



The differences between civil partnership, marriage and cohabitation for couples

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When deciding how to arrange or label their relationship, couples now have more choice than ever before. They can choose to marry, to enter into a civil partnership or simply to cohabit without formalising a relationship or they may enter into a cohabitation agreement. This flexibility, irrespective of whether you are part of a same sex or opposite sex couple, has only become available relatively recently.

Civil partnerships were introduced by the Civil Partnership Act 2004 ("CPA") and were initially available only to two people of the same sex allowing them to formalise their relationship in a manner similar to marriage. Following a decision by the Supreme Court in 2018, confirming that the law banning opposite-sex couples from forming civil partnerships was discriminatory, the CPA was amended in 2019 to allow opposite-sex couples to register a civil partnership in England and Wales. Further, since March 2014 the Marriage (Same Sex Couples) Act 2013 has made marriages of same-sex couples lawful in England and Wales. There is no difference between a same-sex marriage and an opposite sex marriage, save that religious organisations may choose whether or not to opt in to marrying same-sex couples.

It is therefore now open to all couples to decide whether they want to enter into a marriage or a civil partnership.

In spite of this flexibility, couples are increasingly choosing to eschew formalising their relationship at all, preferring to cohabit together. In their annual estimates of population by legal marital status and cohabitation status, the ONS found that: *"while "married" remained the most common marital status, accounting for just over half the population in 2019, this proportion is steadily declining except among those aged 70 years and over."*

When faced with this range of choices, combined with the trend away from formalising relationships, it is very important that couples are able to make an informed decision as to which option is most appropriate for their relationship, particularly in circumstances where their relationship's legal status may have significant legal implications.

What is a civil partnership and how is it different to marriage?

A civil partnership is a legal relationship entered into by a couple which is registered and provides them with similar legal rights to married couples. Despite the similarity, there are a variety of reasons why couples choose not to marry, although these often relate to their personal and religious beliefs.

While they remain in a partnership, civil partners have the same legal status as married couples in

England and Wales, including in respect of available tax reliefs and pension provision. Civil partnerships entered into in England and Wales do not, however, benefit from the same international recognition as a marriage, and consideration of the individual rules of a specific country may need to be given if you are seeking to relocate.

Upon divorce, while the terminology to describe the end of a marriage or a civil partnership is different (marriages are ended by "divorce" while civil partnerships are ended by "dissolution"), the reality is the rights and obligations are very similar. It should be noted, however, that it is not possible to petition on the grounds of adultery upon the breakdown of a civil partnership, but it is possible to do so upon the breakdown of a marriage. Importantly, this does not have any impact upon either partner's entitlement to financial provision. Both married couples and those in civil partnerships benefit from legislation which protects their rights when they separate and divorce. They can make financial claims in respect of the assets either in joint or sole names, including (where appropriate) applications for maintenance or provision for legal funding orders.

Similarly, the option to enter into a Pre-Nuptial Agreement remains available for those entering into either a civil partnership or a marriage. This is a formal written document which enables both parties to set out the ownership of their assets and record how they are to be divided upon the breakdown of their marriage or civil partnership.

Importantly, the legislative protections relating to inheritance and entitlement to property arising from a marriage or a civil partnership, mean that your partner will be protected in the event you are to die without a Will.

What are the differences between a marriage or civil partnership and cohabitation?

Some couples prefer to cohabit, believing that neither marriage nor a civil partnership is appropriate for their relationship. Unfortunately, many people believe, in error, that if they have lived together for a period of time they will enjoy the same rights as a married couple, so called "common law marriage". This is not the case. Generally speaking, when you are cohabiting you will have fewer rights than if you are married or in a civil partnership and in the event of a relationship ending will have to fall back on normal principles of property and contract law. This applies to tax treatment, inheritance provision, pension provision and financial provision upon separation. During your relationship, or upon its breakdown, no legal or financial responsibility to each other will arise from your relationship – irrespective of the length of your cohabitation.

Given the trend towards cohabitation, it is a concerning misconception that couples who live together for an extended period of time may believe they acquire legal rights that put them in the same position as a divorcing couple.

If you are not married, there is no automatic right to share assets owned by your partner or to request ongoing financial assistance by way of maintenance for yourself, even if one party has given up work to look after children. The only legislative recourse you may have access to is in relation to any interest in property under property law principles or any claims brought on behalf of children of the relationship under Schedule 1 and section 15 of the Children Act 1989.

