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# Getting Married

**Guidance on getting married or forming a civil partnership from Adams & Remers to help plan towards the Big Day and beyond.**

# Marriage or Civil Partnership v Cohabitation

What are the differences according to the law?

	Marriage / Civil Partnership	Cohabitation
Income Tax	<p>Married person's allowance</p> <p>Connected persons</p> <p>Aggregation of profits for Corporation Tax</p>	<p>Not connected persons</p> <p>No aggregation</p>
Capital Gains Tax	<p>No gain, no loss on transfers (provided spouses are not separated)</p> <p>Connected persons</p> <p>Only one property for principal private residence ("PPR") (provided spouses are not separated)</p> <p>Only one property for dependant relative exemption under PPR relief to cover any particular time</p> <p>Where spouse or civil partner who is gifted or inherits property from the other spouse or partner the combined period of ownership is taken into account</p>	<p>Gifts may be subject to CGT</p> <p>Not connected persons</p> <p>Each can have a principal private residence</p>
Inheritance Tax	<p>Spouse exemption</p> <p>Limitation on application of gifts with reservation of benefit regime under s.102 Finance Act 1986</p>	<p>No spouse exemption</p> <p>No limitation on application of S.102</p>
Pre-owned Assets Tax	Connected persons	Not connected persons
Matrimonial Causes Act 1973	Applies for separation/divorce/dissolution of civil partnership giving court discretion to rearrange certain property rights	Does not apply
Inheritance (Provision for Family and Dependants) Act 1975	Applies on death from immediately after marriage even if spouse/civil partner is not financially dependant upon the deceased	Applies on death after two years of cohabitation – unless the cohabitee was financially dependant on the deceased
Pensions	Certain automatic rights as spouse whether or not financially dependant	Depending on pension deed, may only benefit if financially dependant
Landlord and Tenant Legislation	Spouse has certain rights	Depends on quality of cohabitation (e.g. length of time together).
Mental Health Act 1983	Spouse is "nearest relative" under the Act	Cohabitee is "nearest relative" only if couple have been living together for at least 6 months
Step-children	Children of a spouse (various pieces of legislation applies to step children)	Not children of a cohabitee
Wills	<p>Revoked by marriage/ registration of partnership</p> <p>On dissolution of marriage or civil partnership spouse/civil partner automatically excluded</p>	<p>Not revoked by cohabitation</p> <p>Previous will unaffected by break up of partnership</p>
Intestacy (i.e. where no will or incomplete will)	Spouse or civil partner has right to statutory legacy and other rights	Cohabitees have no rights under the intestacy rules



# Prenuptial Agreements

A prenuptial agreement is a contract entered into by a couple who intend to marry or enter into a civil partnership in order to regulate arrangements to be made between them should the marriage or civil partnership subsequently break down. Providing for the financial issues tends to form the main part of any agreement but other aspects can also be dealt with, for example, arrangements in relation to any children that might be born; the forum for any disputes, and so on.

At the moment there is no statutory law governing prenuptial agreements and for this reason they are not automatically upheld within divorce/ civil partnership proceedings in England and Wales.

Nonetheless prenuptial agreements are becoming more common. Cases now going through the courts demonstrate that a formal agreement freely entered into, properly and fairly arrived at, with an understanding of the implications of entering into such a Deed (preferably as a result of competent legal advice) will be taken into account by the court within ancillary relief proceedings and further that they should not automatically be overturned.

It is now recognised that there are circumstances where prior to marriage or a civil partnership, there are some who wish to take steps to protect their financial position should their relationship break down.

Within ancillary relief proceedings a court will resolve the financial issues by applying Section 25 of the Matrimonial Causes Act 1973 to each couple's circumstances. Information about Section 25 and orders the court can make are set out in separate leaflets. In particular the existence of a prenuptial agreement is held to be conduct within Section 25; therefore the existence of the agreement and the weight to be attached to it are factors that will be taken into account by the court.

In deciding whether the agreement is to be binding, the court will consider a number of aspects which include the following:-

- Did both parties fully understand the agreement?
- Did both parties fully understand the implications of entering into the agreement?
- Were they properly advised as to the terms of the agreement?
- Are the terms clear?
- Was there any pressure to sign up to the agreement?

