



BRIEFING PAPER

Number 08423, 24 October 2018

Civil Partnerships, Marriages and Deaths (Registration Etc) Bill: Committee Stage Report

By Catherine Fairbairn

Contents:

1. Introduction
2. Clause 1: Marriage registration
3. Clause 2: Report on civil partnership
4. Clause 3: Report on registration of pregnancy loss
5. Clause 4: Coroners' investigations into still-births
6. Clause 5: Supplementary provision about regulations
7. Other amendments

Contents

Summary	3
1. Introduction	4
1.1 The Bill	4
1.2 Progress of the Bill	4
1.3 Membership of the Public Bill Committee	5
2. Clause 1: Marriage registration	6
2.1 Second reading debate	6
2.2 Public Bill Committee	7
Amendments agreed	7
3. Clause 2: Report on civil partnership	10
3.1 Second Reading debate	10
3.2 Civil partnership developments between Second Reading and Public Bill Committee stage	13
Command Paper	13
Supreme Court Decision	13
3.3 Public Bill Committee	14
Amendments agreed	14
Northern Ireland	16
3.4 Civil partnership developments since Public Bill Committee stage	17
3.5 Amendment tabled for Report stage	17
4. Clause 3: Report on registration of pregnancy loss	18
4.1 Second reading debate	18
4.2 Public Bill Committee debate	19
5. Clause 4: Coroners' investigations into still-births	21
5.1 Second Reading debate	21
5.2 Public Bill Committee debate	22
6. Clause 5: Supplementary provision about regulations	26
7. Other amendments	27

Summary

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. The Bill, as amended in Public Bill Committee, has Government and Opposition support.

The Bill would deal with the following matters:

- marriage registration;
- report on civil partnership;
- report on registration of pregnancy loss; and
- coroners' investigations into stillbirths.

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.

This briefing paper provides information about Second Reading and Public Bill Committee stage in the House of Commons. Another Commons Library briefing paper provides background information about the issues involved:

[Commons Library analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) (Number 08217, 24 October 2018).

In addition, four separate papers are available for those who are interested only in specific aspects:

- [Mothers' details on marriage certificates](#) (Number 07516);
- [The future of civil partnership](#) (Number 07586);
- [Registration of stillbirth](#) (Number 5595); and
- [The investigation of stillbirth](#) (Number 01867).

In Public Bill Committee a number of amendments were agreed including:

- replacing Clauses 1 (Marriage registration) and 2 (Report on civil partnership) – the clauses in the Bill as introduced had been referred to as “marker clauses”;
- introducing a new supplementary provision about regulations;
- amending the long title.

Report stage in the Commons is scheduled for 26 October 2018.

1. Introduction

1.1 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.

It would deal with the following matters:

- marriage registration;
- report on civil partnership;
- report on registration of pregnancy loss; and
- coroners' investigations into stillbirths.

[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.

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

At Second Reading, Victoria Atkins spoke of the Government's support for the Bill, subject to it being amended in Committee:

This short Bill has grand ambitions. It deals with the happiest of times—the celebration of love and committed relationships—as well as the saddest of times: the loss of a much-cherished baby. ...The Government want to work with [Tim Loughton] constructively and thank him for the assurances he has given on clauses 1 and 2. Accordingly, the Government are pleased to be able to support it.¹

Shadow Home Office Minister, Karen Lee, said "Labour Members fully support this Bill".²

1.2 Progress of the Bill

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. In Public Bill Committee, Tim Loughton said that many of the amendments were "formal drafting amendments agreed between the Government and me".³

¹ [HC Deb 2 February 2018 c1125](#)

² [HC Deb 2 February 2018 c1115](#)

³ [PBC Deb 18 July 2018 c5](#)

The Bill as amended in Public Bill Committee has been published as [Bill 254 of 2017-19](#).

Report stage in the Commons is scheduled for 26 October 2018.

1.3 Membership of the Public Bill Committee

The Public Bill Committee consisted of the following Members:

Chair: Mr Virendra Sharma

Victoria Atkins, (Parliamentary Under-Secretary of State for the Home Department)

Sir Graham Brady, (Con)

Ms Karen Buck, (Lab)

Mr Alistair Carmichael, (LD)

Dr David Drew, (Lab/Co-op)

Kevin Foster, (Con)

Lilian Greenwood, (Lab)

Carolyn Harris, (Lab)

Mrs Sharon Hodgson, (Lab)

Nigel Huddleston, (Con)

Tim Loughton, (Con)

Steve McCabe, (Lab)

Rachel Maclean, (Con)

Scott Mann, (Con)

Will Quince, (Con)

Andy Slaughter, (Lab)

Dame Caroline Spelman, (Second Church Estates Commissioner)

Gareth Thomas, (Lab/Co-op)

Mr William Wragg, (Con)

2. Clause 1: Marriage registration

Clause 1 of the Bill would deal with marriage registration.

