Civil Partnership Act 2004

The Civil Partnership Act (the "Act") came into force on 5 December 2005, having received Royal Assent on 18 November 2004.

The Act enables same sex partners to gain legal recognition of their relationship by entering into a "civil partnership". A consequence of the Act is that civil partners in the UK will enjoy many of the same rights and responsibilities as married couples.

Civil partners-to-be must give 15 days' notice before their partnership can be registered; therefore, the earliest date on which a person may become a civil partner is 21 December 2005.

The Act applies to same sex couples only. The government's reasoning for this is that opposite sex couples already have the option of marrying and, therefore, achieving legal status for their relationship.

The Act applies throughout the UK but with slight differences in Scotland and Northern Ireland.

The Department of Trade and Industry expect between 11,000 to 22,000 people to become civil partners by 2010, these figures indicate that the effects of the Act are potentially far reaching.

Eligibility requirements to register as civil partners

To register as civil partners in the UK:

- both parties must be of the same sex;
- neither party must be in a civil partnership or marriage;
- both parties must be at least 16 (if under 18, they will need the written consent of their parent(s)/legal guardian(s)); and
- the parties cannot be too closely related e.g. close blood ties.

Registration and dissolution

The Government has provided for various formalities in respect of both the creation and dissolution of civil partnerships. Civil partnership registrars will supervise the registration of the civil partnership. In practice these are likely to be existing registration officers.

The register must be signed by both parties in the presence of two witnesses. During the registration the parties will have to make declarations about their eligibility to enter into a civil partnership.

Civil partnership can only be dissolved by formal court proceedings (in practice this is likely to be very similar to a divorce).

Where a civil partnership is registered overseas and the civil partners meet the requirements set out in the Act, the partnership will be treated in the same way as a UK civil partnership, and there is no requirement to re-register such partnerships as civil partnerships in the UK. However, parties in overseas civil partnerships entered into prior to the Act coming into force are treated as having formed a civil partnership only at the time the Act came into force.

Rights and obligations of civil partners

The Act will provide for parity of treatment between civil partners and married couples: during the civil partnership; on dissolution of the civil partnership; and following the death of one civil partner.

General civil partnerships rights and obligations will include the following:

- a duty for a civil partner to provide reasonable maintenance for his/her civil partner and any children of the family;
- the ability for a civil partner to apply for parental responsibility of his/her civil partner's child;
- equitable treatment for the purposes of assessment for child support; life assurance; tax, including inheritance tax; employment and pension benefits; and inheritance of a tenancy agreement;
- recognition under the intestacy rules;
- protection from domestic violence; and
- recognition for immigration and nationality purposes.
Employment issues

**Discrimination:** civil partners will benefit from two forms of protection from discrimination – they will continue as before to be protected from discrimination on the grounds of their sexual orientation, and they will also now be protected from being discriminated against because of their civil partnership status, in the same way that married people are protected from discrimination on the grounds of their marital status.

The Act amends the Sex Discrimination Act 1975 (the SDA) in respect of discrimination on the grounds of marital status, to ensure that this protection now applies equally to civil partners. The Employment Equality (Sexual Orientation) Regulations 2003 ("the Sexual Orientation Regulations") have also been amended to reflect civil partnership rights, and provide that a civil partner has the same status as a married person.

Therefore: (1) civil partners must be treated in exactly the same way as married people. Any distinction in the way married people and civil partners are treated could lead to a claim by the civil partner for discrimination on the grounds of sexual orientation; (2) civil partners must not be discriminated against on the basis of their civil partnership status – this could lead to a claim under the SDA; (3) employers can still treat married people and civil partners differently to those who are neither married nor in a civil partnership.

In order to avoid unlawful discrimination against civil partners, employers must ensure that civil partners receive the same benefits as those offered to married couples and that any benefits provided to spouses of employees also extend to the registered partner of a civil partner. Examples of such benefits include Private Health Insurance, the right to time off before or after marriage, survivor pensions, flexible working, paternity pay and paternity and adoption leave.

**Pensions:** the Sexual Orientation Regulations provide that pension schemes must not discriminate between civil partners and spouses. Therefore, civil partners will be entitled to future pension rights accruing from 5 December 2005 in the same way as spouses. An occupational pension scheme not compliant with the Act may create a discrimination claim where a surviving registered civil partner is not entitled to benefits to which a surviving spouse would have been. Civil partners will not generally, however, have any entitlement to pension rights which accrued prior to 5 December 2005 (there are specific provisions in relation to contracted-out rights acquired pre 5 December 2005, which may accrue to civil partners – please seek further specialist advice if required in this area).

**Immigration:** immigration rules have been amended so that civil partners are treated in the same way as spouses of work permit holders in the UK. A non-EU citizen who is the civil partner of a British Citizen, or person settled here, will be able to apply for 2 years’ leave to enter and remain in the UK, after which that partner may apply for indefinite leave to remain here while the partnership subsists. This means that an employer will not need to apply for a work permit to employ the partner of a British civil partner.

**Tax:** civil partners will be treated in the same way as married couples for tax purposes.

**Family friendly:** civil partners will be entitled to benefit from paternity leave and pay and the right to request flexible working. The right to take time off in an emergency involving a dependant will be extended to cover an emergency involving a civil partner. In preparation, employers will need to train the appropriate staff and implement policies to deal with such benefits and any requests made.

**Next steps**

This is a good opportunity for employers to review their equal opportunities and anti-harassment policies covering discrimination and harassment on the grounds of sexual orientation in order to ensure they meet the requirements of the Act.

As a result of this Act coming into force prudent employers should consider taking the following steps:

- providing training to managers and other employees, as appropriate, regarding the Act, its impact on the workforce and regarding sexual orientation discrimination;
• ensuring family friendly rights (and other employment benefits as appropriate) are extended to same-sex couples;
• amending relevant forms, including equal opportunities monitoring forms, that ask for information on marital status to include a category for civil partner;
• inviting civil partners to social events to which spouses are invited;
• offering any benefits offered to spouses to civil partners of employees equally;
• ensuring occupational pension schemes give the same benefits to civil partners as to widows and widowers;
• considering extending existing procedures relating to confidentiality and conflict of interests to civil partners.

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