- Was the agreement signed willingly?
- Did one party exploit a dominant position, either financially or otherwise?
- Has there been proper disclosure by the parties to each other of their financial positions with documentary evidence to verify where relevant?
- Is there any reason why the parties should not be held to the agreement?
- Have any unforeseen circumstances arisen since the agreement was made that now make it unfair or unjust?
- Were children contemplated?

In light of the above, steps can be taken by you and your lawyers to try to make it as difficult as possible for the prenuptial agreement to be overturned in the event your relationship should break down.

The process should include disclosure of your financial circumstances with a summary of the disclosure and any documents produced for verification being annexed to the agreement.

The document should confirm that you intend to create legally binding relations and that you understand the position in law. Both of you should have independent legal advice to ensure that you understand the terms and to ensure that there is no undue pressure.

Steps should be taken by you and your lawyers to ensure that the provisions made are fair and take into account the possibility of there being children. The arrangements should try to reflect the length of marriage/civil partnership and the standard of living that you are going to enjoy.

# Prior Engagement

**I**t is not widely known, but getting married (which includes registering a civil partnership) cancels automatically any previous will that you have made.

This can present problems on two scores:

- a will you have made to benefit your fiancé(e) or partner before your marriage may not benefit him or her after you marry or register your partnership
- any will you have made benefiting children of a previous marriage or partnership may no longer be valid.

If you want to make a will benefiting a person whom you are living with or to whom you are engaged, and you want that will to remain in force after the marriage, then you can do so by making a will which is stated to be made “in anticipation of” marriage.

Where the date of your marriage is indeterminate, then a flexible will is ideal. This allows your executors to follow any letter of wishes that you leave, and to take into consideration the circumstances at the date of your death. When you do set a date for the marriage, this will can then be re-printed to include the clause “in anticipation of . . .” and will then continue validly after your marriage.

Where you wish to protect the position with regard to children of an earlier marriage or partnership, you can deal

with your will in the same way, and with the same flexibility, and potentially save inheritance tax.

Getting married or registering a civil partnership can be very good inheritance tax planning. It brings with it other implications, however.

See page 1 for our Marriage or Civil Partnership v. Cohabitation comparison - which sets out some of the differences to watch.

Do remember that if you marry without having made a will in anticipation of marriage, the intestacy rules (the rules which govern people who do not make wills) will apply to you in the event of your death.

This means that if you have children, the first £250,000 together with any property that you own jointly with your spouse or partner as joint tenants will go to your spouse or partner, and the surviving spouse or partner will also have the right to the income from half the remainder (i.e. assets above £250,000 including property held jointly as tenants in common).

The word “partner” here refers only to registered civil partnerships – cohabiting partners receive nothing under the intestacy rules.

In our experience, it is unlikely that the intestacy rules will achieve your wishes, and may result in more inheritance tax being paid than necessary, so if you are planning to marry or re-marry or register a civil partnership, do take advice.

# Wills for Married Couples

**E**state planning is all about you. It involves looking at the options for you or your estate to pay the minimum amount of tax and ensure that you have access to all the funds you want during your life time, and on your death your wishes are carried out and the maximum funds are passed to those you wish to benefit.

## Why make a will?

Unless you make a will the intestacy rules will apply under which, if you have children, your spouse will only receive £250,000 outright. This is rarely what is expected but the only way to prevent those rules applying is to make a will.

## Inheritance tax saving

The Government recently announced changes to inheritance tax (IHT) which many married couples may think solves any IHT problems on their estates. But the new transferable nil rate band (the ability use your spouses unused tax free amount on death) does not solve all problems. It may not save as much IHT as including inheritance tax planning in your will would.

And as you can see below, there are still non-tax reasons for considering estate planning in your wills.

## Nursing and residential home fees

If you leave everything to your spouse, in your will and the survivor of you then needs residential or nursing home care, your entire estate can be called upon by the local authority to pay for care. Including some simple estate planning in your will can avoid this.

## Remarriage or cohabitation

If the survivor of your remarries or cohabits claims against his or her estate can arise on divorce or death. That would include any property inherited from the first of you to die. Again simple estate planning can ring fence the funds from the first estate, protecting it for the children etc. If you leave funds to your spouse outright, you cannot be sure that such funds will not eventually find their way into the hands of a future spouse or cohabitee of your spouse or partner.

