

# CIVIL PARTNERSHIP ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Civil Partnership: England and Wales**

#### **Introduction**

#### *Chapter 1 – Registration*

#### *Section 2: Formation of civil partnership by registration*

19. *Subsection (1)* describes the point at which a civil partnership is formed and sets out who is to be present at the registration. Two people are to be regarded as having registered as civil partners of each other once each of them has signed the civil partnership document. “The civil partnership document” is defined in section 7. *Subsection (2)* makes it clear that a civil partnership is formed even if the formalities set out at *subsections (3) and (4)* are not complied with. *Subsection (3)* specifies who else must sign the civil partnership document. *Subsection (4)* sets out what is to be recorded in the register once a civil partnership document has been signed and the administrative procedure to be completed following the civil partnership registration.
20. *Subsection (5)* provides that no religious service is to be used while a civil partnership registrar is officiating at the signing of a civil partnership document.

#### *Section 3: Eligibility*

21. *Subsection (1)* provides that two people are not eligible to register as civil partners of each other if -
- (a) they are not of the same sex,
  - (b) either of them is already a civil partner or lawfully married,
  - (c) either of them is under 16, or
  - ((d) they are within prohibited degrees of relationship (set out in Part 1 of Schedule 1).

#### *Section 4: Parental etc. consent where proposed civil partner under 18*

22. This section sets out the provisions requiring consent where a person wishing to form a civil partnership is under 18 years of age. Part 1 of Schedule 2 identifies the appropriate person or persons who may give consent. *Subsection (3)* provides an exception to the requirement of consent where a civil partner has been bereaved and wishes to form a subsequent civil partnership before he or she is 18. For the purposes of Part 2 of the Act, *subsection (5)* defines “child” as a person who is under 18 (except where the term is used to express a relationship).

### ***Section 5: Types of pre-registration procedure***

23. *Subsection (1)* sets out the various procedures, available in England and Wales, under which two people may register as civil partners of each other. *Subsection (2)* sets out the relevant modifications of those procedures which apply where one of the proposed civil partners lives in Scotland, Northern Ireland or is a member of the armed forces serving abroad, and the other has a usual residence in England and Wales, or where the proposed civil partners are former spouses, one of whom has changed sex. *Subsection (3)* provides for all the procedures to be subject to Schedules 1 and 2 (provisions applicable in connection with prohibited degrees of relationship and where a proposed civil partner is under 18). *Subsection (4)* provides that section 5 is also subject to section 249 and Schedule 23 (provisions relating to the formation of civil partnerships by persons subject to immigration control).

### ***Section 6: Place of registration***

24. This section states that the place where the proposed civil partnership is to be registered must be in England and Wales, must not be in religious premises and must be specified in the notice or notices of proposed civil partnership. "Religious premises" is defined in *subsection (2)*. *Subsections (3) and (4)* make it clear that in the case of registration under the standard procedure, the place of registration must be one that is open to anyone wishing to attend and that it must be agreed with the registration authority where the registration is to take place before it is specified in a notice. If the place specified in a notice is not agreed then the notice is void.

### ***Section 7: The civil partnership document***

25. This section defines the term "civil partnership document" as a Registrar General's licence in relation to the special procedure and a civil partnership schedule for all other procedures. *Subsection (2)* provides that before a civil partnership registration can take place, the civil partnership document must be delivered to the civil partnership registrar who may then ask the proposed civil partners for any information required to be recorded in the register.
26. **Sections 8 to 17** set out the standard procedure by which two people may register as civil partners of each other in England and Wales.

