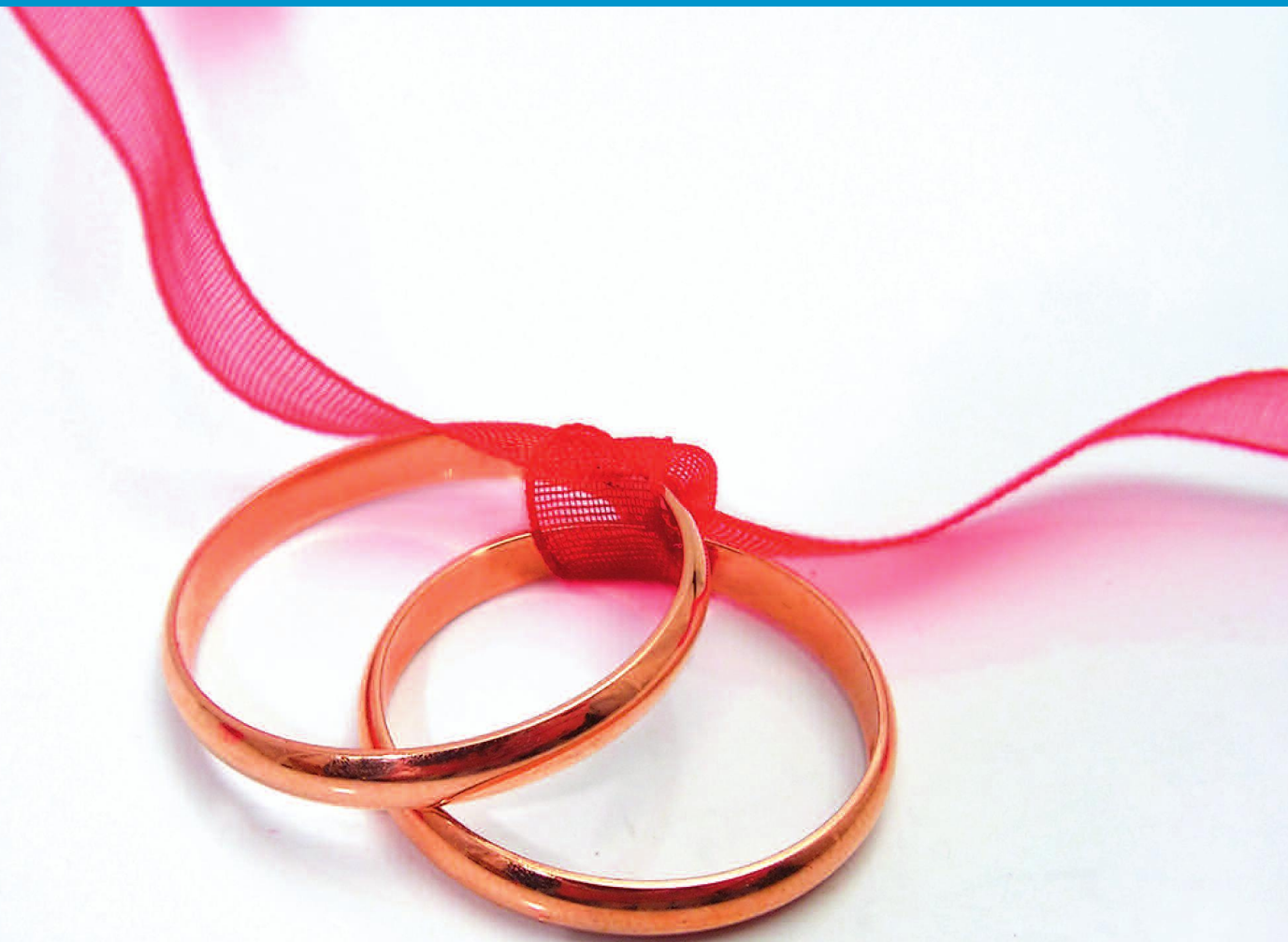


Civil Partnerships

- everything you need to know



A guide designed to provide an overview of civil partnership law for lesbian, gay and bisexual people.



