

CIVIL PARTNERSHIPS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes have been prepared by Lord Lester of Herne Hill QC in order to assist the reader in understanding the Bill. They do not form part of the Bill. They need to be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require explanation, none is given.

SUMMARY

2. The Bill provides the framework for establishing a new kind of recognised relationship between two individuals, to be called a civil partnership. It sets out the procedure for the registration of the partnership and the legal consequences that will follow. It also contains provision for ending the partnership.

3. An overview of the Bill is set out below. A detailed description of each Part and the clauses is contained in the commentary. Terms used are generally defined in the text where they first appear. Some terms are defined in clause 40.

BACKGROUND

4. The Bill is designed to remedy the lack of protection for cohabiting couples (whether opposite sex or same-sex) in English law and to give them the opportunity to register a civil partnership. This will enable them to live together within a stable and coherent framework of rights and responsibilities.

THE BILL

5. The Bill is in four Parts.

Part 1, Formation of a civil partnership. This Part provides for the registration of a relationship between two individuals. It sets out the conditions that must be satisfied before the relationship can be registered and outlines the procedure to be followed to secure registration. Certain details relating to the registration are to be kept on a record available for public inspection.

Part 2, Effect of a civil partnership. This Part sets out the legal framework for the mutual care and support of the partners in a civil partnership. It contains provision dealing with the specific matters set out in the Part as well as a power for Ministers of the Crown to make further provision in relation to civil partnerships. This will enable full effect to be given to the framework outlined in the Part and will allow for further provision to be made if, after consultation, this is considered appropriate for the proper functioning of civil partnerships in other areas. The specific matters outlined in Part 2 include provision relating to the partners' property and provision of certain fundamental protections for the partners in the face of adverse circumstances (such as

ill health, domestic violence or death). There is also provision to treat civil partners as a single unit in assessing any entitlement they may have to means-tested benefits.

Part 3, Ending of a civil partnership. This Part deals with the procedure for obtaining a court order to end a civil partnership. The procedures allow for the partners to decide for themselves, so far as possible, the arrangements for allocating property between them but there is a default procedure in the event that no satisfactory arrangements can be agreed. There is also provision for an application to be made for the court to intervene in respect of matters relating to property and financial provision.

Part 4, Supplemental. This Part contains provision dealing with interpretation, commencement and territorial scope. It also contains a power for rules of court to be made in relation to applications to the court for which the Bill makes provision.

COMMENTARY ON CLAUSES

PART 1: FORMATION OF A CIVIL PARTNERSHIP

6. This Part provides for the registration by the Registrar General of civil partnerships and for the maintenance by him of a public record of registered civil partnerships.

Clause 1: Civil partnerships

7. This clause provides that two individuals may register their relationship with each other if certain conditions are specified. Under clause 3(4)(a), a person who applies to register a partnership must sign a declaration that includes a statement that the conditions for civil partnership are satisfied. He commits a criminal offence if, at the time of the application, he knows that the conditions are not satisfied or is reckless as to whether or not they are satisfied (see clause 3(7)).

Clause 2: Conditions for a civil partnership

8. This clause sets out the conditions for civil partnership. These include the requirement that the prospective partners must have lived together for a minimum period of 6 months before the relationship can be registered. Each of the partners must be 18 years old or more and neither of them may be married or in an existing civil partnership.

Clause 3: Application for registration

9. This clause establishes the procedure for registration. The Registrar General is given the registration function under *subsection (1)* but the Lord Chancellor may make regulations for initial applications to be considered at a local level (see clause 7(2)(a)). The Lord Chancellor has power under section 7(2)(g) to require applicants to send a copy of an application to specified persons (which may include a local registrar) as well as to the Registrar General.

10. The power to make regulations under clause 7(2)(a) refers to determinations made locally as being carried out ‘on behalf’ of the Registrar General. The outcome of a determination would then be communicated to the Registrar General so that he may make the appropriate entry in the public record kept by him under clause 5. There is no power in clause 7 to make provision for anyone other than the Registrar General to carry out any functions affecting the register once an entry has been made.

11. The Lord Chancellor will have power under clause 7 to make regulations setting out the form in which an application must be made and requiring prospective partners to supply with an application certain information demonstrating that the conditions for civil partnership

are satisfied. That power to make regulations would also allow the Lord Chancellor to make provision with a view to securing that explanatory information about the effect of a civil partnership is given to the prospective partners. Such information could, for example, form an integral part of the blank form to apply to register the civil partnership that the applicants must fill in.

