



## BRIEFING PAPER

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# The future of civil partnership

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## Summary

This briefing paper deals with the position in England and Wales unless otherwise stated.

### **Civil partnership and marriage across the UK**

In England, Wales and Scotland, same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship. In Northern Ireland, same sex couples may register a civil partnership but may not marry. Across the UK, opposite sex couples may marry but they may not register a civil partnership.

When consulting on the introduction of marriage for same sex couples, the Coalition Government considered that it was unnecessary to extend civil partnership to opposite sex couples, given the availability of both civil and religious marriage.

### **Statistics on civil partnerships and marriage of same sex couples**

Between the introduction of civil partnerships in December 2005 and the end of 2017 there were 72,087 civil partnerships formed in the UK.

The number of civil partnerships formed fell after the introduction of marriage for same sex couples in England and Wales in March 2014, and in Scotland in December 2014. In 2015, 2016 and 2017 the number of civil partnerships in these three countries did not change much, suggesting that the level of civil partnership formation may have stabilised since the introduction of same sex marriages.

Between the introduction of same sex marriage in England and Wales on 29 March 2014 and the end of 2015, there were 9,978 marriages formed between same sex couples in England and Wales. Couples in civil partnerships in England and Wales have been able to convert their civil partnership into a marriage since 10 December 2014. A further 11,557 couples have done so between that date and the end of 2015.

Same sex marriage was introduced in Scotland on 16 December 2014. In the period from January 2015 to December 2017 there were 3,244 marriages formed between same sex couples, of which 1,236 were between couples who were already in a civil partnership.

### **Previous consultations on the future of civil partnership**

In 2014, the Coalition Government consulted on the future of civil partnership in England and Wales. Among other things, the Government asked for views on opening up civil partnership to opposite sex couples. In June 2014, the Coalition Government stated that, in responses to the consultation, there was no united call for reform and that it had decided not to do anything at that time.

Issues in relation to civil status are devolved. The Scottish Government also consulted on the future of civil partnership in Scotland. In November 2017, the Scottish Government published its response to the consultation. It stated that it did not intend to legislate on civil partnership at that time but would continue to consider the evidence on potential take-up of mixed-sex civil partnership in Scotland.

### **Calls for civil partnership to be opened to opposite sex couples**

Calls continue to be made for civil partnership to be made available to opposite sex couples. Supporters of this position argue that opposite sex couples, like same sex couples, should be able to choose whether to marry or to register a civil partnership.

Separately, some calls have been made for civil partnership to be extended to a wider range of couples – for example, siblings who live together. The Government does not support this type of extension.

## 4 The future of civil partnership

### **Government Command Paper**

In a Command Paper published in May 2018, the Government set out how it would gather the additional information it considered necessary to bring forward proposals for the future of civil partnership. At that time, the Government anticipated being able to consult on the future operation of civil partnerships in 2020 – this timing has now changed.

### **Supreme Court decision**

In a judgment delivered on 27 June 2018, the Supreme Court decided that the current law on civil partnership is incompatible with the European Convention on Human Rights to the extent that it precludes opposite sex couples from entering into civil partnerships.

### **Government announcement that civil partnership law will be changed**

On 2 October 2018, the Prime Minister announced that the Government would change the law to allow opposite sex couples in England and Wales to enter into a civil partnership.

### **Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19**

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill (the Bill) is a Private Member's Bill introduced by Tim Loughton (Conservative), who came fifth in the ballot for Commons Private Members' Bills for the 2017-19 Parliamentary session. Information about the Bill is provided on the [Bill page on the Parliament website](#).

**Clause 2** of the Bill would deal with the extension of civil partnership to opposite sex couples. This clause was amended in Public Bill Committee and at Report stage in the Commons, and again at Committee stage in the Lords.

The Bill, as amended, has Government and Opposition support.

In October 2018, while the Bill was still in the Commons, the Government indicated that it would introduce its own legislation to deal with civil partnership in the next session of Parliament. However, the Government now hopes that the Bill, as amended, would be able "to deliver a comprehensive and effective opposite-sex civil partnerships regime at the earliest opportunity".

As amended in the Lords, Clause 2 would enable the Secretary of State to make regulations, under the affirmative resolution procedure, to amend the Civil Partnership Act 2004 so that opposite sex couples would be able to form a civil partnership in England and Wales. The Secretary of State would be required to exercise the power so that such regulations are in force no later than 31 December 2019.

Consideration of Lords amendments by the House of Commons (Ping Pong stage) is due to take place on **15 March 2019**.

The Bill would also deal with a number of other matters. Another Library briefing paper provides further information:

[Commons Library analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill \(CPB 08217\)](#).

### **Consideration of Bill by Committees**

The House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee have expressed concerns about the delegated powers in the Bill.

### **New consultation by Scottish Government**

Following the Supreme Court judgment in June 2018, the Scottish Government consulted on the future of civil partnership in Scotland. The consultation period ran from 28 September 2018 to 21 December 2018.

The consultation set out two options for change and sought views on the arguments for and against these options. The two options were: to make provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future; and the introduction of opposite sex civil partnership. The Scottish Government has said that “Either option would be effective in removing the current discrimination from the law”.

Once the responses to the consultation have been analysed, the Scottish Government intends to take a decision on the way ahead and legislate.

# 1. Civil partnership and marriage: current position

## Summary

In England, Wales and Scotland, same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship. In Northern Ireland, same sex couples may register a civil partnership but may not marry. Across the UK, opposite sex couples may marry but there is no option for them to register a civil partnership.

## 1.1 Who can register a civil partnership?

Civil partnerships may be registered only by same sex couples.<sup>1</sup> The legislation provides specifically that opposite sex couples are not eligible to register a civil partnership.<sup>2</sup>

## 1.2 Marriage of same sex couples

### England and Wales

The [Marriage \(Same Sex Couples\) Act 2013](#) enables same sex couples to marry. It also enables civil partners to convert their partnership to a marriage, if they wish.

In England and Wales, the first marriages of same sex couples took place on 29 March 2014. Conversion of civil partnerships to marriage has been possible since 10 December 2014.

### Scotland

The [Marriage and Civil Partnership \(Scotland\) Act 2014](#) enables same sex couples to marry. The first ceremonies took place on 31 December 2014. The legislation has also enabled civil partners to convert their partnership to marriage since 16 December 2014.

### Northern Ireland

Marriage of same sex couples is not possible in Northern Ireland. Same sex couples may register a civil partnership.

## 1.3 How does civil partnership differ from marriage?

The [Civil Partnership Act 2004](#) created a union for same sex couples which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas.

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<sup>1</sup> [Civil Partnership Act 2004 section 1](#)

<sup>2</sup> [Civil Partnership Act 2004 section 3](#)

The Coalition Government published a [table](#) setting out the similarities and differences between civil partnership and marriage as it applies to same sex couples.<sup>3</sup>

There are also some differences between how marriage applies to opposite sex couples and how marriage and civil partnership apply to same sex couples. For example, the definition of adultery, which has developed through case law, means sexual intercourse (within the meaning of the law for these purposes) between a man and a woman outside of marriage. All couples (opposite sex and same sex) may cite infidelity not covered by this definition as a basis for divorce due to “unreasonable behaviour”. Adultery has never been a basis for dissolution of a civil partnership (as it is for divorce).<sup>4</sup>

Another Library briefing paper looks at the way in which forming a civil partnership affects rights to state, occupational and personal pensions and at the relevant provisions in the Marriage (Same Sex Couples) Act 2013:

[Pensions: civil partnerships and same sex marriages \(CBP03035\)](#).

## 1.4 Why was eligibility for civil partnership not extended when marriage for same sex couples was introduced?

On 11 December 2012, the Coalition Government published its [response](#) to its consultation on the introduction of marriage for same sex couples.<sup>5</sup> This set out why, given the availability of marriage for opposite sex couples, the then Government considered that it was unnecessary to extend civil partnership to opposite sex couples:

7.8 When civil partnerships were introduced in 2005, they were created to allow equivalent access to rights, responsibilities and protections for same-sex couples to those afforded by marriage. They were not intended or designed as an alternative to marriage. Therefore, we do not believe that they should now be seen as an alternative to marriage for opposite sex couples.

7.9 Opposite sex couples currently have access to marriage, either via a civil or religious ceremony, which is both legally and socially recognised. We understand that not all opposite sex couples wish to marry, but that decision is theirs to make and they have the option to do so if they wish. Through the responses received to this consultation, it has not been made clear what detriment opposite sex couples suffer by not having access to civil partnerships.

