

An Introduction to the Civil Partnership Act 2004

1 Background

- 1.1 The DTI's Women and Equality Unit produced a document *Civil Partnership: A Framework for the Legal Recognition of Same-sex Couples* in June 2003.
- 1.2 Key objective: to prevent ECHR challenge to UK marriage laws on account of inability to enter into gay or same-sex marriage.
- 1.3 Nine EU member states now have a form of civil partnership registration, with the status of a civil partner varying among the different arrangements made by each of the nine EU member states.
- 1.4 In Belgium and Holland, the law has been changed to allow gay marriage.
- 1.5 The website for the DTI's Women and Equality Unit proclaims: "The Government's civil partnership status is not the same thing as gay marriage."
- 1.6 Perhaps the clearest statement during the passage of the Bill through Parliament was made by Angela Eagle MP (who was not a minister at the time):

"It is no secret that the Bill is an attempt to put in place arrangements that are as close as reasonable to civil marriage, but not holy matrimony. All Front-Bench spokesmen and hon. Members who support the Bill have been quite open about that." (HC Deb 9.11.04 col 737).

1.7 Despite not being gay marriage, the UK's civil partnership status nevertheless follows a 'marriage model'. How different is civil partnership from marriage?

2 Timing

2.1 The Act received Royal Assent on 18 November 2004.

2.2 An attempt had been made in the House of Lords to amend the Bill to include a whole range of other relationships as potential civil partners, and a final attempt to delay the Act from coming into effect, until aspects of the civil partner status were afforded to certain family members under a separate scheme, was also defeated.

2.3 At the time of Royal Assent last year, the government said that it 'expects the Act to be brought into effect in about a year', ie **late 2005**.

2.4 There are a good many rules and regulations to be made before the Act can come into effect. As at the time of writing, no statutory instruments had been published, and no commencement order had been made.

2.5 In addition, the Act makes no amendments to tax laws, and it seems unlikely that the Act will be brought into force before the necessary changes to tax law have been made.

3 Size

3.1 The Act runs to 264 sections and 30 schedules, over 450 pages.

3.2 However, not all of this relates to England and Wales, as large parts of the Act relate to Scotland and to Northern Ireland.

4 Formation of a civil partnership

4.1 The rules for formation of a civil partnership are very similar indeed to those for entering into a civil marriage:

4.1.1 each party must have obtained the age of 16 (s 3(1)(c)). Parental consent is required for a person aged 16 or 17 to enter into a civil partnership (s 4, and Sched 2);

4.1.2 each party must be single, ie not already a civil partner or lawfully married (s 3(1)(b));

4.1.3 the parties must not be within the prohibited degrees of relationship (s 3(1)(d) and Sched 1).

4.2 Of course, the big difference is that the parties must be of the same sex (s 3(1)(a)).

4.3 A civil partnership ends only on death, dissolution or annulment (s 1(3)).

4.4 The law on civil preliminaries to marriage forms the basis of the procedural requirements which must be followed in order to form a registered partnership. There is a range of procedures:

4.4.1 the standard procedure: each party to register notice of their proposed civil partnership (s 8), notice to be publicised by the register office (s 10), waiting period of 15 days (s 11); registration authority to issue civil partnership schedule at end of waiting period provided no objection to the proposed civil partnership (s 14); the registration ceremony must take place within 12 months of the date of the giving of notice of the proposed civil partnership (s 17);

- 4.4.2 procedure for house-bound persons: allows the parties to enter into a civil partnership at the place where one of them is house-bound: need for medical statement (s 18);
- 4.4.3 procedure for detained persons: allows the parties to enter into a civil partnership at the place where one of them is detained as a patient in a hospital or prison (s 19);
- 4.4.4 special procedure: for the grant of a licence by the Registrar-General where one of the proposed civil partners is seriously ill and not expected to recover; civil partnership must be formed within one month of their giving of notice of their proposed civil partnership (ss 22, 27).