2.1 Second reading debate

In response to a question from the junior Home Office Minister, Victoria Atkins, Tim Loughton confirmed that Clause 1 was a “marker clause” which would be “replaced and elaborated on in Committee, as agreed with Ministers”.⁴ He also said that it was “highly likely” that the long title of the Bill would need to be amended in Committee, “particularly to reflect the change that will be required to the electronic record of marriage certificates”.⁵

Tim Loughton spoke of introducing an electronic register, to replace hard copy books, and of the benefits this would bring:

That would avoid the potentially costly need to replace all the register books. Instead of signing a book at the ceremony, the newly married couple would sign a document that would then be returned to the register office to be entered in the existing electronic register so that an official marriage certificate could be issued, including the names of all the parents. The measure could also take account of new family structures... There would be two spaces for the signatures of each of the partners in the marriage, or, indeed, civil partnership. That innovation was actually made when civil partnerships were introduced in 2004, but, bizarrely, it does not apply to marriages. Both parents would be included, be they biological mother and father, same-sex parents of whom one might be a biological parent, or adoptive parents.⁶

Tim Loughton said that, with the measure of support previously expressed, it was “nonsensical that this simple measure has not already come to pass”.

Victoria Atkins spoke of the Government’s support for the Bill, subject to it being amended in Committee:

The long title of the Bill refers to only mothers being added to certificates. We need to ensure that when the marriage entry is updated it allows for all the different family circumstances in society today—for example, same-sex parents. ... We need to make sure that we have a system in place that enables the marriage register to be capable of adapting.⁷

Victoria Atkins said that the intention was to replace Clause 1 with the provisions of another Private Member’s Bill before the House, the Registration of Marriage (No. 2) Bill.⁸ She said that moving to a schedule system of registration would “introduce savings of about £33.8 million over 10 years”.

Ms Atkins confirmed that the Government wanted to work constructively with Tim Loughton.

⁴ [HC Deb 2 February 2018 c1105](#)

⁵ [HC Deb 2 February 2018 c1097](#)

⁶ [HC Deb 2 February 2018 c1105](#)

⁷ [HC Deb 2 February 2018 c1120-2](#)

⁸ [HC Deb 2 February 2018 c1123](#)

2.2 Public Bill Committee

Amendments agreed

Tim Loughton moved **New Clause 2**, Marriage registration, which was in his name and that of Victoria Atkins.⁹ The Member's explanatory statement was:

This new clause allows the Secretary of State to introduce a central, electronic system of marriage registration in England and Wales.

New Clause 2 was considered with the question of whether Clause 1 should stand part of the Bill and with **Amendment 12** which was also in the names of Tim Loughton and Victoria Atkins.

Tim Loughton said that New Clause 2 was an enabling clause and would replace Clause 1 in the Bill as introduced. He set out information about the new provision, including the limitations on the order-making power:

New clause 2 seeks to remove the marker provision that is the current clause 1 and replace it with the provisions in new clause 2 of the Registration of Marriage (No. 2) Bill... In addition, the amendments aim to improve those provisions by limiting the scope of delegated powers in the Bill. For example, any regulations made by the Secretary of State under clause 1(1) will now be limited to amending the Marriage Act 1949. The regulations that amend that Act would be subject to the affirmative procedure and require the approval of both Houses of Parliament, providing ample parliamentary oversight.

Subsection (6) of the new clause inserts a sunset clause that limits the use of the power of the Secretary of State to amend primary legislation to a period of three years beginning on the day on which the regulations are first made. I know that this point—that it could be an open-ended power—has been a bone of some contention, and has hampered the progress of similar private Members' Bills and legislation in the past. By inserting this sunset clause, and specifically limiting the power to the Marriage Act 1949, the Bill has a very clear intent.¹⁰

New Clause 2 is intended to reform how marriages are registered and would enable the names of the mothers of the couple to be included. There would be a new system of registration:

The new clause aims to introduce a schedule-based system, replacing the current paper registers. That is the most cost-effective way to introduce the change. With the introduction of a schedule system, all civil and religious marriages will be held in a single electronic register, rather than in more than 80,000 paper register books scattered around churches and religious institutions up and down the country. It will make the system more secure and efficient, and it will make it simpler to amend the content of the marriage entry, both now and in the future. The new clause enables the Secretary of State to make the required changes to the Marriage Act by regulations, and to move a schedule-based system for registering marriages. The regulations would change the current procedures in part III of the Marriage Act—Marriage

⁹ [PBC Deb 18 July 2018 c4](#)

¹⁰ [PBC Deb 18 July 2018 c6](#)

under Superintendent Registrar's Certificate—to provide that a marriage can be solemnized on the authority of a single schedule for the couple instead of two superintendent registrar's certificates of marriage, one for each of the couple, which is currently the case.¹¹

The regulations would also deal with marriages in the Church of England and Church in Wales:

The regulations would also provide for a member of the clergy to issue the equivalent of a marriage schedule, which is a marriage document, for marriages that have been preceded by ecclesiastical preliminaries, for example the calling of the banns or the granting of a common licence. Once a marriage ceremony has taken place, the signed marriage schedule or marriage document will be returned to the local registry office for entry in the electronic register.¹²

Tim Loughton also set out the proposed registration procedure:

Where a registrar is present at a marriage ceremony, the signed schedule will be retained by the registrar for entry in the electronic register. In all other cases, it will be the responsibility of the couple to ensure that the marriage schedule is returned to the registry office. However, they will be able to ask a representative to take it for them, or they could send it by post...