### ***Section 8: Notice of proposed civil partnership and declaration***

27. *Subsection (1)* states that for two people to register as civil partners of each other they must each give a notice of proposed civil partnership and have resided in England or Wales for at least 7 days immediately before giving the notice. The information contained in the notice may be prescribed by regulations. *Subsections (3) and (4)* state that a notice must include a solemn declaration in writing to be made by the person giving notice. By this declaration the proposed civil partner must confirm that he or she knows of no legal impediments to the formation of the civil partnership and confirm that each proposed civil partner has had a residence in England and Wales for at least 7 days before the notice was given. The declaration must be signed by the person giving the notice and attested by the "authorised person" (as defined by *subsection (6)*). *Subsection (5)* requires the registration authority to record in the register the fact that the notice has been given and the information in it, and that the authorised person attested the declaration.

### ***Section 9: Power to require evidence of name etc.***

28. This section enables a registration authority to request specified evidence to verify certain information contained in a notice of proposed civil partnership. Requests for evidence may only be made before the civil partnership schedule has been issued in accordance with section 14.

***Section 10: Proposed civil partnerships to be publicised***

29. This section sets out which registration authority (or authorities), as well as the Registrar General, must publicise “relevant information” during the “waiting period” after a notice has been given. *Subsection (2)* defines “relevant information” as the names of the proposed civil partners and such other information as may be prescribed by regulations.

***Section 11: Meaning of the “waiting period”***

30. This section defines the term “waiting period” for the purposes of Chapter 1.

***Section 12: Power to shorten the waiting period***

31. This section enables the Registrar General, on an application being made to him, to reduce the waiting period if satisfied there are compelling reasons to do so, because of exceptional circumstances. *Subsections (2)* and *(3)* give the Registrar General the power to make procedural regulations in relation to such applications and to make regulations delegating the power to shorten the waiting period to a registration authority in prescribed cases and making provision for appeals (to the Registrar General) against any decision taken by a registration authority where this power has been delegated.

***Section 13: Objection to proposed civil partnership***

32. This section sets out the procedure for any person to make an objection to the issue of a civil partnership schedule. The registration authority which receives an objection must record the fact that the objection has been made and the information it contains in the register as soon as possible.

***Section 14: Issue of civil partnership schedule***

33. This section provides for the issue of a civil partnership schedule at the end of the waiting period. *Subsection (2)* confers a power to make provision as to the contents of the civil partnership schedule. The schedule may be issued on the request of one or both of the proposed civil partners, provided the relevant registration authority is satisfied that there is no lawful impediment to the couple forming a civil partnership and that any objections to the proposed civil partnership have been satisfactorily investigated by the relevant registration authority or have been withdrawn. “The relevant registration authority” means the authority which first records that a notice of proposed civil partnership has been given.

***Section 15: Appeal against refusal to issue civil partnership schedule***

34. This section provides for an appeal to the Registrar General against the refusal of a registration authority to issue the civil partnership schedule. The Registrar General must either confirm the refusal or direct that a civil partnership schedule be issued.

***Section 16: Frivolous objections and representations: liability for costs etc.***

35. This section provides for the Registrar General to deal with frivolous objections made against the issue of the civil partnership schedule. *Subsection (3)* imposes liability on a person who makes a frivolous objection or representation for costs of the proceedings before the Registrar General and for damages payable to the proposed civil partner to whom the objection or representation relates.

***Section 17: Period during which registration may take place***

36. This section provides that the proposed civil partners may not form a civil partnership until the waiting period in relation to each notice of proposed civil partnership has expired. It also specifies the period of validity of a civil partnership schedule issued under the standard procedure as being 12 months, running from when notice of proposed

civil partnership is recorded, and when notices are not recorded on the same day, from the earlier of the two days. After this period the civil partnership schedule becomes void and cannot be used. Fresh notices of proposed civil partnership would need to be given if the parties still intended to form a civil partnership.