4.5 The actual creation of a civil partnership:

- 4.5.1 occurs when each civil partner has signed the civil partnership schedule (or the Registrar-General's licence) in the presence of a civil partnership registrar and in the presence of each other and two witnesses (s 2(1));
- 4.5.2 the registrar and the witnesses must also sign the schedule (or licence), but their failure to do so does not invalidate the marriage (s 2(3), (2)).
- 4.5.3 it is a civil 'ceremony': there must be no religious service used while a civil partnership registrar officiates at the signing of the document (s 2(5)), and cannot take place in religious premises (s 6(1)(b));
- 4.5.4 otherwise, the venue must be specified in the notice, in England and Wales, open to the public, and approved by the registration authority for the area in which it is situated (s 6).

5 The status of a civil partner

- 5.1 Like marriage, on entering into a civil partnership, the civil partners change their legal status, with the legal consequences of their being civil partners fixed by the Act.

5.2 Relationships arising through civil partnership

5.2.1 Section 246 provides that, in relation to a person ('A'), 'in any provision to which this section applies':

- A's stepchild includes a person who is the child of A's civil partner (but who is not A's child) (similarly for stepson and stepdaughter);
- A's stepparent includes a person who is the civil partner of A's parent (but who is not A's parent) (similarly for stepfather and stepmother);

5.2.2 Likewise, in the provisions to which it applies, s 246 provides that 'brother-in-law' includes the a civil partner's brother (similarly for father-, mother-, parent-, and sister-in-law), and 'son-in-law' includes the son's civil partner (similarly for daughter-in-law).

5.2.3 Clearly, civil partnerships create family relationships in the same way as marriages.

5.2.4 To which provisions does s 246 apply?

- to the existing statutes set out in Sched 21;
- to all future legislation, except in so far as otherwise provided;
- to all future subordinate legislation, except in so far as otherwise provided;

5.2.5 The most important of the existing legislation to which this new rule of construction applies include:

- the definition of a relative in s 63(1) of the Family Law Act 1996 (nb relatives are associated persons for the purpose of obtaining relief under Part IV of the 1996 Act);
- the definition of a relative in s 105(1) of the Children Act 1989;
- the definition of 'a member of a person's family' in the Housing Act 1985 (eg relevant to statutory succession etc re secure tenancies).

5.2.6 Note that there is no provision for s 246 to apply to 'instruments', ie wills and other documents governing the distribution etc of property, unlike s 1 of the Family Law Reform Act 1987. So, for instance take Mr A, who marries Mrs A. They have no children but Mrs A has two children, M and N from her previous marriage. Clearly M and N are A's step-children. Mr A then divorces Mrs A and enters into a civil partnership with Mr B, who has two children, P and Q, from a

previous marriage. P and Q are Mr A's stepchildren for the purposes of any statutory provision to which s 246 applies, but if on his death Mr A leaves £100,000 to be divided among all my stepchildren, do M and N get £50,000 each, or do all four of M, N, P and Q each get £25,000?

- 5.3 The Act makes particular provision for giving civil partners equivalent rights to married couples:
 - 5.3.1 improvement to property: s 65 follows s 37 of the Matrimonial Proceedings and Property Act 1970: improvement by one civil partner of property owned by the other gives a share or an increased share in the property to the first civil partner.
 - 5.3.2 property proceedings: albeit that proceedings under s 17 of the Married Women's Property Act 1882 are rare, s 66 of the Act provides the equivalent provision for civil partners as that made by s 17 of the 1882 Act. Section 67 of the Act provides the like extension to the court's powers under s 66 as that made to s 17 of the 1882 Act by s 7 of the Matrimonial Causes (Property and Maintenance) Act 1958.
 - 5.3.3 rights in the home: Sched 9 to the Act amends the provisions of the Family Law Act 1996 relating to matrimonial home rights. Such rights are now to be known as home rights. A non-owning civil partner will have home rights in the 'civil partnership home' in the same way as a non-owning spouse will have home rights in the matrimonial home. The provisions relating to the registration of home rights by notice or as a class F land charge apply to all home rights, whether in the matrimonial or the civil partnership home. The power under Sched 7 to transfer certain tenancies now extends to transfers between (former) civil partners.
 - 5.3.4 housing law: the legislation governing security of tenure (eg Rent Act 1977, Housing Act 1985 and Housing Act 1988) is amended by Sched 8 to the Act to give the same protection to civil partners as to spouses. In particular, a surviving civil partner will have the same rights as a surviving spouse to succeed to the tenancy, and provisions relating to the right to buy applying to spouses are also now applicable to civil partners.