If a signed marriage schedule or marriage document is not returned within the specified timescale, and after reminders have been sent, the person commits an offence in accordance with subsection (3) of the new clause. My understanding is that in Scotland there are no issues with signed documents not being returned to the registry office. Once the marriage is registered in the electronic register, the couple will be able to have a copy of their marriage certificate.

The Registrar General would have power to make regulations under section 74(1) of the Marriage Act 1949 to prescribe the content of a marriage schedule or document, to make provision to reissue or correct the information contained in the marriage schedule or document prior to the marriage taking place, and to make provision for the keeping and maintenance of the existing paper registers.¹³

Dame Caroline Spelman (Second Church Estates Commissioner) confirmed the position of the Church, for the avoidance of doubt:

...I make it clear to the Committee that the Church of England consulted on the matter some time ago, and is fully in favour of these practical and equitable changes, which deal with a difficult pastoral situation. At the moment, the clergy often have to break the bad news to a mother that she cannot put her name on the marriage certificate at the ceremony, which causes great distress. The Church of England would like to see this change achieved. The amendments that my hon. Friend referred to are the amendments that the Bishop of St Albans tabled to the identical Bill in the Lords, which is about to return to our House.¹⁴

¹¹ [PBC Deb 18 July 2018 c6](#)

¹² [PBC Deb 18 July 2018 cc6-7](#)

¹³ [PBC Deb 18 July 2018 c7](#)

¹⁴ [PBC Deb 18 July 2018 c7](#)

Victoria Atkins confirmed the Government's support:

It is important that an adaptable system is in place. In making these changes, we must ensure that they allow for all the different family circumstances in society, including, for example, same-sex parents. It is a much-wanted and much-needed change in the law, and I am pleased to confirm the Government's support for it.¹⁵

There were no objections to New Clause 2 which was therefore added to the Bill (now **Clause 1** in the Bill as amended in Public Bill Committee). The previous Clause 1 was removed from the Bill.

The long title of the Bill as introduced included these words: "to make provision about the registration of the names of the mother of each party to a marriage or civil partnership". **Amendment 12**, which was agreed without vote, amended this to "make provision about the registration of marriage".

3. Clause 2: Report on civil partnership

Clause 2, as amended in Public Bill Committee, would require 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 would have to provide for a public consultation.

The Secretary of State would be required to lay the Report before Parliament.

3.1 Second Reading debate

At Second Reading, Tim Loughton confirmed that Clause 2 was a “marker clause” to be “replaced and elaborated on in Committee”.¹⁶ 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

¹⁶ [HC Deb 2 February 2018 c1105](#)

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.¹⁷

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

For some, it is too much of an establishment thing to do. Many identify marriage as an innately religious institution, and even if it 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.¹⁸

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).¹⁹ He spoke out against abolishing civil partnerships altogether.²⁰

Victoria Atkins explained how 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:

We are committed to resolving this issue, but we have to get some better evidence than we have at the moment in order to deal sensitively with the civil partnership issue. I wish it were a simple matter of changing a sentence in the Civil Partnership Act 2004, but we have to recognise that this is not just about eligibility; it is also about the rights that flow from any changes.²¹

Victoria Atkins said that the Government would:

- continue its existing work on assessing the relative take-up of civil partnership and marriage among same sex couples;

¹⁷ [HC Deb 2 February 2018 cc1098-1100](#)

¹⁸ [HC Deb 2 February 2018 c1099](#)

¹⁹ [HC Deb 2 February 2018 c1102](#)

²⁰ [HC Deb 2 February 2018 c1103](#)

²¹ [HC Deb 2 February 2018 c1120](#)

- continue to consider whether phasing out civil partnerships for same sex couples is the best way forward;
- undertake surveys to understand the demand for civil partnership among opposite sex unmarried couples; and
- review what has happened in other countries when they have been faced with similar choices.

The Minister said that she would take away and speak to officials about the idea suggested by David Drew (Labour/Co-op) of educating cohabiting couples about their rights.²²

Victoria Atkins would not be drawn into setting precise time limits.

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

Although I welcome a report and a review to find more evidence, I think that rolling out civil partnerships to everyone is not the right approach, as I am confident such a review would highlight.

It is time to refresh our minds as to why civil partnerships were invented. They were invented because same sex marriage was not legal. Civil partnerships were not intended to be a permanent alternative to marriage. They were created to allow same sex couples access to rights, responsibilities and protections equivalent to those afforded to married couples. That is no longer the case.

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...

