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Barry Crown

*National University of Singapore*

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# CIVIL PARTNERSHIP IN THE U.K. – SOME INTERNATIONAL PROBLEMS

BARRY CROWN\*

## I. INTRODUCTION

The new consultation document on civil partnership (the “Consultation Document,”) issued by the Women and Equality Unit of the Department of Trade and Industry, proposes the creation of a new legal status for registered same sex couples.<sup>1</sup> If these proposals are adopted, England and Wales will join the ranks of those jurisdictions which either recognize same sex marriages or which confer a similar status on registered same sex couples.<sup>2</sup> As would be expected, the proposals contained in the Consultation Document are heavily influenced by developments abroad.<sup>3</sup> That comes as no surprise in an age of globalization. What is remarkable, however, is the extent to which the proposals in the Consultation Document – like some schemes which have been adopted in other jurisdictions – simply ignore the conflict of laws and other international problems that are likely to arise should a new status be conferred on registered same sex couples. Whatever view is taken of the desirability or otherwise of recognizing same sex marriage or creating a new status of civil partnership, it can surely be agreed that, if this is to occur, it should not be done in a way that is liable

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\* LLB (Jer), LLM (London), MLitt (Oxon); Solicitor (England and Wales); Associate Professor, Faculty of Law, National University of Singapore. This article draws heavily on the author’s unpublished comments to the Women and Equality Unit of the DTI as part of the consultation process.

1. Women and Equality Unit of the Department of Trade and Industry, *Civil Partnership - A Framework for the Legal Recognition of Same-Sex Couples* (June 2003), available at [http://www.womenandequalityunit.gov.uk/research/civil\\_partnership\\_consultation\\_FINAL.pdf](http://www.womenandequalityunit.gov.uk/research/civil_partnership_consultation_FINAL.pdf).

2. The government announced its intention in the Queen’s Speech on the opening of Parliament on November 26, 2003, to introduce legislation on the registration of civil partnerships between same sex couples: Hansard HC, November 26, 2003, col. 4.

3. See generally LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW (Robert Wintemute & Mads Andenaes eds., Oxford 2001) and LEGAL RECOGNITION OF SAME-SEX COUPLES IN EUROPE (Katharina Boele-Woelki and Angelika Fuchs eds., Oxford 2003).

to create difficulties for couples who avail themselves of the benefits of the legislation. Therefore, the purpose of this article is to discuss some of the international aspects of the proposed civil partnership legislation. Paragraph 4.21 of the Consultation Document raises the question of whether civil partnership registration schemes in operation in other countries should be recognized in England and Wales. While this is an important issue, given the limited number of such schemes currently in operation, recognition of foreign registration schemes will solve only a few of the problems considered here.

## II. OVERSEAS COUPLES – PROBLEM AREAS

At first sight, it might seem that civil partnership registration would be of little interest to couples living outside the United Kingdom (“U.K.”). For example, registration under the new law will give partners the right to claim the benefit of provisions for property division on the dissolution of the civil partnership. However, if the partners are resident in a foreign country, which does not recognize English civil partnership, the courts of that country will not enforce any such rights.<sup>4</sup> Registration as civil partners in England and Wales might be thought to be of little more than symbolic value to a foreign couple in these circumstances.

In fact, however, if one of the partners has a close connection with England and Wales, registration of their partnership under English law may well be of great importance to them. One of the cases frequently cited as showing the necessity for civil partnership legislation is the problem caused by inheritance tax. Where A and B are a same sex couple living in a house belonging to A, which A leaves to B by her will, B will have to pay inheritance tax on the house on A’s death. Were A and B a heterosexual couple, the tax would be avoided if they were married.<sup>5</sup> Presumably this element of discrimi-

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4. In fact even though the foreign country may not recognize an English civil partnership directly, it may well do so indirectly through the operation of its own conflict of laws rules. See *infra* text accompanying note 29.