12. The power to make regulations may also be exercised so that the application form may be submitted together with a notice of any property agreement that the partners have made under clause 10 or together with a notice that either of the partners has created a continuing power of attorney under clause 13 in favour of the other.

13. Under *subsections (2) to (4)* of clause 3, each of the prospective partners must make a civil partnership declaration. This must be signed and witnessed by two persons other than the partners. The declaration must contain certain statements. In addition to the statement that the partner believes that the conditions for civil partnership are satisfied (which is referred to in the commentary on clause 1), each partner must also declare that he has read any explanatory information that was included with the application to register that he has filled in and that he understands the effect of registering the partnership. The declaration each partner must make also emphasises the seriousness of the commitment represented by entering into a civil partnership.

14. The Registrar General may request more information if he is concerned that the conditions for civil partnership may not be satisfied (see *subsection (5)*). This provides a means for ensuring, if possible, that any problems with an application can be resolved at an early stage. If more information is requested, the application will not be completed until the information is supplied. This has the result that the one month period within which the Registrar General must register the partnership under clause 4(1) will not start running.

15. If a person makes an application knowing that the conditions for a civil partnership are not satisfied, or is reckless as to whether or not they are satisfied, he commits an offence and is liable on summary conviction to a fine not exceeding the statutory maximum (*subsections 7 and 8*).

Clause 4: Registration

16. It is only if the Registrar General considers that the conditions for partnership are not satisfied that he may refuse to register a civil partnership. The Registrar must have reasonable grounds for such a view. In such circumstances, the Registrar must give each of the applicants a notice setting out his reasons and inform them that they may make representations to him. That period must be at least 28 days but it may be longer. At the end of that period, the Registrar General must inform the applicants of his decision. If he refuses to register the partnership, he must give his reasons. The applicants may apply for judicial review of the Registrar General's decision.

Clause 5: The register of civil partnerships

17. The Register General must keep a record of civil partnerships that are registered. In Parts 2 to 4 of the Bill this record is referred to as the "register" (see clause 9(4) and clause 40). The record is to be open to public inspection and provision is made for copies of entries in the register to be requested on payment of a fee. The record must be kept up to date (see *subsection (4)*).

18. In addition to containing the basic information about the names of the partners and the date of registration of the civil partnership, the public record must also indicate whether the Registrar General has been notified that the partners have made a property agreement under

clause 10 or whether he has been notified that one or both of them have created a continuing power of attorney under clause 13. The Registrar General must keep any copies of signed documents evidencing a property agreement or continuing power of attorney which are notified to him by virtue of provisions made in or under Part 2 of the Bill (*subsection (6)*).

Clause 6: Non-compliance with conditions for civil partnership

19. If, after a civil partnership is registered, it comes to light that the conditions for civil partnership were not satisfied in one or more respects, either partner may apply to the court for the partnership to be annulled. If the court grants an order, it may make a direction adjusting the position of the partners if it considers it just and equitable to do so in all the circumstances of the case. Under this clause, the court may make any direction that it could make in an intervention order under Part 3 of the Bill. The court may, for example, require that property be transferred between the partners or that a payment be made by one partner to the other.

Clause 7: Procedure relating to registration

20. This clause sets out the Lord Chancellor's powers to make detailed provision relating to applications for registration and the keeping of the public record. In addition to the provisions that could be made under this power which are already referred to in the preceding paragraphs of this commentary, this clause provides for the setting of fees which are payable in making an application to register a civil partnership or in obtaining a copy of entries in the register.

PART 2: EFFECT OF A CIVIL PARTNERSHIP

21. This Part sets out the framework of rights and obligations within which civil partnerships will operate.

Clause 8: Introduction to Part II

22. This clause sets out the general purpose of the Part as being the establishment of a framework for the mutual care and support of the partners to a civil partnership.

Clause 9: Sharing of communal property

23. This clause provides that, except in certain circumstances, civil partners are to be treated as sharing certain property in equal shares. This property is referred to as "communal property". In general terms, the property in question is the partners' main home (if this is owned by one or both of them) and any contents which the partners use in the maintenance of the home. Communal property would include, for example, a house or flat in which the partners hold a freehold or leasehold interest (whether or not it is subject to a mortgage). But it would not extend to a home that the partners occupy as tenants or to any property that is not the partners' principal home. Where the home in which the partners live is occupied under a tenancy agreement or by virtue of a statutory tenancy, the communal property will comprise only such of the contents as belong to the partners and which are used to maintain the home.

