

Immigration and the Civil Partnership Act 2004

Introduction

The Act is an extremely significant development for same sex bi-national couples seeking to remain together in the United Kingdom.

The fight for immigration rights in this context was led by the Stonewall Immigration Group (SIG), now known as the United Kingdom Lesbian and Gay Immigration Group (UKLGIG). Prior to the 1990s and for most of that decade, there was no provision at all for leave to be granted to enter or remain in the United Kingdom on the basis of a same-sex relationship. A number of brave couples, with the support of SIG, made applications to the Home Office for leave to remain. SIG lobbied the Labour party who were then in opposition and managed to obtain a promise that if and when the party entered government provision would be made for such bi-national couples.

Labour won the general election in May 1997 and a concession for cohabiting same-sex couples was introduced in October 1997. Though this was undoubtedly an achievement, the requirement that a couple had already lived together in a relationship akin to marriage for four years was onerous. Following further lobbying the period was reduced to two years in 1999 and in October 2000 the provisions ceased to be merely a concession and became part of the Immigration Rules. These rules are now available to cohabiting same-sex and opposite-sex couples. Previously, all couples using these rules had been referred to as 'unmarried' but the rules now refer to 'unmarried' or 'same-sex' partners. (See paragraphs 295AA-295O of the immigration rules).

Before the Act, those seeking to remain in the UK on the basis of their same sex relationship could only look to the Immigration Rules relating to unmarried partners (unless a claim could be sustained under Article 8 of the European Convention on Human Rights). Though these rules have assisted many couples (and will continue to do so), the requirement of 'living together in a relationship akin to marriage which has subsisted for two years or more' has often been evidentially- and factually-problematic.

The Act contains few specific references to immigration matters (the notable exceptions being immigration control and the formation of civil partnerships, the recognition of overseas relationships and nationality issues) but the amended

immigration rules have now been published and will take effect from 5 December 2005 (apart from those parts which came into force on 14 November 2005 referred to below).

A note of caution needs to be made for those advising prospective civil partners. The experience of those teaching this course is that many couples may think that the Act will be a simple cure for current immigration problems – that it will simply be a question of entering a civil partnership and then making an application on that basis from within the UK. As can be seen from the notes below, this is not the case.

This course is split into the following sections:

Section A: What is Civil Partnership?

Section B: Immigration and Entering into a Civil Partnership

1. Immigration control and the restrictions on the formation of civil partnerships
2. Applications for leave to enter as a proposed civil partner
3. Civil partnership visitors
4. Registration at overseas posts
5. The recognition of overseas regimes

Section C: Applications for leave after a Civil Partnership has been established

6. Applications for leave to remain as a civil partner
7. Applications for leave to enter as a civil partner

Section D: Partners of EEA nationals and those with limited leave

8. Civil partners of EEA nationals
9. Civil partners of individuals with limited leave to remain in the UK

Section E: Other issues

10. Naturalisation as a British citizen
11. A comparison of civil partners and unmarried partners
12. The special circumstances of civil partners making applications to come to the UK from abroad

Section A: What is Civil Partnership?

Section 1 of the Civil Partnership Act 2004 states:

(1) A civil partnership is a relationship between two people of the same sex ("civil partners")-

(a) which is formed when they register as civil partners of each other-

(i) in England or Wales (under Part 2),

(ii) in Scotland (under Part 3),

(iii) in Northern Ireland (under Part 4), or

(iv) outside the United Kingdom under an Order in Council made under Chapter 1 of Part 5 (registration at British consulates etc. or by armed forces personnel), or

(b) which they are treated under Chapter 2 of Part 5 as having formed (at the time determined under that Chapter) by virtue of having registered an overseas relationship.

(2) Subsection (1) is subject to the provisions of this Act under or by virtue of which a civil partnership is void.

(3) A civil partnership ends only on death, dissolution or annulment.

(4) The references in subsection (3) to dissolution and annulment are to dissolution and annulment having effect under or recognised in accordance with this Act.

