

Civil Partnerships - Home and Abroad

By Lucy Greenwood

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The English Perspective

Civil partnerships were initially introduced in England in 2004 for same sex couples, who were unable to marry. Although the legal rights for civil partners were akin to those of married couples, same sex marriage was introduced ten years later, in 2014.

Whilst this long-awaited legislation was progressive for same sex couples, some heterosexual couples felt their legal rights were not being treated equally, because unlike same sex couples they could not choose whether to enter a civil partnership or a marriage.

The loudest proponents for equality were predominantly cohabiting couples, sometimes with children, opposed to the historic concepts of traditional marriage, but who wanted to have equal legal rights to married couples. (In England cohabitees have far fewer legal rights than civil partners or married couples and there is no such thing as common law marriage. In some other countries cohabitees automatically acquire defacto marriage rights after living together for a certain period. That is not the case in England, but such rights can be acquired if civil partners move abroad).

Following a high-profile Supreme Court case in 2018 which ruled not allowing heterosexual civil partnership to be incompatible with the European Convention on Human Rights, England introduced heterosexual civil partnerships on 31 December 2019.

Interestingly there remains one significant disparity between same sex and heterosexual civil partners, in that whilst a same sex civil partnership can be converted to a marriage, a heterosexual civil partnership cannot be. It is likely this will change, but it has not yet.

From 6 April, when no fault divorce arrives in England, it will be possible to dissolve a civil partnership in exactly as a marriage, via the court's online portal. <https://www.iflg.uk.com/blog/insight-new-no-fault-divorce-law-commencing-6-april->

It is not possible for Marriages to be converted to Civil Partnerships.

In England, civil partnerships cannot be entered if either party is in a lawful marriage.

An International Perspective

The rights and protections for civil partners vary considerably between countries, some States, Territories and even within other parts of the UK.

For civil partners who are 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.

For civil partners 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 change considerably.

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

Some points for an internationally mobile Civil Partners to Consider:

- 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 Intra-State there can be different rules about who can enter a civil partnership e.g. In Pennsylvania '*domestic partnerships*' are recognised in Philadelphia, but not elsewhere in the State of 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.

Consequently, the stronger financial partner's legal obligations to the other partner varies considerably worldwide.

In England, the law provides very generous financial provision to the weaker financial party. The same applies 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.

Financial provision in England available upon Dissolution of a Civil Partnership includes:

- The possibility of assets in one person's name being transferred to the other
- Spousal/civil partner maintenance
- Child maintenance (where applicable)
- Sharing pensions
- And sometimes even the sharing of some inherited, gifted or pre-relationship assets where the court deems it necessary to do so to meet the weaker financial party's financial needs.

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

So, what does this mean?

International couples, where the stronger financial party has sufficient connection to another 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 severely prejudice the weaker financial civil partner. This process is known as 'forum shopping'. forum shopping is a term which is commonly used about international divorcing couples, but it applies equally to civil partnerships in England.

England is often considered the better country for the weaker financial party to use owing to its generous provisions.

Consequences of a civil partner failing to secure their favoured country to deal with their dissolution could cause even starker contrasts in outcomes, owing to the greater variations of the legal rights of civil partnerships in some other countries.

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 partners might not be treated equally to spouses in this regard.

Therefore, the consequences for international and internationally mobile families who are in civil partnerships rather than a marriage could be considerable and far reaching.

How to Mitigate Risk

Convert to a Marriage (same sex couples only)

If same sex couples have entered a civil partnership only to find their legal rights are not adequately protected in a country to which they plan to move, they could consider converting their relationship status to a marriage before they move.

However, whilst for some civil partnerships, this option might provide the reassurance they require, for others it might suit one civil partner not to convert their civil partnership into marriage. Therefore, careful consideration with legal advice should be sought before any decision to make such a conversion of relationship status is made.

Civil Partnership Agreements

If couples are planning to enter a civil partnership, they could consider a pre- or post-civil partnership agreement. This would require consideration of whether that agreement would be legally recognised in any relevant country. Advice from international family lawyers in each relevant country would be required to assess this. If a civil partner is concerned about having equal access to information as a spouse, for example about a civil partner's medical condition, they could include provisions for this in a civil partnership agreement. This agreement could then be shown to the relevant authorities.

Access to Information – Pro-Forma

Some countries might have specific approaches to formally consent to a civil partner receiving 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.

Other Laws in England applicable to International Civil Partners

If no court in any other country to which the couple have connections has jurisdiction to dissolve a civil partnership (regardless of where the couple live or became civil partners) such couples can apply to dissolve their civil partnership in England. Whilst this default option is helpful for many, it could give rise to weaker financial parties becoming entitled to the full range of financial remedies in England where the stronger financial party had never intended for that to be the case.

Sometimes civil partners who have dissolved their civil partnerships abroad but have received a very low financial outcome proportionate to their partner's wealth and who retain sufficient connection with England, can seek additional financial relief in England. Specialist legal advice will however be essential if this option is being considered.

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

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.

Lucy Greenwood

Lucy.greenwood@iflg.uk.com

The International Family Law Group LLP

www.iflg.uk.com

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iFLG

Hudson House
8 Tavistock Street,
London WC2E 7PP

Contact

+44 (0) 203 178 5668
enquiries@iflg.uk.com

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