## Bankruptcy and means tested benefits

The same estate planning in your wills is applicable if your spouse receives any means tested benefits or there is any risk of bankruptcy.

## What estate planning should be included?

To obtain the greatest flexibility, we recommend that you include a trust to ring fence funds. Your spouse will then have access to the funds and, if you wish, effective control over them, but without them forming part of his or her estate.

For estates above the amount that can be given away tax free (the nil rate band - currently £325,000) there is the further possibility of using your will to give more than the tax free amount to your children while your spouse is still alive. Particularly if your spouse agrees, and he or she survives you by seven years, this can be used to pass such funds to your children potentially inheritance tax free.

Where the family home is a substantial major asset there is also further effective inheritance tax planning that we can advise on.

If you would like to know about more options for planning for inheritance tax or care home fees, or if you own a property or have a business, there is other estate planning that you may wish to consider, and we will be happy to advise.

# Gifts on Marriage

Marriage of a daughter or son, or a grandchild, can involve considerable expense, but even so it is traditionally a time to make gifts. For inheritance tax (IHT) purposes, it can be a particularly good time to do so as there are special marriage exemptions available.

If you make a gift to your son or daughter or step-child which relates to the marriage, up to £5,000 of it is exempt for inheritance tax purposes. So a husband and wife can between them give £10,000, without it being added to their IHT history, or needing 7 years to elapse for it to fall outside their estates for IHT.

A grandparent can give up to £2,500 which is similarly exempt. It is also worth remembering other IHT exemptions which may be available to ensure that no IHT is payable on the gift:

- Annual exemption £3,000 per annum;
- Small gifts exemption £250 per annum (but not to anyone who has received part of all of the £3,000);
- Gifts to the bride or groom which cease to be counted for the IHT after 7 years;
- Gifts into trust of £325,000 or less, or of certain business assets or agricultural property.

It is worth watching one trap which is sometimes overlooked in giving substantial funds to an adult child. If it is to “set them up in life” (e.g. the deposit on a flat) it can be regarded as a “portion”. This rather old fashioned concept can be applied to require the gift to be brought into account by that child against his or her share of your estate on death.

To avoid family conflict – or even just expensive confusion on your death – it is worth reviewing your will whenever you make substantial gifts to check that it does not have unexpected or unwanted consequences.

And what about the ultimate in engagement and wedding presents – a combined will and pre-nup and contributions to a “divorce insurance policy”. It may not be the most romantic of wedding gifts, but it is highly practical.



# Tax and other issues

## Miscellaneous Tax and other Issues for Consideration in Anticipation of Marriage or Registration of a Civil Partnership

1. Marriage/Registration will make a Will invalid unless expressly made in anticipation of the marriage/registration;
2. If you are domiciled in the UK, the full spouse exemption will be available for inheritance tax purposes unless your spouse or partner is not also UK domiciled (not just UK resident). For a non-UK domiciled spouse/partner the spouse exemption is only £55,000;
3. Domicile is a difficult concept which is key for the levying of taxes in the UK;
4. Private documents, e.g Wills, trusts, and deeds, which refer to “spouses” do not necessarily include civil partners, so it is important not to rely on that.
5. Civil partners have the same rights on dissolution of the partnership as a spouse on divorce and also have the same rights to have provision made for them under a Will, as spouses on death under the Inheritance (Provision for Family and Dependents) Act 1975.
6. Prenuptial agreements are increasingly being regarded by the courts and are increasingly available in civil partnerships. See our leaflet on this.
7. If your spouse/civil partner has not previously been living in the UK, but intends now to spend (broadly) more time in the UK, he or she may become UK resident for income tax purposes and CGT. This also becomes important for UK inheritance tax (which is payable on all worldwide assets after residence in the UK for 17 years or if one adopts the UK as one’s domicile) and in relation to CGT and income tax on UK sited assets or earnings. As different countries apply different criteria, it is advisable for a non-resident and /or non UK domiciled person intending to spend more time in the UK to have professional advice about the consequences of the change in status which the marriage/registration and any change in residence may engender. In some cases it widens the scope for tax planning for the UK domiciled spouse or partner, as well.
8. A resumé of the differences between cohabitation and marriage/registration, ‘Marriage v Cohabitation’ is detailed on page 1.

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