

Til Death Do Us Part?

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On 31 December 2019 England* introduced heterosexual civil partnerships. Prior to then only same- sex couples could enter civil partnerships in England.

There seems to be much confusion and misunderstanding caused by the introduction of heterosexual civil partnerships in England.

Q: An international/multinational couple who enter into a civil partnership either because they are over the romantic/proposal phase or over the age for weddings or have made vows previously that they are not inclined to breach (to a former spouse).

A: I would say, the first scenario mentioned in your question is not in my experience likely to be a common a reason for choosing a civil partnership. For older couples, international or otherwise many still retain a strong belief in the tradition of marriage and so if they want to formalise their relationship they still tend to marry. There is no age limit on marriage or romantic love!

I am also not sure what is meant by staying faithful to their vows. For a few, including perhaps couples who have cohabited for a long time or are not marrying for the first time, this style of process (i.e. a civil partnership as opposed to a marriage) might better reflect their approach to complying with their legal, as well as romantic commitments to each other, however I doubt this scenario arises often. There should also be no misunderstanding that in England, save for the ceremony itself which must be non-religious, entering a civil partnership provides the couple with the same legal rights as marriage.

Consequently, if couples are worried about breaching vows, the promises and commitments made during a civil partnership in England are akin to the legal promises and commitments made upon marriage, save there can be no religious context. In my experience, couples with religious beliefs prefer to marry or remarry, usually in a religious setting which supports their religious beliefs.

The loudest proponents for this change to English law were predominantly cohabiting heterosexual couples, sometimes with children, opposed to the historic concepts of traditional marriage, but who wanted to have equal legal rights to those couples who are married. They argued there was inequality in the law as same sex couples had the right to (by then) marry or have a civil partnership, but heterosexual couples had no such choice.

In England, a common phrase used by couples who do not believe in the tradition of marriage is that marriage is "just a piece of paper". This expression perhaps explains why some heterosexual civil partnership ceremonies (but by no means

all) appear understated events compared to weddings.

A reason why some international couples might think it's better to opt for a civil partnership in England as opposed to a marriage is because in their home countries, civil partnerships might not carry legal rights akin to marriage. Consequently, the stronger financial party might (wrongly) believe that entering a civil partnership in England as opposed to marrying, will mean they are protected from the notoriously generous financial provisions which England is known for upon divorce (England is commonly referred to as "the divorce capital of the world". That however is not so. In England, a dissolution of a civil partnership enables the same financial claims as couples who divorce.

In contrast, in England, cohabitants have very few legal rights indeed and contrary to a popular myth, there is no such thing as "common law marriage" in England. There are those that think civil partnership is the solution to this problem, but it is not. Many believe rather than requiring people to actively commit to a formal relationship (to ensure they have suitable legal protection) there should instead be an automatic right to such legal protection after say, a period of cohabitation or if the cohabiting couple have children. In other countries do have these "*de facto marriages*" e.g. Australia. There is currently a Bill called the cohabitation Rights Bill going through the House of Lords. We are awaiting news of the date for the second reading of this Bill in the Lords. Such rights for cohabitants have long been fought for (i.e., for at more than two decades).

Q: Do all jurisdictions place equal legal rights on the Civil Partnerships as the UK does? If the couple spends part of their life in a jurisdiction that does not recognise the Civil Partnership vehicle, what would be the impact on their joint business projects or the ability to function as a couple for example if one of them goes to hospital, would the other have automatic right to information as a civil partner?

A: The rights and protections for civil partners can vary considerably between countries, or even some states, territories and even within other parts of the UK.

For couples who are both only connected to England (by birth or citizenship) and who do not foresee ever living abroad during their civil partnership; their legal status, rights and remedies should remain consistent throughout their civil partnership. That is their rights will remain akin to marriage and upon dissolution they would continue to have the same legal remedies available to them as divorcing couples would have in England.

For others, with connections to countries other than England (by birth, citizenship or residence) the long-term status and recognition of their civil partnership and associated rights and obligations towards their civil partner might vary considerably.

Unlike "*marriage*" there is not even a worldwide definition of what constitutes "*a civil partnership*" or what rights and obligations civil partnerships bestow upon a couple. They are even called different things in different countries. For example, in Nova Scotia, Canada there are "*domestic partnerships*", in Argentina, "*Unions Civil*" and in Tasmania "*significant relationships*".

- Some countries recognise civil partnerships
- Many countries do not recognise civil partnerships (and in some countries cohabitation outside marriage can even be a criminal offence)
- In some countries civil partnerships only apply to same sex couples. In others, even inter-state they can have different rules about who can enter a civil partnership e.g., Pennsylvania.
- In some countries they offer rights and obligations almost identical to married couples (England being one of them)
- In some countries civil partnerships do not carry the same rights as married couples

These differences impact a couple's legal rights hugely during their civil partnership as well as upon a dissolution of their civil partnership.

As a result of these worldwide differences in interpretation and associated rights, the stronger financial partner's obligations to the other partner over and above their respective legal ownership of assets might also vary very considerably worldwide.