7.10 This consultation was not aimed at being a wider process of reform of marriage and civil partnership legislation and therefore we do not consider that it is necessary to open up civil partnerships to opposite sex couples in order to enable same-sex couples to get married.<sup>6</sup>

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<sup>3</sup> [Gov.UK, Department for Culture, Media & Sport, Comparison of Civil Partnership and marriage for same sex couples, 10 December 2013](#) [accessed 12 March 2019]

<sup>4</sup> [Civil Partnership Act 2004 section 44](#)

<sup>5</sup> HM Government, [Equal marriage: The Government's response](#), December 2012

<sup>6</sup> *Ibid*, p26

## 2. Statistics on civil partnerships and same sex marriages

### 2.1 Civil partnerships

The table below shows the number of civil partnerships formed in the UK in each year from 2005 to 2017. Civil partnerships were introduced in December 2005 and the figures for 2005 relate to just the month of December in that year.

CIVIL PARTNERSHIP FORMATIONS					
United Kingdom, 2005-17					
Year	England	Wales	Scotland	Northern Ireland	United Kingdom
2005 <sup>A</sup>	1,790	67	84	12	1,953
2006	14,383	560	1,047	116	16,106
2007	7,635	294	688	111	8,728
2008	6,276	282	525	86	7,169
2009	5,443	244	498	96	6,281
2010	5,536	268	465	116	6,385
2011	5,900	252	554	89	6,795
2012	6,103	259	574	101	7,037
2013	5,381	265	530	100	6,276
2014	1,616	67	436	110	2,229
2015	832	29	64	89	1,014
2016	859	31	70	84	1,044
2017	876	32	70	92	1,070

Notes:

A. Data for 2005 includes only the month of December, when civil partnerships were introduced.

Sources:

England and Wales: ONS, [Civil Partnership Formations](#), Table 1; Scotland: [Vital Events Reference Tables 2017](#), Table 7.10; Northern Ireland: [Registrar General Annual Report 2017](#)

There were 1,953 civil partnerships in December 2005, and 16,106 in 2006, which was the first full year civil partnerships were available.

This was much higher than in subsequent years, presumably due to pent-up demand for a legal form of same sex union.

After 2006 the number of civil partnerships fell, and from 2009 to 2013 the number of civil partnerships remained relatively stable at around 6,600 a year.

Following the introduction of marriage for same sex couples in England and Wales in March 2014, and in Scotland in December 2014, the

number of civil partnerships fell. In 2015, 2016 and 2017 the number of civil partnerships in these three countries did not change much, suggesting that the level of civil partnership formation may have stabilised since the introduction of marriage for same sex couples.

Between the introduction of civil partnerships in December 2005 and the end of 2017 there were 72,087 civil partnerships formed in the UK.

## 2.2 Same sex marriages

### England and Wales

Between the introduction of marriage for same sex couples in England and Wales on 29 March 2014 and the end of 2015, there were 9,978 marriages formed between same sex couples in England and Wales.

Additionally, couples in civil partnerships in England and Wales have been able to convert their civil partnership into a marriage since 10 December 2014. In December 2014, 2,401 couples converted their civil partnership into a marriage.<sup>7</sup> The number of conversions per month then fell, with 9,156 conversions taking place in 2015 (an average of 763 per month).<sup>8</sup>

### Scotland

Marriage for same sex couples was introduced in Scotland on 16 December 2014. The legislation in Scotland allowed couples in a civil partnership to marry without first dissolving their civil partnership.

In 2015, there were 1,671 marriages formed between same sex couples in Scotland, of which 936 were between couples who were already in a civil partnership.<sup>9</sup>

In 2016, there were 998 marriages formed between same sex couples in Scotland, of which 173 were between couples who were already in a civil partnership.<sup>10</sup>

In 2017, there were 575 marriages formed between same sex couples in Scotland of which 127 were between couples who were already in a civil partnership.<sup>11</sup>

### Northern Ireland

Marriage of same sex couples is not recognised in Northern Ireland.

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<sup>7</sup> ONS, [Marriages in England and Wales \(provisional\), for Same Sex Couples, 2014](#)

<sup>8</sup> ONS, [Marriages in England and Wales: 2015](#)

<sup>9</sup> NRS, [Vital Events Reference Tables 2015](#)

<sup>10</sup> NRS, [Vital Events Reference Tables 2016](#)

<sup>11</sup> NRS, [Vital Events Reference Tables 2017](#)

### 3. Government consultation on the future of civil partnership in England and Wales

#### Summary

In accordance with a requirement in the Marriage (Same Sex Couples) Act 2013 to do so, in 2014, the Coalition Government consulted on the future of civil partnership in England and Wales. Subsequently, the Coalition Government stated that, in responses to the consultation, there was no united call for reform and that it had decided not to do anything at that time.

#### 3.1 Requirement to consult

In debates on the bill which became the [Marriage \(Same Sex Couples\) Act 2013](#), (the 2013 Act) calls were made for the Bill to enable opposite sex couples to register a civil partnership.

At Report stage in the House of Commons, an amendment providing for a review of the Civil Partnership Act 2004 was agreed. The amendment became [section 15](#) of the 2013 Act:

- (1) The Secretary of State must arrange—
  - (a) for the operation and future of the Civil Partnership Act 2004 in England and Wales to be reviewed, and
  - (b) for a report on the outcome of the review to be produced and published.
- (2) Subsection (1) does not prevent the review from also dealing with other matters relating to civil partnership.
- (3) The arrangements made by the Secretary of State must provide for the review to begin as soon as practicable and include a full public consultation.

Commentary on the debate on the amendment is provided in the [Lords Library Note](#) on the Bill.<sup>12</sup>

#### 3.2 Consultation paper

On 23 January 2014, the Coalition Government published its consultation paper, [Civil Partnership Review \(England and Wales\): a consultation](#). Among other things, the consultation asked for views on:

- abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages;
- stopping new civil partnerships being registered but retaining existing ones; and
- opening up civil partnership to opposite sex couples.

The consultation period ended on 17 April 2014.

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<sup>12</sup> LLN 2013/011, 30 May 2013, p7

### 3.3 Government response

In June 2014, the Coalition Government published its response, [Civil Partnership Review \(England and Wales\) - Report on Conclusions](#). This stated that there was no united call for reform in responses to the consultation. Some felt that it was too soon to change civil partnership, before the impact of extending marriage to same sex couples could be assessed. The Coalition Government decided not to do anything at that time:

A majority of respondents who expressed a view on them were opposed to each of the three main changes to civil partnership. There was therefore no united call for change from respondents to the consultation at this stage.

Of the over 10,000 online survey answers to each of the relevant questions:

- Less than a third of respondents supported abolition of civil partnership
- The majority were against closing civil partnership to new couples
- Over three-quarters were against opening up civil partnership to opposite sex couples.

Several important organisations thought it was too soon to consider making changes to civil partnership – this should wait until we know the impact of extending marriage to same sex couples. Other organisations, in contrast, put forward a case for opening up civil partnerships to opposite sex couples now, for example because civil partnership and marriage were different relationships and couples should have equal access to both.

In time we will know how many same sex couples are marrying and how many entering a civil partnership, and how many couples are remaining in civil partnerships rather than converting them to marriages. At present we do not have this information, and civil partnership conversion to marriage will not be available until December 2014.

Given the lack of consensus on the way forward, the Government will not be making any changes.<sup>13</sup>

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<sup>13</sup> Department for Culture, Media and Sport, [Civil Partnership Review \(England and Wales\) - Report on Conclusions](#), June 2014, p4

## 4. Calls for civil partnership to be available to opposite sex couples

Calls have been, made both inside and out of Parliament, for civil partnership to be extended to opposite sex couples. For example:

- The [Equal Civil Partnerships Campaign](#) has called on the Government to extend the right to civil partnership to all couples, regardless of sex or sexual orientation.
- In November 2017, The Times and the charity, [Marriage Foundation](#) launched their “Family Matters” campaign. The campaign is calling for the modernisation of family law, including extending civil partnerships to opposite sex couples.<sup>14</sup>
- On 28 October 2016, Alistair Carmichael (Liberal Democrat) tabled an early day motion, [Civil partnerships and different-sex couples](#), which supported efforts to extend civil partnerships to opposite sex couples. The EDM gained 44 signatures including Members from all the main parties.
- The [Civil Partnership Act 2004 \(Amendment\) Bill 2016-17](#), a Private Member’s Bill, was presented to Parliament by Tim Loughton on 21 July 2016.<sup>15</sup> The long title of the Bill was “to amend the Civil Partnership Act 2004 to provide that opposite sex couples may enter into a civil partnership; and for connected purposes”. Tim Loughton had previously introduced similar bills.

