

CIVIL PARTNERSHIPS

SOME GOOD NEWS AND A COUPLE OF TRAPS

On 5 December this year new legislation is coming into force which will revolutionise the way in which the law views same-sex couples who register their relationship under the auspices of the Civil Partnership Act 2004. Couples who take this step will find themselves in many respects in the same position as married people, although the term “gay marriage” is inaccurate and apt to mislead. The Act is a consequence of another piece of legislation, the Human Rights Act, and in particular its provisions attacking discrimination.

Various examples of discrimination have been highlighted by same-sex couples and their advocates, not least with regard to tax rules. Married couples have always been able to transfer property to each other without any Inheritance Tax implications, and special rules apply for Capital Gains Tax as well, but same-sex couples were denied any equivalent recognition under the law, with the result that capital tax liabilities have potentially been a source of serious concern. We are waiting for the Treasury to put the necessary Regulations in place, but assuming they don't forget we can expect equal treatment for registered couples and their married counterparts from December onwards. The stated intention is to put civil partners in the same position as married people for tax purposes.

The new Act will also put civil partnerships on the same footing as marriages for various purposes connected with wills. This creates a trap familiar to those who prepare and advise on wills, and a more novel one peculiar to the new regime. Unless special words are used marriage revokes existing wills made by the happy couple, a registered civil partnership will have the same effect. The available solutions are also the same, either make new wills after registration, or make wills expressly “in contemplation of” a civil partnership which has yet to be created. Another potential difficulty seems a possibility, however, where civil partnerships are concerned. The new Act will provide recognition for some pre-existing civil partnerships entered into in other countries: it therefore means that the mere coming into force of the Act may have the effect of automatically revoking the wills of those affected. This is the sort of unintended consequence which may be addressed by amending legislation, but meanwhile those affected should take steps to ensure that their testamentary wishes remain effect.

James Matthews 2005