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1. Introduction to Civil Partnership Act



The Civil Partnership Act 2004 allows same-sex couples to enter into a civil partnership to get legal recognition of their relationship. Civil partnerships offer identical practical legal rights and responsibilities to marriage.

Since the Act came into force in 2005 more than 40,000 partnerships have been formed across the UK. Stonewall's Info Service continues to receive a high volume of enquiries about civil partnerships. If you're planning a civil partnership yourself, congratulations! We hope this legal guide is helpful.

How to register a civil partnership

To form a civil partnership you must first give notice of your intention to a register office in the area you have lived for at least seven days. You can find your nearest register office through the direct.gov website. Notices are publicised by the registrar for a period of 15 days.

What happens during a civil partnership ceremony?

A civil partnership is formed by signing a civil partnership document before a registrar and two witnesses. You can choose to incorporate a ceremony to the signing of the document - these will vary depending on where you register.

There is no legal obligation on the wording used during the ceremony. You don't have to include any vows at all if you

don't want to. To hold a civil partnership ceremony in an unlicensed venue, it is necessary to speak to the superintendent registrar of your local authority. It is currently not possible to include any religious content in a civil partnership ceremony, just like a civil marriage. However, in March 2010 the House of Lords supported a cross-party amendment to the Equality Bill to permit religious denominations who wish to conduct civil partnerships to do so. Stonewall played a key role in securing this change. The detail and timing of the changes is to be confirmed by the Government.

The minimum age for any person wishing to enter a civil partnership is 16 years old and anyone under the age of 18 will require written permission from their parents or guardian.

Each party can either keep their own name or one party can change their surname to their partner's.

Couples may also choose to double-barrel or merge their surnames, or to change it to something new altogether. Please note this is not automatic - they will need to apply through Deed Poll to do this.

2. Civil Partnership and Immigration Rules



We're frequently asked about immigration rules and civil partnerships. Individuals who are British, EEA (European Economic Area) nationals or those who hold Indefinite Leave to Remain/Permanent Residence have the right to reside in the UK and are able to register a civil partnership here. (The EEA includes the European Union plus Iceland, Liechtenstein and Norway).

Non EEA overseas nationals who are already in the UK with temporary UK immigration permission (such as students) are able to register a civil partnership here. Forming a civil partnership does not alter an individual's immigration status. The couple will need to look into their options under UK immigration rules and in some circumstances under European regulations.

For any of the options given below lesbian, gay and bisexual people should be assessed and treated in exactly the same way as a heterosexual couple.

What are the options?

Apply for residency when one partner is an EEA national
Under European regulations, civil partners of EEA nationals have the right to reside in the UK provided the EEA national civil partner is in employment, self-employment, in study or is self-sufficient in the UK.

The civil partner may apply for an EEA Family Permit at any British Diplomatic Post overseas. Evidence of the registration of the civil partnership and the EEA partner's nationality must be submitted with the application. An EEA Family Permit will be issued for six months. Once the civil partner is in the UK, they may then apply for a Residence Card to confirm their right of residence in the UK as an EEA Family Member.

Residence Cards are issued for five years. At the end of five years' residency in the UK, provided that the EEA national partner continues to exercise treaty rights throughout the period, their partner may acquire permanent residence.

Apply to bring a civil partner to the UK where the partnership has been registered overseas
A couple may wish to enter (or have entered) into a civil partnership in another country, or in some cases get married, before coming to the UK. If the civil partnership takes place overseas and one of the partners is not 'settled'

in the UK the overseas national partner may apply for a Civil Partner visa to come to the UK. A 'settled' partner will be a resident in the United Kingdom with no immigration restriction on the length of their stay. To be free of immigration restriction you must have the right of abode or indefinite leave to enter or remain in the United Kingdom.