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.²³

²² [HC Deb 2 February 2018 c1122](#)

²³ [HC Deb 2 February 2018 cc1140-1](#)

3.2 Civil partnership developments between Second Reading and Public Bill Committee stage

Command Paper

In May 2018, the Government published a Command Paper, [The Future Operation of Civil Partnership: Gathering Further Information](#).²⁴ This set out how the Government would gather the additional information it considered necessary to bring forward proposals for the future of civil partnership.

Supreme Court Decision

On 27 June 2018, the Supreme Court delivered its judgment in the [Steinfeld and Keidan case](#).²⁵

The issue before the Supreme Court was whether the ban on different sex couples entering into civil partnership breached the appellants' rights under article 14 (the prohibition on discrimination) together with article 8 (the right to respect for private life) of the European Convention on Human Rights (ECHR). The High Court and Court of Appeal had already dismissed the couple's claim.

The Supreme Court allowed the appeal. The Court rejected the Government's argument that European Court of Human Rights (ECtHR) case law requires a wide margin of appreciation²⁶ 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 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.²⁷

Lord Kerr did not consider that the Government had a sufficiently important "legitimate aim" (at [paragraph 42](#)):

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

²⁴ Cm 9606

²⁵ [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](#)

²⁶ 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"

²⁷ Supreme Court [Press summary](#), 27 June 2018, p2

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.

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.²⁸

3.3 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. The Member's explanatory statement was:

This new clause provides for a report to be prepared on the changes which ought to be made to bring about equality between same-sex and other couples in terms of their future ability or otherwise to form civil partnerships. It replaces the current Clause 2 (see Amendment 1).

It was considered at the same time as **Amendments 11 and 13** – the change to the long title.

Tim Loughton urged the Government to make progress.²⁹

Victoria Atkins expressed the Government's support for New Clause 1,³⁰ and said that the Government had been spurred on by the Bill's Second Reading, with even more urgency being added by the Supreme Court judgment. She indicated that there would now be a revised and shorter timetable for research:

The reason the original deadline was 2019 was that there was going to be five years' worth of research on the numbers of marriages and civil partnerships. We now propose to bring forward that deadline, so there will be four years of research instead of five.

We have also started the Office for National Statistics lifestyle survey—that is happening now—to calculate the projected number of opposite-sex couples who would wish to enter into civil partnerships. The third strand of research is on how other countries have dealt with civil partnerships and marriages, as my hon. Friend the Member for East Worthing and Shoreham has set

²⁸ Ibid

²⁹ [PBC Deb 18 July 2018 cc11-12](#)

³⁰ [PBC Deb 18 July 2018 c20](#)

out. The fourth category is a qualitative survey of same-sex couples in civil partnerships, because we are very conscious of the need to tread carefully for those couples who are already in civil partnerships.

That was all wrapped up in the Command Paper, which was presented in May. As the Secretary of State has said, the clause will shorten the research programme so that it can report to Parliament with urgency, and we will include a public consultation so that members of the public can also contribute their views.

Victoria Atkins 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.³¹

Victoria Atkins was pressed by Andy Slaughter (Labour) on how quickly the law might change. The junior Minister replied that the Government would have to act on evidence and commit to a public consultation. She added:

I understand his wish for a timetable. At the moment, we have the timetable set out by the private Member's Bill. The work is ongoing. Those who assist me and the officials have a great understanding of the urgency of the situation. We want to get to a position where we have the evidence and we have ensured that we have lined up all the other matters connected to an act of civil partnership and the issues that flow from that for other Departments. The Secretary of State is always in listening mode, as am I.³²

Tim Loughton asked the Minister about the possibility of amending the Bill further at Report stage:

Obviously I would like the Minister to go further, but will she at least acknowledge that it is in principle possible to amend the Bill on Report, were that to be at the end of October, to satisfy the findings of the Supreme Court? Alternatively, she alluded to the possibility, without going into detail, of an even faster way of doing it, in which case the Government's priority is to do this as rapidly as possible, but hopefully no later than on Report.³³

Victoria Atkins replied:

Although, as my hon. Friend knows, the Secretary of State is very much seized of the matter and concerned by it, I would not want to take the risk, respecting this Committee and colleagues from all parts of the House as I do, of speculating at this stage.³⁴

³¹ [PBC Deb 18 July 2018 cc15-16](#)

³² [PBC Deb 18 July 2018 c19](#)

³³ [PBC Deb 18 July 2018 c19](#)

³⁴ [PBC Deb 18 July 2018 c19](#)

New clause 1 was added to the Bill without a vote. It is now Clause 2 in the Bill as amended in Public Bill Committee. Clause 2 in the Bill as originally presented was not proposed and so was omitted from the Bill.

Northern Ireland

New Clause 1 was considered at the same time as **Amendments (a), (b) and (c)** to New Clause 1, all of which were in the names of Conor McGinn (Labour) and Gareth Thomas (Labour/Co-op).

The Member's explanatory statement for Amendment (a) was:

Together with Amendment (c) to NC1 and the consequential Amendment 16 to Clause 5, this amendment extends the scope of the report to considering equality in civil partnerships in Scotland and Northern Ireland.

