Recognition of Overseas Civil Partnerships and Marriages for Same Sex Couples

Civil partnerships are treated as relationships similar to marriage in the UK. They are informed by a similar registration system, have similar benefits and responsibilities of marriage and can only be terminated by a formal procedure known as ‘dissolution’ akin to divorce. So what is all the fuss about? If there is any international or overseas element the whole arena of understanding changes and becomes highly complicated. As more and more people move around the world and we become a more cosmopolitan society such issues will become increasingly common. A wide range of same sex couples can be affected. These include:

- Two people from the UK who live abroad;
- Two people from the UK who enter into a marriage or civil partnership in another country or enter into a UK civil partnership abroad.
- One partner from the UK and one foreign partner entering into a civil partnership in the UK or a civil partnership/marriage in another country.
- Two foreign partners who enter into a marriage/civil partnership abroad who then live in the UK.

Issues range from recognising a foreign marriage/civil partnership in the UK to recognising/foreign divorce or dissolution. There is then the further question on the extent the English court make financial provision for same sex couples who have had a foreign divorce or dissolution.

A starting point of understanding is to realise that a ‘civil partnership’ is a very new concept and legal entity which is not something that is recognised world wide unlike marriage. This article examines how the UK recognises “overseas partnerships and marriages” of same sex couples under the new Civil Partnership Act.

1. Recognition of civil partnerships and marriages formed outside the UK

Recognition is important because it means that a same sex couple can be treated as though they are ‘civil partners’ even though they did not formally enter into a civil partnership at any time in the UK. This will entitle the couple to a range of benefits such as tax, savings, transfer of pension benefits treated as next of kin etc. It is not only civil partnerships that are entered into in all parts the UK that are now recognised under the Act. There are two categories of people overseas who are ‘recognised’. They are:-

(a) Those who enter into a civil partnership outside the UK with the intention of having their relationship formally recognised in the UK. For this to be accepted it has to take place at the British Consulate in the overseas country or in the case of the armed forces prescribed personnel at their barracks.
This is unlikely to be a large number of people. In the case of civilians it will probably affect UK citizens living overseas in a country where such a registration system will not be objected to and there is no other facilities to allow such a couple to enter into a relationship in the law of that country.

(b) Where the parties have already registered in relationship ‘overseas’ under that country’s jurisdiction. This will be recognised providing the partnership/marriage is one that is listed as recognised or satisfies the general conditions under the Act.

In order for this to be the case the relationship cannot be entered into by parties who are already party to a relationship to that of a kind or married. The relationship may be of an indeterminate duration and the effect of entering into it is that they are treated as a ‘couple’ or are treated as ‘married’. In addition to this there has to be formality and the relationship must in some way be registered. The only caveat to these provisions is that the UK will not recognise an overseas relationship which is contrary to public policy because of capacity issues in that country i.e. if their relationship could not have been formalised and recognised in the overseas country it will not be recognised as a civil partnership here.

Schedule 20 of the Act lists all the countries whose formal state recognised same sex couples relationships are also recognised in England. These are listed at the end of the article.

The list is reasonably wide but what is surprising is the diversity of the type of relationships recognised. By way of example countries where same sex couples can get married such as in Belgium and Canada will be treated as civil partners here. There is no mechanism in which their relationship will be recognised as a marriage. Marriage is still an institution that can be entered into by two people of the opposite sex in the UK. On the other hand if same sex couples enter into a legal binding contract making them ‘partners’ in countries such as France and Germany they will be treated as civil partners here. Such contracts have different obligations to marriage or civil partnership. The responsibilities under such contracts are usually much less. As a consequence such a couple who live in England will find they have many more obligations towards the other than they committed to in the country which they entered their contract in.

Inevitably the list of countries will change over the course of time as countries laws change. However it there still remain inconsistencies in what each country understands the same sex couple is entering into. There are bound to be problems from a UK perspective. There is also no worldwide recognition of a UK civil partnership not even from some of the countries that are listed in schedule 20.

In summary a same sex couple who register as civil partners here will have to understand how their relationship will be viewed in each country they live in in future and vice versa if a couple come to live in the UK.

2. **Termination of an overseas relationship in the UK**

If an overseas relationship is recognised in England (whether that is marriage, civil partnership or a registered agreement) one of the partners can seek a dissolution of that relationship in the UK under the Civil Partnership Act. Whether or not the UK’s procedure for the dissolution of that relationship is recognised in the country where the parties were married remains an issue but a marriage in Canada or a PACS in France can be treated as if capable of being dissolved in England. Another interesting aspect of this is that whilst people in England who have entered into civil partnerships after the Act came into force cannot themselves dissolve their relationship until one year after registration of the civil partnership, the same does not apply to those who are in an ‘overseas relationship’ who
have been in their relationship for more than a year. It is therefore possible that someone in a same sex relationship who has been married for over a year in another country can now seek to have their relationship resolved.