(5) References in this Act to an overseas relationship are to be read in accordance with Chapter 2 of Part 5.

(The full text of the Act can be found at
<http://www.opsi.gov.uk/acts/acts2004/20040033.htm>)

The Women and Equality Unit of the Department of Trade and Industry answers the question 'What is Civil Partnership?' as follows:

'The Act creates a new legal relationship of civil partnership, which two people of the same-sex can form by signing a registration document. It also provides same-sex couples who form a civil partnership with parity of treatment in a wide range of legal matters with those opposite-sex couples who enter into a civil marriage.'

Important rights and responsibilities will flow from forming a civil partnership, helping same-sex couples to organise their lives together.

Provisions in the Act include:

- a duty to provide reasonable maintenance for your civil partner and any children of the family;*
- civil partners to be assessed in the same way as spouses for child support;*
- equitable treatment for the purposes of life assurance;*
- employment and pension benefits;*
- recognition under intestacy rules;*
- access to fatal accidents compensation;*
- protection from domestic violence; and*
- recognition for immigration and nationality purposes.'*

Those who are advising prospective civil partners solely on the immigration aspects of the Act should nonetheless highlight that entering into a civil partnership has implications beyond immigration. Though the debate continues over whether the United Kingdom should allow marriage for same-sex couples (using the word 'marriage'), civil partnership is to a very great extent 'gay marriage' and involves the same rights and responsibilities. Like marriage, it is not to be entered into lightly

Prospective civil partners also need to be aware that they cannot have a spouse and civil partner at the same time!

Section B: Immigration and Entering into a Civil Partnership

1. Immigration control and the formation of civil partnerships

Section 249 and schedule 23 were late amendments to the Bill. The amendments were clearly introduced in order to bring the Act into line with the measures affecting marriage introduced by sections 19-25 of The Asylum & Immigration (Treatments of Claimants Etc.) Act 2004.

The effect of section 249 and schedule 23 of the Act is that, in order to enter into a civil partnership, an individual needs permission from the Secretary of State for the Home Department unless he or she:

1. Is a British citizen, or
2. Has the right to abode, or
3. Is an EEA national, or
4. Is not subject to immigration control for another reason, or
5. Has been granted indefinite leave to remain, or
6. Is entering into a registration with a former spouse one of whom has changed sex
7. Has been granted leave to enter as a proposed civil partner or a civil partnership visitor

Permission is given in the form of a Certificate of Approval. Applications can be made on Form CoA and are relatively simple. (See Form CoA (11/05))

Approval will usually only be granted to those who have been granted leave of more than six months' duration and who have at least three months of that leave outstanding. This is summarised in the attached guidance on obtaining a certificate of approval.

It must be made clear to applicants that the grant of a Certificate of Approval is completely separate from any application for leave.

Individuals who are not eligible for a certificate of approval will need to follow one of the following options:

1. leave the UK and apply for leave to enter as a proposed civil partner or civil partnership visitor (see below) and then re-enter to register the partnership, or

2. leave the UK and register at an overseas post or under a recognised overseas regime (see below), or
3. obtain leave in excess of six months and then apply for a certificate of approval (It must be remembered that if an individual wishes to pursue this option, the category chosen should not be one which requires an 'intention to leave' or the individual could then face difficulties over whether he or she really has the requisite intention), or
4. show that there are exceptional circumstances.

Important points to note on obtaining a certificate of approval:

1. The applications can be made from 14 November 2005
2. There have been recent difficulties with the IND website so there may be clients who have applied on the wrong form. IND have acknowledged this and if an application is rejected on the basis that the wrong form was used this may be challengeable.
3. Those who are granted certificates of approval must register at a designated register office (see list attached),
4. It should not be accepted that there are no exceptions to the guidance. The guidance used to refer to exceptions but this no longer seems to be the case.

