

## Civil partnerships – gay marriage?

**From 5 December this year, same sex couples in the UK will, for the first time, be able to apply for legal recognition of their relationship. For virtually all intents and purposes, this will be gay marriage, although, perhaps for reasons of religious opposition, the Government has gone to great efforts to ensure that 'marriage' is never equated with 'civil partnerships'.**

The Civil Partnership Act 2004 (CPA) gained Royal Assent last November although, rather overshadowed by the hunting Bill, it received only limited press attention. The CPA allows two people, of the same sex, in a non-religious setting and in the presence of a registrar, to sign the Civil Partnership Register and thereby take on certain rights and responsibilities. Note that two people of the opposite sex cannot have a civil partnership, eg co-habiting father and daughter, nor indeed can those who are within the 'prohibited degrees of relationship' (as with a marriage) eg mother and daughter.

Through the CPA, a surviving civil partner will have rights equivalent to a surviving spouse upon intestacy and in the event of an Inheritance Act claim upon the estate of a deceased civil partner or former civil partner. The CPA also restricts the witnessing of Wills by civil partners of beneficiaries, and causes there to be automatic changes to Wills, unless a contrary intention is clear, upon entering into a civil partnership or upon dissolution.

'Dissolution' is the civil partnership equivalent to divorce, and the CPA sets out the procedure and grounds for this. In essence, dissolution mirrors divorce, save for the missing 'fact' of adultery (omitted for technical reasons), with judges having power upon a dissolution to make a variety of orders relating to the division of assets. It is widely expected that pre-registration agreements (ie pre-nuptials) will be as effective as in a marital context, if not more so. We certainly anticipate substantial demand.

### Mostly tax savings ...

Tax benefits will probably provide the necessary incentive for many same-sex couples to 'tie the knot'. However, it should be noted that, in general, tax provisions are not yet on the statute book, having been purposefully excluded from the CPA (which was considered social policy legislation rather than fiscal

increase the financial security of a surviving civil partner (assuming they are UK domiciled for inheritance tax purposes), and also enables civil partners to take advantage of the same tax-mitigation techniques as married couples. In this regard, we are expecting considerable interest in our Loan Plan Will for Civil Partners, which can save a minimum of £110,000 of inheritance tax. The inclusion of other, more advanced methods can save additional amounts substantially in excess of this.

### ... but beware a few traps

Aside from inheritance tax, civil partners will be able to transfer assets between themselves without triggering a capital gains tax charge. This would facilitate income, capital gains and inheritance tax planning through asset reallocation. However, prospective civil partners should also note that whilst they might presently each own a property that benefits from the main residence exemption from capital gains tax, only one such property will be protected following registration.

Prospective civil partners should also be aware of the settlor-interested trust rules and close company provisions. Thus tax planning advice both in advance of, and after entering into, a civil partnership, is highly recommended.

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legislation). Equality with married couples has, though, been promised, and this year's Finance Act has granted power to the Treasury to amend all existing legislation. Regulations dealing with Council Tax have already been published, and a torrent of further regulations are anticipated shortly.

Principal amongst the expected tax benefits will be inheritance tax, with civil partners being granted the equivalent of the spouse exemption. This will greatly