24. This provision for sharing of communal property does not apply in certain cases. One case is where the partners have made their own arrangements under clause 10 for the treatment of any property that belongs to them. Another case is where, as part of the procedure for ending the civil partnership, the partners have agreed a final settlement arrangement under clause 34 or where the court has made an intervention order under clause 36 on the application of one of the partners. The provision for sharing property does not apply so as to affect any interest held by a third party in the property in question.

Clause 10: Property agreements

25. This clause enables the partners to make their own arrangements in respect of their property in the form of “property agreements”. If they do so, and the existence of the agreement is noted on the register in accordance with clause 11(2), then the sharing of communal property for which clause 9 makes provision will no longer apply (see clause 9(3)(a)). Instead, the terms of the property agreement will determine the partners’ respective entitlements to any of the property dealt with in the property agreement (see *subsection (2)*) unless, as part of the procedure for ending the civil partnership, the partners have agreed a final settlement arrangement under clause 34 or the court has made an intervention order under clause 36 on the application of one of the partners (see *subsection (3)*). As with clause 9, property agreements cannot affect any interest held by a third party in the relevant property.

26. The arrangements for registering a civil partnership encourage the partners to consider the implications that the partnership will have for their property. The civil partnership declaration required by clause 3 require that the applicants are in a position to declare that they are aware of the consequences of entering into a civil partnership, especially those relating to property. Clause 7(2)(c) confers on the Lord Chancellor power to make provision for applicants to be provided with information relating to the effect of a civil partnership on property (as well as other things). If the partners are not content with the idea of sharing communal property under clause 9 then they may, under this clause, make different arrangements to suit them.

27. Regulations under clause 7(2)(e) may allow for the existence of a property agreement to be notified to the Registrar General at the same time as registration of the civil partnership. But property agreements can be made, amended or revoked at any time before a cessation order is made (see clause 11(4) and (5)).

Clause 11: Property agreements: supplemental

28. This clause includes provision to the effect that a property agreement can only be noted on the register if each of the partners has been advised separately by a solicitor in relation to the effect of the agreement and the merits of entering into it (see *subsection (2)*). Amendments to a property agreement must also be made on legal advice if they are to be effective in determining the partners’ entitlements to property (see *subsection (4)*).

Clause 12: Taxation on transfers of assets

29. This clause provides that a transfer of assets between the partners in a civil partnership is a no-loss/ no-gain transfer for the purposes of the Taxation of Capital Gains Act 1992. This means that the value of any property transferred by one civil partner to the other is not taken into account in assessing liability to capital gains tax.

Clause 13: Provision for health and welfare of partner without capacity to act

30. This clause establishes a procedure to enable one civil partner to give to the other a power to act on his behalf in matters relating to his health and welfare. The power is referred to as a continuing power of attorney.

31. A continuing power of attorney only becomes effective in the event that the donor of the power is not able to act on his own behalf. This might be because he is unable to make a decision for himself or because he is unable to communicate a decision for whatever reason. Under the current law relating to powers of attorney, it is only possible to grant a power that survives where a person loses the capacity to act for himself if the power is limited to financial matters.

32. *Subsection (3)(a)* indicates that a Minister of the Crown is able to make an order under clause 30 limiting the type of decisions that the partner holding the power might take or the circumstances in which a decision may be taken. This may, for example, be used to exclude from the scope of any continuing powers of attorney certain kinds of decisions (such as a decision to cease all treatment). The partner giving the power is also able to restrict the decisions that can be taken under it (see *subsection (3)(b)*).

33. The power under clause 30 may also be used to make detailed provisions for continuing powers of attorney and matters incidental to their operation. This may include provision for the procedure for revoking a continuing power of attorney, to ensure that the power is not used when the donor of the power retains the capacity to act for himself or to set out the powers of the courts in relation to these powers.

34. Where the fact that a civil partner has created a continuing power of attorney appears in the register (*subsection (5)(b)*), any doctor or other person who is in a position to take steps affecting the civil partner's health or welfare is directed by *subsection (6)* to take account of the decisions or directions of the other partner holding the power. However, this only applies where the partner holding the power is acting in compliance with any restrictions on the power (as described in the preceding paragraph of this commentary). The wording in *subsection (6)* is based on provisions for a continuing power of attorney in similar circumstances to those for which this clause makes provision which are contained in the Law Commission Report on Mental Incapacity (Law Comm No 231).