Evidence of the registration of the civil partnership must be provided to the UK Border Agency for the visa to be issued. The UK must also recognise the overseas civil partnership. Schedule 20 of the Civil Partnership Act 2004 lists most of the overseas partnerships which are automatically recognised in the UK.

If the civil partnership is not recognised by the UK then in some circumstances applicants may apply to a British Diplomatic Post overseas to request recognition or, if they have not yet entered into a civil partnership, may register their civil partnership at the British Diplomatic Post. Please note that the option to register a civil partnership is only available at certain British Diplomatic Posts.

From the 29 November 2010, all applicants who apply to enter the UK on the basis of a civil partnership must also demonstrate that they can speak and understand English. If an applicant is not a national of a majority English speaking country (e.g. Australia or the US) and does not have a degree taught in English, then they must pass an English language test with one of the UK Border Agency's approved test providers.

The visa is issued for 27 months and at the end of two years' residence in the UK the overseas national partner may be eligible to apply for Indefinite Leave to Remain provided they meet further criteria.

If the civil partnership has been registered for more than four years and the couple have been living outside the UK together for at least four years, the overseas national partner may apply directly for Indefinite Leave to Enter. Evidence of the registration must be submitted as well as evidence that there are sufficient funds to maintain and accommodate the overseas national partner without help from public funds.

The overseas national partner will also have to undertake a Life in the UK test to be granted Indefinite Leave to Enter the UK. The Life in the UK test is only available in the UK so an overseas national partner will either need to take the test whilst in the UK as a visitor and return overseas to apply for Indefinite Leave to Enter the UK or enter the UK

on a Civil Partner visa and apply for Indefinite Leave to Remain once the test is successfully completed.

Please note that if both partners are overseas nationals and one holds temporary UK immigration permission (e.g. as a student), the other may apply for permission to enter the UK as their dependant.

Apply for UK residency after a civil partnership

An overseas national partner of a 'settled' person may apply for immigration permission to remain in the UK on the basis of the civil partnership if they either entered the UK with a Proposed Civil Partner visa or a valid visa issued for more than 6 months.

This application may be made from within the UK and evidence of the registration of the civil partnership must be provided as well as evidence that the couple has sufficient funds to maintain and accommodate the overseas national without any help from public funds.

The visa is granted for two years. At the end of the initial two year period the overseas national partner may be eligible to apply for Indefinite Leave to Remain (also known as settlement) provided further criteria are met.

From the 29 November 2010, all applicants who apply for rights to remain in the UK on the basis of a civil partnership must also demonstrate that they can speak and understand English. If an applicant is not a national of a majority English speaking country (e.g. Australia or the US) and does not have a degree taught in English, then they must pass an English language test with one of the UK Border Agency's approved test providers.

Those who are the civil partners of persons with temporary immigration permission such as students and who are not 'settled' in the UK may not apply for further rights to remain in the UK. They must apply from overseas for a Dependant visa.

Apply for a Proposed Civil Partner visa

The Proposed Civil Partner visa permits non EEA overseas nationals to come to the UK to enter into a civil partnership with a 'settled' partner (a British citizen, an EEA national or someone who holds Indefinite Leave to Remain/ Permanent Residence in the UK). After the ceremony the non EEA Overseas National will be able to apply to remain in the UK without having to return home to submit a fresh application. See the section on 'Application to remain' for more details.

There is no requirement for couples to have lived together. However, the UK Border Agency must be satisfied that the relationship is 'genuine and subsisting', and that the overseas national has the means to be supported without recourse to public funds or work for at least six months. This is the same for civil marriage.

If the 'settled' partner is an EEA national (e.g. a national of any EEA member state such as Belgium, France, Germany, Italy, etc) who does not already have an EEA registration certificate (a certificate issued by the UK Border Agency which confirms the EEA national's right of residence in the UK) then they must obtain such a document before the Proposed Civil Partnership application can be made.

Proposed Civil Partnership visas will only be extended in exceptional circumstances if there is a good reason why the civil partnership has not been registered within six months and that it will be registered soon. The civil partnership ceremony should therefore take place within the six month visa validity period.