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<sup>14</sup> Frances Gibb, “Family Matters: ‘Judges have too much power in divorce cases’”, The Times, 23 November 2017 (subscription required)]

<sup>15</sup> Bill 58 of 2016-17

## 5. Legal challenge

### 5.1 Judicial review case

Since the Marriage (Same Sex Couples) Act 2013 came into force, same sex couples have had two ways of formalising their relationship: marriage or civil partnership, whereas opposite sex couples may only marry.

In January 2016, an opposite sex couple (Rebecca Steinfeld and Charles Keidan) lost their claim for judicial review of the ban on civil partnership for opposite sex couples.<sup>16</sup> They were seeking a declaration that the Civil Partnership Act 2004 is not compatible with Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Mrs Justice Andrews DBE held that the restriction on opposite sex couples entering into a civil partnership had not become unlawful and also considered that the Government was entitled to wait before making a decision on the future of civil partnership.

### 5.2 Court of Appeal decision

The couple appealed to the Court of Appeal which dismissed their appeal and upheld the High Court decision.<sup>17</sup> In part, the decision was by majority (2:1).

The majority held that the Government's policy of "wait and evaluate" was proportionate, and therefore justifiable, at that time.

The Judiciary of England and Wales published a [summary of the Court of Appeal decision](#).

### 5.3 Supreme Court decision

The couple were granted permission to appeal to the Supreme Court.

In a judgment delivered on 27 June 2018, the Supreme Court allowed the appeal.<sup>18</sup> The Court rejected the Government's argument that European Court of Human Rights (ECtHR) case law requires a wide margin of appreciation<sup>19</sup> in relation to the timing of legislative change to recognise different forms of relationship, and that a significant measure of discretion should be accorded to Parliament in its decision as

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<sup>16</sup> [Rebecca Hannah Steinfeld and Charles Robin Keidan v Secretary of State for Education](#) [2016] EWHC 128 (Admin)

<sup>17</sup> [\[2017\] EWCA Civ 81](#)

<sup>18</sup> [R \(on the application of Steinfeld and Keidan\) \(Appellants\) v Secretary of State for the International Development \(in substitution for the Home Secretary and the Education Secretary\) \(Respondent\)](#) [2018] UKSC 32

<sup>19</sup> Council of Europe Judicial Professions, The Lisbon Network, [The Margin of Appreciation](#), states: "The term "margin of appreciation" refers to the space for manoeuvre that the Strasbourg organs are willing to grant national authorities, in fulfilling their obligations under the ECHR: S. Greer – The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights, Council of Europe, 2000, p. 5"

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to when the timing of legislative change in the field of civil partnership should occur:

It is reasonable that the legislature should be allowed time to reflect on what should be done when dealing with an inequality that it has come to recognise due to evolving societal attitudes. By contrast, to create a situation of inequality and then ask for time – in this case several years – to determine how that inequality is to be cured is less obviously deserving of a margin of discretion.<sup>20</sup>

Lord Kerr did not consider that the Government had a sufficiently important “legitimate aim”:

The legitimate aim articulated by the respondent in the present appeal is the need to have time to assemble sufficient information to allow a confident decision to be made about the future of civil partnerships. ...The respondent does not seek to justify the difference in treatment between same sex and different sex couples. To the contrary, it accepts that that difference cannot be justified. What it seeks is tolerance of the discrimination while it sorts out how to deal with it. That cannot be characterised as a legitimate aim.<sup>21</sup>

The Court unanimously agreed that the Civil Partnership Act 2004 is incompatible with the ECHR insofar as it applies only to same sex couples, and that this amounts to discrimination. However, the judgment does not oblige the Government to do anything:

The court has discretion as to whether to make a declaration of incompatibility and must decide whether it is appropriate to do so in a particular case. It should be noted that a declaration of incompatibility does not oblige the government or Parliament to do anything, and in this case, the court should not feel reticent about making such a declaration. The court therefore makes a declaration that sections 1 and 3 of the CPA [Civil Partnership Act 2004], to the extent that they preclude a different-sex couple from entering into a civil partnership, are incompatible with article 14 taken in conjunction with article 8 of the ECHR.<sup>22</sup>

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<sup>20</sup> Supreme Court [Press summary](#), 27 June 2018, p2

<sup>21</sup> [R \(on the application of Steinfeld and Keidan\) \(Appellants\) v Secretary of State for the International Development \(in substitution for the Home Secretary and the Education Secretary\) \(Respondent\) \[2018\] UKSC 32, Paragraph 42](#)

<sup>22</sup> Supreme Court [Press summary](#), 27 June 2018, p2

## 6. Command Paper

In May 2018, (before the Supreme Court delivered its judgment) the Government published a Command Paper, [The Future Operation of Civil Partnership: Gathering Further Information](#).<sup>23</sup> This set out how the Government intended to gather the additional information it considered necessary to bring forward proposals for the future of civil partnership.

The Government considered four elements of research to be required:

- trends in civil partnership and marriage amongst same sex couples;
- survey to assess demand for civil partnership and marriage amongst opposite-sex couples in the UK;
- research into the motivations of same-sex couples who choose civil partnership
- review of what has happened in other countries

On overall timing, the Government said (at that time):

By September 2019 we will have access to four full years of data on civil partnership formation following the introduction of marriage for same-sex couples. We will also have completed the activities set out above, giving us the information we need to make a well-informed assessment of potential demand for civil partnerships by early 2020.

Once these activities are completed the Government would be able to bring forward a set of proposals for how the law should be changed as part of a full public consultation. At the earliest, we would anticipate being able to consult on the future operation of civil partnerships in 2020.<sup>24</sup>

Some of the timings stated in the Command Paper have now changed.

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<sup>23</sup> Cm 9606

<sup>24</sup> Ibid paragraphs 28-29

## 7. Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19

### Summary

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill (the Bill) is a Private Member's Bill introduced by Tim Loughton (Conservative).

Clause 2 of the Bill would deal with the extension of civil partnership to opposite sex couples. This clause was amended in Public Bill Committee and at Report stage in the Commons, and again at Committee stage in the Lords.

In October 2018, while the Bill was still in the Commons, the Government announced that it would change the law to allow opposite sex couples in England and Wales to enter into a civil partnership. The Government also indicated that it would introduce its own legislation to deal with civil partnership in the next session of Parliament. However, the Government now hopes that the Bill, as amended, would be able to "deliver a comprehensive and effective opposite-sex civil partnerships regime at the earliest opportunity".

As amended in the Lords, Clause 2 would enable the Secretary of State to make regulations, under the affirmative resolution procedure, to amend the Civil Partnership Act 2004 so that opposite sex couples would be able to form a civil partnership in England and Wales. The Secretary of State would be required to exercise the power so that such regulations are in force no later than 31 December 2019.

Consideration of Lords amendments by the House of Commons (Ping Pong stage) is due to take place on 15 March 2019.

The House of Lords Constitution Committee and the House of Lords Delegated Powers and Regulatory Reform Committee have expressed concerns about the delegated powers in the Bill.

### 7.1 The Bill

The [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) (the Bill) is a Private Member's Bill introduced by Tim Loughton (Conservative), who came fifth in the ballot for Commons Private Members' Bills for the 2017-19 Parliamentary session. [Explanatory Notes](#) were prepared by the Home Office with the consent of Tim Loughton.

Most of Bill would extend to England and Wales. Clauses 5 (Supplementary provision about regulations) and 6 (Extent, commencement and short title) would extend to England and Wales, Scotland and Northern Ireland. Tim Loughton has said that, although consequential amendments might be made to UK-wide legislation, the substantive changes to the law would relate to England and Wales only.<sup>25</sup>

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<sup>25</sup> [PBC Deb 18 July 2018 c35](#)

Information about the Bill is provided on the [Bill page on the Parliament website](#).

At Commons Second Reading, junior Home Office Minister, Victoria Atkins, spoke of the Government's support for the Bill, subject to it being amended in Committee.<sup>26</sup>

Shadow Home Office Minister, Karen Lee, said "Labour Members fully support this Bill".<sup>27</sup>

**Clause 2** of the Bill would deal with the extension of civil partnership to opposite sex couples. This clause was amended in Public Bill Committee and at Report stage in the Commons, and again at Committee stage in the Lords.