The specific provisions for the courts in England and Wales is that they have jurisdiction to hear proceedings for dissolution, nullity or separation orders if a civil partner falls into one of the following categories namely:-

(a) One of them is habitually resident in the UK, and is a national member of the state or is domiciled in part of the UK or the Republic of Ireland.

(b) No other court has jurisdiction and either party would have 'jurisdiction provided they were domiciled' in England and Wales on the date proceedings had begun or the parties registered as partners in England and Wales and no other court has or is recognised as having jurisdiction and it would appear to be in the interests of justice for the court to assume jurisdiction. This would apply particularly to a same sex couple who have had a civil partnership in England and Wales but were living abroad in a country where they are unable to get their civil partnership dissolved.

3. Financial claims made in England and Wales following a termination of an overseas relationship (including Scotland and Northern Ireland)

Where a court outside the UK dissolves, annuls or legally separates by means of judicial proceedings such couple would be treated as though they had been ‘civil partners’ in England and Wales and their dissolution, annulment or legal separation will be recognised here. In addition providing certain criteria are met it is possible for one or both of the couple to make a claim against the other for financial provision under the Act. There are different provisions for such financial clarity in Scotland and Northern Ireland. Making such an application is not permitted automatically. In order to do this:

(i) The partner who is seeking relief must not have entered into another civil partnership or marriage;
(ii) Leave of the court must be sought and leave will not be granted unless there are substantial 'grounds' for the making of such an application. It is possible for the courts to make a financial order even if an order for financial provision has been made in another country/jurisdiction.
(iii) One of the partners must either be domiciled or have been habitually resident for one year prior to leave being sought or have been here a year before proceedings ended in a foreign jurisdiction or one or both the partners has a beneficial interest in a property in England which at some point the couple had during their relationship as ‘civil partners’ (as defined as one that is recognised here)

Subject to these criteria, when considering making an application, the court will take into account a variety of matters primarily the connection that the civil partners had in the UK and the extent to which they have already been provided for financially in the country that dissolved, annulled or provided a Deed of Separation. The relief provided is similar to that which married couples in England and Wales can seek if there is a foreign divorce and financial provision has been made in that country. How this will be adapted to civil partners remains to be seen given the diversity of the provisions made in each country. Will the courts in England and Wales apply the discretionary exercise to an overseas relationship that has been dissolved where that relationship does not have the same obligations that registered civil partners have here?
Conclusion

This is going to become an increasingly difficult area as the laws affecting same sex couples develops worldwide. The main difficulty remains that marriage, civil partnerships and registered agreements have different meanings in different countries for same sex couples. What someone may believe they are entering into in one country may be more or less than they had understood in another country. Entering into a legally recognised relationship does not in itself have international status. The same rights benefits and responsibilities are not transferable from one country to another. This highlights the importance for same sex couples to understand how their relationship is recognised in each country they live in. It is wise to take expert legal advice if they plan on living in another country later from the one where their relationship was ‘legally’ formed and is recognised in. In England it is always worth considering whether the pre-registration agreement is appropriate which may have some importance and recognition in other countries.

List of Countries Who Recognise Relationships of Same Sex Couples as Civil Partnerships

<table>
<thead>
<tr>
<th>Country or territory</th>
<th>Description</th>
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<tbody>
<tr>
<td>Belgium</td>
<td>Cohabitation légale (statutory cohabitation)</td>
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<tr>
<td>Belgium</td>
<td>Marriage</td>
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<tr>
<td>Canada Nova Scotia</td>
<td>Domestic partnership</td>
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<td>Canada Quebec</td>
<td>Civil union</td>
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<tr>
<td>Denmark</td>
<td>Registreret partnerskab (registered partnership)</td>
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<td>Finland</td>
<td>Rekisteröity parisuhde (registered partnership)</td>
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<tr>
<td>France</td>
<td>Pacte civile de solidarité (civil solidarity pact)</td>
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<td>Germany</td>
<td>Lebenspartnerschaft (life partnership)</td>
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<td>Iceland</td>
<td>StaOfesta samvist (confirmed cohabitation)</td>
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<tr>
<td>Netherlands</td>
<td>Marriage</td>
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<tr>
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<tr>
<td>Sweden</td>
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</tr>
<tr>
<td>United States of America – Vermont</td>
<td>Civil union</td>
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