In respect of any claims arising from an interest in a property, it is important to note that properties held in joint names (a joint tenancy) are generally shared equally on relationship breakdown, irrespective of contribution. However, if the property is held in unequal shares based on initial contribution to the purchase price (a tenancy in common), each cohabitant will take back their relative share on sale. If you believe that you and your partner agreed that the beneficial ownership does not reflect the legal ownership (for example that even though you hold the property in unequal shares, the property should be divided equally), the burden is on you to show that that you both intended your beneficial interests to be different to their legal interests.

To establish an interest in a property not held in joint names, you must rely on property law and the

principles of constructive trusts and proprietary estoppel, rather than family law principles. These claims are usually addressed through the Trusts of Land and Appointment of Trustees Act 1996 (or ToLATA as it is known). You will need to show that there was an agreement, arrangement or understanding to own a property jointly, either at the time of purchase or at a later stage. Financial contributions are relevant but there are many other factors which enable a court to decide what shares were either intended or fair. Court proceedings can be expensive and may take many months or years to resolve.

It is very important, therefore, when buying a property together that couples should consider all of the implications for how the property will be legally owned and registered. For example, even if each individual is to own a 50% share, a couple may want to consider holding the property as Tenants in Common so that their respective share will pass under the terms of their Will. This may be important where there are children from a previous relationship. Couples should consider entering into a Declaration of Trust which can clarify the beneficial interest of each party within any jointly owned property. This document can then be referred to when parties separate to ensure any sale proceeds are dealt with as agreed by the parties.

As noted above, following the separation of a co-habiting couple, it is also possible to bring claims on behalf of any children from the relationship. The parent with care of the children can apply for child maintenance via the Child Maintenance Service and for more extensive provision under Schedule 1 and Section 15 of the Children Act where appropriate.

Any provision made under this Act relates only to the needs of the child, and not to the needs of the parent applying (save in their role as carer of the child during its minority). While it is therefore possible to apply for a lump sum order or a maintenance order, these are only referable to the needs of the child. Similarly, an order to provide a property for the child will usually only last as long as it will benefit the child, often until they are 18 or have finished education. The property will then return to the parent providing the funds. This can leave one parent in a difficult financial situation when that support is withdrawn.

What about cohabitation agreements?

Whilst no rights automatically arise from a couple choosing to live together it is possible to draw up a legal agreement to protect yourself when living with someone. Such agreements are known as "cohabitation agreements" which can outline both the rights and obligations that you and your partner have towards each other during your relationship and upon separation.

A cohabitation agreement is a formal agreement that deals with what would happen in the event of separation. A cohabitation agreement can set out the assets owned by each party and how these should be dealt with if the couple were to separate. They can also deal with how provision for children should be dealt with and record, for example, any non-financial agreements relating to children (such as changes of surnames).

Provided they are drafted and executed properly as a deed, and meet specific criteria, these agreements are legally binding in the UK. It is important, if you are considering entering into a cohabitation agreement and wish to ensure it is binding, that both you and your partner take specialist legal advice.

What are my rights upon the death of my partner if we are not married or in a civil partnership?

Unmarried couples should also ensure that they have an up to date Will. It is a misconception that unmarried couples will have an automatic right to each other's' estate in the event that one of them predeceases the other. Currently, there is no legislation to say that the surviving co-habiting partner will automatically inherit anything. Nor is there an automatic right to your partner's property in the event of their death, even if you have been living together for a significant period of time. Cohabiting couples are also not entitled to tax reliefs or exemptions that spouses and civil partners enjoy, including those

relating to pensions.

Crucially, the only way to ensure that your assets will be distributed to benefit your partner in accordance with your wishes, is to ensure provision for them is explicitly dealt with in your Will.

Conclusion

While there has been some movement towards trying to increase the legal protections relating to property and finances when cohabitating relationships end, including a Law Commission report in 2007, it is notable that the government has chosen not to take forward those recommendations to date. In such circumstances, and given the trend towards cohabitation, it is extremely important that both parties in a relationship are aware of the advantages and disadvantages of the arrangement they have entered into. If you are concerned about your rights arising from the legal status of your relationship it is strongly recommended that you take legal advice to ensure you, and your family, are properly protected in the ways that you think you are.

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