

Lesbian and Gay Lawyers Association

LAGLA

LAGLA's Amendments for the Civil Partnership Bill

Concerning Unregistered Couples

May 2004

About LAGLA

The Lesbian and Gay Lawyers Association (LAGLA) membership is made up of solicitors, barristers, judges and academics. LAGLA is not a lobbying organisation, but a group of lesbian and gay lawyers who meet for seminars, conferences and social gatherings. We have members with a wide variety of legal backgrounds and feel, therefore, that we are uniquely placed to respond to the Government's proposals.

We have formed a working group of lawyers with expertise in family law as well as in other areas of law that the proposals affect. We welcome the Civil Partnership Bill and want to help to improve the Bill by suggesting the amendments in this Briefing.

Parliamentarians or journalists may contact

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Further details on www.lagla.org.uk in the Partnership section.

SCHEDULE 4 - WILLS, ADMINISTRATION OF ESTATES AND FAMILY PROVISION
PART 2 - ADMINISTRATION OF ESTATES AND FAMILY PROVISION

1. Paragraph 15 (page 110 line 31)

Amendment

Page 110 after line 41 add:

“(3A) In subsection (1A)(b) after ‘wife’ add ‘or (if of the same sex) in an equivalent relationship”

Briefing

This amendment would put unregistered same-sex partners in the same position as unmarried partners under the Inheritance (Provision for Family and Dependents) Act 1975.

The Civil Partnership Bill extends certain provisions applying to unmarried (opposite-sex) couples to unregistered (same-sex) couples. Most important of these are that all same-sex couples will be treated as a family unit for the purposes of assessing welfare benefits and tax credits, thereby reducing their entitlement considerably. Schedule 8 extends the succession rights to some tenancies to persons who were living “as if they were civil partners”.

It is inconsistent to extend some provisions, including all onerous ones, but not all rights. As practicing lawyers we regularly come across clients whose long term partners die young and suddenly and who have not thought about marriage and therefore would not have the benefits of spouses. However, in some areas, including the Inheritance (Provision for Family and Dependents) Act, there are provisions for unmarried partners. These ought to be extended to unregistered partners.

The current provisions are discriminatory and have been found to be so in the context of the tenancy succession in the recent case of *Ghaidan v Mendoza* [2002] 4 All ER 1162, which we understand is subject to appeal. It cannot be right for bereaved partners to have to litigate the validity of their relationship through the courts system, possibly funded by the Community Legal Service Fund, when this issue can be clarified by a simple amendment in the present Bill.

The Inheritance (Provision for Family and Dependents) Act 1975 allows unmarried partners of the deceased to apply to the court for provision from the estate if they have not been provided for adequately. This is important since unmarried partners will not inherit under intestacy rules and these provisions often help people out of poverty and away from state benefits whose partner dies unexpectedly. The same rationale applies to unregistered same-sex partners.

SCHEDULE 20 – MINOR AND CONSEQUENTIAL AMENDMENTS: GENERAL

2. Paragraph 41 (page 235 line 25)

Amendment

Page 235 after line 29 add:

“41A In section 26(1)(a) after ‘wife’ add ‘or civil partner’ and in section 26(6) after ‘husband or wife’ add ‘or civil partner’.”

Briefing

Section 26 of the Mental Health Act 1983 defines who is to be regarded as the “nearest relative” of a patient. Civil partners should be in the same position and spouses and unregistered same-sex partners should be in the same person as unmarried opposite-sex partners. On 30 March 2004 Lord Warner in a written question by Lord Lester of Herne Hill said:

“Mental Health Act 1983: "Nearest Relatives"

Lord Lester of Herne Hill asked Her Majesty's Government:

Whether they intend to amend the Mental Health Act 1983 so as to eliminate any difference in treatment between same-sex cohabitants and opposite-sex cohabitants.[HL2083]

The Parliamentary Under-Secretary of State, Department of Health (Lord Warner): There is no difference in the treatment of same-sex cohabitants and opposite-sex cohabitants under the Mental Health Act 1983.

30 Mar 2004 : Column WA146

A court order finalised on the 7 November 2002 established that local authorities should regard same-sex partners as within the extended definition of husband or wife under Section 26 of the 1983 Act.

Unmarried partners, whether homosexual or heterosexual, may therefore be recognised as patients' "nearest relatives" under the 1983 Act provided that they have cohabitated for a period exceeding six months.

The Department of Health issued guidance on this ruling to local authorities in November 2002 with a direction that same-sex partners must be treated in the same way as opposite-sex partners when it comes to the interpretation of Section 26.

The amendment would therefore implement the court ruling for unregistered couples and put civil partners in the same position as spouses without the need of six months of cohabitation.