35. Clause 7(2)(f) provides that, in specifying the procedures for applying to register a civil partnership, the Lord Chancellor may include provision for an instrument creating a continuing power of attorney to be sent to the Registrar General as part of the application process. But the arrangements for which this clause makes provision may be established at any time afterwards. A continuing power of attorney is automatically cancelled on the making of a cessation order (see *subsection (7)*).

Clause 14: Mental health

36. The Mental Health Act 1983 contains a number of provisions which give a role to a person's "nearest relative". These include, for example, the right to object to an order admitting a person to hospital for treatment or to be consulted on certain matters. Clause 14 makes general provision for a person's civil partner to be treated as his nearest relative for the purposes of that Act.

Clause 15: Income-based benefits

37. This clause provides for civil partners to be assessed as a single unit in determining whether or not they are entitled to certain income-related benefits and, if they are, in determining the amount payable. The benefits in question are income-based jobseeker's allowance, income support, housing benefit and council tax benefit.

38. This means that in making any assessment relating to any one partner the question whether or not the other partner is working, or is already receiving income-based jobseeker's allowance or income support, may be taken into account. In addition, the capital and income of both of the partners are to be counted together in making an assessment relating to one of them. Finally, it is not possible for both partners to receive the same benefit.

39. *Subsections (4), (5) and (7)* of this clause contemplate that the power under clause 30 of the Bill may be used to include detailed provision relating to this clause. The power may be used to replicate existing provisions applicable to joint assessment to income-related benefits (for example, existing legislation provides for certain deductions to be made in the

context trade disputes and deals with circumstances where a council tax benefit is payable to one partner but it is the other partner who is liable to pay the council tax).

Clause 16: Working families' tax credit and disabled person's tax credit

40. This clause makes similar provision to clause 15 in relation to assessments in respect of entitlement to working families' tax credits or disabled person's tax credits. If one civil partner is receiving one of these tax credits, the other civil partner is not entitled to receive any of them. In addition, the capital and income of both of the partners are to be counted together in making any assessment relating to one of the partners.

Clause 17: Power of court to make occupation orders

41. A civil partner (or a former civil partner) may apply to the court for an order under this clause regulating the rights of the partners to occupy their home. An order may be made whether or not the partners own the home and may be used, for example, to exclude one of them from the home or to direct that a partner who has been excluded from the home should be allowed back in. *Subsection (2)* sets out the full description of the kind of orders that a court may make.

42. The court may only make an order if it considers that it would be just and reasonable to do so (*subsection (2)*) having regard to the factors set out in *subsections (3) and (4)*. These subsections direct the court to consider matters such as the alternatives open to the partners, their conduct and the needs of any children living with the partners or whose interests the court considers relevant. In practice, the power is likely to be used where a relationship is deteriorating and unreasonable or violent conduct is involved. *Subsection (4)* states that the court must make an occupation order if it considers that the conduct of one of the partners is likely to cause significant harm to the other partner if an order is not made unless it considers that making an order would cause equal or greater harm to the partner against whom the order would be made. Any harm that would be caused to any children living with the partners or who would otherwise be affected by an order must also be considered.

Clause 18: Power of court to make non-molestation orders

43. This clause provides that a court may make an order against one of the partners in a civil partnership with a view to preventing any attack or other form of molestation being carried out on the other partner. A non-molestation order may also be made against a former civil partner. An order may be made on an application by one of the partners or may be made by the court of its own volition in any proceedings under Part 3 of the Bill which relate to the ending of the partnership.

44. The court is required to have regard to all the circumstances in deciding whether to make an order; but *subsection (4)(a) to (d)* specifically lists the need to secure the health and well-being of the person who would be protected by the order and of any children who would be affected.

Clause 19: Life assurance

45. This clause ensures that a civil partner may take out a policy of insurance relating to the other partner's life. The Life Assurance Act 1774 would otherwise prohibit this and would prevent civil partners from making this kind of financial arrangement with a view to planning for the future.

Clause 20: Right to register death of partner

46. The persons who may register another person's death are limited by the Births, Marriages and Deaths Act 1953. This clause provides that a deceased's civil partner is able

to register the death of their partner and puts them under a duty to do so except in certain circumstances.

