



Living Together: Our Guide for Same sex Couples



VENTERS
SOLICITORS



By a multi-award winning
law firm

Tel: 01737 229 610
info@venters.co.uk





We are
here to help
every step
of the way.



VENTERS
SOLICITORS

Contents

What is Cohabitation?	.....	5
Cohabitation: The Key Factors	.....	5
What are Civil Partnerships?	.....	6
What are the key differences between Civil Partnerships v. Marriage?	.....	6
Prenuptial, Pre-registration & Post-Nuptial Agreements	.....	7
Prenuptial Agreements	.....	7
Pre-registration Agreements	.....	8
Post-Nuptial Agreements	.....	8
Divorce and Dissolution	.....	9
What is the process?	.....	9
Adoption and Surrogacy	.....	10
Adoption	.....	10
Stage 1	.....	11
Stage 2	.....	11
Surrogacy	.....	13
Full Surrogacy	.....	13
Parital Surrogacy	.....	13
Surrogacy and the Law	.....	14

For many years, same-sex couples could not achieve the same legal rights and status as a married heterosexual couple, but fortunately this all changed in 2005 as result of the Civil Partnership Act. Venters Solicitors regularly act for same-sex couples and understand the challenges involved, which often include issues surrounding living together and bringing children into your lives.

In our guide we take you through some of the common legal complexities arising from same-sex relationships.

This guide does not constitute legal advice. If you require this advice, please contact our specialist team for advice tailored to your circumstances.



What is Cohabitation?

Cohabitation is defined as two individuals, who are unmarried or not in a civil partnership, living together as a couple without legal recognition as married or civil partners.

Under current law in England and Wales, cohabitants do not have a legal definition, as the person is still classed as an individual. This brings about several issues when cohabiting couples separate.

Cohabitation: The key factors

1. **Property Ownership:** Cohabitants typically retain ownership of any assets brought into the relationship. Contributions to shared property are considered individually unless stated otherwise in a cohabitation agreement and/or a Declaration of Trust at the time of property purchase.
2. **Financial Contributions:** Financial responsibilities are often based on individual incomes. There is no automatic obligation for one partner to financially support the other in the absence of a cohabitation agreement.
3. **Debt Responsibility:** Each cohabitant is generally responsible for their own debts. Shared debts may be split based on individual contributions or agreements.
4. **Child Custody:** Cohabitants have parental responsibility for their children if they are named on the child's birth certificate. However, in case of separation, arrangements for the children are decided based on the best interest of the children. Child maintenance can be agreed between the parents or, if not agreed, falls within the jurisdiction of the Child Maintenance Service.
5. **Inheritance Rights:** Without a valid will, cohabitants have no automatic inheritance rights. In the event of a partner's death, assets may not pass to the surviving partner.
6. **Pension Rights:** Cohabitants may not have automatic rights to each other's pensions. Nomination forms or specific legal arrangements are necessary to ensure the partner benefits.
7. **Medical Decisions:** Unmarried partners may not automatically have the right to make medical decisions for each other.
8. **End of Relationship:** In case of separation, there may be limited legal processes for asset division, and disputes may need to be resolved through civil litigation rather than divorce proceedings. Property disputes for unmarried couples fall under a very complex area of law known as TOLATA (Trust of Land & Appointment of Trustees Act 1996). Where the cohabitants have children there may also be limited remedies for financial matters under Schedule 1 Children Act 1989.

If you need help to create a cohabitation agreement or advice when a cohabiting relationship breaks down, then the team at Venters can help you with this.

What are Civil Partnerships?

Couples who register as civil partners, opposite sex or otherwise, under the Civil Partnership Act 2004 are legally recognised as being in a Civil Partnership. When the act was introduced in 2004, only same-sex couples were able to form a Civil Partnership; this has now been expanded to include opposite sex couples through amendments made by the Civil Partnership (Opposite-sex Couples) Regulations 2019 (SI 2019/1458).

What are the key differences between Civil Partnerships v. Marriage?

Civil Partnerships

Legal Recognition: Civil partnerships provide legal recognition for same-sex and opposite-sex couples, offering similar rights and responsibilities to marriage.

Property Rights: Similar to marriage, assets acquired during a civil partnership are generally considered joint property, and both partners have equal rights to them.