The validity of the restrictions on the ability to marry are not within the ambit of this course but are the marriage provisions may be incompatible with human rights legislation - not least the fact that the provisions relating to spouses do not relate to those married in the Church of England while they are applicable to those whose marriage is conducted within the rights of other Christian churches and other religions. This may indicate that the right to marry under Article 12 of the European Convention on Human Rights (ECHR) is being applied in a discriminatory way which would contravene Article 14 of the ECHR. Under Article 6 of the Human Rights Act 1998 it is unlawful for a public authority to act in any way which is incompatible with a convention right.

2. Leave to enter the United Kingdom with the intention of entering into a civil partnership and subsequently settling in the United Kingdom

The initial consultation papers issued prior to the Civil Partnership Bill did not deal with those individuals who are not in the United Kingdom but wish to come to the UK in order to enter into a civil partnership and subsequently apply for leave to remain on the basis of that partnership. Following representations on this point by the Lesbian and Gay Lawyers Association (LAGLA) and UKLGIG, it was confirmed that provision would be made for 'fiancés' and the amended immigration rules refer to 'proposed civil partners'.

The proposed civil partner category allows a grant of leave to enter for those who wish to enter the UK in order to enter into a civil partnership with a British citizen or a person who has indefinite leave to remain and most EEA nationals (see below for a further discussion of EEA nationals.) Leave is granted for six months to enable the individual to enter the UK, register the partnership and subsequently apply from within the UK for leave to remain as a civil partner.

The amended immigration rules are attached.

Those who have leave in this category will not need to obtain a certificate of approval (see above). The applicant will need to show that he or she will have the means to be supported without recourse to public funds or work for six months.

It is likely that relatively more proposed civil partners will apply for leave than fiancés. The reason for this is simply that when two individuals want to marry and live in the UK they can get married abroad in nearly every country in the world. This is not the same for same-sex marriage and partnership, which is still only available in a limited number of countries. Many same-sex partners will therefore need to come to the United Kingdom as a proposed civil partner in order to have the opportunity to register the civil partnership in the first place. There are two situations where this will not be necessary:

1. when the couple is able to enter into an overseas relationship under s.212 in another country (see below); or
2. when the couple is able to register at an overseas diplomatic mission under the provisions under s.210 (see below).

The proposal in IAN to remove the right of appeal for fiancés (and therefore proposed civil partners) is extremely worrying given the importance of this category to potential civil partners.

Important points to note in relation to proposed civil partners:

(i) Mistake in the amended immigration rules - It was intended that the requirement that an applicant for leave to remain as a civil partner must have been granted more than six months leave to remain would not apply to those who have been granted leave to enter as proposed civil partners. It is currently the position that fiancés can switch to being spouses.

Unfortunately, the amended immigration rules have not made provision for this. Those who drafted should have added '*or proposed civil partner*' to the end of paragraph 284 (i). They did not.

This means that as the rules stand, it is not possible to switch from a proposed civil partner to a civil partner. UKLGIG have pointed out this mistake to IND and they have indicated that it will be rectified in a future statement of changes to the Immigration Rules.

(ii) Timing of applications for leave to enter as a proposed civil partner - These applications can be made from 14 November 2005 but advisors should be aware that until 5 December 2005, the applications are made under a concession and all applications will be referred to the Home Office in the United Kingdom making the concession potentially effectively worthless (for more information on how this situation arose see the attached e-mail correspondence and www.uklgig.org.uk).

(iii) Evidence - Advisors need to check with each individual post as to what they wish to see. Advisors should always be aware that the entry clearance officers will wish to be satisfied that it is a genuine relationship and, given the fact that applications which are made at this point may be among the first the entry officers see, it may be advisable to make very full applications beyond the basic requirements stated by the post.

The application should be made on Form VAF 2 (which was updated on 14 November 2005). A suggested format for the application follows, though it is accepted that different posts will attach different levels of importance to some of the documentation.