5.3.5 Wills: the general rules about wills, marriage and divorce are applied by Part 1 of Sched 4 to the Act to civil partnerships:

- unless the will is made in contemplation of civil partnership, a civil partnership will revoke the will (new s 18B of the Wills Act 1837);
- where a person makes a will and his or her civil partnership is subsequently dissolved or annulled, any property left to his or her former civil partner passes as if the former civil partner had died on the date of the dissolution/ annulment (new s 18C);

5.3.6 Rights on intestacy: in broad terms, Part 2 of Sched 4 to the Act amends the intestacy rules so that a surviving civil partner is in the same position as a surviving spouse, ie gets the statutory legacy of the first £125,000 in the estate and the deceased's chattels.

5.3.7 The rule contained in s 1 of the Married Women's Property Act 1964 (money or property derived from any housekeeping allowance given by the husband to the wife is jointly owned, in the absence of any agreement to the contrary) is **not** applied to civil partners.

5.4 Other legal consequences of entering into a civil partnership

5.4.1 The Act applies to civil partners several further provisions relating to married couples.

5.4.2 The law of evidence: s 84(1) provides any rule of law relating to the giving of evidence by a spouse applies in relation to a civil partner as it applies in relation to the spouse. In particular, s 80 of the Police and Criminal Evidence Act 1984 is amended to provide that a civil partner, like a spouse, is a competent but not compellable witness against his or her civil partner.

5.4.3 Section 69 provides that the court can stay tort proceedings between civil partners.

5.4.4 A civil partner has an unlimited insurable interest in the life of his or her civil partner (s 253, and see also s 70).

- 5.4.5 A civil partner has the same right to apply under s 10(5) of the Children Act 1989 as a stepparent in relation to whom the child is a child of the family (s 77). The definition of child of the family is also amended accordingly.
- 5.4.6 A civil partner can acquire parental responsibility for a child who is the child of his or her civil partner under the new s 4A of the Children Act 1989 as a stepparent.
- 5.4.7 The rule that a married person cannot adopt on his or her own save in limited circumstances is also extended to a person who is a civil partner (s 79 of the Act amending s 51 of the Adoption and Children Act 2002).
- 5.4.8 The Fatal Accidents Act 1976 is amended by s 83 of the Act to allow a surviving civil partner to bring a claim under the Act, and the definition of child of the family in the 1976 Act is also extended to include any child who was treated as a child of the family in relation to any civil partnership in which the deceased was at any time a civil partner.
- 5.4.9 In general, civil partnership is treated in the same way as marriage for the purposes of immigration and nationality.

5.5 Tax

- 5.5.1 This proved the most controversial element of the Bill's passage through Parliament, with back-bench Conservative attempts to include carers and relatives within those able to form civil partnerships so that the family home would not have to be sold on the death of one to meet the inheritance tax liability. These attempts all eventually failed.
- 5.5.2 In fact, the Act says nothing about tax at all. The Bill started its life in the House of Lords, and taxation matters are a matter only for the House of Commons.
- 5.5.3 The Treasury's press release accompanying the pre-budget report of 2 December 2004 states:

“The tax consequences of the Civil Partnerships Act will be dealt with in the first available Finance Bill. For tax purposes, registered same-sex couples will be treated the same as married couples.”

5.5.4 It is clear that the intention is that civil partners will have the same tax benefits as married couples, including the married couples' allowance, and exemption from capital gains tax and inheritance tax on transfers between spouses.

5.6 Social security and pensions

5.6.1 In general, the Act amends social security legislation such that civil partners are treated in the same way as spouses for the purposes of social security benefits.

This means that, for instance:

- a woman receiving a widow's pension will lose it on entering into a civil partnership (as well as remarrying);
- means-tested benefits, including working, child, and pension tax credits, will depend not only on the income and capital of the individual civil partner, but on their combined income and capital;
- liable relative now includes a civil partner;

5.6.2 Civil partners will have similar but not identical pension rights as married couples:

- one civil partner will receive a state pension (category B retirement pension) based on the other (A)'s national insurance contributions in the same way as a married person or a widow or widower is eligible to do so, but **not** where A was born before 6 April 1950 (ie is already nearly 55).
- the Act amends some statutory schemes to include provision for surviving civil partners (Sched 25), **but**
- s 255 gives power to amend 'legislation relating to pensions, allowances or gratuities' relating to pensions etc for the surviving civil partners or dependants of deceased civil partners, and this power may be exercised by statutory instrument provided it is approved by Parliament. However, s 255(4) states that the SI may contain provision which 'may be the same as, **or different to**, the provision made with respect to widows, widowers or the dependants of persons who are not civil partners'.
- there does not appear to be any provision requiring the providers of occupational or personal pension schemes to amend their schemes so

that surviving civil partners are always treated in the same way as surviving spouses.