Apply for a Civil Partnership Visit visa

The Civil Partnership Visit visa is for overseas nationals who wish to come to the UK specifically for the purpose of entering into a civil partnership. They will not have permission to remain in the UK after the ceremony has taken place and the visa expires.

If both proposed civil partners are overseas nationals and are not 'settled' in the UK then they each must apply for Civil Partnership Visit visas to register their civil partnership.

The visa will usually be issued for six months. Evidence must be submitted showing that the couple intend to enter into a civil partnership within six months and that they intend to leave the UK afterwards.

Under this option no application can be made for further rights to remain in the UK after the civil partnership. Any partner who is not 'settled' will need to apply from overseas if they wish to re-enter the UK in a more permanent category.

3. Benefits and Tax



The Equality Act 2010 protects lesbian, gay and bisexual people from being treated unfairly by their councils or housing associations because of sexual orientation. Couples in a civil partnership are assessed in the same way as married heterosexual couples for their benefit entitlements and tax payments.

The key implications are:

Income Tax

Where one partner was born before 6 April 1935 and the couple is living together, the civil partner with the highest income can claim Married Couple's Allowance.

As long as they are living together, a civil partner may transfer any unused amount of their Blind Person's Allowance to their partner.

Inheritance Tax

Anything left by a civil partner to their surviving partner is not subject to Inheritance Tax.

Anything left by a partner of a same-sex couple not in a civil partnership but who live together as if in a civil partnership is subject to Inheritance Tax if its value is more than the rate set for that year. This is £325,000 in 2010-11. This is a good and important reason to make a will (see section 5).

Capital Gains Tax

Civil partners do not have to pay Capital Gains Tax on the transfer of assets to their partners, provided they are living together.

When civil partners sell or otherwise dispose of their only or main residence, they may be entitled to Private Residence Relief. Such relief is limited to one residence. Civil partners must jointly nominate which property is to be treated as their only or main residence within two years of formation of the civil partnership. Any other property may then be subject to some measure of Capital Gains Tax.

Tax Credits

Single people who claim tax credits and then form a civil partnership, or live with a same-sex partner as if in a civil partnership, must inform HMRC about the change of circumstances. You can do this by writing to HMRC Tax Credit Office or calling their free phone helpline (details below). Civil partners must make a joint claim, which will take into account both partners' incomes. This is the same for heterosexual couples.

Council Tax

Civil partners are jointly liable to pay their council tax.

There have also been some minor amendments to the council tax legislation as a result of the Civil Partnership Act 2004:

Students: A civil partner of a foreign student will be exempt or disregarded from council tax if he/she is not a UK citizen and not permitted to work or claim benefit whilst in the UK.

Unoccupied property discount of 50%: If a civil partner is required to live elsewhere as a condition of employment, a 50% discount may be granted.

Carer Disregards: A 25% discount may be granted if a person moves into a home to care for another. However, the carer must not be a relative. A civil partner is classed as a relative.

Annexes: An annexe attached to a house is exempt from council tax if a civil partner's dependent relatives live in it.

Liabilities on death: Council tax arrears of a civil partner are payable, out of the deceased estate, and annuities payable to a surviving civil partner are excluded from an attachment of earnings order.

The following considerations apply for benefit entitlements benefits:

Income-based Jobseeker's Allowance (JSA)

Income and financial needs are considered jointly when deciding whether or not the applicants are entitled to JSA. This also applies to same-sex couples who are living together as if in a civil partnership.

Income-based Employment and Support Allowance (ESA)

A civil partner may only receive income-based ESA if the usual entitlement conditions are satisfied and the other partner works less than 24 hours a week on average.

Income Support (IS)

A civil partner may claim IS for him/herself as well as for their partner, however, only one person in a family can claim IS at any one time.

Income and financial needs are looked at jointly when deciding whether or not the applicants are entitled to IS. Depending on individual circumstances of civil partners, several types of premiums are available.