5. See Inheritance Tax Act, 1984, c. 51, § 18 (Eng.).

nation will be removed by applying to registered partners the rule which currently applies to spouses.<sup>6</sup>

Suppose, however, that A is a British citizen who goes to Australia to work for three years. There, she establishes a relationship with B, an Australian of the same sex. The result is that if A leaves her entire estate to B in her will, B will have to pay British inheritance tax upon A's death. The tax is payable on the worldwide assets of a deceased who is domiciled in the U.K. or who was previously domiciled in the U.K. during the last three years.<sup>7</sup> Where assets are situated in the U.K., inheritance tax is payable on these assets regardless of the place of domicile of the deceased. The tax can only be avoided if it can be shown that A lost her U.K. domicile more than three years prior to her death. On the facts, this is most unlikely because A only went to Australia for three years. In any event, since A's intention was not to emigrate permanently to Australia, it is likely that she retained her U.K. domicile until her death.<sup>8</sup> Because Australian law does not have any form of civil partnership registration that might be recognized in England and Wales,<sup>9</sup> the only way for A and B to avoid inheritance tax in this case would be for them to visit England or Wales and register their partnership there. Under the proposals contained in the Consultation Document, A and B would be required to live in England or Wales for seven days before being able to give notice to a registra-

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6. Curiously this problem is not specifically addressed in the Consultation Document, although paragraph 6.6 recognizes, in general terms, the need to make changes to the tax regime. See *supra* note 1, at ¶ 6.6.

7. See Inheritance Tax Act, 1984, c. 51, § 267 (Eng.). Under this section a person is also deemed to be domiciled in the U.K. if s/he was resident in the U.K. in not less than seventeen of the twenty years of assessment ending with the year of assessment in which the relevant time falls.

8. In practice, most British citizens who emigrate to Australia will eventually acquire an Australian domicile. The problem is more acute in relation to other countries. Most British citizens who work in places like Hong Kong do not intend to settle there permanently and will therefore always retain their domicile of origin, regardless of the length of time they have lived abroad. For a general discussion of the rules relating to the acquisition of a domicile of choice, see DICEY AND MORRIS, *THE CONFLICT OF LAWS* (13th ed., London, 2000), at 117, et seq.

9. Some Australian states have legislation which gives the courts power to adjust property rights of couples (both homosexual and heterosexual) who have been cohabiting for a specified time period (usually two years), but this is very different from an official registration system conferring a recognized legal status on a same sex couple. See *infra* note 35.

tion officer and would then have to wait a further fifteen days before the registration ceremony. These requirements are not unduly onerous, so it would be perfectly feasible for A and B to take a holiday in the U.K. for this purpose. But it would be an expensive undertaking and they would both need to be able to take about a month off work at the same time to make it possible. Needless to say, none of this would be necessary for a heterosexual couple, who would be able to avoid U.K. inheritance tax by the simple expedient of getting married in Australia.

As an Australian citizen, B does not require a visa to enter the U.K. In practice, B is unlikely to encounter any difficulties from the immigration authorities at Heathrow Airport, provided she has a return ticket to Australia and sufficient funds for her visit to the U.K. If B were a citizen of another country, the situation might be more difficult. For example, suppose A is a British citizen, who is sent by his employers to work in Kuala Lumpur. While there, he establishes a relationship with B, a Malaysian citizen of the same sex. They set up home together with the intention of living together in the U.K., if and when A has to leave Malaysia. Unfortunately, A is informed by his employers that he must return to work in England after A and B have been living together for only one year. The immigration rules allow same sex partners of British citizens to enter and remain in the U.K., but only if the couple have been living together for at least two years.<sup>10</sup>

Married couples are not subject to this requirement.<sup>11</sup> The Consultation Document proposes to remedy this element of discrimination by applying to registered partners the rules currently applicable to married couples.<sup>12</sup> The difficulty, however, is that A and B can register their partnership only by first returning to the U.K. Malaysian law offers no form of partnership registration.

It is difficult to know how the U.K. immigration authorities would view such a situation, but it cannot be assumed that they would allow B to enter the U.K. Indeed, if they know of his relationship with A, they may suspect that B does not genuinely intend

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10. U.K. Immigration Rules (Family Members) Part 8 ¶¶ 295A, 295B (Jan. 2004), available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=3185>.