5.7 'Engagements'

5.7.1 A civil partnership agreement: an engagement being an agreement to enter into a marriage, a civil partnership agreement is an agreement to enter into a civil partnership.

5.7.2 There is no cause of action for breach of a civil partnership agreement (s 73).

5.7.3 In the same way that engaged couples have the benefit of s 37 of the Matrimonial Proceedings and Property Act 1970 and the use of s 17 of the Married Women's Property Act 1882, provided an application is brought within three years of the breaking-off of the engagement, where a civil partnership agreement is terminated, s 74 applies ss 65 to 67 to such persons (again subject to the three year limitation in the case of an application under s 66).

5.7.4 Persons who have agreed to enter into a civil partnership are associated persons under the Family Law Act 1996 (see below).

5.8 Discrimination legislation

5.8.1 The Sex Discrimination Act 1975 is amended so as to extend the prohibition against discrimination in the employment field on the basis of marital status to discrimination on the basis that a person is a civil partner (s 251).

5.8.2 However, this does not make it unlawful per se to treat a person who is a civil partner less favourably than a person who is married, except presumably in fields where there is a prohibition against discrimination on grounds of sexual orientation.

6 Recognition of foreign civil partnerships

6.1 A relationship entered into overseas is eligible to be recognised in UK courts under s 212 provided it meets certain criteria. If it does so, it is an 'overseas relationship'. The criteria are:

- 6.1.1 First, it must be registered with a responsible authority outside the UK.
 - 6.1.2 Secondly, it must be entered into by two persons who are of the same sex under the law of the country or territory where it is registered ('the relevant law').
 - 6.1.3 Thirdly, neither party can already be a civil partner or already married (ie the relationship must be 'monogamous').
 - 6.1.4 Fourthly, it must either a 'specified relationship', ie one described in the list set out in Sched 20 to the Act, including eg civil unions entered into in Vermont, pacte civile de solidarite in France etc. Sched 20 may be amended by statutory instrument.
 - 6.1.5 Or, under s 214 it must satisfy the general conditions, ie that under the relevant law, the nature of the relationship is 'monogamous' (ie it cannot be entered into if either party is already married or a party to a relationship of that kind), the relationship is of indeterminate duration, and the effect of the relationship is that the parties are treated as a couple, either generally or for specified purposes, or they are treated as married.
- 6.2 An overseas relationship will be treated as a civil partnership provided:
- 6.2.1 under the relevant law, the parties had capacity and met all the requirements to ensure the formal validity of the relationship (s 215(1));
 - 6.2.2 the relationship had not been lawfully ended under the relevant law;
 - 6.2.3 they were of the same sex under UK law at the time they entered into the relationship (s 216);
 - 6.2.4 if one of them was at the time of registration domiciled in England and Wales, both of them were aged 16 or over and they do not fall within the prohibited degrees of relationship within Sched 1 to the Act (s 217);
 - 6.2.5 it would not be manifestly contrary to public policy to recognise the capacity, under the relevant law, of one or both of them to enter into the relationship (s 218).

7 Dissolution

7.1 A civil partnership ends only on death, annulment or dissolution. The provisions relating to dissolution of a civil partnership follow very closely the sections of the Matrimonial Causes Act 1973 relating to divorce.

7.2 The ground for dissolution

7.2.1 Under s 44(1), the ground for dissolution is irretrievable breakdown.

7.2.2 Nevertheless, the court may only make a finding of irretrievable breakdown where one of the facts set out in s 44(5) are made out.

7.2.3 The facts are:

- (a) the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (b) 2 years' separation plus consent to the making of a dissolution order;
- (c) 5 years' separation;
- (d) 2 years' desertion.

7.2.4 **Adultery** is not one of the facts.