The Member's explanatory statement for Amendment (b) was:

This amendment requires the Secretary of State's report to consider the implications of marriage law in Northern Ireland for equality in civil partnerships in Northern Ireland.

Gareth Thomas made the case for the proposed report to cover Northern Ireland, asking "why should the fact that the Northern Ireland Assembly is suspended mean that same-sex couples in Northern Ireland who want to get married are denied that right?". He considered that New Clause 1 provided an opportunity to make progress:

Most political parties in Northern Ireland already support same-sex marriage, and a broad coalition is already very active in campaigning on this issue. Opinion polls in Northern Ireland continue to demonstrate considerable support for allowing same-sex marriage, so I struggle to see why the Secretary of State cannot seek to advance the case for change in Northern Ireland through the report. Why, for example, cannot the Secretary of State and the Home Secretary not consult political parties in Northern Ireland? Why cannot they ensure that there is a consultation with other civil society organisations to continue the process of building support for change? Why cannot the Government commit to saying what they will do if it becomes clear—although we all hope that this will not be the case—that the Northern Ireland Assembly will not be re-established?³⁵

Victoria Atkins resisted the amendments and spoke of civil partnership and marriage being devolved matters, adding that the Bill was not the place to deal with issues relevant to Northern Ireland:

Given that this is a private Member's Bill, I am afraid that we feel constrained to observe the political fact—as well as the political courtesy—that the matters are devolved. I understand the motivations of those who want change across the whole UK, but I regret that on this we must observe the fact that the matter is devolved. Not only must we underline our view that the Bill is not the right place in which to grapple with the political situation in Northern Ireland; we must allow it to resolve what are devolved matters.³⁶

Tim Loughton considered that "if we are to have equality in civil partnership and same-sex marriage, they should be available to every

³⁵ [PBC Deb 18 July 2018 c17](#)

³⁶ [PBC Deb 18 July 2018 c19](#)

citizen or subject in Northern Ireland in the same way as they are for someone in London, Edinburgh or Cardiff". However, he did not consider that the Bill was the right vehicle to achieve change in Northern Ireland:

I have no problem in principle with supporting what the hon. Member for Harrow West is trying to do ... but I just request that this is not the Bill to do it—I have enough work on my hands as it is trying to get the Bill through both Houses without adding a whole dimension that involves the Democratic Unionist party and certain other forces in Northern Ireland. It could kibosh the entire Bill.³⁷

Gareth Thomas said that he would not press the amendments.³⁸

3.4 Civil partnership developments since Public Bill Committee stage

On 2 October 2018, Theresa May announced that the Government would change the law to allow opposite sex couples in England and Wales to enter into a civil partnership.³⁹

The Equal Civil Partnerships website has the text of a [Government press release](#) issued on 2 October 2018.⁴⁰ 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":

On 2 October the Prime Minister announced that we would extend the availability of civil partnerships to opposite-sex couples.

This important step for equality will give families more certainty and security, and we intend to introduce legislation as soon as possible.⁴¹

3.5 Amendment tabled for Report stage

A new clause "Reform of civil partnership" has been tabled in the names of Tim Loughton and others (not including Victoria Atkins).

The amendment would require 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 has also tabled an amendment to leave out Clause 2.⁴²

³⁷ [PBC Deb 18 July 2018 c20](#)

³⁸ [PBC Deb 18 July 2018 c21](#)

³⁹ See, for example, [Civil partnerships: Law to change for mixed-sex couples](#), BBC News, 2 October 2018

⁴⁰ [Government to change the law to allow opposite-sex couples to enter into civil partnership](#), 2 October 2018 [accessed 23 October 2018]

⁴¹ [PQ 177374 \[on Civil Partnerships: Heterosexuality\], 17 October 2018](#)

⁴² [Notices of Amendments given up to and including Monday 22 October 2018](#)

4. Clause 3: Report on registration of pregnancy loss

Clause 3 of the Bill, as amended in Public Bill Committee, would require the Secretary of State to “make arrangements for the preparation of a report on whether, and if so how, the law ought to be changed to require or permit the registration of pregnancy losses which cannot be registered as still-births under the Births and Deaths Registration Act 1953”.

The Secretary of State would be required to publish the report.

4.1 Second reading debate

At Second Reading, Tim Loughton set out the purpose of Clause 3:

The Bill will simply require the Government to hold a review of how we can do better and come up with a simple scheme that could have a huge impact on many grieving parents. It has nothing to do with changing the law on abortion, and that debate is for another day and another piece of legislation. I have deliberately not been prescriptive about what form the review should take, but I trust the Government to do the right thing here and I think we are pushing at an open door.⁴³

Shadow Home Office Minister, Karen Lee, said, “We agree that stillbirths that occur before 24 weeks should be formally acknowledged and registered, but by no means would we want to see such a measure used to undermine abortion rights and a woman’s right to choose”.⁴⁴

Victoria Atkins, acknowledged the range of views on the subject, and welcomed the proposed review:

Currently, parents whose babies are stillborn after 24 weeks’ gestation can register the baby’s name and receive a certificate of registration of stillbirth. When a pregnancy ends before 24 weeks’ gestation, however, there is currently no formal process for parents to be able to register their loss legally. Some expectant parents find this to be not just distressing but devastating. The Department of Health and Social Care recognises the need to do more to support families affected by a miscarriage. Some families may want their loss to be acknowledged and registered. Others, however, may feel distressed at any mandatory requirement to do so in the circumstances of their grief. This issue must therefore be approached with great care and sensitivity.