As amended in the Lords, Clause 2 would enable the Secretary of State to make regulations, under the affirmative resolution procedure,<sup>28</sup> to amend the Civil Partnership Act 2004 so that opposite sex couples would be able to form a civil partnership in England and Wales. The Secretary of State would be required to exercise the power so that such regulations are in force no later than 31 December 2019.

The Bill would also deal with a number of other matters. Another Library briefing paper provides further information:

[Commons Library analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) (CPB 08217).

## 7.2 Progress of the Bill

### House of Commons

The Bill was published on 31 January 2018 as Bill 11 of 2017-19, had its [Second Reading](#) on 2 February 2018, and [Public Bill Committee stage](#) (in one sitting) on 18 July 2018. [Report and Third Reading](#) took place on 26 October 2018.

### House of Lords

Baroness Hodgson of Abinger sponsored the Bill in the House of Lords. Lords stages took place as follows:

- First Reading was on 29 October 2018;
- [Second Reading](#) was on 18 January 2019;
- [Committee stage](#) was on 1 February 2019;
- [Report stage](#) was on 1 March 2019;
- [Third Reading](#) was on 7 March 2019.

Consideration of Lords amendments by the House of Commons (Ping Pong stage) is due to take place on 15 March 2019.

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<sup>26</sup> [HC Deb 2 February 2018 c1120](#)

<sup>27</sup> [HC Deb 2 February 2018 c1115](#)

<sup>28</sup> Requiring the formal approval of both Houses of Parliament to become law

## 7.3 Commons Second Reading debate

At Second Reading, Tim Loughton confirmed that Clause 2 in the Bill as introduced was a “marker clause” to be “replaced and elaborated on in Committee”.<sup>29</sup> He set out three reasons for supporting the reform of civil partnership:

- Inequality:

First, it will correct the unintended but glaring inequality that results from the Marriage (Same Sex Couples) Act, whereby same-sex couples are entitled to continue in a civil partnership, take up a civil partnership or enjoy the recent extension of marriage while opposite-sex couples have only the single option of conventional marriage, albeit by a larger range of religious institutions. That is not fair, and it gives rise to an inequality in an Act that was billed as promoting equality.

- Family stability:

According to the latest estimate, there are some 3.2 million cohabiting opposite-sex couples in this country. That is more than 4,900 couples per parliamentary constituency, and it is about double the figure that was reported just 15 years ago. Those couples are responsible for more than 2 million children. Some 53% of birth registrations are to married parents, but about a third are to unmarried parents who are living together.

Cohabitation is the fastest growing form of family in this country, whether we like it or not. We need to recognise that our society is changing and we need to adapt in order to promote family stability, in whatever form, to provide a continuum that gives children the best and most stable start in life.

- The “common misconception that there is such a thing as a common-law wife or husband”:

If a woman has a child with her partner and the relationship breaks down, she is not entitled to any form of financial support if they are not married. There is no automatic entitlement to property, even if she had been paying into the mortgage.

When one partner is much older than the other and there is a reasonable expectation that one will die some years before the other, the long-term survivor would not receive the same tax benefits as a married woman or those in a civil partnership. That would be discriminatory towards the couples’ children. The same vulnerabilities can apply if one partner does a runner. Even a couple engaged to be married have more rights than a cohabiting opposite-sex couple.<sup>30</sup>

Tim Loughton acknowledged that opposite sex couples could get married but said that some people chose not to do so:

For some, it is too much of an establishment thing to do. Many identify marriage as an innately religious institution, and even if it

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<sup>29</sup> [HC Deb 2 February 2018 c1105](#)

<sup>30</sup> [HC Deb 2 February 2018 cc1098-1100](#)

is done in a registry office, it still has religious connotations. Some see marriage as having a patriarchal side, and some see it as a form of social control. For others, it is rather expensive. Marriage is not seen as a genuine partnership of equals, as civil partnerships are. Those are not my views, but they represent how many people see marriage.<sup>31</sup>

Mr Loughton said that he wanted opposite sex civil partnerships to be offered on exactly the same basis as same sex civil partnerships. He acknowledged that the Government would want to carry out further research about the demand and practicalities for such a reform (though doubting what this would achieve).<sup>32</sup> He spoke out against abolishing civil partnerships altogether.<sup>33</sup>

Victoria Atkins explained how, at that time, the Government wanted the Bill to be amended:

Our amendment to it will require the Government to undertake a further review of the operation of civil partnerships, and to bring forward proposals for how the law ought to be changed so that the difference in treatment in the current system is resolved. The amendment will go further than the current marker clause in the Bill before the House, in that it will require the Government to report to Parliament and to include a full public consultation.

The Minister confirmed the Government's commitment to deal with the issue of civil partnership but said it was necessary to get some better evidence first. She set out how the Government intended to proceed but would not be drawn into setting precise time limits.

Victoria Atkins said that it was not a "simple matter of changing a sentence in the Civil Partnership Act 2004", adding, "we have to recognise that this is not just about eligibility; it is also about the rights that flow from any changes".<sup>34</sup>

A number of Members spoke in favour of the Bill. However, Michelle Donelan (Conservative) spoke against extending civil partnerships to all couples:

I appreciate and empathise with the argument that the current situation is unequal because opposite sex civil partnerships are not available, but the answer is not necessarily to expand civil partnerships. In fact, I would rather see civil partnerships cease altogether. Today everyone in the UK can get married. We finally have equality, which is what people have campaigned for and fought for. Expanding civil partnerships to all would serve to add an extra tier, which would confuse and complicate commitment, rather than encouraging it.

(...)

Some say that civil partnerships are a modern alternative to marriage, and I recognise that argument, yet they are basically the same. It is important that we educate people about that and do not mis-sell the point...

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<sup>31</sup> [HC Deb 2 February 2018 c1099](#)

<sup>32</sup> [HC Deb 2 February 2018 c1102](#)

<sup>33</sup> [HC Deb 2 February 2018 c1103](#)

<sup>34</sup> [HC Deb 2 February 2018 c1120](#)

Another point to make is that civil partnerships are not cheaper. ...Another argument used for the Bill is the claim that people can be put off by the word "marriage" and the connotations, social pressures and expectations of what it represents. Do we really believe that a significant number of people choose not to marry because of the word "marriage", but are absolutely fine to make all the same legal and financial commitments when the name is different? The connotations, social pressures and expectations around marriage often exist because it is seen as something permanent and something that can end badly, but that is equally true of a civil partnership. As time progresses and more and more people have them, that will become known.<sup>35</sup>

## 7.4 Civil partnership developments between Commons Second Reading and Public Bill Committee stage

Between Second Reading and Public Bill Committee stages, the Government published its Command Paper, [The Future Operation of Civil Partnership: Gathering Further Information](#) (May 2018),<sup>36</sup> and the Supreme Court delivered its judgment in the [Steinfeld and Keidan case](#) (June 2018).<sup>37</sup>

## 7.5 Public Bill Committee Amendments agreed

In Public Bill Committee, Tim Loughton moved **New Clause 1** which was in his own name and that of Victoria Atkins. It was considered at the same time as **Amendments 11 and 13** – the change to the long title.

This Clause would have required the Secretary of State to make arrangements for the preparation of a report "assessing how the law ought to be changed to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships" and setting out the Government's plans for achieving that aim.

The arrangements were to provide for a public consultation and the Secretary of State would have been required to lay the Report before Parliament.

New Clause 1 was added to the Bill without a vote and became Clause 2 in the [Bill as amended in Public Bill Committee](#).<sup>38</sup> Clause 2 in the Bill as originally presented was not proposed and so was omitted from the Bill. The New Clause has since been superseded.

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<sup>35</sup> [HC Deb 2 February 2018 cc1140-1](#)

<sup>36</sup> Cm 9606 – see section 6 of this briefing paper

<sup>37</sup> [R \(on the application of Steinfeld and Keidan\) \(Appellants\) v Secretary of State for the International Development \(in substitution for the Home Secretary and the Education Secretary\) \(Respondent\) \[2018\] UKSC 32](#) - see section 5 of this briefing paper

<sup>38</sup> Bill 254 of 2017-19

Tim Loughton urged the Government to make progress.<sup>39</sup>

Victoria Atkins expressed the Government's support, at that time, for New Clause 1,<sup>40</sup> and indicated that there would now be a revised and shorter timetable for research. She acknowledged the need to act quickly:

My hon. Friend urged on me that this private Member's Bill should be the vehicle to drive forward civil partnerships. He makes a very important point. We know we need to move quickly. At the moment, the Bill is the immediate vehicle to do that, but we are also considering other options and we want to reach a conclusion that creates equality as soon as is viable. We acknowledged, even in advance of the Supreme Court judgment, that the law needs to change, so a great deal of work is being done and the Bill will help with that.<sup>41</sup>

## 7.6 Government announcement that law would be changed

On 2 October 2018, the Prime Minister announced that the Government would change the law to allow opposite sex couples in England and Wales to enter into a civil partnership.<sup>42</sup>

The Equal Civil Partnerships website has the text of a [Government press release](#) issued on 2 October 2018.<sup>43</sup> This concludes:

There are a number of legal issues to consider, across pension and family law, and the Government will now consult on the technical detail.