1. Completed Form VAF-2, together with two passport sized photographs of the applicant and the required fee
2. The foreign partner's passport.
3. A certified copy of the British based partner's passport (since, ordinarily, he or she will be in the United Kingdom at the time the application is lodged).

4. Documentation from the appropriate register officer confirming either the day that has been booked for the civil partnership registration ceremony or, in the alternative, giving an indication that the individuals concerned have taken appropriate initial steps to arrange a date
5. A statement signed by both members of the couple confirming the history of their relationship.
6. A dossier of documentary evidence confirming that the couple have been pursuing a relationship and, to the extent that they have been living together for any period, documentary evidence confirming this.
7. letters in support of the application from third parties who are aware of the history of the couple's relationship
8. Documentary evidence of the couple's ability to support and accommodate themselves without relying on public funds which would consist of six months' worth of wage slips and bank statements.
9. Evidence of accommodation in UK
10. Residence permit for EEA national (see below).

It is stressed that not all of these documents are mandatory (advisors must check with each overseas post what they do demands to see) but this is a suggested format.

(iv) Those who have entered as proposed civil partners must register at a designated register office - A list of such offices is attached

3. Civil partnership visitors

Civil partnership visit visas must be distinguished from proposed civil partnership visas. Leave to enter as a civil partnership visitor allows an individual to enter the United Kingdom in order to enter a civil partnership (and no certificate of approval will be required) but no application can then be made for leave to remain in the United Kingdom as a civil partner. This category requires an 'intention to leave'

This category allows non-EEA nationals to enter the United Kingdom solely for the purpose of entering into a civil partnership. These applications can be made from 14 November 2005 on Form VAF 1.

Civil partnership visitors must register at a designated office.

4. Registering at an overseas post

It will be possible in some instances to register the relationship abroad at an overseas post - Embassies, High Commissions and Consulates. For those who choose to do this, an application can be made for leave to enter as a civil partner rather than as a proposed civil partner. The registration of civil partnerships at overseas posts is dealt with at s210 of the Act. There are limitations on this at s210 (2) which requires that:

- (a) at least one of the proposed civil partners is a UK national,*
- (b) the proposed civil partners would have been eligible to register as civil partners of each other in such part of the UK as is determined in accordance with the Order,*
- (c) the authorities of the country or territory in which it is proposed that they register as civil partners will not object to the registration, and*
- (d) insufficient facilities exist for them to enter into an overseas relationship under the law of that country or territory*

We do not yet know the impact of this but it is a sad fact that there are many authorities around the world who may object to same-sex registrations taking place in their countries and so the ability to register abroad may well be restricted under (c) above.

Little information is yet available as to which posts will allow registrations but a quote from a very helpful Embassy in North Africa illustrates the difficulty in many parts of the world:

'No arrangements have yet been put in place at the Consulate for registrations to take place. Homosexuality and cohabitation by unmarried partners (whether same sex or otherwise) remains illegal....., it is unlikely that objections will not be raised [by the local authorities]'

5. Recognition of overseas regimes

Prior to the Act coming into force, the United Kingdom will not allow those who have entered into a same-sex marriage abroad to enter the United Kingdom as a spouse on the basis of that marriage. This position has been challenged by lawyers involved with UKLGIG who stated that there was nothing in the Diplomatic Policy Instructions to prevent a same sex 'marriage' being a basis for

leave to enter or remain as a spouse. The response by the Home Office was to simply change the instructions so that they specifically stated that same sex marriages would not be recognized. This amendment was made in 2004 - in apparent contradiction to the work the government was doing on civil partnership.

However, from 5 December 2005, this position will change. Provision will automatically be made for those who have entered into an overseas regime recognised under s.212. An overseas relationship is recognised as a civil partnership if it is listed in schedule 20 or meets the conditions set out in section 214 (see attached).

If a relationship is recognised as a civil partnership, it can form the basis of an application for leave to enter or remain.