### ***Section 18: House-bound persons***

37. This section caters for people who wish to register as civil partners of each other at the place where one of them is house-bound. A person will be accepted as being house-bound if, in relation to that person, a statement is made by a registered medical practitioner that, in his opinion, because of illness or disability, that person ought not to move from the place where he or she is at the time when the statement is made and that this is likely to be the case for at least the following 3 months. The statement must be made not more than 14 days before the day on which each notice of proposed civil partnership is recorded.
38. *Subsection (3)* sets out the procedure for a housebound person to register as a civil partner. This is the same as the standard procedure –(see sections 8 – 17) but with the additional requirements that a medical statement must accompany each notice; receipt of the medical statement is recorded in the register; and the applicable period (during which the civil partnership schedule may be signed) is shortened to 3 months.
39. For the purposes of forming a civil partnership, *subsection (6)* treats a person in relation to whom a medical statement is made as being resident and usually resident at the place where he or she is for the time being, even if this would not otherwise be the case.

### ***Section 19: Detained persons***

40. This section enables two people to register as civil partners of each other at the place where one of them is detained.
41. *Subsection (2)* defines “detained” as meaning detained as a patient in a hospital (other than as a short-term detainee under the [Mental Health Act 1983 \(c20\)](#)) or in a prison or other place to which the [Prison Act 1952 \(c. 52\)](#) applies.
42. *Subsection (3)* sets out the procedure for registration in such a case. This is the same as the standard procedure (see sections 8 – 17) with the additional requirements that a supporting statement must accompany each notice; receipt of the supporting statement must be recorded in the register and the applicable period (during which the civil partnership schedule must be signed) is shortened to 3 months.
43. *Subsection (4)* sets out that a supporting statement is one made by the responsible authority (as defined by *subsection (6)*) identifying the establishment where the person is detained and confirming that the responsible authority has no objection to that place being specified in a notice of proposed civil partnership as the place at which the detained person is to register as a civil partner.
44. For the purposes of forming a civil partnership, *subsection (8)* treats a detained person as being resident and usually resident at the place where he or she is for the time being, even if this would not otherwise be the case.

### ***Section 20: Modified procedures for certain non-residents***

45. [Section 20](#) modifies the standard procedure and the procedures for house-bound persons and for detained persons where two people wish to register as civil partners of each other in England and Wales and one of them is resident in England and Wales but the other resides in Scotland or in Northern Ireland or is a member of Her Majesty’s forces serving overseas.
46. The modifications are set out in *subsection (5)*. The person resident in England and Wales is required to give a notice of proposed civil partnership but the other person is

not required to do so. A registration authority must not issue a civil partnership schedule unless one of the proposed civil partners produces a certificate of no impediment issued under section 97, 150 or 239. In the case of the standard procedure, where one of the proposed civil partners resides in Scotland or Northern Ireland, the applicable period (during which the civil partnership schedule must be signed) is shortened to 3 months.

### ***Section 21: Notice of proposed civil partnership***

47. **Sections 21 to 27** deal with "the special procedure". This enables a civil partnership registration to take place very quickly, under a Registrar General's licence, where one of the proposed civil partners is seriously ill and not expected to recover. The licence is the equivalent of a civil partnership schedule but can be issued by a registration authority only on the authority of the Registrar General. It is the document that is signed by the couple to form the civil partnership.
48. **Section 21** relaxes the normal requirement that both proposed civil partners must give notice and allows one of the proposed civil partners to give a notice of proposed civil partnership under the special procedure, as long as that person complies with any requirement made under section 22. **Subsection (3)** applies most of the requirements of subsections (3) to (6) of section 8 relating to the declaration to be made when giving notice. The requirement as to residence (in section 8(4)(b)) is not applied.

### ***Section 22: Evidence to be produced***

49. This section sets out the evidence that the Registrar General may require the person giving the notice to produce to the registration authority in order to satisfy the Registrar General that the special procedure should be used.
50. **Subsection (3)** makes it clear that a certificate from a registered medical practitioner is sufficient evidence of the seriousness of a proposed civil partner's medical condition and of that person's ability to understand the nature and purport of signing a Registrar General's licence.

### ***Section 23: Application to be reported to the Registrar General***

51. This section requires a registration authority to inform the Registrar General if it receives any notice of proposed civil partnership under the special procedure. The authority must also inform the Registrar General about supporting evidence and comply with any directions that he may give for verifying the evidence.