Accordingly, I am pleased that clause 3 will provide for the Government to review this issue and to look at whether current law on registration of stillbirths should be changed to allow for the registration of pregnancy loss before 24 weeks’ gestation. As part of this review, we will seek views and evidence from all interested parties. I hope that colleagues across the House will contribute to that review.⁴⁵

⁴³ [HC Deb 2 February 2018 c1108](#)

⁴⁴ [HC Deb 2 February 2018 c1115](#)

⁴⁵ [HC Deb 2 February 2018 cc1123-4](#)

4.2 Public Bill Committee debate

In Public Bill Committee, Tim Loughton spoke of a review started by the Government:

The Department of Health and Social Care has begun considering the issue and has commissioned a review to be carried out on behalf of the Secretary of State. The review will also look at how the NHS can improve the support it gives to families who have experienced pregnancy loss prior to 24 weeks' gestation. The most important thing the Department of Health and Social Care can do—and it is doing this—is ensure that we prevent pregnancy loss in the first place.

Mr Loughton expressed some reservations about the focus of the review. He reiterated the purpose of the Bill:

I am very clear that we need to do something specifically for women who have given birth but it happens to be before 24 weeks. We probably need to do more for the many more women who have had pregnancy loss through miscarriage, at whatever stage. I know that other measures are being looked at...but I am focusing on the experiences of women who have given birth to children who, alas, are not alive when they are born. That is a different experience. Having a baby loss at any stage is hugely traumatic. I am not in any way trying to undermine the tragedy of everybody's loss. The problem here is that, simply because of the way the law is figured and the chronology, which is part of the law, many children who would otherwise have been registered and acknowledged do not exist in the eyes of the state.⁴⁶

Victoria Atkins confirmed the Government's support for a report on the issue of registration:

Registration and certification can be an important part of acknowledging a pregnancy loss, and that is why the Government fully support the need to look into the issue more closely.

(...)

We support the requirement in this clause that a report is prepared before we consider any changes, because of the obvious sensitivities involved. In conducting this review, the Government are engaging closely with health practitioners, registrars and charities. Most importantly, the review is speaking to parents who have lost a baby before 24 weeks, to learn about their experiences and how to ensure that they receive the best care and support possible when such a tragedy takes place.⁴⁷

Tim Loughton hoped that Government action would follow the proposed report:

The clause only commits to having a report at this stage, but there is an expectation that the Government will want to turn that report into legislative change—into action—to complement the good work that is going on to prevent anybody from being in the iniquitous position of realising that their child is not officially recognised by the state, by substantially reducing the number of stillbirths and miscarriages.⁴⁸

⁴⁶ [PBC Deb 18 July 2018 c23](#)

⁴⁷ [PBC Deb 18 July 2018 cc26-7](#)

⁴⁸ [PBC Deb 18 July 2018 c27](#)

Clause 3 was agreed without amendment.

The Public Bill Committee also agreed a change to the long title of the Bill to take out the words "about the registration of stillborn deaths" and to replace them with "for a report on the registration of pregnancy loss".

5. Clause 4: Coroners' investigations into still-births

Clause 4, as amended in Public Bill Committee, would require the Secretary of State to "make arrangements for the preparation of a report on whether, and if so how, the law ought to be changed to enable or require coroners to investigate stillbirths". The Secretary of State would be required to publish the report.

Following publication of the report, the Lord Chancellor would have power to make regulations which could amend Part 1 of the Coroners and Justice Act 2009 (the 2009 Act) to:

- enable or require coroners to conduct investigations into stillbirths (whether by treating still-births as deaths or otherwise);
- specify the circumstances in which investigations are to take place (including by limiting the duty or power to investigate to certain descriptions of still-birth) – the Explanatory Notes suggest that this provision could be used to provide that a power or duty to investigate stillbirths only applies to stillbirths of more than a specified gestation;⁴⁹
- provide for the purposes of those investigations;
- make provision equivalent or similar to provision in Part 1 of the 2009 Act relating to investigations into deaths.

The regulations could not:

- create any criminal offence, or
- confer any power to make provision of a legislative character,

other than by applying (with necessary modifications), or making equivalent or similar provision to, provision already contained in Part 1 of the 2009 Act.

The regulations would have to be made within five years of the date on which the report is published.