Financial Support: Dissolving a civil partnership involves a legal process similar to divorce, where financial support may be ordered by the court based on factors like income and needs.

Matrimonial Home: The family home is treated similarly to marriage, with both partners having a claim to it, regardless of individual contributions.

Inheritance Rights: Like in marriage, partners in a civil partnership have automatic inheritance rights, and a portion of the deceased partner's estate passes to the surviving partner.

Pensions: Similar to marriage, partners in a civil partnership may be entitled to a portion of each other's pensions accrued during the partnership.

Tax Benefits: Civil partners may also benefit from various tax advantages, similar to those available to married couples.

Legal Dissolution: Dissolving a civil partnership involves a legal process similar to divorce, addressing issues like asset division, child custody, and potential financial support through the court system.

Marriage

Joint Property Ownership: In marriage, assets acquired during the marriage are generally considered joint property, and both spouses have equal rights to them.

Financial Support: Upon divorce, the court may order one spouse to provide financial support to the other based on factors like income disparity, duration of the marriage, and individual needs.

Matrimonial Home: The family home is often treated as a special category of property, and both spouses have a claim to it, regardless of the individual contributor.

Inheritance Rights: Spouses have automatic inheritance rights, and without a will, a portion of the deceased partner's estate will pass to the surviving spouse through intestacy.

Pensions: Spouses may be entitled to a portion of each other's pensions accrued during the marriage, depending on the specific pension scheme and legal regulations.

Tax Benefits: Married couples may benefit from various tax advantages, including marriage allowance and inheritance tax exemptions.

Medical Decisions: Spouses generally have automatic rights to make medical decisions for each other in case of incapacity.

Divorce Proceedings: There is a legal framework for divorce, ensuring fair asset division and addressing issues like child custody and spousal support through the court system.

We have provided these points, regardless of Venters' involvement within a specific legal service. For legal services we do not offer, such as Wills & Probate and Conveyancing, and tax implications we recommend you seek advice from a professional who specialises in that service.

Pre-nuptial, Pre-registration & Post-nuptial Agreements

Pre-nuptial Agreements

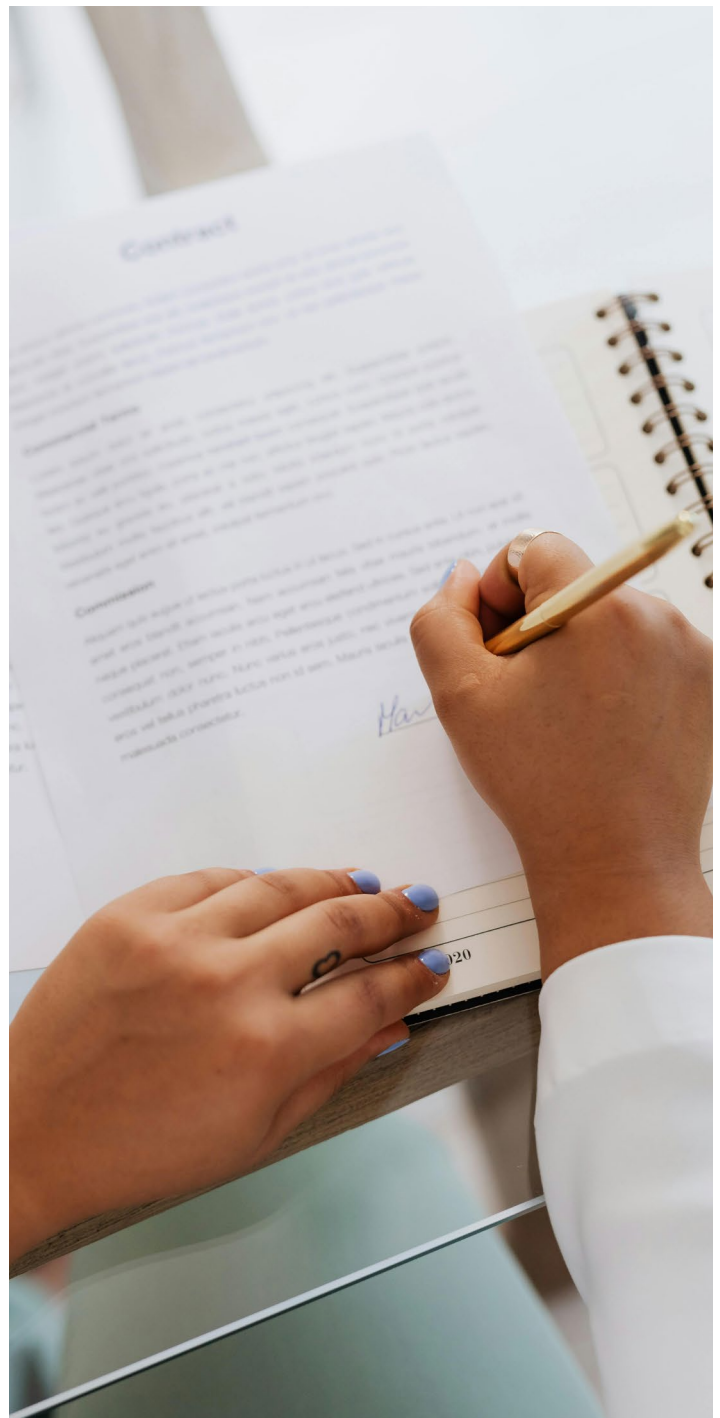
A pre-nuptial agreement, commonly known as a 'pre-nup', is a legal document that is drawn up between a couple before marriage to outline how each of their assets will be divided between them in the event of divorce. These are particularly useful in second marriages where one partner may be bringing significant assets to the relationship, or where provision needs to be made for children from a previous relationship.