11. *See id.* at ¶¶ 281-82.

12. *See supra* note 1, at 7.2.

to return to Malaysia after his visit to the U.K. This suspicion is likely only to increase if they know or suspect that the couple intends to register a civil partnership while in the U.K. At the very least, there is the fear that A and B intend to “jump the queue” by applying in the U.K., rather than from Malaysia, for B to settle in the U.K.<sup>13</sup> This problem would not exist if A and B were a heterosexual couple. They would then be able to marry in Malaysia, or in a third country, and thereafter benefit from the more generous immigration rules applicable to married couples.

A and B’s problem is particularly difficult because if B is denied permission to enter the U.K., it is difficult to see how they will be able to fulfill the requirement of living together for two years, which is applicable to immigration applications made by same sex couples. If A’s employers do not want him to remain in Malaysia, his only option may be to give up his job. However, the Malaysian government is unlikely to allow him to remain in the country solely on the basis of his relationship with a Malaysian citizen of the same sex. He would have to find another job in Malaysia and obtain a new work permit from the Malaysian authorities in order to remain with B. It is also unlikely that A and B can find a third country where they can continue to live together.

The large number of British citizens living overseas means that problems of the type mentioned above will occur with some frequency. It may be that one day there will be a network of civil partnership regimes subject to mutual recognition just as today marriage in one country is generally recognized automatically in others. However, that day is a long way off and the very real problems raised here should be addressed now.

### III. OVERSEAS REGISTRATION

The simplest way of dealing with these problems is to make it possible for couples to register a civil partnership overseas. The idea is not a new one. Under the French PACS legislation, a civil

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13. Cf *R (on the application of McCollum) v. Secretary of State for the Home Dep’t* EWHC Admin 40, CO/569/1999 (Q.B. Admin. Ct. 2001) and *R v. Immigration Officer ex parte Hashim* CO/2052/99 (Q.B. 2000). These cases illustrate the difficulties encountered in practice by same sex partners in asserting their immigration rights in circumstances similar to those mentioned in the text.

partnership can be registered at a French consulate outside France where at least one of the partners is a French citizen.<sup>14</sup> Although the consultation document did not suggest that any provision would be made for overseas registration, the government appears now to have conceded this point. The report on responses to civil partnership states:

The Government is carefully considering whether to offer same-sex couples the facility to register their partnership at a U.K. diplomatic post abroad in certain circumstances, in a similar way as applies for marriage. However, any such facility would depend on there being insufficient facilities to register a civil partnership under the law of the foreign country where they resided, and on the agreement of the country in question.<sup>15</sup>

It is quite understandable that for diplomatic reasons it would not be possible to offer a formal ceremony for same sex partnerships at a U.K. diplomatic post without the consent of the country where the post is situated. However, this means that problems of the type mentioned above will not be avoided. It is quite inconceivable, for example, that the Malaysian government would agree to the registration of civil partnerships for same sex couples at U.K. consulates in Malaysia.<sup>16</sup> In fact, it is likely in practice that consular registration will be offered in only a very limited number of countries.<sup>17</sup> While there is much to be said for having a formal registra-

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14. Law No. 99-944 of November 15, 1999 J.O., November 16, 1999, p. 16959. Art. 515-3 (November 16, 1999), available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX9803236L>.

15. Responses to Civil Partnership – a framework for the legal recognition of same-sex couples (November 2003), 35, available at [http://www.womenandequalityunit.gov.uk/publications/CP\\_responses.pdf](http://www.womenandequalityunit.gov.uk/publications/CP_responses.pdf).

16. Under the Malaysian Penal Code, § 377B, consensual homosexual acts are punishable by up to 20 years imprisonment and whipping. The law has been enforced in recent years, most notably in the case of *Public Prosecutor v Dato' Seri Anwar Bin Ibrahim*, [2001] 3 M.L.J. 193.