7.2.5 As in s 1(4) of the MCA 1973, once the fact is proved the court must dissolve the civil partnership unless satisfied that the civil partnership has not irretrievably broken down (s 44(4)).

7.2.6 There is the same duty as in s 1(3) of the 1973 Act for the court, so far as it reasonably can, to inquire into the facts alleged by both parties (s 44(2)).

7.2.7 Section 45 makes near identical provision to s 2 of the 1973 Act relating to the continuity of periods of separation and desertion etc.

7.3 No application for a dissolution order may be made within the first year of the civil partnership (s 41).

7.4 The hardship bar to dissolution where only five years' separation is alleged is reproduced in identical form to s 5 of the 1973 Act (s 47).

7.5 Procedural matters

- 7.5.1 Change of nomenclature: application and applicant, respondent and response. No decree nisi or absolute, but conditional order and final order.
- 7.5.2 All dissolution and nullity orders to be conditional orders in first instance (s 37(2)).
- 7.5.3 Conditional orders can be made final after 6 weeks (s 38(1)); the court can shorten the six week period (s 38(4)).
- 7.5.4 The respondent can also apply for the conditional order to be made final once three months have elapsed after the six weeks have passed since the making of a conditional order (s 40(2)).
- 7.5.5 The court can delay the making final of a conditional order in cases of 2 or 5 years separation to protect the respondent's financial position (cf s 10(2) of the 1973 Act: see s 48).
- 7.5.6 The court can also delay the making final of a conditional order where there are exceptional circumstances which make it desirable in the interests of the child/ren of the family that the order should not be made final until the court orders otherwise (s 63(2)).
- 7.5.7 The court has an equivalent duty to that of s 41 of the Matrimonial Causes Act 1973 to consider whether there are any children of the family in respect of which it should exercise any of its powers under the Children Act 1989 (s 63(1)).
- 7.5.8 The Queen's Proctor may intervene (s 39).
- 7.5.9 The court means the High Court and 'civil partnership county courts'.

7.6 Separation orders

- 7.6.1 The court may grant a separation order on proof of the same facts as would entitle it to make a dissolution order (s 56), although whether or not the civil partnership has broken down irretrievably is irrelevant.
- 7.6.2 The court can subsequently make a dissolution order on the same basis as it made a separation order, but must not do so without receiving evidence from the applicant (s 46).

7.6.3 As with a decree of judicial separation of marriage, under s 57 a civil partner who is the subject of a separation order which remains in force will not be entitled on the intestacy of the other civil partner.

8 Annulment

8.1 Section 37(1)(b) gives the court power to make a nullity order, ie an order which annuls a civil partnership which is void or voidable. The procedural matters set out above relating to nomenclature etc apply equally to annulment proceedings.

8.2 A civil partnership is **void** if:

8.2.1 the civil partners are not of the same sex;

8.2.2 one of the civil partners is already a civil partner or lawfully married;

8.2.3 one of them was under the age of 16 at the time of the registration;

8.2.4 the civil partners are within the prohibited degrees of relationship;

8.2.5 when both civil partners know at the time of registration that certain formalities have not been complied with;

8.2.6 where one of the civil partners is aged 16 or 17, requires parental consent to enter into the civil partnership but the parent in question has forbidden the civil partnership (and thus the civil partnership document is void).

8.3 A civil partnership is voidable if:

8.3.1 no valid consent to its formation (from duress, mistake, unsoundness of mind or otherwise);

8.3.2 at time of formation, even though capable of giving a valid consent, was suffering from mental disorder of such a kind or such an extent as to be unfitted for civil partnership;

8.3.3 respondent pregnant by some person other than the applicant at time of formation;

8.3.4 the respondent had, in effect, had a legally recognised 'sex change' under the Gender Recognition Act 2004 before its formation [properly is a person whose

gender at the time of its formation had become the acquired gender under the 2004 Act];

8.3.5 either party has since the time of its formation obtained an interim gender recognition certificate under the 2004 Act.