The key purpose of a pre-nuptial agreement is to provide a couple with clarity around how their assets will be divided in the case of a relationship breakdown. Often, these agreements reduce the time, expense and acrimony experienced with divorce settlements. These agreements vary depending on the circumstances but typically cover:

- Protecting specific assets or children's inheritance
- Protecting money, assets or savings that has been inherited
- Providing both individuals, a say in how assets will be divided if a divorce is agreed upon

There are issues that cannot be included within a pre-nuptial agreement:

- Child custody including visitation rights, schooling, and religious upbringing
- Child support
- Personal matters
- Illegal or unfair matters
- Lifestyle matters





VENTERS
SOLICITORS

Continued...

Pre-registration Agreements

When a couple are considering becoming civil partners, a pre-registration agreement is the equivalent of a prenuptial agreement. This agreement covers the same issues as a prenuptial agreement but is for those who wish to become civil partners.



Post-nuptial Agreements

When a couple are legally married or in a civil partnership, they can decide to create a legal agreement known as a post-nuptial agreement, commonly known as a 'post-nup'.

Much like a pre-nuptial agreement and a pre-registration agreement, a post-nuptial agreement establishes protections over an individuals' assets and/ or property. A key difference between a pre and post-nuptial agreement is the reason for establishing. Post-nuptial agreements are established to often address evolving financial circumstances or to formally address arrangements that were not initially agreed upon.

These agreements must not be considered automatically legally binding. Courts will consider these agreements in the case of divorce or dissolution and may enforce them if they are deemed fair and to have been entered into freely by both parties, with a full understanding of the implications and without undue pressure.

