of kin status

The concept of "next-of-kin" has a very limited meaning in the context of healthcare. Before health professionals treat an adult patient, they usually need his or her consent. As long as the patient can understand what is involved in the treatment, he or she is the only person who can give consent.

If a patient is incapable of giving consent or making decisions for themselves, health professionals will make decisions based on the best interests and medical needs of that patient in consultation with those closest to the patient to help establish their likely views.

However, there have been many anecdotal cases of same-sex partners being excluded from consultation, access to information and even denied the right to visit a critically ill partner where there is no basis for doing so.

The introduction of civil partnership as a legal status should help raise awareness that all gay and lesbian couples whether or not they are civil partners, should be consulted about the treatment of their partner in the same circumstances as opposite-sex couples would be.

UNISON and The Royal College of Nursing have issued good practice guidance to healthcare workers for providing services to lesbian, gay and bisexual service users. College of Occupational Therapists, the Chartered Society of Physiotherapy, the Royal College of Midwives, and the Society of Radiographers also endorse the guidance. To see a copy, go to <http://www.unison.org.uk/acrobat/14029.pdf>

IF A CIVIL PARTNER DIES

Death registration

The Civil Partnership Act extends the definition of relative in the Births and Deaths Registration Act to include relatives by civil partnership.

Civil partners will therefore be able to register the death of their partner in the same way that married couples can.

Wills.

If a person has a will and then registers a civil partnership, it will be revoked automatically unless there are express terms in it that it should not be revoked in these circumstances. New civil partners are advised to make new wills.

Similarly, the law provides that if the civil partnership is ended then gifts to the former civil partner or any appointment of the former civil partner fails, unless it is clear from the will that such a gift should take effect on the death of the deceased civil partner.

The most valuable asset which couples are likely to have is the home they share. If they own the home jointly then ownership of the home will be vested absolutely in the surviving civil partner when the other partner dies. There is no need to make special provisions for this in the will.

But all other property that belongs to one or other of the civil partners will be disposed of in accordance with the terms of the civil partner's will or under the intestacy rules.

Intestacy

If a person dies without making a will there are special legal rules which determine how the estate of the deceased should be shared amongst that person's relatives.

Under the new law if a civil partner dies intestate then his or her civil partner can receive a maximum of £200,000 from the estate and a half share of the amount that is left.

If the deceased had children then the amount which the surviving civil partner automatically receives is £125,000 and a half share of the rest.

Family provision

If a surviving civil partner feels that neither the deceased civil partner's will or the intestacy rules makes reasonable financial provision for them they can apply to the High Court asking the court to award them a certain sum of money out of the estate or, perhaps, to award them the family home.

The court does not need proof that the surviving civil partner was financially dependant on the deceased, just that they did not make reasonable financial provision for the surviving partner.

Former civil partners may also make a claim for reasonable financial provision from the estate of the deceased.

Life assurance

A civil partner will be presumed to have an insurable interest in the life of his or her civil partner and there will be no limit on the amount of value of that interest. Civil partners will have the right to obtain assurance on their civil partner's life on a basis equivalent to married people.