17. According to a press release issued by the Ministry of Foreign Affairs in Sweden on May 28, 2003, "It is natural for Sweden to be able to offer registration of partnership at embassies where the host country does not oppose it." However, registration overseas is currently permitted only at the Swedish Embassies in Paris, Madrid and Lisbon. Press Release, Ministry of Foreign Affairs, Registration of Partnership Abroad (May 28, 2003), at [http://www.regeringen.se/galactica/service=irnews/action=obj\\_show?c\\_obj\\_id=52054](http://www.regeringen.se/galactica/service=irnews/action=obj_show?c_obj_id=52054).

tion ceremony, in most cases, this poses too many difficulties for overseas couples. A better solution to the problem would be to allow couples resident overseas to sign the registration papers privately before witnesses and then submit them for official registration.<sup>18</sup>

If overseas registrations are to be permitted, the registrations should be limited to cases where at least one of the proposed partners has a close connection with the U.K. Otherwise, there might be a suggestion of interference in the domestic affairs of the foreign country. A close connection must surely exist where at least one of the proposed partners is either a British citizen or is settled in the U.K. within the meaning of the U.K. immigration rules. In practice this will cover virtually all cases, but in view of the extended ambit of inheritance tax, overseas registration should also be available where one of the partners is either domiciled in the U.K. or treated as so domiciled for the purposes of the Inheritance Tax Act.<sup>19</sup>

#### IV. DISSOLUTION

In recent years there has been considerable discussion of the question of same sex marriage or registered partnership. There has, however, been relatively little consideration of the question of same sex divorce or dissolution of same sex registered partnerships. Generally, it seems to be assumed that dissolution should follow the same principles as those adopted for heterosexual divorce. It is submitted that at least so far as the jurisdiction of the courts is concerned, this approach is profoundly misconceived and, if adopted in the new English civil partnership legislation, will cause serious difficulties.

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18. Compare the procedure laid down in Lord Lester's Civil Partnership Bill (HL Bill No 41 of 2002), available at [http://www.odysseustrust.org/cpb/civil\\_partnerships\\_bill.pdf](http://www.odysseustrust.org/cpb/civil_partnerships_bill.pdf).

19. *See* Inheritance Tax Act, 1984, c. 51, § 267 (Eng.). Where assets are situated in the U.K., inheritance tax is payable on these assets regardless of the place of domicile of the deceased. However, it would not be appropriate to allow consular registration of a civil partnership where the only connection with the U.K. was the fact that one of the proposed partners owned assets there. This would allow any person to register a U.K. civil partnership overseas by the simple expedient of opening a bank account in the U.K. Such a person can obviously avoid inheritance tax by liquidating the U.K. assets and transferring them overseas.



The problem traditionally in cases of divorce has been that of multiple jurisdiction – that courts of more than one country might have a right to deal with issues relating to the dissolution of the marriage of a given couple. Clearly, it would be most unsatisfactory if a couple were to be married in one country and divorced in another. Given the small number of jurisdictions which permit same sex marriage or registered partnership - and the even smaller number which recognize this status when it has been acquired under the laws of another jurisdiction - the problem here is the exact opposite. There may well be no country at all with jurisdiction to decree the dissolution of the marriage or registered partnership. This problem already exists. The Civil Unions Act was passed in Vermont to provide same sex couples with the same rights as those of heterosexual married couples.<sup>20</sup> Although the Act does not refer to civil union as “marriage,” it was, in fact, designed to confer on same sex couples an equal and equivalent status to that of marriage, and its provisions mirror those of the Vermont marriage laws. Thus, the law lays down only minimal formal requirements for entry into civil union,<sup>21</sup> and dissolution is only possible where one of the partners has lived in Vermont for at least a year prior to the grant of the decree of dissolution.<sup>22</sup> Many couples from all over the United States, and even from foreign countries, have gone to Vermont to enter into a civil union. Should their relationship break down, there is now no practical way for them to dissolve the civil union. Few, if any, jurisdictions outside Vermont recognize the civil union, and the Vermont courts will not dissolve a civil union unless the residence requirements are met.

A similar problem has occurred recently with court decisions in British Columbia<sup>23</sup> and Ontario<sup>24</sup> permitting same sex marriages.

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20. VT. STAT. tit. 15 § 1202 (2003).