5.1 Second Reading debate

At Second Reading Tim Loughton provided information about the intent of Clause 4:

My Bill proposes an enabling clause to give the Secretary of State powers to amend the Coroners and Justice Act 2009 to give coroners the power to investigate stillbirths. The preference would be for the change to apply to late-term stillbirths and for discretion to remain with coroners to determine which deaths they wished to investigate rather than be swamped by having to investigate large numbers of otherwise straightforward stillbirths. However, I appreciate the complexities of making such a change, given that the responsibility lies between the Department of Justice and the Department of Health and Social Care. I do not seek to be prescriptive about the enabling power at this stage, but

⁴⁹ [Bill 11-EN paragraph 29](#)

I am sure that both Secretaries of State would wish to get on with this sooner rather than later, given the imperative that the Health Secretary has already placed on this issue, on record.

Importantly, coroners tell me that they have the capacity to take on these additional investigations, and indeed it is likely that the measure will cut down on subsequent litigation, as it will afford greater certainty about exactly what has happened. It will also lead to reduced care costs on the back of fewer damaged babies and give much greater comfort to parents who are struggling to come to terms with such a traumatic loss. As such, it should certainly be seen not as a stand-alone measure but as complementary to the panoply of other improvements that the Government are currently introducing, on which they are to be congratulated.⁵⁰

Victoria Atkins, said that the Government “agree wholeheartedly with the need to look at the role that coroners could play in this regard” while emphasising the importance of a review:

The Government think that it is important to carry out a review and produce a report in this area before making any changes. There are important and sensitive issues to explore, such as the question of how far into a pregnancy coronial involvement should be triggered, and the potential role of other factors, such as violence to the mother or medical negligence. We need to hear a wide range of views, including those of coroners, including the chief coroner, medical professionals, researchers in the field and, of course, bereaved parents and the organisations that support them.⁵¹

5.2 Public Bill Committee debate

Gareth Thomas (Labour/Co-op) moved a probing amendment (**Amendment 17**, in the name of Lilian Greenwood) intended to ensure that the Secretary of State’s report would examine how the law should be changed and not whether it should be changed.⁵² Another amendment in Lilian Greenwood’s name (**Amendment 18**), considered at the same time, would have required the Secretary of State’s report to be published within six months of the Bill receiving Royal Assent. Gareth Thomas said that he was hoping that the Minister would commit to a timetable:

I press the point that surely a baby’s death should be treated no differently from any other death. In that sense, the coroner represents an independent judicial office, and therefore any inquest into the death would be truly independent and transparent. A coroner would be able to address local issues at a particular hospital or unit where there were concerns about the care arrangements, by making references to other statutory bodies.

As I say, it had appeared that the former Secretary of State for Health was committed to making changes, but the caveat in clause 4(1)—the reference to

“whether...the law ought to be changed”—

⁵⁰ [HC Deb 2 February 2018 cc1109-10](#)

⁵¹ [HC Deb 2 February 2018 cc1124-5](#)

⁵² [PBC Deb 18 July 2018 c28](#)

has raised some concerns about whether there has been any slowing-down of commitment or even—I hesitate to say it—backtracking. In the spirit of a probing amendment, I hope that the Minister will reassure us and commit to a timescale for moving things forward.⁵³

Tim Loughton said that “coroners should have powers to investigate when a baby dies during labour, just as they can when a baby dies immediately after delivery”.⁵⁴ He reiterated the intention of Clause 4:

The clause ... requires the Government to review fully whether, and if so, how, coroners should investigate stillbirths, and then, I hope, to do something about it. I certainly agree with the Government that we need to explore thoroughly the full range of issues involved in such a change. We must act on this in a considered manner. The clause ensures that the Government will give the issue the consideration that I and many others believe it deserves. However, once it is clear what needs to be done to enable coroners to investigate these deaths, the Government should act quickly. The clause allows for that, too, which partly addresses the point made by the hon. Member for Harrow West [Gareth Thomas].

Tim Loughton spoke of how regulations might be framed:

The clause gives the Lord Chancellor the power to make regulations that would amend part 1 of the 2009 Act to enable or require coroners to conduct investigations into stillbirths. It also allows for regulations to provide for the purpose of those coroners’ investigations into stillbirths, which is necessary because, for example, it may be appropriate to investigate a stillbirth even when it was caused by a natural process; coroners rightly do not do so when other deaths are caused by a natural process. I want coroners to have the right and proper duties to investigate stillbirths and do not want to restrict the power to make regulations in a way that prevents that.

The clause also provides for regulations that could limit the circumstances in which investigations are to take place. For example, regulations could provide for a power or a duty to investigate only stillbirths of more than a specified gestation. It may not be necessary for every stillbirth to be in the scope of a coroner’s investigation, such as those that occur when the pregnancy has reached full term. The clause provides that regulations may not create criminal offences, other than by applying or making an equivalent or similar provision to a provision already contained in part 1 of the 2009 Act. That allows the offences in schedule 6 of the Act to apply to investigations into stillbirths, but ensures that the power will not be used too widely.⁵⁵

He also set out the safeguards the Bill would include:

First, any regulation that will amend primary legislation must be voted on by both Houses. Secondly, I have provided a sunset clause that provides that the power to make investigation regulations will cease if it has not been exercised within five years

