

English civil partnerships may not be recognised abroad

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Civil partnership was introduced into English law by 2004 legislation for same-sex couples. It was then anticipated it would answer the need for same-sex couples to have a civil state registered relationship but short of same-sex marriage. It was treated in law as equivalent of marriage. Within a decade, in 2013 England introduced same-sex marriage. But Civil partnership remained. However it was still limited to same-sex couples. As the same-sex marriage legislation went through Parliament, the government made a commitment to review Civil partnership, admitting that it was discriminatory against heterosexuals. It carried out a review as to whether to open up Civil partnership to heterosexuals or, now we had same-sex marriage, close availability of Civil partnership to any new entrants. The response was generally balanced between these two and the government took the easy approach and did nothing more.

In the last year, the debate has reopened. There are now significantly fewer same-sex couples entering into civil partnership because of the availability of same-sex marriage. Some seek that it is opened up to heterosexuals. Claims to do so have been made through the courts. Private members legislation has been prepared. Others suggest it is confusing, perhaps detrimental for a society, to have both marriage and civil partnership. There are anxieties it would be regarded as marriage lite. This might be detrimental to children if the relationship broke up more quickly than marriage; the simple reality is that reliable statistics are not available.

With so many international families, the cross-border element of civil partnership should not be ignored in this debate. Within my firm we handle many cases involving cross-border civil partnerships. So what is the position in law? Why might some civil partners find themselves in a more difficult, disadvantaged position abroad because they are in a civil partnership rather than marriage?

The 2004 civil partnership legislation made specific provision for recognition in this country of civil partnerships entered into abroad according to the law of that country. In schedule 20 of the legislation there are many countries listed which have their own civil partnership law and whose civil partnerships we will recognise in England as if English civil partnerships. This schedule had been added to as new countries created their own laws of civil partnerships. By and large this was reciprocated. So an English civil partnership would invariably, although not always, be recognised as a civil partnership in those countries where we recognised the civil partnerships entered into in those countries.

This certainly doesn't mean that all of the rights and entitlements of an English civil partnership will apply in the other country. It would only be the rights and entitlements of civil partnership in that country as if a civil partnership of that country. This applies particularly on dissolution of the civil partnership. Only the rights available under the law of that

country could be claimed on dissolution by a civil partner even if they entered into the civil partnership in England which gives equivalent rights to divorce. In some of these countries the civil partnership rights are quite limited and significantly different, far lesser, to rights and entitlements on divorce. This leads to civil partnership forum shopping where one civil partner may seek to have the dissolution in a country favourable to him or her. The dramatic differences in financial outcome on divorce between Western countries including within the EU apply even more in respect of civil partnership. But at least there is recognition of the civil partnership and opportunity for dissolution of the civil partnership in the country in which the civil partners are then living and have their home.

This still leaves the many countries around the world which don't have any concept of civil partnership. Some countries give equal or similar entitlements to cohabitants, sometimes referred to as *de factos*, as if married. In those circumstances why would they create another hybrid status of domestic relationship? With many countries adopting same-sex marriage, the likelihood of more countries creating the legal status of civil partnerships is diminishing.

Accordingly, a number of civil partners who have entered into a civil partnership in England but then moved to live abroad find themselves in a country which does not have any concept of civil partnership. They are treated as cohabitants with whatever rights pertain to cohabitants in the laws of that country. They are moreover without any opportunity to have a dissolution of the civil partnership in the country in which they are resident, perhaps nationals and domiciled. This would ordinarily leave them in a state of limbo. In a status of civil partnership from which they are unable to extract themselves legally.

It is here that a very unknown and relatively obscure piece of law comes to their aid. If a couple enter into a civil partnership in this country and at the time of the breakdown there is no country with which they then have a connection which can provide a dissolution, they can apply for a dissolution in England. No other connection, so-called jurisdiction, is needed in these restricted circumstances.

My firm has been approached on many occasions by civil partners abroad, often at their wits end believing they are stuck within the civil partnership forever in their home country unable to have a dissolution, a termination in law of their relationship. The law is little-known. I have no doubt that there are some civil partners in relationships which have broken down where they have not yet obtained a dissolution in law for the reason of being unaware that it is available in England where they entered into the civil partnership originally.

This situation will increasingly occur if some countries abolish the status of civil partnership now they have adopted same-sex marriage. This is quite possible. In certain ways civil partnership does become an anachronism; an alternative status relationship when there is the opportunity for both heterosexual and homosexual marriage.

Therefore whilst the fairly narrow opportunity does exist to have a dissolution of a civil partnership in England even though the couple are living abroad, it is undoubtedly far more cumbersome than a divorce in the country in which the couple are based and living. With many countries adopting same-sex marriage, many in a same-sex civil relationship travelling and living abroad might well be better in a marriage.

Whilst the safety net is available for those who enter into a civil partnership in England which breaks down when they are living abroad in a country which doesn't have civil partnership, there are some unattractive features of policy and jurisprudence about this law. There are no significant divorce rights and remedies pertaining to a foreign based couple married in this country due to that fact alone. Were civil partnership to be extended to heterosexuals, there is little doubt that the law would be used much more often.

As our country considers the future status of civil partnership, its uncertainty and its difficulties abroad should be brought into account.

This article does not set out details of statute or case law which can be supplied on request.

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