8.4 Non-consummation, or wilful refusal to consummate, is **not** a ground on which a civil partnership is voidable.

8.5 In relation to voidable civil partnerships, there are similar bars to relief as in nullity of marriage:

8.5.1 the estoppel/ acquiescence bar (knowing of right to obtain annulment but leading respondent to believe would not do so) (s 51(1));

8.5.2 in the first four grounds above, no nullity order can be made unless the application is made within three years of the date of formation of the civil partnership (s 51(2)), unless the court extends the period, which it can only do if the applicant suffered from mental disorder during the three year period and it would be just to give leave (s 51(3));

8.5.3 in relation to numbers 3 and 4 above, the court can only grant a nullity order if the applicant was ignorant of the facts alleged (s 51(6)).

9 Presumption of death orders

9.1 The little used provision for the grant of decree of presumption of death and dissolution of marriage in s 19 of the Matrimonial Causes Act 1973 is reproduced in s 55 of the Act to allow the court to make a presumption of death order in relation to the civil partnership where the other civil partner has been continually absent for the last seven years and there is no reason to believe the other civil partner has been living during that time.

10 Ancillary relief

10.1 Sched 5 to the Act contains all the familiar ancillary relief powers:

- 10.1.1 Part 1 (esp para 2) allows the court to make periodical payments, secured periodical payments, and lump sum orders.
- 10.1.2 Part 2 allows the court to make property adjustment orders.
- 10.1.3 Part 3 empowers the court to make an order for the sale of property.
- 10.1.4 Part 4 gives the court to make pension sharing orders.
- 10.1.5 In relation to all of the above, except periodical payments/ lump sum orders for the benefit of a child of the family, the court can only make these orders on the making of a separation order or a conditional order of dissolution or annulment, and the order will only take effect on the conditional order being made final.

10.2 Part 5 of Sched 5 is the equivalent of s 25 of the 1973 Act, containing the matters to which the court must have regard:

- 10.2.1 para 20 provides that the court must have regard to all the circumstances of the case, and give first consideration to the welfare, while under 18, of any child of the family who has not reached 18;
- 10.2.2 para 21(2) contains a checklist modelled on s 25(2):
 - (a) the income, earning capacity, property and other financial resources which each civil partner-
 - (i) has, or
 - (ii) is likely to have in the foreseeable future, including, in the case of earning capacity, any increase in that capacity which it would in the opinion of the court be reasonable to expect a civil partner in the civil partnership to take steps to acquire;
 - (b) the financial needs, obligations and responsibilities which each civil partner has or is likely to have in the foreseeable future;

- (c) the standard of living enjoyed by the family before the breakdown of the civil partnership;
- (d) the age of each civil partner and the duration of the civil partnership;
- (e) any physical or mental disability of either of the civil partners;
- (f) the contributions which each civil partner has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
- (g) the conduct of each civil partner, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- (h) in the case of proceedings for a dissolution or nullity order, the value to each civil partner of any benefit which, because of the dissolution or annulment of the civil partnership, that civil partner will lose the chance of acquiring.

10.2.3 para 22 contains provision equivalent to s 25(3) of the 1973 Act with a checklist of factors to be considered when the court is considering to make Part 1 orders for the benefit of a child, and orders under Parts 2 and 3, as well as the factors the court must consider in relation to the exercise of those powers against a civil partner in favour of a child of the family who is not his or her child (akin to s 25(4)).

10.2.4 para 23 contains provisions relevant to the imposition of a clean break between civil partners:

- para 23(2) is the equivalent of s 25A(1) (duty to consider whether appropriate to exercise powers in such a way as to terminate financial obligations as soon as just and reasonable);
- para 23(3) is the equivalent of s 25A(2) (duty to consider fixing term of maintenance orders as would enable the payee to adjust without undue hardship to termination of dependence);
- para 23(4) is the equivalent of s 25A(3) (power to dismiss application with direction for no future application for maintenance).