Section C: Applications for leave after a Civil Partnership has been established

6. Applications for leave to remain as the civil partner of a British Citizen or a person with indefinite leave to remain

From 5 December 2005, the civil partner of a British citizen or a person with indefinite leave to remain will be able to make an application for leave to remain in the UK on the basis of that civil partnership. The requirements for such an application mirror those currently in place for a spouse who applies on the basis of a marriage.

The amended immigration rules relating to leave to remain are attached.

As with the rules relating to spouses, an applicant who makes an application for leave to remain from within the UK must have leave and that leave must have been granted for over six months duration unless that leave was granted as a proposed civil partner (see above for an important note on this point concerning a mistake in the amended immigration rules). This leave cannot be leave granted outside the immigration rules.

If a civil partner were in the UK without leave, any application for leave on the basis of a civil partnership or proposed civil partnership would need to be made from outside of the UK unless there are exceptional circumstances. However, the question of whether an applicant has leave will arise on very few occasions as section 249 and Schedule 23 of the Act mean that those without leave or leave of short duration will simply not be able to enter into a civil partnership in the UK (see above).

On a successful application the civil partner will be granted leave for a probationary period of two years. During this two-year period there will be no restrictions on the civil partner's right to work, but there will be a prohibition on "recourse to public funds" (The list of 'public funds' can be found at Annex w of Chapter 1, Section 7 of the Immigration and Nationality Instructions on the IND website and should be referred to when assessing whether public funds have been relied on). If at the end of the two-year period the partners remain living together in the civil partnership and the non-settled civil partner has not had recourse to public funds (except in exceptional circumstances), he or she will be eligible for a grant of indefinite leave to remain in the United Kingdom.

There is also be provision for the grant of indefinite leave to remain to the non-settled civil partner in the following situations:

1. where the relationship has ended during the probationary period due to bereavement
2. where the relationship has ended during the probationary period due to domestic violence

The fact that civil partners will not be required to demonstrate prior cohabitation will clearly benefit many couples and is of course to be welcomed. However, advisors must be aware that they will need to satisfy decision makers on applications for civil partners that the relationship is genuine so may consider providing the evidence listed above under the proposed civil partnership section. Applications will be made on Form FLR(M) which will be amended prior to 5 December 2005.

7. Applications for leave to enter as the civil partner of a British Citizen or a person with indefinite leave to remain

As with spouses, the immigration rules relating to leave to enter as a civil partner are similar to those relating to leave to remain, though no mention is made of current leave or past immigration history.

Throughout this course, it is suggested that where an individual is not allowed to enter into a civil partnership in the UK or to make an application on the basis of a civil partnership, the solution is to leave the United Kingdom and make an application for leave to enter from abroad.

This will indeed often be the most simple and fastest solution. However, it must be remembered that though the immigration rules relating to leave to enter do not specifically refer to past immigration history in the paragraphs relating to civil partners, there is within the immigration rules discretion for applications to be refused on this basis (paragraph 320 of the Immigration Rules). Though such refusals may be challengeable at appeal on human rights grounds depending on each individual case, potential applicants need to be warned accordingly.

An additional element in the rules relating to leave to enter is that where the couple have been in a civil partnership outside of the UK for four years prior to an application for leave to enter, no probationary period is required and indefinite leave to enter can be granted.

Applications are made on the amended Form VAF2 and the comment above on evidence also apply to these applications.

Advisors should check that the endorsement in passports does not disclose that an individual is a civil partner (see e-mails on this point).

Section D: Partners of EEA nationals and those with limited leave to remain

8. Civil partners of those with limited leave to remain

The initial government consultation paper did not make reference to the civil partners of individuals with limited leave to remain and, in its response, LAGLA requested confirmation that the foreign partners of those with limited leave will be given leave to enter and remain as dependants. At the IND meeting, it was confirmed that the civil partners of those with limited leave would be able to apply for leave to enter in the same manner as the spouses of such individuals.

The rules have been amended to reflect this and are attached. (IND indicated in a meeting with LAGLA and UKLGIG that in the future the unmarried partners of students might also be provided for.)