Council Tax Benefit and Housing Benefit

Council tax benefit offers you a reduction in the costs of your council tax when your income and any savings are below a certain level. An assessment of your eligibility usually takes into account your partner or civil partner's earnings and any savings. You should contact your local council for further details about this.

Housing benefit offers financial support towards the rent on your home. If live with your partner or civil partner only one of you will be able to receive housing benefit.

Child Benefit

Since 5 December 2005, where a person is living with a same-sex partner as a couple - whether or not they form a civil partnership and they are both receiving higher rate child benefit - the couple need to inform the HMRC Child Benefit Office as soon as possible. If HMRC are not informed within three months, the couple will not only have to pay back any overpaid tax credits but may also have to pay a penalty. You can contact the HMRC Tax Credit Office through the details below.

Tax Credit Office

Preston

PR1 0SB

Mark your envelope 'Change of circumstances'.

Tax Credits Helpline

0845 300 3900

Opening hours

8 am to 8 pm, Monday to Friday

8 am to 4 pm Saturday

Closed Sundays, Christmas Day,

Boxing Day and New Year's Day

4. Pensions

Prior to the implementation of the Civil Partnership Act, workers in same-sex relationships did not have the same statutory right to pension benefits as their married counterparts. Now one-off lump sum payments are payable to the surviving partner on the death of a scheme member along with a continuing monthly pension.

Civil partners are treated in exactly the same way as widowers under all public service pension schemes, private sector contracted-out occupational pension schemes and the pension protection fund rules. These rules cover what happens when a pension scheme goes bust. This means that a survivor's pension is paid to a surviving civil partner based on members contributions on their service back to 1988.

For other schemes, UK law requires that schemes take into account service from 5 December 2005 onwards when calculating survivors' benefits for civil partners.

The only area where civil partners may find that they receive different treatment from spouses is in the area of survivor benefits for non contracted-out pension schemes. This is where an employer may choose voluntarily to offer more than the statutory minimum. The government doesn't regulate for these schemes and it is a matter for the employer's discretion. The majority of employers have opted to treat all employees equally, regardless of sexual orientation. Stonewall strongly encourages employers to do this.

5. Wills for Civil Partners



The ease of making a will differs between different sizes and circumstances of estates. The task itself remains daunting but it helps to make sure that you provide for your chosen beneficiaries, including a civil partner. We recommend taking advice if you are still uncertain about anything.

What are the inheritance laws?

Wills

The writing of your will should be performed by a solicitor to ensure that all your wishes comply with the law and will be easily carried out. However, there are guidelines you can follow to ensure you are prepared and know how to express your wishes.

You will need to choose people to execute your will and administer your estate. This involves collecting in all the assets of your estate, paying any debts and distributing any assets according to your will. Who you choose to execute your estate is entirely up to you although most people will choose a family member or friend who they trust, a solicitor or other professional or a bank or other trust making facility.

Tax

Inheritance tax is the tax payable to the Inland Revenue when someone dies and is usually paid by the executor. It is only due if your estate is valued over the Inheritance Tax

threshold for that financial year. This is £325,000 in 2010-11.

There are, however, certain exemptions which may decrease the amount payable. In particular, your estate will not usually be expected to pay Inheritance Tax on anything you leave to your civil partner even if this amount is over the tax threshold.

Since October 2007, civil partners (just like married couples) can effectively increase the threshold on their estate when the second partner dies - to as much as £650,000 in 2010-11. Their executors or personal representatives must transfer the first spouse or civil partner's unused Inheritance Tax threshold or 'nil rate band' to the second spouse or civil partner when they die. See the HMRC website for more information.

What happens if a partner dies without a will?

If there is no will, the person's estate will be shared out under the 'rules of intestacy'. For those who were in a civil partnership when they died, the first person entitled to the

estate is their civil partner. The amount they would inherit depends on how much is in the estate, and how many surviving blood relatives there are. Please note that this is one of the biggest risks of not making a will.