- 10.3 Part 6 contains provisions relevant to pensions, including having regard to all pension benefits, whether or not likely to be received 'in the foreseeable future', as well as pension ear-marking.
- 10.4 Part 8 allows the court to make an order for the maintenance of a civil partner pending the outcome of the application for a dissolution, nullity or separation order. Interim maintenance before the making of the conditional order cannot be made for the benefit of a civil partner under Part 1, only for the benefit for a child of the family.
- 10.5 Part 9 contains provision analogous to s 27 of the Matrimonial Causes Act 1973, ie for the court to make maintenance orders where one civil partner is failing to provide reasonable maintenance for the other or a child of the family, in the absence of any proceedings for dissolution, nullity or separation.
- 10.6 Part 10 sets out the rules for when applications for ancillary relief may be made, and the duration of orders. The most important features are:
- 10.6.1 a periodical payments order ends on the death of either civil partner, or on the formation of a subsequent civil partnership or marriage by the payee (para 47(2));
 - 10.6.2 where a civil partnership has been the subject of a dissolution or nullity order and one of the parties forms a subsequent civil partnership or marriage, he or she is no longer entitled to apply for a Part 1 order in their favour or a property adjustment order (para 48).
 - 10.6.3 para 49 makes equivalent provision relating to the duration of orders in favour of children of the family as are contained in s 29 of the 1973 Act.
- 10.7 Part 11 contains provisions relating to variation of financial orders, closely modelled on s 31 of the 1973 Act, including the power, on a variation application, to make a further capital order where imposing an immediate or deferred clean break (para 53).

- 10.8 Part 14 is modelled on s 37 of the Matrimonial Causes Act 1973, allowing the court to enjoin and set aside dispositions intended to defeat a claim by a civil partner for ancillary relief.
- 10.9 Sched 6 allows magistrates' courts to make orders for financial provision for the benefit of a civil partner or a child of the family, and is closely modelled on the Domestic Proceedings and Magistrates' Courts Act 1978.
- 10.10 Sched 7 is based on Part 3 of the Matrimonial and Family Proceedings Act 1984, and allows an English court to grant financial relief ancillary to an overseas dissolution or annulment of a civil partnership:
- 10.10.1 the powers are available even if the civil partnership was dissolved or annulled overseas before the commencement of the Act (para 1(2));
 - 10.10.2 leave of the court is required to make the application (para 4);
 - 10.10.3 the court's jurisdiction to make orders is set out in para 7 and closely follows s 15 of the 1984 Act;
 - 10.10.4 the court must also consider whether the English court is the appropriate venue for the application (para 8, following s 16 of the 1984 Act).

11 Declarations

11.1 Akin to the provisions of Part III of the Family Law Act 1986, and in particular s 55, which govern the grant of declarations as to marital status, ss 58 to 61 of the Act govern the grant of declarations as to the validity of a civil partnership.

11.2 The following declarations may be obtained under s 58 of the Act:

- (a) a declaration that the civil partnership was at its inception a valid civil partnership;

- (b) a declaration that the civil partnership subsisted on a date specified in the application;
- (c) a declaration that the civil partnership did not subsist on a date so specified;
- (d) a declaration that the validity of a dissolution, annulment or legal separation obtained outside England and Wales in respect of the civil partnership is entitled to recognition in England and Wales;
- (e) a declaration that the validity of a dissolution, annulment or legal separation so obtained in respect of the civil partnership is not entitled to recognition in England and Wales

11.3 Similar provisions are made for the involvement of the Attorney-General as for declarations under Part III of the 1986 Act.

12 International jurisdiction

12.1 Sections 219 to 224 set out when the English courts can entertain proceedings for dissolution, separation, or nullity orders, for presumption of death orders, and for declarations as to the validity of civil partnerships.

12.2 Section 219 allows the Lord Chancellor to make regulations as to the jurisdiction of the English courts corresponding with the Brussels II EC Regulation governing conflicts of jurisdiction between EC member states.

12.3 Under s 220, for the court to have jurisdiction to make a dissolution or separation order, one of the following must apply:

- 12.3.1 the court has jurisdiction under the civil partnership version of Brussels II;
- 12.3.2 if no court has jurisdiction under the above, either party is domiciled in England and Wales;

12.3.3 no court has jurisdiction under the civil partnership version of Brussels II, the civil partnership was registered in England and Wales, and the court considers it to be in the interests of justice to assume jurisdiction (s 220).

12.4 Recognition of overseas orders for dissolution, annulment or separation orders

12.4.1 Sections 234 to 238 contain provisions analogous to those in Part II of the Family Law Act 1986 (recognition of overseas divorces etc)

13 Inheritance Act

13.1 Part 2 of Sched 4 to the Act makes a number of amendments to the Inheritance (Provision for Family and Dependants) Acts 1975 to equate, more or less, the position of a surviving civil partner to that of a surviving spouse, and that of a surviving former civil partner to that of a surviving former spouse.