There remain practical difficulties in this area for same-sex couples that spouses do not have. In order to take advantage of these provisions, same-sex partners will have to be registered civil partners, either:

1. by registering as civil partners in the UK under the Act or
2. by marrying or registering abroad in a regime that is recognised as a civil partnership under (see section of recognition of overseas relationships)

Registering a civil partnership at an overseas post under s.210 is only possible if one partner is a British Citizen so this is not available in this situation. It is also not possible to use the proposed civil partner category as this can only be used by the partners of British Citizens, those with indefinite leave to remain and certain EEA nationals.

If the couple is able to enter into a partnership under the jurisdiction of another country (option .2 above) then there is no difficulty. However, this will very often not be possible given that still relatively few countries in the world have same-sex partnerships regimes. The only option therefore for most couples would be to register as civil partners in the United Kingdom.

This means that the couple will need to go through the following process:

1. The partner who does not have limited leave to remain will enter the United Kingdom on a civil partnership visit visa, then,
2. The partner with limited leave to remain will apply for a certificate of approval, then,

3. The couple will give notice and then enter into a civil partnership in the United Kingdom, then,
4. The partner who is present on a civil partnership visit visa will leave the United Kingdom and then,
5. He or she will make an application for leave to enter as the civil partner of a person with limited leave to remain from abroad.

This is complicated, lengthy and expensive. The problem does not arise for opposite-sex couples as they are able to marry in their home country.

At a meeting with IND, possible solutions were suggested by the representatives of ILPA, LAGLA and UKLGIG and IND agreed to consider them. However, no provision has yet been made.

It may be possible that partners in this situation will be able to use the immigration rules relating to unmarried partners or travel to a third country to register their partnership or marry there in a regime recognised under s.212.

9. The civil partners of European Economic Area nationals

There has sometimes been confusion over the exact position of same sex partners of EEA nationals who are exercising their treaty rights in the UK. The source of this confusion has been that while the spouses of such EEA nationals fall under EC law, there is no provision (yet) within EC law for same sex partners though the Directive on Free Movement, which will be introduced in April 2006, will change this situation.

It is, though, clearly established that the same sex unmarried partners of EEA nationals who are exercising their treaty rights in the UK should be treated equally to the partners of British citizens. The only difference is that the partners of EEA nationals need to complete a period of four years in the UK before indefinite leave to remain is granted (though this may not be the case if the EEA national becomes entitled to indefinite leave to remain within the four year period.)

It has been confirmed that the civil partners of EEA nationals will be treated in the same manner, even though there is no provision for civil partners in EC law. An e-mail from UKVisas confirms this (see attached).

However, advisors should beware. Advice has also gone out to overseas posts concerning the Directive on Free Movement and it appears from conversations had and faxes received by those giving this course that some overseas posts may be confused.

Advisors must be ready to explain to overseas posts that the fact that the directive does not come into force until April 2006 does not mean that the partners of EEA nationals cannot take advantage of the Civil Partnership Act now. It simply means that it is solely an issue of UK immigration law.

It should be noted that the proposed civil partners of EEA nationals (excluding certain A8 nationals) do not face the same potential difficulties as the proposed civil partners of those with limited leave to remain referred to above as paragraph 290A of the immigration rules in relation to fiancés/proposed civil partners states:

..... an EEA national who, under either the Immigration (European Economic Area) Order 1994 or the 2000 EEA Regulations, has been issued with a residence permit valid for 5 years is to be regarded as present and settled in the UK even if that EEA national has not been granted permission to remain in the UK indefinitely.

Advisors should advise the EEA national to obtain a residence permit as soon as possible though not all overseas post will necessarily require them.

The European Economic Area (EEA) is all EU countries (Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, The Netherlands, UK) as well as Iceland, Liechtenstein and Norway

Paragraph 257 of the Immigration Rules defines EEA nationals as including nationals of Swiss nationals and the civil partners of Swiss nationals should be treated in the same manner of the civil partners of nationals of the EEA.