If you and your partner do not have a registered civil partnership then neither of you will receive a share in the other's estate without making prior provision in a will. In the event that there is no will, your only option is to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975.

What if one partner has children or has been married before?

If either you or your partner has children from a previous relationship, the situation could be complex. However, the provision for family outside your current civil partnership can be easily catered for by means of a trust. A trust provides you with an opportunity to maintain an element of control over your property. For example, a trust could give your partner 'specified assets' for the remainder of his/her life, whilst making provision for those assets to pass to any children after their death.

The benefit is that any property left to your civil partner on trust will also be exempt from Inheritance Tax. If you were to opt for a trust in your will, you would have to appoint trustees. Trustees will carry out the wishes you express in the trust. When appointing trustees you should bear in mind that they will be governing the occupation of any property you leave in the trust and so you should choose individuals accordingly.

Overview of Probate Service

The Probate Service deals with 'non-contentious' probate business. This is where there is no dispute about the validity of a will or entitlement to take a grant. They are able to appoint a personal representative to administer the estate of the deceased. The Grant of Representation is usually required as proof of authority to administer the estate.

6. Dissolution

Sadly, sometimes things go wrong and civil partners decide to end their relationship. To do this they would need to apply for a dissolution which, in the eyes of the law, is the same as getting a divorce.

Overview of the process

In order to make an application for the dissolution of a civil partnership, the couple must have been in a civil partnership for at least 12 months. The civil partner wanting to dissolve the civil partnership is called the applicant. The ground for the dissolution of a civil partnership is that the civil partnership has irretrievably broken down. The applicant must be able to reason his/her application for the dissolution of the civil partnership. There are four reasons (called facts): (a) unreasonable behaviour, (b) two years separation with consent, (c) five years separation and (d) four years desertion. If the judge accepts the application, s/he may grant a Conditional Order and then six weeks after grant the Final Order. The Final Order will officially end the civil partnership.

Alternatives to a dissolution petition

Other methods of ending a civil partnership are nullity, presumption of death and separation orders.

Do you need legal advice?

Dissolution of a civil partnership or otherwise bringing it to an end by nullity, a separation order or a declaration of presumed death will not always require legal advice.

However, it would be essential that the applicant seeks legal advice where the application is opposed, there is disagreement relating to finance or property or disagreement relating to any children. The relevant solicitor will be able to advise the applicant on the legal aspect of his/her situation and support the applicant during the process.

What are the implications of dissolution for children?

For detailed information about parenting rights and responsibilities please see Stonewall's publications in this area - [Pregnant Pause](#), a guide for lesbians on how to get pregnant and [A Guide for Gay Dads](#). Stonewall has also produced an online guide called [Parenthood for Same sex Couples](#).

Adoption

On dissolution of a civil partnership, each individual's status in relation to the child remains the same. Therefore if the child was jointly adopted by the couple they will both remain legal parents.

Fostering

Foster parents do not have parental responsibility for children in their care - i.e. they do not have the usual legal rights and duties attached to being a parent. As a result, upon dissolution of a civil partnership foster children are not considered to be dependent children of the family and the situation may need to be reassessed by the foster agency.

Surrogacy

Surrogacy arrangements for civil partners and same-sex couples are legal in the UK although they are closely regulated.

Once a parental order has been made, both partners will have parental responsibility. The dissolution of the civil partnership has no effect on parental responsibility, although the court has power to terminate parental responsibility on an application by one of the parties.

Step-Parenting

Upon dissolution of a civil partnership, a step-parent who has acquired parental responsibility will not lose it. Their parental responsibility can, however, be brought to an end by a court order.

Donor Insemination

On dissolution, a lesbian partner who is treated as a parent will be responsible for maintaining the child.

How to apply for a court order

If former civil partners are unable to amicably agree on the care arrangements for their child, either of them can apply to the court for an order under Section 8 of the Children Act 1989.