⁵³ [PBC Deb 18 July 2018 c29](#)

⁵⁴ [PBC Deb 18 July 2018 c29](#)

⁵⁵ [PBC Deb 18 July 2018 c30](#)

of publication of the Government's report, which the clause requires.⁵⁶

Tim Loughton considered that the delegated power to make regulations was necessary, adding, "I know that the Government supports that".⁵⁷

He stressed that coroners' investigations would not replace "the important role that the NHS plays here already":

It will supplement and support it, and will ensure that coroners can contribute to the learning and to playing a role in reducing the stillbirth rate.⁵⁸

Tim Loughton indicated which cases might be referred to a coroner:

For example, there seems to be a consensus for giving coroners powers to investigate full-term stillbirths—at 37 weeks onwards. Those are the ones that might be considered least likely, in comparison to those closer to 24 weeks, when the position is more delicate, and therefore more questions need to be asked. In some cases it might require a coroner to ask those questions.

That is probably a good starting point, and if, with experience of coroners investigations, it appears that the term in question should be brought forward, the issue can be revisited later. However, an important starting point is set out, which will give confidence to parents who have suffered a stillbirth that in a small number of cases—it is not a question of flooding coroners with an awful lot of additional work—if the questions have not been answered, the full independence and weight of open inquiry that a coroner can bring to bear will be available to them.⁵⁹

Victoria Atkins reiterated that the Government supported Clause 4 and agreed with the need to consider the role coroners could play in investigating stillbirths:

The Government have already committed to looking into the question of coroners investigating full-term stillbirths and support the requirement in the clause that a report is prepared before we make any changes. There are important and sensitive issues to explore, including what powers a coroner should have to undertake any investigation such as the ordering of post-mortems and when any duty to investigate should apply. We also need to consider how we can maximise the learning from each coroner's investigation.⁶⁰

Ms Atkins disagreed with the probing amendments, acknowledging the possible range of views which might emerge, and speaking of potential timescales:

Our concern is that amendment 17 would prejudge the findings of the report and the discussions that the Government are having with the many stakeholders in this area. We would not be able to look at whether there should be a role for coroners; it rather assumes that there should be one. We submit respectfully that that is not the correct approach. While many bereaved parents who may have had difficult experiences will want a coroner to carry out an investigation into stillbirths, we need to consider

⁵⁶ [PBC Deb 18 July 2018 c30](#)

⁵⁷ [PBC Deb 18 July 2018 c31](#)

⁵⁸ [PBC Deb 18 July 2018 c31](#)

⁵⁹ [PBC Deb 18 July 2018 cc31-2](#)

⁶⁰ [PBC Deb 18 July 2018 c32](#)

alternative experiences. Some parents may find the formal coronial process too distressing—it may be too much for them on top of the investigation the NHS would carry out—and they may want the official processes to be over so they can find the wherewithal to deal with their grief. They may not want to go through an additional official process before they begin to mourn.

On amendment 18, while the Government agree that we should move quickly, we must not be constrained in time to reach the right conclusions, which are what every member of the Committee is concerned to achieve. It is important that the report is thorough and all views are considered carefully. We want to explore in detail whether and in what circumstances a coroner may investigate stillbirths, and that will take some time. We are not dragging our feet. We have already begun the review on which my hon. Friend the Member for East Worthing and Shoreham has given some details. That demonstrates our commitment to making progress as quickly as possible and, if change should be made, to make it in a timely manner. While I cannot commit to timescales, I consider that good progress is being made.⁶¹

Gareth Thomas withdrew the amendment.

6. Clause 5: Supplementary provision about regulations

New Clause 3 was added in Public Bill Committee. This is now **Clause 5** in the Bill as amended in Public Bill Committee. It sets out supplementary provision about regulations.

In Public Bill Committee, Tim Loughton set out the intent of the provision, including:

Hon. Members may wish to note that the amendment changes the Henry VIII power, limiting the power to consequential amendments rather than incidental or supplemental ones. This is in line with the marriage registration powers. It limits powers to those that in practice are likely to be used, rather than allowing a wider power. It also amends the parliamentary procedure so that only regulations that amend, repeal or revoke any provision in primary legislation will be subject to the affirmative resolution procedure, ensuring oversight in both Houses of Parliament by virtue of subsection (6) of the new clause.⁶²

Amendments consequential to the insertion in the Bill of New Clause 3 were also agreed. Tim Loughton described them as “minor technical amendments”.

⁶² [PBC Deb 18 July 2018 c35](#)

7. Other amendments

Amendments 9 and 10, in the names of Tim Loughton and Victoria Atkins, were agreed in Public Bill Committee. They amend what is now Clause 6: Extent, commencement and short title (then Clause 5 in the Bill as introduced).

The Member's explanatory statement for Amendment 9 was:

The amendment enables consequential amendments to be made to UK-wide legislation (even though the substantive changes to the law will relate to England and Wales only).

The Member's explanatory statement for Amendment 10 was:

The amendment provides for the Bill to come into force two months after it receives Royal Assent.

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).