On 17 October 2018, in answer to a written Parliamentary Question, Victoria Atkins indicated that legislation would be introduced "as soon as possible".<sup>44</sup>

In a written Ministerial Statement made on 26 October 2018 (the same day as Report stage of the Bill), Penny Mordaunt, Minister for Women and Equalities, indicated that the Government's intention, at that time, was to introduce its own legislation in the next session of Parliament:

The changes needed to effect the greater equality we wish to see are not all straightforward and there are a number of questions that arise specifically about opening civil partnerships to opposite-sex couples for the first time, on which we will need to consult. For example, whether couples can choose to convert their civil partnership into a marriage (or vice-versa) and what should be the grounds for dissolution of an opposite-sex civil partnership.

We are clear that Government legislation is essential to ensure that these and other consequential of opposite-sex civil partnerships are properly legislated for and adequately debated by

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<sup>39</sup> [PBC Deb 18 July 2018 cc11-12](#)

<sup>40</sup> [PBC Deb 18 July 2018 c20](#)

<sup>41</sup> [PBC Deb 18 July 2018 cc15-16](#)

<sup>42</sup> See, for example, [Civil partnerships: Law to change for mixed-sex couples](#), BBC News, 2 October 2018 [accessed 13 March 2019]

<sup>43</sup> [Government to change the law to allow opposite-sex couples to enter into civil partnership](#), 2 October 2018 [accessed 13 March 2019]

<sup>44</sup> [PQ 177374 \[on Civil Partnerships: Heterosexuality\], 17 October 2018](#)

this house and in the other place. This would not be possible through my Hon. Friend's bill as currently amended.

We intend to consult to enable us to introduce legislation in the next Parliamentary Session to bring about the necessary changes.<sup>45</sup>

### 7.7 Commons Report stage

At Commons Report stage of the Bill a new clause, "Reform of civil partnership", was agreed to take the place of Clause 2 of the Bill as amended in Public Bill Committee.<sup>46</sup>

This Clause, which has now been superseded, would have required the Secretary of State to make regulations, to take effect within six months of the Bill being passed, "to change the law relating to civil partnership to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships".

Tim Loughton considered the new clause to be necessary because of the Prime Minister's announcement about the extension of civil partnership. He said that the Government had not given any timescale for change. Tim Loughton thought that his Bill was the best way to effect such change:

My Bill is the cleanest and quickest way to change the law, to satisfy the Supreme Court and, most importantly, to address a significant pent-up demand from couples who have waited for this change and the chance of equality for a long time. I cannot understand why the Government have not more proactively used my Bill as a vehicle for achieving that right from the start.<sup>47</sup>

He said that "the statutory instrument route gives greater flexibility on a subject which, frankly, we have debated almost to death. It is less vulnerable to the vagaries of the parliamentary timetable than primary legislation".

Caroline Nokes, Minister for Immigration, replied for the Government, setting out concerns with the proposed new clause and why the Bill might not be the most appropriate legislative vehicle for equalising access to civil partnerships between same sex and opposite sex couples:

For instance, we need to check all the existing legislative provisions that cross-refer to the civil partnership regime to make sure that they still work as intended for opposite-sex couples as well as same-sex couples. These existing provisions are spread across a wide range of current legislation, from arrangements for adoption through to pension entitlements, so this is not an insignificant body of work. Any existing provisions that are not appropriate to extended civil partnerships will need to be changed. There are also a number of sensitive policy issues that will need to be resolved, such as whether convergence from a marriage to a civil partnership should be allowed, and whether the terms for the dissolution of an opposite-sex civil partnership should mirror those for same-sex couples or be the same as for opposite-sex marriages.

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<sup>45</sup> [HCWS1039 \[on Civil Partnerships\], 26 October 2018](#)

<sup>46</sup> [HC Deb 26 October 2018 cc555-565](#)

<sup>47</sup> [HC Deb 26 October 2018 c558](#)

We also need to resolve a number of cross-border and devolution issues, such as how we should provide for recognition of similar relationships entered into in other countries, and how our own relationships should be treated in other parts of the United Kingdom which have their own legislation on civil partnerships.<sup>48</sup>

The Minister said that she was particularly disappointed that the new clause would replace the requirement for the Government to consult and report to Parliament on how they intended to equalise civil partnerships between same sex and other couples.

Caroline Nokes also expressed concern about the “wide-ranging delegated power” which the new Clause would introduce. She reiterated that the Government was “working hard to extend civil partnerships to opposite sex couples, as well as same sex couples”, despite not supporting the proposed new clause.

The new clause was added to the Bill without a vote in place of the previous Clause 2 (which had been agreed in Public Bill Committee).

## 7.8 Lords Second Reading

On 18 January 2019, at [Lords Second Reading](#), Home Office Minister, Baroness Williams of Trafford, confirmed the Government’s intention to introduce opposite sex civil partnership. In a change to what had been said previously, she indicated that the Bill might be a suitable vehicle to effect change:

... The Bill gives us the opportunity to carry forward this objective of the delivery of a comprehensive and effective opposite-sex civil partnerships regime at the earliest possible opportunity. I am very optimistic that the Bill may provide scope as a vehicle for extending civil partnerships to opposite-sex couples.<sup>49</sup>

Baroness Williams said that the Government hoped to lay an amendment to Clause 2 before Committee stage:

As highlighted by the Minister of State for Immigration at Third Reading, the Government have doubts about the clause’s ability in its current form to deliver an effective and comprehensive opposite-sex civil partnership regime in the time it provides for. In particular, we have some concerns about the lack of detail in the regulation-making power as drafted. We are pleased to be working closely with my noble friend and the Bill’s sponsor in the other place, Tim Loughton, to draft a new amendment to the Bill, which we hope to lay before the House in Committee. This will hopefully address the concerns about the current shape of the clause and ensure that the Bill can deliver a comprehensive and robust opposite-sex civil partnership regime as soon as possible.<sup>50</sup>

In a written answer to a [Lords PQ](#) on 7 January 2019, the Government confirmed its intention to consult this year.<sup>51</sup> When asked to give an

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<sup>48</sup> [HC Deb 26 October 2018 cc561-2](#)

<sup>49</sup> [HL Deb 18 January 2019 c453](#)

<sup>50</sup> [HL Deb 18 January 2019 c452](#)

<sup>51</sup> [PQ HL12470 \[on Civil Partnerships: Heterosexuality\], 7 January 2019](#)

indication of the scope of the intended consultation, Baroness Williams replied:

At this point, officials are working through all the policy issues before the content of any consultation is determined. Therefore, I have to tell my noble friend that I cannot say any more at this stage.<sup>52</sup>

## 7.9 Lords amendments

On 1 February 2019, at Lords Committee stage, Baroness Hodgson of Abinger (Conservative), the Bill's sponsor in the Lords, moved amendments which sought to replace the then Clause 2 (which had been inserted at Commons Report stage) and to make consequential changes to the drafting of the Bill. She said that her intention in doing so was not to change the intention of the clause, but to clarify it. Baroness Hodgson acknowledged that the then Clause 2 was "not adequately drafted".<sup>53</sup> She set out the intended effect of the proposed amendments, which included specifying that the regulations extending civil partnership to opposite sex couples must come into force no later than 31 December 2019:

Subsection (1) of the new clause would enable the Secretary of State to amend by regulation the eligibility criteria of the Civil Partnership Act 2004 in order that two people who are not of the same sex are able to form a civil partnership.

Subsection (2) would establish the date by which the regulations must come into force as 31 December 2019. This would ensure that a comprehensive opposite-sex civil partnerships regime came into force at the earliest opportunity, and certainly before the end of the year. I know the Minister will also be reiterating that, all things being equal, that is the Government's intention. This will be welcome news to many couples for whom getting a civil partnership is a matter of urgency for various reasons.