21. See VT. STAT. ANN. tit. 18 § 5160 (2003). As noted in the text accompanying note 9, the new English proposals for civil partnership also lay down only minimal formal requirements. The problems raised in the text are less likely to occur in civil law countries, which tend to impose nationality or residence requirements on those seeking to marry or enter into a civil partnership. Since no such requirements apply to marriage in England and Wales, it would be discriminatory to introduce them for civil partnership.

22. See VT. STAT. ANN. tit. 15 § 1206 (2003); see also VT. STAT. ANN. tit. 15 § 592 (2003).

23. *Barbeau v. Attorney Gen. of British Columbia*, [2003] DLR 472.

It is understood that many couples from the United States have gone to Canada to get married. Because their marriages are not recognized in the United States, these couples will not be able to obtain a divorce in the United States. They also cannot get divorced in Canada without meeting the residence requirements.<sup>25</sup> In practice, most people in these circumstances probably assume that it does not matter if they are unable to get divorced. If they live in a jurisdiction which does not recognize the marriage or civil union, they are still single for most practical purposes. However, they will never be able to enter into another marriage in a jurisdiction which allows same sex marriages. They may also be unable to enter into another civil union in a jurisdiction which recognizes such a status. As will be seen shortly, there may well be other less obvious consequences which flow from the "limping" status of their marriage or civil union.

The proposals for civil partnership registration in England and Wales are very similar to the Vermont civil union legislation. The aim in both cases is to create a new status for same sex couples that essentially grants them the same rights as those conferred by marriage. However, the English provisions for jurisdiction in cases of divorce are more generous than those of Vermont.<sup>26</sup> Generally speaking, the English courts have jurisdiction to entertain proceedings for divorce if either of the parties to the marriage is domiciled in England and Wales on the date when the proceedings are initiated or if either party was habitually resident in England and Wales throughout the period of one year ending with that date.<sup>27</sup> The use of the concept of domicile in addition to that of residence is helpful in increasing the number of instances where the English courts have jurisdiction, but domicile is a nebulous concept, and it would be unfortunate if the only way a couple residing abroad could ob-

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24. *Halpern v. Attorney Gen. of Canada*, [2003] DLR 529.

25. One year's residence in the relevant province. *See* Divorce Act, R.S.C., ch. 3, § 3 (1985) (Can.).

26. *See* VT. STAT. ANN. tit. 15 § 1206 (2003); *see also* VT. STAT. ANN. tit. 15 § 592 (2003).

27. Domicile and Matrimonial Proceedings Act, 1973, c. 45, § 5(2) (Eng.). More complicated arrangements are in force where either of the parties is resident in one of the other member states of the European Union. *See* Council Regulation (EC) No 1347/2000 of 29 May 2000.

tain dissolution of their registered partnership would be by proving a U.K. domicile.

Since the Consultation Document does not say when the courts will have jurisdiction to dissolve a registered partnership, the following example assumes that the new English legislation follows the model of Canadian law and the Vermont Civil Unions Act in conferring jurisdiction to dissolve the partnership only in the same circumstances where there would be jurisdiction to decree a divorce. A and B are both British citizens resident in England. They register their partnership and later decide to emigrate to Australia. After living in Australia for several years, their relationship breaks down, and they wish to dissolve their partnership. However, because Australian law does not recognize the registered partnership in the first place, the Australian courts do not have jurisdiction to dissolve it. They seek to dissolve their partnership in England, but are advised that this is not possible because neither lives in England or Wales and they are both now domiciled in Australia. Needless to say, this problem would not arise if A and B were a married heterosexual couple, as they would be able then to obtain a divorce in Australia. Two years later, A enters into a relationship with C, a Cambodian citizen of the same sex who is studying in Australia on a student visa. A and C wish to live together in Australia, and C applies for permanent residence as A's partner. This is possible under the Australian immigration rules. An Australian citizen or resident may sponsor a same sex partner, but one of the requirements is that the sponsor must not have a spouse or other interdependent partner.<sup>28</sup> If the immigration authorities know of A's registered partnership with B, they will undoubtedly want evidence that this relationship has broken down, and A is likely to face intrusive questioning on this point. It is not unlikely that the immigration authorities will also want to interview B to obtain confirmation that the relationship has indeed been terminated. It is unlikely that A would face this embarrassment if he were able to demonstrate that his partnership with B had been dissolved by court order.