Clause 21: Succession to certain tenancies

47. This clause applies where one of the partners in a civil partnership has statutory rights to occupy as tenant any property that is the joint home of the civil partners. Examples of such statutory rights include the protections given to secure tenants under the Housing Act 1985 or to protected tenants under the Rent Act 1977. If the partner who has the benefit of the statutory rights dies, this clause has the effect that the other partner will succeed to the tenancy. This will not apply if the deceased partner also inherited those rights from another person (for example under provisions contained in the Act which confers the rights in question).

Clause 22: Intestacy

48. This clause contains provision for the disposition of the estate of a civil partner who dies either without making a valid will or who has made a valid will that does not cover the whole of his property. The property that is not disposed of by will, and that is left after certain charges have been paid for out of the deceased person's money, is referred to as the residuary estate.

49. Under this clause, if the deceased civil partner has no children, the whole of the residuary estate passes to the surviving partner. Where the deceased partner has surviving children, the residuary estate is to be divided between the surviving partner and the children in the manner described in *subsection (5)*.

Clause 23: Rights of action under Inheritance (Provision for Family and Dependants) Act 1975

50. Where a civil partner dies, the other partner may, by virtue of this clause, bring an application for an order under the Inheritance (Provision for Family and Dependants) Act 1975. Such an order may be granted if the court considers that any provision for the surviving partner which is made by the deceased partner's will or by the provisions as to intestacy under clause 22 of the Bill is not such as is reasonable to maintain the surviving partner. In deciding whether to make an order, *subsection (3)* requires the court to consider the age of the surviving partner and the contribution made by the surviving partner in the care and welfare of the deceased partner and his family.

Clause 24: Inheritance tax on death

51. This clause has the effect that inheritance tax is not payable out of the estate of a deceased civil partner in any case where any property passes from him on his death to the surviving partner. Any transfer of property between the partners is treated as exempt for the purposes of the Inheritance Tax Act 1984. This means, for example, that where the partners' joint home is in the name of the deceased partner, no inheritance tax would be payable by the surviving partner if title to the home passes to him and its value exceeds the inheritance tax threshold for an "excepted estate" (currently £210,000). This does not affect the tax position that will apply on the death of partner who inherits the home.

Clause 25: Contributory benefits payable on death

52. This clause provides that a surviving partner is entitled to receive certain contributory benefits if certain conditions are satisfied. The benefits in question are a bereavement payment and a bereavement allowance under that Act. The conditions that must be satisfied

include the requirement that the deceased partner's national insurance contributions meet the levels specified in the Social Security Contributions and Benefits Act 1992.

Clause 26: Occupational pension schemes

53. This clause applies to any occupational pension scheme that provides for certain payments to be made, in respect of the death of a member of the scheme, to the member's spouse. In such a case, *subsection (1)* has the direct effect that the scheme is to be treated as also providing for payments to be made to the civil partner of a scheme member. The trustees or managers of an occupational scheme are likely to have to amend the scheme in order to give effect to this requirement and *subsection (2)* ensures that any difficulties they may encounter with their powers to do so can be overcome. But occupational pension schemes are not to be amended so as adversely to affect any entitlement or accrued rights of other members of the scheme which were acquired before any changes are made (see *subsection (3)*).

54. The Commissioners of the Inland Revenue have powers (under Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988) to approve certain occupational pension schemes in respect of which certain exemptions or reliefs from income tax become available. For example, in assessing an employee's liability to income tax in any year, his contributions to an occupational pension scheme are treated as a deductible expense for that year. Under section 590(2)(a) of the 1988 Act, approval can only be given in respect of occupational pension schemes that provide for payments to be made to a limited range of persons (i.e. a member of the scheme, his spouse, children, dependants or personal representative). As a result of *subsection (4)*, the fact that payments may also be made to the civil partner of a member of the scheme by virtue of this clause is not to disqualify the scheme from approval by the Commissioners of the Inland Revenue.

55. Unlike the other provisions of the Bill, this clause (and clauses 27 and 28) would come into force three years after the bill is passed. This recognises that the need to make the necessary adjustments in the way that pension schemes operate so as to make available the necessary funds requires more time than for the other clauses of the Bill.

Clause 27: Personal pension schemes

56. This clause applies to personal pension schemes that provide for payments to be made, in respect of the death of a member of the scheme, to the member's spouse. It makes provision for payment to civil partners which is similar to that made in clause 26. There is no need to include in this clause provision protecting the vested interests of other members of the scheme because of the differences between personal and occupational schemes.

