

Information

Briefing note on civil partners and cohabittees in relation to:

**The Civil Partnership Act 2004
The Tax and Civil Partnership Regulations 2005
Family Law (Scotland) Bill**

Civil Partners

The Civil Partnership Act 2004 (“the 2004 Act”) came into effect in Scotland on 5 December 2005. The 2004 Act establishes a legal framework for same sex relationships, where the parties to the relationship decide to enter civil partnership. This framework brings with it a range of rights and obligations which mirror those which apply to people in opposite sex relationships who decide to marry.

How the law has changed

Many aspects of Scots law have changed now that the 2004 Act is in force. This briefing note is intended to highlight some of the key changes which will affect everyone who enters into or is considering entering into civil partnership.

Succession

Rights afforded to spouses under the Succession (Scotland) Act 1964 are extended to civil partners. This means that a surviving civil partner may, in the case of intestacy, become entitled to receive elements of prior rights, legal rights and free estate in the deceased civil partner’s estate.

Legal rights also arise for surviving civil partners in the case of testate estates: if there is a surviving civil partner and no surviving children of the deceased civil partner, then legal rights payable to the surviving civil partner will extend to one half of the deceased partner's net moveable estate. If there are surviving children then this becomes one third of the deceased partner's net moveable estate.

Civil partners are also covered by the presumption that neither survived the other where they have died together and it is uncertain which died first.

It is important that civil partners, or people considering entering into civil partnership, consider carefully the impact that the law of intestacy will have on their estates and ensure that Wills are in place to give effect to any particular wishes which intestacy law might otherwise defeat. Under the law of intestacy, for example, parents and brothers and sisters have a greater claim to free estate than does a civil partner. If no Will is in place, then the law may benefit someone other than the civil partner: this may not correspond with the deceased civil partner's wishes.

Tax

The Tax and Civil Partnership Regulations 2005 and the Tax and Civil Partnership (No.2) Regulations 2005 were made on 24 November 2005 and mostly came into effect on 5 December 2005. The result of these Regulations is to equate for tax purposes:-

- civil partners with spouses;
- the formation of a civil partnership with marriage;
- persons who are not civil partners of each other, but who are living together as if they were, with persons who are not married but are living together as husband and wife; and
- a person who is not a civil partner of any other person with a person who is unmarried.

Some parts of the Regulations will apply as if they had effect for the whole of fiscal year 2005/06. A few of the Regulations, mostly in relation to pensions, will come into effect on 6 April 2006 to coincide with "A-Day", when the simplification of the taxation of pensions will take effect.

The changes include:

- **Inheritance Tax:**
 - full civil partners' exemption for transfers of value in life and on death;
 - relief for gifts made in consideration of civil partnership;
- **Capital Gains Tax:**
 - transfers between civil partners are on a no gain, no loss basis;
 - principal private residence relief is restricted to one residence per couple;
 - the definitions of connected parties are extended to capture civil partners;
- **Income Tax:**
 - Married Couple's Allowance now applies to civil partners;

▪ **Stamp Duty and Stamp Duty Land Tax:**

- transfers between former civil partners on dissolution of the civil partnership are eligible for relief from Stamp Duty and SDLT, in the same way as former spouses may receive relief on divorce.

While some of these changes to tax law will be of enormous benefit to civil partners, for example the civil partners' exemption for Inheritance Tax purposes, some changes will have an adverse effect. The restriction of principal private residence relief for Capital Gains Tax purposes is one such example. Civil partners should review their tax position in conjunction with their general affairs and consider what additional tax planning steps they should now be taking.

Pensions and life insurance

Civil partners have an insurable interest in each other's lives and care should be taken to ensure that life and pension policies are appropriately written in trust or have up to date nominations in place in respect of death benefits which may become payable.

Where the law presently provides (or will provide after "A-Day") for spouses to receive a widow's pension after the death of one spouse, those provisions will apply to civil partners. Pension splitting on dissolution of a civil partnership is also relevant.

Other changes

Other areas of law where the 2004 Act brings civil partners in line with spouses include:

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|--------------------------|-------------------------|
| ▪ occupancy rights | ▪ employment |
| ▪ property | ▪ discrimination |
| ▪ housing | ▪ crofting |
| ▪ evidence | ▪ agricultural property |
| ▪ debt | ▪ damages |
| ▪ adults with incapacity | ▪ mental health |
| ▪ sexual offences | ▪ bankruptcy |

It is important that those entering civil partnership, or who are already civil partners, understand the extent of the rights and obligations which the law places upon them and how this may affect their own affairs.

Cohabitees

Other changes to the treatment of relationships are expected once the Family Law (Scotland) Bill, which recently completed Stage 2 of its progress at Holyrood, is enacted and brought into force. Some of these changes will amend the Civil Partnership Act 2004, even although it has only recently come into force.

The treatment of cohabittees will change under the Family Law (Scotland) Bill, making new provisions for those living together as if they were spouses or civil partners, but without formally having entered into a marriage or civil partnership.

One important change is in relation to claims on intestacy. As the Bill currently stands, where a cohabitee dies intestate, it will be possible for the surviving cohabitee to ask the Court, in its discretion, to make an order for financial provision. Such provision can be satisfied by a monetary payment or by a transfer of property, and the Court will have a range of factors which it may take into account when making an order. The only limits on the extent of provision available are that the prior and legal rights of any surviving spouse must be satisfied before provision is made for a surviving cohabitant, and the cohabitant cannot be placed in a better position than a surviving spouse.

Since these new claims only arise for cohabittees under intestacy, the preparation of a Will precludes the ability of the surviving cohabitant to make a claim and permits cohabittees to make for each other such (or no) provision as they would wish.

Other matters contained in the Family Law (Scotland) Bill, including the right, in certain circumstances, to make a claim for financial provision on cohabitation ceasing, may make the possibility of a cohabitation agreement more attractive, and will permit cohabittees to regulate their affairs as they decide. It is not certain to what extent cohabitation agreements will be treated by the courts as binding, but, as with Pre-Nuptial Contracts, it is considered likely that in the event of the matter being brought before the court, such an Agreement will be regarded as binding.

Summary and Conclusion

The Civil Partnership Act 2004, the Regulations relating to Tax and Civil Partnerships, and the Family Law (Scotland) Bill represent a substantial shift in the way relationships of various types are recognised and treated under the law. These new provisions will affect civil partners and cohabittees in a number of different ways.

It is important that people who are considering entering into civil partnership, who are already civil partners, or who are cohabiting (whether in a same sex or an opposite sex relationship) consider the impact of these new provisions on their own circumstances and take appropriate steps to ensure that their own affairs are in order.

December 2005

This note is intended as a comment on the Civil Partnership Act 2004, the Tax and Civil Partnership Regulations 2005, the Tax and Civil Partnership (No.2) Regulations 2005 and the Family Law (Scotland) Bill as amended at Stage 2. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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