The following people can apply without having to first obtain permission of the Court:

- [Parents \(including unmarried fathers\)](#)
- [Civil partners](#)
- [Guardians](#)
- [Those who already have a residence order](#)
- [People who have a sufficiently close relationship with a child to have a say on where the child should live but not a right to have a say in the details of how a parent should raise a child.](#)

Persons who require permission of the court:

Anyone else who does not fall into the above categories must obtain permission from the court.

A local authority foster carer must have the consent of the local authority to apply for a Section 8 order unless they are related to the child or the child has been living with them for at least three years preceding the application.

The following orders can be sought:

[Residence order](#) - This is an order setting out with whom a child is to live.

[Contact order](#) - This is an order requiring the person with whom a child lives to allow the child to visit or stay or have indirect contact with the person named in the order.

[Prohibited steps order](#) - This is used to prohibit another party from taking a specified action in relation to a child, such as taking the child overseas.

[Specific issue order](#) - This is used to resolve a specific issue, such as a child's religious upbringing.

What are the financial implications of dissolution?

On the dissolution of a civil partnership the division of income and capital will be resolved by applying the same criteria as with heterosexual married couples on divorce.

The courts have wide powers to redistribute assets and income between the parties. The court can order one partner to transfer property to the other. It can also order the sale of a property and division of its sale proceeds. In addition the court can order one partner to pay the other a lump sum and/or pay them maintenance. It can also vary trusts entered into in contemplation of or following the civil partnership. Finally, the court can make orders in relation to the partners' pensions.

In deciding which orders to make, the first consideration for the court will be for the welfare of any child under the age of 18.

The following matters will also be considered by the court:

- [the income, earning capacity, property and other financial resources which each of the parties to the civil partnership has or is likely to have in the foreseeable future. This will include whether it could be reasonably expected for either partner to take steps which would increase their earnings, for example through employment.](#)
- [the financial needs, obligations and responsibilities which each of them has or is likely to have in the foreseeable future;](#)

- (c) the standard of living enjoyed by the family before the breakdown of the partnership;
- (d) the age of each party and the duration of the partnership, including any pre-partnership cohabitation;
- (e) any physical or mental disability of either of the parties;
- (f) the contributions which each of them 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 of the parties, whether it occurred during the relationship or after separation.
- (h) the value to each of any benefit which, either party would lose entitlement to - for example, a pension.

The court will aim to achieve a ‘clean’ break for both parties. However, achieving a clean break is rare. The court will often also order one of the partners to pay maintenance to the other.

What is the effect of the dissolution of a Civil Partnership on pensions?

Courts are also able to take into account the value of any pensions held by either party when redistributing their income and assets on dissolution of the partnership.

The options available to the court are:

- (a) **Offsetting** - the pension assets of the parties are either wholly or partly compensated through the value of other assets or a lump sum payment;
- (b) **Attachment/Earmarking Orders** - schemes pay a portion of one partner’s pension to the other on their retirement;
- (c) **Pension Sharing** - a percentage of one partners pension is transferred to a new pension for the benefit of the former civil partner.

Prenuptial agreements

You may also wish to arrange a ‘prenuptial agreement’ before your civil partnership, to agree how your assets should be divided in the case of separation and/or dissolution. We suggest you take legal advice. You’ll find a list of gay-friendly legal advisors on Stonewall’s website www.stonewall.org.uk/info.

7. Where to go for further information



Stonewall

Stonewall's Information Service can point you in the right direction for helpful contacts and legal advisors. Contact us Monday-Friday from 9.30am to 5.30pm.

08000 50 20 20 (freephone)
info@stonewall.org.uk
www.stonewall.org.uk/info

UK Border Agency

For further information about UK immigration rules.
www.ukba.homeoffice.gov.uk

Directgov

For further information on benefits and tax.
www.direct.gov.uk

Revenue and Customs Office

For further information on benefits and tax.
www.hmrc.co.uk

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Please note: Stonewall do not run drop-in advice sessions.