The new clause would also provide for other necessary amendments to be made by regulation. Subsection (4) outlines the areas about which the regulations may make particular provision, arising from the fact that the existing regime was designed with same-sex couples in mind. They include: matters relating to parenthood and parental responsibility; the financial consequences of civil partnership, which include pensions and survivor benefits; and the recognition of equivalent opposite-sex civil partnerships entered into overseas as civil partnerships in England and Wales.

Subsection (5) would enable the Secretary of State to make regulations governing conversion rights. These rights may include the right to convert a marriage into an opposite-sex civil partnership. The regulations may also provide for any new right to convert a marriage, or the existing right to convert a civil partnership into a marriage, to be restricted or brought to an end in future. Noble Lords may wonder why it is necessary for the legislation to stray into this territory; it is because existing civil partnerships can be converted into same-sex marriages. We need

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<sup>52</sup> [HL Deb 18 January 2019 c453](#)

<sup>53</sup> [HL Deb 1 February 2019 c1290](#)

the scope to legislate further on conversion in a way that is equitable to different groups.

The question of converting civil partnerships into marriage and perhaps vice versa, will of course be of particular interest and concern to some people, so subsection (6) would require the Secretary of State specifically to consult on this matter before making any regulations on conversion.

Subsection (7) would make provision for regulations protecting the ability to act in accordance with religious belief in relation to matters provided for in regulations under this section. For example, any decision about whether to host an opposite-sex civil partnership on religious premises should remain a decision for an individual religious organisation to take.

Subsection (8) would enable the regulations made under the new clause to amend, repeal or revoke primary legislation. My amendments to Clause 5 would ensure that these and any other regulations made under the new clause would be subject to the affirmative resolution procedure, ensuring that they were debated and scrutinised appropriately in both this House and the other place. Amendments 4, 5 and 6 would make the necessary changes to the supplementary provisions about regulations in Clause 5.

Lastly, Amendment 7 would change the Long Title of the Bill to reflect the fact that Clause 2 no longer relates to the publication of a report on civil partnerships but instead relates to the extension of civil partnerships to opposite-sex couples. This is a missed consequential amendment from the changes on Report in the Commons. The Bill would therefore be correctly titled and reflect the important changes that it needs to make and, we trust, will make.<sup>54</sup>

Baroness Barker (Liberal Democrat) referred to the concerns raised by both the House of Lords Delegated Powers and Regulatory Reform Committee and the House of Lords Constitution Committee about the Henry VIII powers<sup>55</sup> in the Bill and the scope for Ministers to make regulations.<sup>56</sup> She referred to the widely-drawn proposed subsection (3):

The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of the extension of eligibility to form civil partnerships in England and Wales to couples who are not of the same sex.

Baroness Barker was concerned that this could be used to extend civil partnerships to siblings – which she did not agree with:

Therefore, it is not just important but necessary that we look again at the drafting of subsection (3). Perhaps the noble Baroness can explain why she believes it to be necessary in the form it is in when she replies. If it is to go ahead, at the very least the Committee would have to be satisfied that it is not the intention that the law will apply to sibling couples and that it cannot be interpreted in that way. That is a very important

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<sup>54</sup> [HL Deb 1 February 2019 cc1290-91](#)

<sup>55</sup> Delegated powers that enable Ministers to amend primary legislation via secondary legislation are referred to as “Henry VIII powers”

<sup>56</sup> See section 7.10 of this paper below

reassurance, which would have to be made in the strongest of terms for me to consider allowing this to pass. That apart, and in all other respects, the noble Baroness's amendment is helpful, and I would wish to support it.<sup>57</sup>

Lord Cashman (Labour) also said that he was concerned by the Delegated Powers and Regulatory Reform Committee's report and its reference to the Bill conferring "no fewer than four Henry VIII powers".<sup>58</sup> Lord Cashman said that he fully supported the extension of civil partnership but he too referred to proposed new subsection (3) which he considered to be "far too widely drawn". He also expressed concerns about proposed new subsections (6) and (7).

Lord Collins of Highbury (Labour) referred again to the two Committee reports. He too expressed support for the objectives of the Bill but questioned why the matter was not being dealt with through primary legislation:

My own view, expressed partly by the Delegated Powers Committee, is that when the Supreme Court decision was made the Government should have come in with a Bill themselves. Why are we not conducting primary legislation properly and scrutinising it properly? We have here an omnibus Bill to which, as I say, I do not object; we certainly want to see it passed, without delay. People who want civil partnerships should be able to have them as soon as practicable and we will support that. However, it is incumbent on the Minister to answer these very important questions about scope.<sup>59</sup>

Baroness Williams of Trafford supported Baroness Hodgson's amendments:

As she said, the Government had some concerns about the drafting of Clause 2, but not the intentions behind it. I am pleased that the drafting of this amendment has been improved in a way that is satisfactory both to the Bill's sponsors and to the Government. I hope that we have arrived at an amendment that works for everyone and is able to deliver a comprehensive and effective opposite-sex civil partnerships regime at the earliest opportunity.

The Government are committed to equality for all, and we were pleased last October to announce our intention to extend civil partnerships to opposite-sex couples. As my noble friend has outlined, the amendments make it possible to equalise access to civil partnerships between same-sex and other couples by amending the eligibility criteria in the Civil Partnership Act 2004 through regulations.<sup>60</sup>

Baroness Williams addressed the concerns about the width of the order-making powers:

A couple of noble Lords mentioned that the Delegated Powers and Regulatory Reform Committee and the Constitution Committee expressed concerns about the drafting of Clause 2. I hope that our amendments go some way towards alleviating those concerns. The new clause now sets out in much greater

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<sup>57</sup> [HL Deb 1 February 2019 c1292](#)

<sup>58</sup> [HL Deb 1 February 2019 c1292](#)

<sup>59</sup> [HL Deb 1 February 2019 c1295](#)

<sup>60</sup> [HL Deb 1 February 2019 c1296](#)

detail how we envisage the delegated powers would be exercised, including dealing with issues such as parental responsibility, the effect of a legal change of gender, the financial consequences of a partnership and any conversion entitlements. I take the point made by the noble Baroness, Lady Barker, and the noble Lords, Lord Collins and Lord Cashman, about Henry VIII powers, but I hope that I can satisfy them at least in part. ...

The powers are needed to give opposite-sex couples equivalent rights and benefits to those enjoyed by same-sex couples. Simply changing the eligibility criteria in the Civil Partnership Act 2004 would not ensure this.<sup>61</sup>

Baroness Williams said that the Government did not intend to extend civil partnership to siblings:

Both the noble Baroness, Lady Barker, and the noble Lord, Lord Cashman—and, I think, the noble Lord, Lord Collins—were concerned about subsection (3) and the possibility of extending civil partnerships to siblings. We have no intention of using the subsection to extend civil partnerships to siblings or family members. My noble friend Lord Lexden, who lives in hope that one day we may do so, has clarified that. Subsection (1) makes it clear that the extension of eligibility applies to opposite-sex couples only, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, said, and, as drafted, would stand in the way of extension to siblings.<sup>62</sup>

The Minister stated that the Government was looking closely at a range of policy considerations, including matters relating to conversion and religious protections. She said the Government would take decisions on the nature and extent of conversion rights following the consultation required by the amendment.

Baroness Williams gave the following indication of timescales:

I will reassure noble Lords that the Government wish to extend civil partnerships to opposite-sex couples as soon as possible and are fully committed to bringing the necessary regulations into force before the end of 2019. It is a challenging timeframe, but, given the need for consultation and further parliamentary debates, it would be impossible to commit to an earlier date.<sup>63</sup>

Baroness Williams reiterated that she fully supported the amendments and said that she would keep the Lords apprised of the exact consultation process and the timings in due course.<sup>64</sup>

The amendments were agreed without division and the then Clause 2 which had been inserted at Commons Report stage was disagreed.

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<sup>61</sup> [HL Deb 1 February 2019 c1296](#)

<sup>62</sup> [HL Deb 1 February 2019 cc1296-7](#)

<sup>63</sup> [HL Deb 1 February 2019 c1298](#)

<sup>64</sup> [HL Deb 1 February 2019 c1298](#)

## 7.10 Consideration of the Bill by Committees

### House of Lords Constitution Committee

In its [17<sup>th</sup> Report of 2017-19](#), published on 31 January 2019,<sup>65</sup> the House of Lords Constitution Committee considered the Bill as introduced in the Lords – that is, in respect of the extension of civil partnership, as amended at Report stage in the Commons and before the present Clause 2 was agreed at Lords Committee stage.