After they have lived together for a few years, the relationship between A and C breaks down. A is subsequently offered a job in Singapore. He has come to feel that his move to Australia has not

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28. See Migration Regulations, 1994, reg 1.09A (Austl.).

been a success in personal terms and the new job represents an opportunity for him to make a fresh start in life. He sells his house and liquidates his assets in Australia. He moves to Singapore staying in the country on an employment pass or other temporary residence permit issued by the Singapore immigration department and lives in accommodation provided by his employer. It may well be that by leaving Australia in these circumstances he has lost his Australian domicile of choice. If so, he is again domiciled in England and Wales – his domicile of origin. This would mean that he could now apply to the English courts for dissolution of his partnership with B. However, unless A is legally trained it is highly unlikely that he will realize that by moving to Singapore, he has become domiciled in England and Wales! It is several years since his relationship with B broke down in Australia and he unsuccessfully tried to dissolve his registered partnership. It is even longer since he last lived in the U.K. It is very unlikely that it will even occur to him to consult a lawyer on this matter.

Two years later A dies intestate, leaving property in Singapore. Under Section 4(1) of the Singapore Intestate Succession Act, “The distribution of the movable property of a person deceased shall be regulated by the law of the country in which he was domiciled at the time of his death.”<sup>29</sup> The Singapore courts will have to determine in which country he was domiciled. It is unlikely to be Singapore, as his stay in that country seems to have been only temporary. It could be Australia, but he seems to have given up his Australian domicile when he moved to Singapore. If so, he will have died domiciled in England and Wales – his domicile of origin. The Singapore courts will therefore apply English law to the distribution of his movable property, which will mean that it would pass to his registered partner, B, even though their relationship had broken down many years ago.<sup>30</sup> This occurs as a result of the operation of Singapore’s conflict of laws rules, even though Singapore law would not recognize the civil partnership.<sup>31</sup>

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29. Intestate Succession Act s. 4(1) (Cap. 146, Rev Ed. 1985).

30. Paragraph 9.23 of the Consultation Document proposes that registered partners should be able to inherit under the Administration of Estates Act 1925 in the same way as spouses. *See supra* note 1.

31. In Singapore consensual homosexual acts are crimes under §§ 377 and 377A of the Penal Code (Cap 224, 1985 Rev Ed) and marriages wherever performed between

As the example shows, it would be most unsatisfactory to copy the jurisdictional rules for divorce in the new civil partnership legislation. Given the difficulties in dissolving an English civil partnership overseas, it is suggested that the English courts should have jurisdiction to dissolve any partnership registered under the English civil partnership legislation regardless of the current residence or domicile of the parties.<sup>32</sup> In exceptional cases, this may mean that the courts of more than one jurisdiction might be able to deal with the same matter. In practice, the English courts would undoubtedly dismiss any application under the doctrine of *forum non conveniens* where the dissolution proceedings would be more satisfactorily handled elsewhere.<sup>33</sup>

## V. RECOGNITION OF FOREIGN REGISTERED PARTNERSHIPS

The question of recognition in England and Wales of foreign registered partnerships is raised in the Consultation Document. In principle it must be correct to work towards mutual recognition of registered partnerships at an international level. One would not expect married couples to have to get married again every time they

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members of the same sex are declared void under § 12 of the Women's Charter (Cap 353, 1997 Rev Ed). It might therefore be possible to argue that recognizing B's rights in this way would be inconsistent with the fundamental public policy of Singapore law (*cf Vervaeke v Smith* [1983] 1 AC 145, 164). It is submitted, however, that it is unlikely that a Singapore court would adopt such an approach given the increasing social acceptance of homosexuality in the country. See Straits Times editorial "About Gay Tolerance" (5 July, 2003). For a general discussion of the criminalization of homosexual conduct from a Singaporean perspective, see Lynette J. Chua Kher Shing, *Saying No: Sections 377 and 377A of the Penal Code*, 2003 Sing. J. Legal Stud. 209.