13.2 A surviving civil partner is treated in the same way as a surviving spouse and applies under s 1(1)(a). Reasonable financial provision is such provision as it would be reasonable for the civil partner to receive, whether or not required for his or her maintenance (new s 1(2)(aa)). The court is required to consider what the applicant might reasonably have expected to receive by way of ancillary relief if on the date of the death of the deceased the civil partnership had been terminated by dissolution or annulment instead of being terminated by death (insertion at end of s 3(2)).

13.3 A surviving former civil partner is treated in the same way as a surviving former spouse and applies under s 1(1)(b). Provision is similarly limited to what is reasonable for the applicant's maintenance. Where the court awards the applicant (whether surviving spouse or civil partner) an order for periodical payments, the order ceases on the applicant forming a subsequent marriage or civil partnership (amended s 19). The court granting a civil partner ancillary relief

has the like power to prevent an Inheritance Act application on the death of the other civil partner (new s 15ZA of the 1975 Act).

14 The four types of couple in English law

14.1 The result of the 2004 Act is that for the purposes of social security law and some aspects of family law there are now four types of 'couple'.

14.2 They are:

14.2.1 a married couple;

14.2.2 civil partners;

14.2.3 a man and a woman who are not married to each other but who live together as husband and wife;

14.2.4 two people of the same sex who are not civil partners but who live together **as if they were civil partners**.

14.3 So, in the relevant legislation governing social security benefits, the following provisions now crop up again and again:

"couple" means-

(a) a man and a woman who are married to each other and are members of the same household,

(b) a man and a woman who are not married to each other but are living together as husband and wife,

(c) two people of the same sex who are civil partners of each other and are members of the same household, or

(d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners.

...

For the purposes of this paragraph, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would

be regarded as living together as husband and wife were they instead two people of the opposite sex.

14.4 Likewise, the definition of cohabitants in s 62(1) of the Family Law Act 1996 is now “two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners”.

14.5 In the amended Inheritance (Provision for Family and Dependants) Act 1975, the category of applicant under s 1(1)(ba), a person who cohabited with the deceased for two years prior to the death of the deceased, now includes the persons to whom the new s 1(1B) now applies, ie ‘a person who for the whole of the period of two years ending immediately before the date when the deceased died the person was living (a) in the same household as the deceased, and (b) as the civil partner of the deceased’.

15 Changes to existing matrimonial/ family law

15.1 The general rule is that civil partnership has the same effect as marriage for family law purposes.

15.2 This means:

15.2.1 periodical payments for the benefit of a spouse end on the payee’s formation of a subsequent marriage or civil partnership;

15.2.2 a new ground for a marriage being void is that one of the parties was already in a civil partnership at the time of the marriage, ie not a single person.

15.3 See above for changes to definition of cohabitants in the Family Law Act 1996 and the Inheritance Act 1975.

- 15.4 In relation to the Family Law Act 1996, although same-sex cohabitants would already be associated with each other under s 63(3)(c) (non-commercial household sharers) (and the new category of those who have or have had an intimate personal relationship with each other which is or was of significant duration), their inclusion as cohabitants has important consequences for obtaining occupation orders. Now, a non-entitled same-sex cohabitant can obtain an occupation order for six months, extendable by up to six months, under both ss 36 and 38 of the 1996 Act.
- 15.5 Although persons who had agreed to enter into a civil partnership agreement are now associated persons, there are equivalent restrictions to those applying to engaged couples:
- 15.5.1 the application must be brought within 3 years of the ending of the civil partnership agreement;
- 15.5.2 there must be evidence in writing of the existence of the civil partnership agreement, unless the court is satisfied that the agreement was evidenced by a gift given by one party to the other as a token of the agreement, or by a 'civil partnership betrothal ceremony' with one or more witnesses.
- 16 Advice now
- 16.1 Difficult to be definitive in advance of detailed regulations as to formation, and amendments to tax legislation.
- 16.2 Possibly relevant to those advising a person in a same-sex relationship drawing up a new will. Advisers will need to mention effect of entering into civil partnership on the will.
- 16.3 Likewise those advising a same-sex couple buying a house together may like to mention the possibility of future civil partnership.
- 16.4 In relation to social security benefits and state pensions, may need to be referred to specialist welfare rights advisers.