The Committee noted that the Bill is "effectively a skeleton Bill" containing Henry VIII powers and other regulation-making powers. The Committee shared the reservations expressed by the Delegated Powers and Regulatory Reform Committee about the powers in the Bill and concluded:

While we recognise that there is a pressing need for a legislative response to the Supreme Court judgment that found that provisions of the Civil Partnership Act 2004 were incompatible with the European Convention on Human Rights, we regret that this Bill contributes to the trend of normalising the inclusion of Henry VIII powers in legislation.<sup>66</sup>

### Delegated Powers and Regulatory Reform Committee

The House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) considered the Bill in two separate reports.

#### 45th Report of Session 2017–19

The DPRRC first reported on the Bill in its [45th Report of 2017–19](#), which was published on 29 January 2019.<sup>67</sup> This Report considered the Bill as introduced in the Lords. The Committee referred to a memorandum provided by the Home Office about the delegated powers in the Bill<sup>68</sup> as "the Memorandum".

The Committee questioned why delegation of power was necessary:

23. The Memorandum gives a single sentence of justification for the delegation:

"Proceeding by way of secondary legislation enables an ECHR incompatibility to be addressed quickly".

24. The Memorandum does not explain why the amendments to the 2004 Act needed to remedy the ECHR incompatibility do not appear on the face of the Bill. The amendments required appear to be straightforward. We note, for example, the Bill introduced by Baroness Burt of Solihull on 13 July 2017, clause 1 of which proposes the following simple amendments to the 2004 Act...

25. Amendments to clause 2 to incorporate these provisions would be neither lengthy nor complex, and they would come into

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<sup>65</sup> [House of Lords Select Committee on the Constitution, Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill, 31 January 2019, HL Paper 279](#)

<sup>66</sup> Ibid paragraph 6

<sup>67</sup> [House of Lords Delegated Powers and Regulatory Reform Committee, 45th Report of Session 2017–19, 29 January 2019, HL Paper 274](#)

<sup>68</sup> [Home Office, Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill Delegated Powers Memorandum](#), 14 January 2019

force two months after Royal Assent (clause 6(3)). This would eliminate the need for affirmative procedure regulations.

The DPRRC also wondered why the Memorandum failed to mention that Ministers already have power to remedy by secondary legislation the ECHR incompatible provisions in the 2004 Act through an order-making power conferred by the Human Rights Act 1998, which attracts a super-affirmative procedure. The Committee considered it inappropriate for the Bill to confer a different power with a less stringent Parliamentary procedure.

The DPRRC also considered the power conferred by clause 2 to be objectionable as a matter of principle:

Under this country's constitution, it is for Parliament not Ministers to make laws. This Committee and the Constitution Committee have repeatedly said that Henry VIII powers should be conferred only where there is very clear justification for them—which is wholly lacking in this case.

29. Moreover, Members of both Houses may well wish to debate the principle of allowing an opposite-sex couple to form a civil partnership, and to table amendments to the proposed legislation need to give effect to this. They would not have this opportunity with affirmative procedure regulations.

The Committee referred to the concerns about Clause 2 expressed by the Minister at Lords Second Reading and to the Minister's indication that the Government was working with the Bill's sponsors on an amendment. The Committee noted that "These amendments may address some or all of the concerns identified above". If not, the Committee recommended that:

- the changes to the 2004 Act needed to remedy the ECHR incompatibility referred to in the Supreme Court's judgment should appear in clause 2 itself;
- the regulation-making power in clause 2 should be narrowed so that it would allow only for necessary consequential amendments to other legislation (with the affirmative procedure applying to changes to primary legislation, otherwise the negative procedure).

#### **48th Report of Session 2017–19**

The DPRRC reported on the Bill again in its [48th Report of 2017–19](#), published on 22 February 2019.<sup>69</sup> This was after Clause 2 of the Bill had been amended at Lords Committee stage and the Home Office had provided a supplementary memorandum about the delegated powers in the new Clause.

The Committee noted that new clause 2 was "significantly more detailed than the previous version which was nothing more than a bare enabling power".

The supplementary memorandum (paragraph 18) set out why the Government had rejected the Committee's recommendation that the necessary amendments to the 2004 Act to give effect to the Supreme

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<sup>69</sup> [House of Lords Delegated Powers and Regulatory Reform Committee, 48th Report of Session 2017–19, 22 February 2019, HL Paper 295](#)

Court's judgment should appear on the face of the Bill, coupled with a more limited power to make other necessary changes by regulations.

The DPRRC set out why it did not find the Government's reasons to be convincing. The Committee said that the supplementary memorandum did not adequately explain why

- subsection (3) confers on the Secretary of State a power "to make any other provision that appears to [him or her] to be appropriate in view of the extension of civil partnerships to opposite-sex couples" instead of a limited power simply to deal with the matters specified in subsection (4) by regulations;
- there is no duty on the Secretary of State to consult except in relation "conversion" regulations under subsection (5);
- there is no time limit on the exercise of any of the powers conferred by clause 2.

In addition, the DPRRC considered that the supplementary memorandum failed to justify the inclusion of clause 2(7).

With regard to the Committee's query about why the Home Office had not brought forward a proposed order under section 10 of the Human Rights Act 1998, the supplementary memorandum stated, amongst other things:

that the remedial order procedure "would ... confine the Government to addressing the specific incompatibility that is the subject of the declaration ..." and "would not enable the Minister to make other changes that might be desirable, or which are necessary for a reason other than to remove the incompatibility" and that "again, this would create the risk that Government would not be able to establish a fully-functioning and compliant opposite-sex couple civil partnership regime" (paragraph 20).

The Committee noted that:

Nothing is said about what "other changes that might be desirable" the Government have in mind, and how their inability to make such changes by regulations would prevent the creation of a fully-functioning and compliant new regime. The House may wish to ask the Minister for an explanation.

The DPRRC considered that the Bill deals with "highly sensitive issues which require full debate in Parliament" and that it was therefore "disappointing that the new clause 2, far from meeting the concerns of the Committee, raises significant new concerns". The Committee made the following recommendations:

21. We therefore remain of the view set out in our earlier report and recommend that the principal changes to the 2004 Act to remedy the ECHR incompatibility should appear on the face of the new clause 2. The House may wish to ask the Minister, since no explanation has been provided, to explain why the simple solution suggested in the Committee's earlier report would not be feasible.

22. We further recommend, for the reasons set out in this report, that the new clause 2 should be amended so that:

- the power conferred by subsection (3) should be removed on the ground that it is inappropriately wide, and replaced

by a focused power which allows only for the provisions referred to in subsection (4) to be made by regulations;

- the consultation requirement in subsection (6) should apply to regulations under subsections (3), (4) and (7) as well as to those under subsection (5);
- subsection (7) should be either narrowed or removed altogether unless the Government can provide a convincing justification as to why it is needed and how they intend to exercise it; and
- no regulations may be made under clause 2 more than three years after Royal Assent.

## 8. Civil partnerships for siblings?

Civil partnerships may not be registered between two people who are within prohibited degrees of relationship (for example siblings, or parent and child).<sup>70</sup> There are similar rules in relation to marriage.

Some calls have been made for civil partnership to be extended to a wider range of couples – for example, siblings who live together.

### 8.1 Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19

At Commons Second Reading of the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19, Sir Edward Leigh spoke of his own long-standing campaign on what he called a “burning injustice”:

The two sisters have lived together all their lives, but when one of them dies, the other one will have to move out of their home because they will not be able afford the inheritance tax. Only the Treasury stands in the way of righting this injustice; it is about money. I hope that when my hon. Friend works on the detail of the Bill, he will try to ensure that it helps siblings to stay in the homes in which they have lived all their lives.

He questioned Tim Loughton on the issue:

Does my hon. Friend recognise that it is an injustice for everyone apart from siblings to be able to have whatever legal relationship they want? I am not asking him to say now that he will include the matter in the Bill, but does he at least accept that this is a worthy cause, on which I have campaigned for many years?<sup>71</sup>

Tim Loughton reiterated that his Bill was not intending to extend civil partnership to people other than cohabiting couples in a relationship, adding, “I want to mirror the existing terminology in the Civil Partnership Act 2004”. He considered that Sir Edward’s cause would over-complicate the Bill:

I understand that it is a worthy cause, but it is different from enabling people to have their relationship recognised by the state. There are clear financial disadvantages and implications in the situation that my hon. Friend describes. I entirely sympathise with his view and I think that the injustice needs to be dealt with, but I do not propose to deal with it at this stage in my Bill. Doing so would make the Bill even more complicated than it already is.<sup>72</sup>

This view was reiterated at subsequent stages of the Bill by both the Government and the Bill’s sponsors.