### ***Section 24: Objection to issue of Registrar General's licence***

52. This section sets out the procedure for any person to make an objection to the Registrar General giving authority for the issue of his licence by giving a notice of objection to the Registrar General or any registration authority. A registration authority that receives notice of objection must record the fact that it has been given and the information it contains in the register as soon as possible.

### ***Section 25: Issue of Registrar General's licence***

53. This section applies where a notice of proposed civil partnership has been given to a registration authority under the special procedure. The registration authority may issue a Registrar General's licence only if given authority to do so by the Registrar General. The Registrar General may not give his authority unless he is satisfied that one of the proposed civil partners is seriously ill and not expected to recover. If he is so satisfied, he must give his authority unless he is also satisfied that there is a lawful impediment to the issue of the licence. If an objection has been made to the Registrar General giving his authority, he must not give his authority until he has investigated the objection and has decided whether it ought to obstruct the issue of the licence or the objection has been withdrawn.

***Section 26: Frivolous objections: liability for costs***

54. This section means that a person who makes a frivolous objection will be liable to costs and damages.

***Section 27: Period during which registration may take place***

55. This section establishes the period of validity of Registrar General's licences issued under the special procedure as 1 month from the day on which notice is given. After this period the notice of proposed civil partnership and the licence are void.

***Section 28: Registration authorities***

56. This section defines "registration authority" in relation to England and Wales.

***Section 29: Civil partnership registrars***

57. This section defines a civil partnership registrar as an individual who is designated by a registration authority as a civil partnership registrar for its area (*subsection (1)*). A registration authority is under a duty to ensure that there are enough registrars for its area (*subsection (2)*). The Registrar General is required to make a list of civil partnership registrars available to the public (see *subsection (4)*).

***Section 30: The Registrar General and the register***

58. This section defines "the Registrar General" and places certain responsibilities on him in connection with the maintenance of records that relate to civil partnerships.

***Section 31: Offences relating to civil partnership schedule***

59. This section creates offences in relation to the civil partnership schedule.
60. *Subsection (3)* sets out the maximum penalty that may be imposed for these offences. *Subsection (4)* specifies the time limit within which a prosecution may be brought.

***Section 32: Offences relating to Registrar General's licence***

61. This section creates offences in relation to the special procedure.
62. *Subsection (3)* sets out the maximum penalty that may be imposed for these offences. *Subsection (4)* specifies the time limit within which a prosecution may be brought.

***Section 33: Offences relating to the recording of civil partnerships***

63. This section creates offences in relation to the requirements for recording civil partnerships in the register, and specifies the maximum penalty for each offence. *Subsection (9)* specifies the time limit of 3 years within which a prosecution may be brought for the offences set out in *subsections (5)* and *(7)*.

***Section 34: Fees***

64. This section enables the Chancellor of the Exchequer to make an order providing for fees to be payable in relation to elements of the different civil partnership registration procedures and other services provided in connection with civil partnership. The section also makes provision, in cases of hardship, for the Registrar General to remit the fee for the issue of his licence under the special procedure.

***Section 35: Power to assimilate provisions relating to civil registration***

65. *Subsection (1)* gives the Chancellor of the Exchequer the power to make an order to assimilate, if appropriate, the provisions of the Act connected with the formation or recording of a civil partnership to any provision made in relation to civil marriage in

*These notes refer to the Civil Partnership Act 2004 (c.33)  
which received Royal Assent on 18th November 2004*

England and Wales. Such order may also make appropriate consequential amendments of other legislation.

***Section 36: Regulations and orders***

66. This section provides that regulations may make provision supplementing the provisions on registration. The section also provides that references to regulations in this Chapter are to regulations made by the Registrar General, with the approval of the Chancellor of the Exchequer. *Subsections (4) to (6)* make provision about the procedure for orders and regulations.