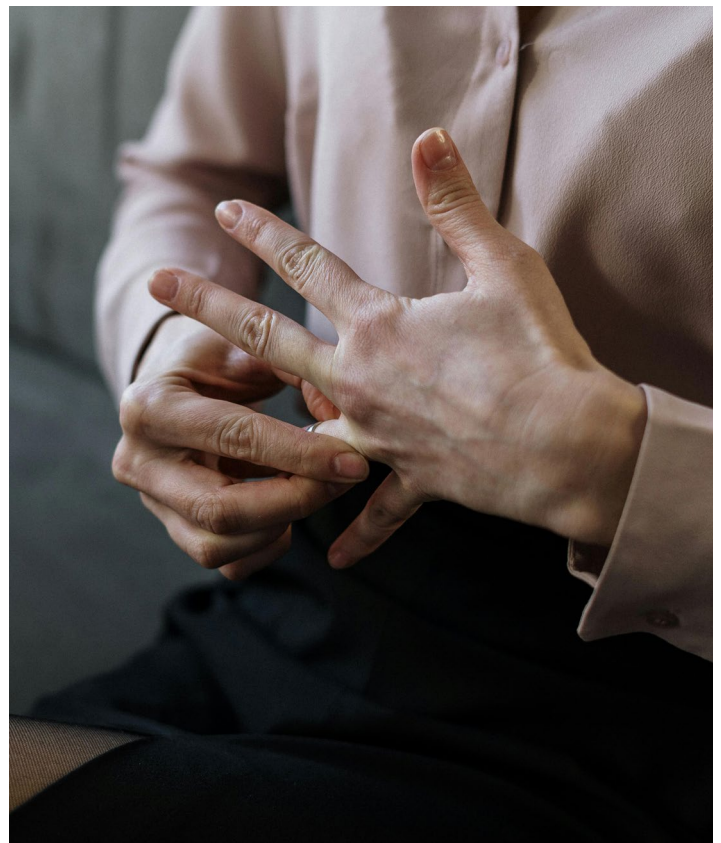
Divorce & Dissolution

A divorce is a legally binding agreement to end a marriage. In the case of a civil partnership, this is known as a Dissolution Order. Both of these achieve the same thing: they end a legally-binding relationship. In both cases, a couple must have been married or civil partners for at least one year before they can apply for a divorce or dissolution.

The Divorce, Dissolution, and Separation Act 2020, amended the Matrimonial Causes Act 1973, and the Civil Partnership Act 2004, which supplies grounds for 'no-fault' divorces and dissolutions. Simply put, couples no longer have to give a reason for divorce or dissolution – a statement that the marriage or civil partnership has irretrievably broken down is the only legal requirement.

What is the Process?

- Applications can be started as a sole applicant or applied for jointly by a couple
- If the application is started by a sole applicant, the Court will send the partner a copy of the divorce application and they will need to respond by acknowledging receipt. In this case, the sole applicant will be known legally as 'applicant for divorce' and the partner as 'respondent'.
- Once the application has been issued by the Court, a 20-week cooling off period begins. This period allows both parties time to consider all aspects of the divorce.
- After this period and provided the respondent has proved receipt of the application, the applicant can apply for a Conditional Order. This order means that the Court does not see any reason against divorce.
- 43 days after the Court has made a Conditional Order, the applicant can apply for a Final Order – this nullifies the marriage or civil partnership.



A Final Order of divorce or dissolution does not end financial ties with your former partner. These will remain open in the majority of cases. It is important that financial arrangements are formalised in a final Financial Remedy Order approved by the Court. In cases where the couple have a child or children, arrangements must be considered and agreed or formalised by way of Court Order.

Venters Solicitors are here to help with the negotiating and obtaining a Financial Remedy Order and formalising arrangements for the children following separation.

Adoption & Surrogacy

Adoption is the formal legal process in which the rights and responsibilities relating to a child are transferred to the adoptive parents. Adopted children no longer keep legal ties with their birth mother & father and become full members of the new family. Once an adoption order has been granted, it cannot be reversed except in very rare circumstances.

Adoption is not a decision to be taken lightly; the process is lengthy, and various checks are needed to ensure a child will be safe and happy. These checks include:

- Investigating the adoptive parents' childhood
- Medical history
- Criminal background checks
- Contact with former partners

Not only is this a large decision in itself, but the type of adoption is also important:

- Domestic Adoption – This involves the adoption of a child within England and Wales where the child is either a family member or in the care of the Local Authority
- International Adoption – This is the adoption of a child who is being brought from a country outside England and Wales
- Step-Parent Adoption
- Foster Parent Adoption
- Local Authority Adoption – When it is your child who is potentially being placed for adoption by a Local Authority
- Surrogacy Adoption



Adoption Continued...

In England and Wales, there is a two-stage statutory framework in place that takes 6 months to complete:

Stage 1:

- This involves checks and references with the authorities as well as people you know and takes no longer than 2 months. The adoption organisation will contact the police, your local authority, employers (where appropriate), and your landlord or mortgage company
- You will also be invited to preparation classes which are normally held locally and give advice on the effect adoption may have on you, so you can think about what is involved in adopting a child
- Individuals will be asked by the adoption organisation to supply the details of people who can comment on your suitability to adopt. This will normally be 3 people and one of them can be a relative
- The adoption organisation will ask you to complete a medical and a self-assessment questionnaire