### 8.2 Civil Partnership Act 2004 (Amendment) (Sibling Couples) Bill [HL] 2017-19

The [Civil Partnership Act 2004 \(Amendment\) \(Sibling Couples\) Bill \[HL\] 2017-19](#) is a Lords Private Member’s Bill which was introduced by

<sup>70</sup> [Civil Partnership Act 2004 section 3](#)

<sup>71</sup> [HC Deb 2 February 2018 c1097](#)

<sup>72</sup> [HC Deb 2 February 2018 c1097](#)

Lord Lexden (Conservative) on 3 July 2017 as [HL Bill 25](#) (the Lords Bill). [Second Reading](#) took place on 20 July 2018 when the Lords Bill was committed to a Committee of the Whole House.<sup>73</sup> A date for Committee stage has not yet been announced.

Information about the Bill is provided on the [Bill page on the Parliament website](#).

Introducing the Bill at Second Reading, Lord Lexden set out the problem his Bill would address:

Why do committed platonic sibling couples need the legal rights they would gain by becoming civil partners? The cruellest aspect of the current state of affairs is the terrible situation that can arise when one member of the committed sibling couple dies. Their joint home, owned by them both and the repository of a lifestyle of shared experiences and memories, has an importance to them that goes beyond bricks and mortar. Yet the rise in the value of property in our time often means that a home that has been shared for decades must be sold when the first sibling dies to raise the inheritance tax on his or her share. Living with the knowledge that this could happen at any time can cause years of apprehension and anxiety that members of the committed, platonic family unit ought surely to be spared. Loss of the shared home creates huge additional misery when two siblings are parted by death.

Lord Lexden said that inheritance tax was not the only issue:

There are other serious difficulties faced by sibling couples, including restrictions on applying for joint council tenancies and the inability to transfer pension rights. The state ought to bestow support on sibling couples. Instead, it leaves them in severe difficulties.<sup>74</sup>

Replying to the debate, Home Office Minister, Baroness Williams of Trafford, said that the Lords Bill would alter the nature of civil partnership and that the Government had “significant reservations” about it. She considered the matter to be one for the Treasury:

My noble friend talked at length about the financial hardships facing siblings who live together upon one of their deaths, and I utterly sympathise with those affected. However, these have all been matters relating to finance and, in some circumstances, to inheritance tax. By attempting to extend civil partnerships to sibling couples, this Bill seeks the wrong remedy to the issue at hand. Quite simply, this Bill is not the appropriate vehicle for addressing the grievances expressed this morning.

(...)

As we know, the tax gives a number of advantages to married couples and civil partners over and above cohabiting couples or others, because it reflects the unique legal commitment that married couples and civil partners enter into. There are no plans to change the inheritance tax rules in this regard. Any extension of the treatment for married couples or civil partners would be a matter for the Treasury.

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<sup>73</sup> [HL Deb 20 July 2018 cc1397-1415](#)

<sup>74</sup> [HL Deb 20 July 2018 c1398](#)

Baroness Trafford said that civil partnerships were “far more than a legal contract for providing financial and other benefits to two people”:

They are a significant instrument, allowing same-sex couples to have their intimate partner relationship recognised by society and the law. This is especially pertinent as they were introduced at a time when marriage was not yet available to same-sex couples, a situation which we have now rectified.<sup>75</sup>

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<sup>75</sup> [HL Deb 20 July 2018 c1413-14](#)

## 9. The future of civil partnership in Scotland

### 9.1 Civil partnership in Scotland

Issues in relation to civil status are devolved.

The Civil Partnership Act 2004 extends across the United Kingdom. [Part 3](#) of the Act deals with civil partnership in Scotland and was included following a Legislative Consent Motion. Section 86 provides that two people are not eligible to register in Scotland as civil partners of each other if (among other reasons) they are not of the same sex.

The Scottish Parliament could make changes to the status of civil partnership in Scotland.<sup>76</sup>

### 9.2 Review of civil partnership in Scotland 2015 Consultation

During the Parliamentary passage of the Marriage and Civil Partnership (Scotland) Act 2014, the Scottish Government said that it would carry out a review of civil partnership in Scotland.

As part of that review, in September 2015, the Scottish Government published a consultation paper seeking views on three options:

- no change, so that civil partnership would remain available for same sex couples only;
- stopping new civil partnerships being registered at some date in the future;
- introducing opposite sex civil partnership in Scotland.

Although the consultation paper asked for views on the subject, the Scottish Government stated that it was not persuaded that opposite sex civil partnership should be introduced in Scotland. The consultation paper set out the Scottish Government's reasons for taking this position:

- The Government considers that demand for opposite sex civil partnership in Scotland would be low. Evidence from other countries is that when the rights and responsibilities of opposite sex married couples and opposite sex civil partners are on the same lines, the vast majority of opposite sex couples seeking to enter into a registered relationship get married.
- The recognition of opposite sex civil partnership elsewhere in the UK and overseas would be limited.
- Society's understanding of opposite sex civil partnership might be limited.
- If couples do not wish to marry, Scots law provides some rights already for cohabitants.

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<sup>76</sup> [Review of civil partnership A consultation by the Scottish Government, September 2015, paragraph 1.02](#)

- Some of the arguments for opposite sex civil partnership seem to be based on perceptions that, for example, marriage is a religious or patriarchal institution. However, it is perfectly possible to have a civil (or belief) marriage ceremony, if the couple so wish. And it is for the couple themselves to determine the nature of their own marriage.
- Opposite sex civil partnership would increase complexity.
- There would be disproportionate costs to opposite sex civil partnership.<sup>77</sup>

Further information is provided in [Annex C](#) of the consultation paper.

## Response to 2015 consultation

In August 2016, the Scottish Government published an [Analysis of Consultation Responses](#). A section beginning on page 19 sets out views received for and against the introduction of opposite sex civil partnership.

In November 2017, the Scottish Government published its [response](#) to the consultation. This stated that an informal analysis of the number of respondents showed that:

- 52% of respondents supported mixed sex civil partnership;
- 30% were specifically against mixed sex civil partnership;
- 9% supported no more new civil partnerships;
- 2% supported the status quo (most of the respondents arguing for this were corporate bodies rather than individuals);
- 7% were in an “other” category.

The Scottish Government referred to the Court of Appeal decision in *Steinfeld and Keidan v Secretary of State for Education*,<sup>78</sup> and noted that the UK Supreme Court had granted permission to appeal the judgment. The Scottish Government said that it would monitor developments.

The Scottish Government stated that it did not intend to legislate on civil partnership at that time but would continue to consider the evidence on potential take-up of mixed-sex civil partnership in Scotland. It considered it likely that it would be reasonable to reassess the position after 2019.

## 9.3 2018 consultation

Following the Supreme Court judgment in the [Steinfeld and Keidan case](#) in June 2018,<sup>79</sup> the Scottish Government [consulted on the future of civil partnership in Scotland](#). The consultation began on 28 September 2018 and closed on 21 December 2018.

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<sup>77</sup> Ibid, Chapter 4, p9

<sup>78</sup> See section 5 of this briefing paper above

<sup>79</sup> [R \(on the application of Steinfeld and Keidan\) \(Appellants\) v Secretary of State for the International Development \(in substitution for the Home Secretary and the Education Secretary\) \(Respondent\) \[2018\] UKSC 32](#) See section 5 of this briefing paper

The consultation sought views on the arguments for and against two options for change, to address the decision of the Supreme Court that the current law on civil partnership is incompatible with the European Convention on Human Rights. The Scottish Government said that “Either option would be effective in removing the current discrimination from the law”.<sup>80</sup>

The [Ministerial Foreword](#) summarised the two options:

The first option would be to make provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future. Existing civil partners could remain in their civil partnership if they wish and would continue to enjoy the same rights and responsibilities as they do now.

The second option would be the introduction of opposite sex civil partnership. Opposite sex civil partnership would be along the same lines as same sex civil partnership.

Once the responses to the consultation have been analysed, the Scottish Government intends to take a decision on the way ahead and legislate:

We will legislate by introducing a Bill into the Scottish Parliament, by making an Order under the Convention Rights (Compliance) (Scotland) Act 2001, or by way of a Bill in the UK Parliament with a legislative consent motion in the Scottish Parliament. The Scottish Government will take a swift decision on the best legislative route once the consultation closes.<sup>81</sup>

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<sup>80</sup> Scottish Government, [The future of civil partnership in Scotland](#) [accessed 13 March 2019]

<sup>81</sup> Ibid

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