Clause 28: Public sector pension schemes

57. This clause provides power for a Minister of the Crown, or government department, with responsibility for a particular public sector pension scheme to make such changes to the scheme (or the legislation under which it is made) as are necessary to provide for benefits to be payable, in respect of the death of a member of the scheme, to the member's civil partner.

Clause 29: Right of action in respect of fatal accidents

58. This clause provides that a surviving civil partner is to be able to claim damages against a person who commits a wrongful act causing the death of the other partner in the partnership. This right of action is equivalent to claims that can be brought by certain specified persons under the Fatal Accidents Act 1976.

Clause 30: Power to make further provision relating to civil partners

59. This clause confers power on a Minister of the Crown to make further provision relating to civil partnerships. *Subsection (2)* sets out the circumstances in which this power may be required.

60. *Subsection (2)(a)* provides for provision to give full effect to Part 2 of the Bill. Clauses 9 to 29 provide for the way in which civil partnerships are to fit within certain existing areas of the law. Some of these provisions already contain enough detail to make them free-standing but others may require further elaboration. An example of such a case is clause 13 (continuing powers of attorney). In addition to the conditions and restrictions imposed on the type of decision to be taken under the power (envisaged by clause 13(3)(a)), it may be necessary to deal with other matters such as requirements as to the execution of the instrument creating the power, registration of the existence of the power, the role of the courts and the protection of third parties where a power is invalid or revoked.

61. *Subsection (2)(c)* allows for provision to be made creating rights or imposing liabilities which are additional to those currently dealt with in Part 2. This is included in case there are some areas of law not dealt with in the Bill in respect of which the absence of any provision for civil partnership would undermine the purpose of Part 2 of the Bill, as stated in clause 8.

62. All provisions made under this clause are subject to the affirmative resolution procedure. In addition, no provision that would be made under *subsection (2)(c)* may be laid before Parliament unless there has been a full consultation on the proposals to make it (see *subsections (4) and (5)*).

PART 3: ENDING OF A CIVIL PARTNERSHIP

63. This Part sets out the process for ending a civil partnership. It provides power for the court to make an order that the partnership is to cease to have effect. Such an order is referred to in the Bill as a “cessation order”.

64. This Part also contains provision as to the manner in which the partners’ property is to be allocated between them. This will depend on whether the partners can agree on a final settlement arrangement under clause 34 and on whether either of the partners makes an application to the court for an order relating to the terms on which partnership is to end. Such an order is referred to in the Bill as an “intervention order”. In addition to dealing with matters relating to property, an intervention order may also contain provision for one partner to provide financial support to the other and for the sharing of certain rights to pensions.

Clause 31: Application for order ending a civil partnership

65. *Subsection (3)* provides that an application to end the civil partnership may be made by the partners acting together or singly but the partnership must have been registered for at least a year beforehand (see *subsection (4)*).

66. There is no statutory test that must be satisfied before a cessation order can be made. Once an application is made, an order must be made unless the application is withdrawn in the meantime (*subsection 5*).

Clause 32: Cessation order

67. This clause sets out the time frame for the making of cessation orders. Under *subsection (4)*, this time frame does not apply in any case where either of the partners makes an application under clause 35 for the court to make an intervention order.

68. The partners are free to agree the terms on which they will allocate their property between them. To do this they must draw up a final settlement arrangement under clause 34. Where there is a final settlement arrangement, a cessation order may be made within nine months of an application being made (see *subsection (3)*). If a final settlement arrangement is submitted at the same time as an application for a cessation order made by the partners acting together, the court must make a cessation order as soon as possible after the end of the period of one month from the making of the application (see *subsection (1)(a) and (2)*).

Clause 33: Allocation of property between partners

69. The allocation of the partners' property depends on whether or not they have reached a final settlement arrangement under clause 34. If they have, *subsections (1) and (2)* provide that the property will be allocated between them in accordance with the arrangement. This final settlement arrangement takes precedence over any property agreement that has been noted in the register in accordance with clause 11(2).

70. If no agreed arrangement can be reached, the partners' property will be allocated between them either on the basis of any property agreement noted in the register or, if there is no property agreement, in accordance with the provisions for sharing communal property under clause 9. The rest of the partners' property will not be affected.

Clause 34: Final settlement arrangements

71. This clause defines "final settlement arrangements" and makes provision as to the formalities required for the making of such arrangements. The Lord Chancellor has the power to set out the form and content of such arrangements and the procedure for making them. This may include provision to secure that the partners have received legal advice on the effect of the arrangements.