In England, the very generous financial provision which can be made to the weaker financial party upon divorce applies equally to civil partners upon dissolution of their civil partnership. This is particularly so where there are children of the

family or it has been a long partnership. This includes the possibility of assets in one person's name being transferred to the other, joint lives spousal/civil partner maintenance as well as child maintenance (where applicable), the sharing of pensions and sometimes even the sharing some inherited, gifted or pre-relationship assets where the court deems it necessary to do so to meet the weaker financial parties financial needs.

In other countries, the potential financial claims upon dissolution of a civil partnership can be very considerably lower. Abroad, certain categories of assets are commonly ring-fenced absolutely, spousal maintenance is often at best very time limited, pensions are not shared and foreign based assets are ignored.

Q: So, what does this mean?

A: International couples, where the stronger financial party has sufficient connection to a country with lower financial outcomes upon dissolution of a civil partnership, might well opt to try to commence dissolution proceedings there instead of England. This can either greatly benefit or severely prejudice a particular civil partner. This process is known as "*forum shopping*". Forum shopping is a term which is commonly used about international divorcing couples. In extremely broad terms, for the weaker financial party in a marriage, England is often considered the better country in which to divorce and for the stronger financial party it is often viewed as the least attractive option.

The same issues and considerations will apply to international couples in civil partnerships who want to dissolve their civil partnerships, save that the consequences of a civil partner failing to secure their favoured country for jurisdiction to deal with their dissolution could cause even starker contrasts in outcomes, owing to the different rights afforded to the varying interpretations for civil partnerships in some other countries.

There is another important point to mention which impacts international civil partners. As there are some countries which do not recognise civil partnerships; if no court in any other country to which the couple have connections has jurisdiction to dissolve a civil partnership, such a couple can apply to dissolve their civil partnership in England. This applies even if they have no other connection to England. This could again give rise to weaker financial parties being able to issue dissolution proceedings in England in circumstances where they could not otherwise have had a jurisdictional basis to do so. In so doing they would then gain rights akin to marriage in circumstances where the stronger financial party had never intended for that to be the case.

Many taxes, inheritance rules, next of kin notifications, access to medical information, pension or immigration rights and sometimes even rights towards the children or possibly the ability to own property in a country are commonly connected to the legal status of the couple's relationship. Civil partnerships might not be treated equally to marriage in this regard.

It is clear therefore that the consequences for international and internationally mobile families who are in civil partnerships rather than a marriage could remain vast if they have connections to other countries (by residence, birth or citizenship).

Q: Is there any way to mitigate a negative impact? Can civil partners enter a contract (similar to a pre-nup or post-nup) that protects civil partners, not just in the event of splitting up, but in all eventualities?

A: If couples have entered into a civil partnership only to find their rights are not adequately protected or recognised in another country to which they intend to move, they could consider converting their relationship status to a marriage before they move. In England this is possible for same sex couples and it is envisaged it will also be an option available to heterosexual civil partners.

However, whilst for many happy civil partnerships this option will provide considerable reassurance, for others it might better suit one civil partner not to convert their civil partnership into a marriage. Careful consideration and specialist legal advice from an international family lawyer should therefore be sought before any decision to make such a conversion of a civil partnership to a marriage is made.

If couples are planning to enter a civil partnership they could consider entering a pre or post-civil partnership agreement, but with consideration of how that agreement might best be recognised in any country with which they or their civil partner has any connection or where they might live. Again, a specialist international family lawyer can help with this.

Also, if a couple knows that rights, like an entitlement to access information about a partner's medical condition are only

automatically afforded to a spouse, they could try to include provisions in a civil partnership agreement about these sorts of rights. This agreement could then be shown to the relevant authorities. However, it might be as well to also check with the relevant country whether there are ways to formally consent to their civil partner receiving such rights and access to personal information. For example, there might be special local consent forms for such purposes. Forms which are familiar to the local authorities are less likely to be scrutinised or challenged as representing valid consent. It is important to also be aware that not all countries even recognise marital agreements (pre-nuptial or post-nuptial) let alone civil partnership agreements.

In some instances, it might also be possible for those in Civil Partners who have dissolved their civil partnerships abroad, have received a very low financial outcome compared to their partner's wealth, but who retain some connection with England, to utilise legislation in England to seek additional financial relief or to apply for capital and maintenance for their children. Specialist legal advice will however be essential if this option is being considered.

Q: Would a former spouse have equal or greater rights as/than a civil partner in certain jurisdictions?

A: A former spouse's rights as a "spouse" are extinguished upon divorce or death. A former spouse might have an ongoing maintenance order for themselves or for a child of the family arising from their divorce. In that scenario they might be able to vary such financial orders. Otherwise, in England a former spouse is unlikely to have greater rights or entitlements to the civil partner. In England, civil partnerships cannot be entered into if you or one of you remains in a lawful marriage.

In Conclusion

There remain many unknowns regarding the recognition of English civil partnerships abroad. Unlike marriage, civil unions do not represent a universally recognised relationship status. It is therefore essential to consider these legally technical but hugely significant aspects regarding civil partnerships with an international family law specialist and other professional advisers preferably before you consider entering a civil partnership, but also if you are contemplating moving abroad or dissolving a civil partnership.

* Throughout this article references to England apply equally to Wales, but the laws in the rest of the UK vary.

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