- A social worker will inform you verbally or in writing if you have successfully moved to stage 2

Stage 2:

- This stage takes 4 months and involves a social worker visiting you at home and talking with the adoptive parents about why they wish to adopt, children you would be best able to care for, and your strengths and suitability
- An invitation to detailed training in preparation for the adoption will be made available
- On completion of the assessment, the social worker will present a report indicating your strengths as an adopter to an Independent Adoption Panel. This panel comprises experienced adopters, people who have knowledge of relevant areas of adoption, and a medical adviser

Once the panel approves the parents as an adopter, the adoption organisation will begin the search for a child whose needs can be met by these parents. There are several ways a child can be matched:

- Local authorities across the UK who are seeking adopters for children in their care
 - Through various adoption charities
-

Once a child has been matched, their social worker will make sure that the potential parents are well placed to care for the child; initial visits and moving in agreements will be put into place. After a minimum of 10 weeks, the parents can apply to a Court for an Adoption Order, and this will legally recognise the adoption.



Surrogacy

Surrogacy is an arrangement in which a woman carries a child and gives birth on behalf of another person or couple. There are two types of surrogacies:

Surrogacy

Surrogacy is an arrangement in which a woman carries a child and gives birth on behalf of another person or couple. There are two different types of surrogacies:

Full Surrogacy

Full surrogacies are defined by HFEA (Human Fertilisation & Embryology Authority) as when:

- The sperm and egg of the intended parents is used
- Sperm from the intended father and a donor egg is used
- Donor egg and donor sperm is used

Full surrogacy means there is no genetic link between a surrogate mother and baby.

Partial Surrogacy

Partial surrogacies are defined by HFEA (Human Fertilisation & Embryology Authority) as when:

- The egg of a surrogate is used
- The sperm from an intended parent of the baby is used



VENTERS
SOLICITORS

Surrogacy Continued...

Surrogacy and the Law

As established by the *Surrogacy Arrangements Act 1985*, the surrogate will always be the child's legal parent at birth. If they are married or in a civil partnership, their spouse will be the child's second legal parent at birth, unless permission was not given.

Surrogacy arrangements are not legally enforceable in the UK therefore both parties must rely on each other to honour the agreement, both in respect of handing over the child and expenses. It is also against the law for a third-party (including solicitor) to negotiate a surrogacy contract for payment.

After the child has been born, parentage can be transferred to the intended parents through one of the following methods:

- Parental Orders – transferring the rights and obligations of the parentage to the intended parents. At least one of them must have provided the egg or sperm and they must be married, civil partners or living together as a couple.
- Adoption – where neither of the intended parents is genetically related to the child. An application for parental responsibility through adoption must be submitted in this instance. A registered adoption agency must have been involved in the surrogacy process.

We know that adoption and surrogacy is often the last resort for couples wishing to have a child and our compassionate team at Venters Solicitors are here to help you every step of the way. The law surrounding the adoption and surrogacy process is understandably complex and getting the right legal team on your side can make all the difference.

If you require advice with regards to any of the issues included in this guide, then please get in touch with the team at Venters.



This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal blue or grey lines across its entire width. The lines are thin and consistent in color, providing a guide for handwriting. There are no margins, text, or other markings on the page.



VENTERS

SOLICITORS



213 CAMBERWELL ROAD, LONDON, SE5 0HG

PHONE: 020 7277 0110
INFO@VENTERS.CO.UK

OPENING HOURS:
9.15AM TO 5.30PM MON TO FRI

CHEYENNE HOUSE, WEST STREET, FARNHAM, GU9 7EQ

PHONE: 01737 229 610
INFO@VENTERS.CO.UK

OPENING HOURS:
9.15AM TO 5.30PM MON TO FRI

CASTLE COURT, 41 LONDON ROAD, REIGATE, RH2 9RJ

PHONE: 01737 229 610
INFO@VENTERS.CO.UK

OPENING HOURS:
9.15AM TO 5.30PM MON TO FRI

CENTAUR HOUSE, ANCELL BUSINESS PARK, ANCELL ROAD,
FLEET, HAMPSHIRE, GU51 2UJ

PHONE: 01737229610
INFO@VENTERS.CO.UK

OPENING HOURS:
9.15AM TO 5.30PM MON TO FRI