Clauses 35: Application for intervention order

72. Where an application for a cessation order is made, either partner can apply for the court to make an order in respect of the property and financial arrangements between the parties. The kind of intervention orders that can be made are described in clauses 37 to 39.

73. If an application for an intervention order is made, the provisions in clause 32 as to the timing of the cessation order no longer apply (see clause 32(4)).

Clause 36: Intervention orders: general

74. The court may make an intervention order if it considers that it is just and equitable to do so, having regard to the matters specified in *subsections (3) and (4)*. The first of these subsections sets out the principle that, once the partnership comes to an end, the partners should not in general look to each other for financial support. *Subsection (4)* lists the factors to which the court is to have regard in determining whether to make an intervention order and, if so, in what terms to make it.

75. If the civil partners concerned have made a property agreement under clause 10, and the existence of that agreement is noted on the register, the court may only make an intervention order if it considers that one of the partners would otherwise suffer financial or

other hardship (see *subsection (2)*). Except in such circumstances, the property agreement that the partners have entered into voluntarily and with legal advice will be upheld.

Clause 36: Intervention order relating to property

76. The first type of intervention order that the court can make is a property order. Under this the court may direct that one partner transfer to the other property described in the order or make arrangements in respect of particular property (such as by setting up a trust) so that the other partner may use the property.

77. In any case where a property agreement made by the partners appears on the register, the court may vary the terms of the agreement.

78. The court may also make an order which has the direct effect of transferring, from one partner to the other, the right under certain kinds of tenancies to occupy a home. These include protected tenancies, secure tenancies and assured tenancies.

Clause 37: Intervention order relating to financial provision

79. The second type of intervention order may provide for one partner to make financial provision for the other. But the court may not impose any requirement to make such provision which runs beyond the maximum period 2 years (*subsection (2)*). Such provision may take the form of direct payments by one partner to the other, either as a fixed amount payable on a regular basis or as a payment of a lump sum or sums of a specified amount. Alternatively, an order may require payments by some other means acceptable to the court, for example by requiring one partner to purchase an annuity which is payable to the other.

Clause 38: Intervention order relating to pension sharing

80. The third type of intervention order may require that a proportion of a pension payable to one of the partners in a civil partnership be paid for the benefit of the other. The power applies to personal and occupational pensions (including certain occupational schemes which operate on a statutory basis). It does not apply to the state basic pension.

81. Under clause 36(4)(f) and (h) the court is already required, in its deliberations relating to intervention orders, to take account of future income and matters such as pension rights which one partner has lost the chance of acquiring. This will allow the court to take account of the value of a person's pension entitlements in an appropriate case for the purpose of making an intervention order relating to property or to financial provision.

82. However, if the court considers that it would be appropriate for it to make provision dividing pension assets (perhaps where the partners have reached or are close to the age of retirement), it may make an intervention order relating to pension sharing. This can be achieved by reducing the rights of the member of a pension scheme by a form of 'pension debit' and granting the former partner a 'pension credit' of the same amount. The court must specify the percentage of the member's benefits that is to constitute the debit/credit. An intervention order relating to pension sharing has the advantage that the rights of the former partner are independent of those of the member and will continue beyond the death of the member.

PART 4: SUPPLEMENTAL

83. This Part contains various supplemental provisions. These include provision as to the making of rules of court in relation to an application under clause 6 to the court for the annulment of a civil partnership, for an order under clause 31 ending a partnership or an intervention order under clause 35. There is also provision as to the jurisdiction of courts to hear such applications.

Clause 43: Regulations and orders

84. This clause sets out the procedure for making statutory instruments under the powers in the Bill. It also contains supplemental provision for adaptations, amendments and repeals to enactments to be made in the exercise of any power conferred by the Bill.

85. The powers subject to the negative resolution procedure are contained in:

- clause 7 (regulations in relation to applications for registration of civil partnership and the keeping of the public record);
- clause 34 (regulations as to form and content of final settlement arrangements);
- clause 41 (rules of court);
- clause 42 (order as to jurisdiction of courts).

86. The affirmative procedure is required for an order under clause 28 in relation to public sector pension schemes. An order under clause 30 is also subject to affirmative resolution but, where the order is made under clause 30(2)(c), this is only after certain requirements as to consultation have been met.