

**ASSESSMENT GUIDANCE FOR CONTROLLED WORK  
RE: IMPLEMENTATION  
OF CIVIL PARTNERSHIP ACT 2004**

**Background**

The Civil Partnership Act 2004 received Royal Assent on 18 November 2004 and comes into force on 5 December 2005<sup>i</sup>. From this date same sex couples will be able to obtain legal recognition of their relationship. (The first ceremonies will take place on 21 December 2005).

Under the Act, same sex couples are able to make a formal, legal commitment to each other by entering into a civil partnership, thus creating a new legal status of 'civil partner'. People entering into a civil partnership will assume legal rights and responsibilities with regard to each other and to third parties, including the State. These include:

- A duty to provide reasonable maintenance for their 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.<sup>ii</sup>

**CLS Financial Eligibility**

The following information and guidance should be borne in mind for CLS financial assessments undertaken from 5 December 2005 onwards.

**Treatment of Partner's Income and Assets: Aggregation**

Under Regulation 11(1) of the Community Legal Service (Financial) Regulations 2000 as amended and current assessment guidance, the resources of a partner with whom the client normally resides as a couple, including a partner of the same sex, are assessed and taken into account. Thus **no change** of policy is required in respect of aggregation to reflect the status of civil partners, as we have previously recognised same sex couples. For the purposes of the legal aid financial assessment, married and cohabiting couples (of the same or opposite sex), and couples that have formed a civil partnership, will have their income and capital aggregated.

The only exceptions to the aggregation rule remain those cases where 1) the couple are living separately and apart (i.e. the relationship has broken down and is considered to be at an end by at least one of the partnership), or 2) there is a contrary interest.

The new Civil Partnership Act has however brought about changes to other welfare benefits that previously did **not** recognise same sex couples. Such changes will have an impact upon legal aid assessments.

### **Passporting Benefits: Income Support / Income Based Job Seekers Allowance/ Guarantee State Pension Credit**

Clients directly or indirectly in receipt of Income Support (IS), Income Based Job Seekers Allowance (JSA(IB)) or Guarantee State Pension Credit (GC) are automatically deemed to be financially eligible for funding for all levels of service. A client is directly in receipt of the benefit if he or she is the claimant, and the claim is live and in payment. A client is indirectly in receipt of the benefit if they are included as a dependant on a live claim.

Prior to 5 December 2005, a same sex partner of a benefit claimant in receipt of IS, JSA (IB) or GC would **not** have been included as a dependant within the benefit claim and therefore would not be passported as a result of that claim.

Various assessment anomalies arose as a result of the benefit rules prior to 5 December. For example, a same sex couple satisfying the qualifying criteria for these income-related benefits would put in separate benefit claims as single people. Alternatively, one partner may have been legitimately claiming benefit whilst his/her same sex partner was in full time employment or self employed, or otherwise had income or capital above the eligibility limit. In such circumstances prior to 5 December, if the person applying for legal aid were in receipt of the benefit he / she would have passported entitlement ignoring the same sex partner's resources; if the person applying for legal aid was the same sex partner of the claimant and therefore not included on the IS, JSA (IB) or GC claim, a full assessment was required, and the benefit payment was included using the aggregation rule.

From 5 December 2005, same sex couples that are claiming Income Support, income-based Job Seekers Allowances and the Guarantee State Pension Credit will be treated as a couple and no longer as two single people. This applies whether or not they decide to register their partnership.<sup>iii</sup> Thus passporting will now operate in the same way for married or cohabiting couples (including couples of the same sex) and civil partners. Where the client is directly or indirectly in receipt of a passporting benefit this should be indicated on the Controlled Work 1 or Controlled Work 2 (Imm) forms (page 2 of both forms); guidance as to acceptable evidence for income is set out within LSC Manual Volume 2 part E.

The Department of Work and Pensions (DWP) have advised clients in receipt of benefits who are in a same sex partnership to contact the office that deals with their claim as soon as they can, to see how their claim / application could be affected.

For all levels of service for which the supplier is responsible for the assessment of financial eligibility, i.e. Legal Help, Help at Court, Family Mediation, Help with Mediation, Controlled Legal Representation (Immigration) and Legal Representation in Specified Family Proceedings, there is no further assessment of means based on a change of circumstances if the original assessment was accurate. (The position is different than that for Legal Representation where the Commission is the assessing

authority, where there is a duty to report changes in financial circumstances). Thus the above guidance will apply to new applications from 5 December 2005 onwards.

### **Other Income Related benefits**

The recognition of same sex couples will apply in the same way to the following income related benefits:

- Housing Benefit
- Council Tax Benefit
- Working Tax Credits
- Child Tax Credits

As previously advised, the DWP have advised clients in receipt of benefits who are in a same sex partnership to contact the office that deals with their claim as soon as they can, to see how their claim / application could be affected.

### **Child Benefit**

For Child Benefit (CHB) purposes, same sex couples will be treated in the same way as married and cohabiting couples, whether or not they register their partnership. From 5 December, if a same sex couple join together to become one family, the higher rate of CHB will only be paid for the eldest child of the new family. If both partners receive CHB they will need to declare this to HM Revenue & Customs so that a decision can be made, in respect of which child receives the higher rate.

Customers receiving lone parent benefit will also lose their entitlement to this payment once they become a same sex couple<sup>iv</sup>.

### **Other benefits**

From 5 December **adult dependency increases**, which are available for a spouse, will be extended to civil partners. This will apply to the following benefits:

- Incapacity Benefit
- Carers Allowance
- Maternity Allowance
- Severe Disablement Allowance

### **State Pensions and Bereavement Benefits**

From 5 December, the DWP will treat same sex couples that enter into a civil partnership the same as married couples in respect of the State Pension.

In relation to Bereavement Benefits, surviving civil partners will be treated in the same way as widows and widowers.

Customers in receipt of bereavement benefits, who are living with a same sex partner or form a civil partnership, will from 5 December need to inform the office dealing with their benefit claim.

### **Further Information**

Contact your local Regional Office in the first instance if further guidance is required.

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<sup>i</sup> See Civil Partnership Act 2004 © Crown Copyright 2004

<sup>ii</sup> Background information reproduced from Women and Equality Unit website and Department for Work and Pensions, Touchbase, Edition 38.

<sup>iii</sup> Touchbase, Edition 40

<sup>iv</sup> Touchbase, Edition 41,