

Same-Sex Marriage and Civil Partnership

Since December 2005, the Civil Partnership Act 2004 (CPA) has enabled same-sex couples to enter into a civil partnership. A civil partnership recognises their relationship and confers on them, many, but not all, of the same rights and responsibilities as a heterosexual married couple. If the relationship breaks down, the partners can dissolve the civil partnership and they are then entitled to the same consideration on financial settlement as married couples; property, capital, pension rights and maintenance. Arrangements for children are dealt with in the same way as for married couples. Civil partners also have the same exemptions on inheritance tax, social security and tenancy rights as well as next of kin.

Since 2014, when the Marriage (Same-Sex Couples) Act 2013 (MSSCA) came into force, same-sex couples may also marry. Civil partners will also be able to convert their civil partnership into a marriage.

There are differences between civil partnerships and marriages. A civil partnership is a non-religious civil event, whether or not the partners then choose to have a ceremony to celebrate their partnership, whereas a marriage can be conducted either through a civil ceremony or a religious ceremony.

The legal requirements for dissolution of a civil partnership are broadly the same as for divorce. The only differences relate to the jurisdictional criteria for dissolution and that adultery cannot (as in a heterosexual marriage) be relied upon.

Parties to a same-sex marriage entered into outside England and Wales are treated as being married in England and Wales. However, be aware that the MSSCA 2013 does not permit a civil partnership entered into outside England and Wales to be converted to a marriage. Those partnerships will continue to fall within the scope of the CPA 2004.

If you have any questions about the dissolution of your civil partnership or your divorce, we advise you to speak to our team of family lawyers in London.

Comparative Table

We set out below the similarities and differences between civil partnership (which is available only to same-sex couples), and marriage.

	Marriage	Civil Partnership
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Legal provisions	Separate legal regime from civil partnership. Provisions set out in the Marriage Act 1949, Matrimonial Causes Act 1973 and MSSCA 2013	Separate legal regime from marriage. Provisions set out in the Civil Partnership Act 2004.
	Married couples cannot call themselves civil partners for legal purposes.	Civil partners cannot call themselves married for legal purposes.
Formation	Marriages are solemnised by saying a prescribed form of words.	Civil partnerships are registered by signing the civil partnership document, with no words required to be spoken.
	Marriages can be conducted through either a civil ceremony, or a religious ceremony for same-sex couples this can only be where the religious organisation has agreed to solemnise marriages of same-sex couples according to its rites.	The formation of a civil partnership is an entirely civil event. Civil partners can choose to add a ceremony to follow the formation of their civil partnership but this does not form part of the formation. Where the civil partnership is formed on religious premises (where the religious organisation agrees to host it), the ceremony may be religious, as long as the actual formation remains secular.
Annulment	A marriage can be annulled for the following reasons:	A civil partnership can be annulled for the following reasons:
	If either party did not validly consent to the marriage.	If either party did not validly consent to the civil partnership formation.
	If either party was suffering from a mental disorder of such a kind as to render them unfit for marriage.	If either party was suffering from a mental disorder of such a kind as to render them unfit for civil partnership.

	If at the time of the marriage the respondent was suffering from a venereal disease in a communicable form.	This is not a ground for annulling a civil partnership.
	If the respondent was pregnant at the time of the marriage by some person other than the petitioner.	If the respondent was pregnant at the time of the civil partnership formation.
	If an interim gender recognition certificate has been issued to either party after the marriage.	If an interim gender recognition certificate has been issued to either party after the formation of the civil partnership.
	If a full gender recognition certificate has been issued as at the date of the marriage to the respondent.	If a full gender recognition certificate has been issued as at the date of the civil partnership to the respondent.
Divorce/ Dissolution	Marriage is ended by divorce, by obtaining a decree absolute. Some effects of marriage of the couple end on the issue of the decree nisi.	Civil partnerships are ended by a dissolution order. Some effects of civil partnership of the couple are ended on the issue of an interim order of dissolution.
	A marriage can be ended on the ground that the marriage has broken down irretrievably, relying on one or more of the following facts:	A civil partnership can be dissolved on the ground that the partnership has broken down irretrievably, relying on one or more of the following facts:
	Adultery - Case law defines adultery as voluntary sexual intercourse between a man and a woman who are not married to each other but one or both of whom is or are married. A statutory definition has now been introduced following the MSSCA 2013 coming into force clarifying that adultery can only be committed between people of the opposite sex.	Given the definition of adultery, this fact cannot be relied on by same-sex couples. If a party believes his same-sex partner has had a sexual relationship with a third party, he can use this as an example of unreasonable behaviour.

	Unreasonable behaviour.	Unreasonable behaviour.
	Desertion for 2 years.	Desertion for 2 years.
	Separation for 2 years (with the respondent's consent to the divorce).	Separation for 2 years (with the respondent's consent to the dissolution).
	Separation for 5 years (no consent required).	Separation for 5 years (no consent required).
	Marriage	Civil Partnership
State pensions	<p>Under the 2013 Act, married same-sex couples are treated the same as men married to women, irrespective of their gender. They may be entitled to a lower-rate basic pension based on their spouse's National Insurance record only where the spouse was born after 5 April 1950.</p> <p>A married woman whose spouse changes legal gender from male to female during the marriage may qualify for a lower-rate basic pension based on her spouse's National Insurance record regardless of her spouse's date of birth. This is the same treatment as if her spouse had not changed their legal gender.</p>	Civil partners are treated the same as men married to women, irrespective of their gender. They may be entitled to a lower-rate basic pension based on their civil partner's National Insurance record only where the civil partner was born after 5 April 1950.
State pensions for widows, widowers and surviving civil partners	Under the 2013 Act, married same-sex couples are treated in the same way as men whose wives have died, irrespective of their gender. Where the surviving spouse is over state pension age and the late spouse died while under state pension age, the	Surviving civil partners are treated the same as men whose wives have died, irrespective of their gender. Where the surviving civil partner is over state pension age and the late civil partner died while under state pension age, the survivor

	survivor can inherit earnings-related state pension only if he or she reaches state pension age after 5 April 2010	can inherit earnings-related state pension only if he or she reaches state pension age after 5 April 2010.
Survivor benefits occupational pension schemes	<p>Where an occupational pension scheme provides discretionary survivor benefits, schemes are permitted to only take into account the rights accrued from the date the Civil Partnership Act came into force (5 December 2005).</p> <p>Where an occupational scheme is contracted out, schemes are required to pay surviving spouses of either gender half of the Guaranteed Minimum Pension (GMP) accrued based on the member's accruals back to April 1988.</p>	<p>Where an occupational pension scheme provides survivor benefits, schemes are permitted to only take into account the rights accrued from the date the Civil Partnership Act came into force (5 December 2005).</p> <p>Where an occupational scheme is contracted out, schemes are required to pay surviving civil partners of either gender half of the Guaranteed Minimum Pension (GMP) accrued based on the member's accruals back to April. 1988.</p>
Survivor benefits public service pensions	Survivor benefits in public service pensions are, in most cases, in line with those for civil partners and widowers of a marriage between an opposite-sex couple. This means that in most cases, in addition to the GMP, they take account of service accrued since 1988.	Survivor benefits in public service pensions are, in most cases, in line with those for survivors of a marriage of a same-sex couple, and widowers of a marriage of an opposite-sex couple. This means that in most cases, in addition to the GMP, they take account of service accrued since 1988.

Should you require any further information in relation to Same-Sex Marriage and Civil Partnership or wish to discuss your matter further, please do not hesitate to speak to a family lawyer in London by calling 02074366767 or emailing info@kmjsolicitors.com.