32. If it is decided to recognize in English law partnerships registered overseas as suggested below, then it will be necessary to cater for the case of the British couple who go to Vermont, register a civil union there and later cease to be resident in the U.K. It should be possible to dissolve a foreign partnership (or same sex marriage) where either of the parties is (or was) domiciled in the U.K. or is (or has been) habitually resident in the U.K. for a period of at least one year. The jurisdiction should only exist where the partnership has effectively become subject to English law, so where neither party is currently domiciled or resident in the U.K., any previous domicile or period of residence should have come to an end no later than the date of registration of the foreign partnership.

33. *Spiliada Maritime Corp. v. Cansulex Ltd.*, [1987] A.C. 460. If this approach is considered too liberal, an alternative would be to provide that the court should not grant a decree of dissolution where neither party is domiciled or resident in England or Wales, unless it is satisfied that no such decree could be obtained in the place of residence of the respondent.

move to a foreign country. The same principles should apply here. Furthermore, as more countries create systems of registered partnership and recognize each other's regimes, the problems raised in this article will gradually disappear. The difficulty, however, is that whereas there is an internationally accepted definition of what is meant by the concept of marriage, there is no such agreement as to the meaning of registered partnerships or civil unions. At one extreme, there are systems like that of Vermont and the new English scheme, which attempt to equate civil partnership with marriage. Indeed in a few cases, such as the Netherlands, Belgium, Ontario and British Columbia, one now has an explicit recognition of same sex marriage. At the other extreme, there are registration schemes such as the London Partnership Register, which are found in many U.S. cities, but confer few, if any, legal rights and are of little more than symbolic value. Given the absence of an agreed definition of "civil partnership," it cannot be assumed that partners who have registered under a foreign scheme have necessarily agreed to accept all the rights and responsibilities of the English system. Same sex partners may have registered under a scheme in an American city simply in order to obtain visiting rights should one of them be hospitalized. The guiding principle must be that parties should not have rights and obligations forced on them against their will.

Where partners are married in a system which allows same sex marriages, they have clearly accepted rights and obligations equivalent to those available under English law and should be recognized automatically as registered partners under English law. The same applies to regimes such as the Vermont civil union, which is intended to confer rights equivalent to marriage. The new legislation should provide that same sex couples who are married or registered under systems which confer rights and obligations substantially equivalent to those of the English scheme should be recognized automatically in England and Wales as registered partners. As a general guide, it may be said that any scheme which enables the courts to award maintenance or to adjust property rights on dissolution confers rights and obligations on the parties that are substantially equivalent to those of English law.<sup>34</sup> While such a rule

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34. The report on the responses to the Consultation Document states somewhat laconically that the government is minded to set out specific criteria that overseas part-

would clearly exclude foreign schemes which are similar to the London Partnership Register, the difficulty is that there may be doubtful cases. To avoid the need to litigate every case, it is suggested that there be a power by secondary legislation to draw up a "white list" of foreign schemes that are conclusively presumed to confer rights and obligations equivalent to those of English law.

In some jurisdictions, the courts have the power to adjust property rights of cohabitantes, whether homosexual or heterosexual, solely on the basis of the fact that they have cohabited for a requisite period of time, even though they have not formally married or been registered under any civil partnership scheme.<sup>35</sup> In such cases it is submitted that the couple should not be recognized automatically as registered partners under the new English scheme. The position adopted in the Consultation Document is that couples should make a specific choice about entry into the new legal status.<sup>36</sup>

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nership schemes would have to meet in order to be recognized. See Responses to Civil Partnership, *supra* note 15, at 35.

35. See, e.g., Property (Relationships) Act 1984 (New South Wales); Domestic Relationships Act 1994 (Australian Capital Territory); Property Law Act 1974 (Part 19 - Property (De Facto Relationships)) (Queensland); Property (Relationships) Act 1976 (New Zealand). Cf the more limited rights of support available in Ontario under the Family Law Act, RSO 1990, Chapter F3.

36. *Supra* note 1, at ¶ 4.25.