There is an unresolved issue in this area. A8 nationals (underlined above) cannot obtain residence permits until they have completed one year on the workers registration scheme or are self-employed. This means that their partners will not be able to enter as proposed civil partners as they will not meet the requirements of paragraph 290A. Those teaching the course are still seeking an answer and will discuss at the course.

Section E: Other issues

10 Naturalisation as a British Citizen

Generally, naturalisation as a British Citizen requires five years' lawful residence in the UK, at least one year of which must have been completed as the holder of indefinite leave to remain. The spouses of British Citizens, though, can naturalise after three years. (This is a very simple summary and full guidance can be found in IND's Nationality Instructions available on its website.)

LAGLA and the UKLGIG, in their responses to the consultation paper, asserted that civil partners should also be able to naturalise after three years, giving parity with spouses. The government agreed with this suggestion and the Act provides for this at Schedule 27 which amends the British Nationality Act 1981.

The amendment at schedule 27 goes further than just allowing naturalisation for civil partners after three years and has inserted 'civil partnership' in many instances where the British Nationality Act 1981 refers to 'marriage.' Schedule 27 (attached) should be referred to for full details.

11. Civil partner or unmarried partner?

Clearly, no individual should enter into a civil partnership purely for immigration reasons. Civil partnership involves responsibilities as well as rights.

Advisors can assist in choosing the appropriate route. The following are just some suggestions as to points to consider:

1. Does the couple want to take on the rights and responsibilities of civil partnership?
2. It is not possible to switch within the UK from the status of visitor (or other leave of six months or less except for leave as a proposed civil partner) to civil partner but it is possible to switch from the status of visitor to unmarried partner. It may be preferable to make an unmarried partners application rather than leaving the UK and making an application for leave to enter as a proposed civil partner (though all visitors should be advised about any possible illegal entry issues).
3. For any person who has been granted six months or less leave or for any person who has less than three months' extant leave, the certificate of

approval must be considered. These individuals will not be granted a certificate of approval. If a couple has been cohabiting for two years and can prove this, they may wish to make an application for leave to remain as an unmarried partner and, once that leave has been granted, apply for a certificate of approval which should then be granted.

4. There is also a time factor to be considered – does the individual wish to wait for a certificate of approval, then give notice, then enter into a civil partnership before making an application?
5. The Home Office is taking an extremely strict view on the type of documentation required for a successful unmarried partners' application. Depending on the circumstances therefore, this may mean that an application on the basis of a civil partnership is the preferred option.
6. Do the clients wish to use DP3/96 as unmarried partners in order that the non-settled partner does not need to leave the United Kingdom?

These are just some ideas which hopefully illustrate that advisers should always look for the simplest way forward with respect to the Immigration Rules.

The basis of the application should not affect the time at which the non-settled partner will be eligible for indefinite leave to remain in the UK (though the amended IDIs have not yet been published.) At present if an unmarried partner marries during the probationary period, no change of status is needed and the individual will simply apply for permanent residency at the end of the probationary period. (Paragraph 5.5 of Chapter 8, Section 7 of the Immigration Directorate's Instructions (available on the IND website). It can be assumed that the guidance will be the same for civil partners.

12. The special circumstances of civil partners making applications abroad

There may be individuals who are not willing to make applications on the basis of their same sex partnership in their country of origin due to the legal or social position concerning homosexuality in that country. In such cases, consideration will need to be given to whether there are arguments to be made that the case is exceptional and matters should be dealt with in the United Kingdom or whether there is a third country to which that individual would be willing and able to travel where the overseas post would be willing to process the application. For instance, would a client returning to a country where homosexual conduct is illegal wish to carry the evidence suggested above through immigration control of that country?

Advisors can be proud of the near equality we have achieved in the United Kingdom but need to be aware that it is an achievement that is matched in very few countries around the world and clients' concerns must be listened to accordingly.