



BRIEFING PAPER

Number CBP08609, 2 January 2020

Civil partnership for opposite sex couples

By Catherine Fairbairn

Contents:

1. Background
2. Civil partnership in England and Wales
3. Civil partnership in Scotland
4. Civil partnership in Northern Ireland



Contents

Summary	3
1. Background	5
1.1 Civil partnership	5
1.2 Why was eligibility for civil partnership not extended when marriage for same sex couples was introduced?	5
2. Civil partnership in England and Wales	6
2.1 Current position	6
2.2 Government consultation	6
2.3 Background to current position	7
Progress towards civil partnership for opposite sex couples	7
The Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019	8
The Civil Partnership (Opposite-sex Couples) Regulations 2019	8
Preceding draft Regulations	9
3. Civil partnership in Scotland	10
3.1 Civil partnership in Scotland	10
3.2 Review of civil partnership in Scotland	10
3.3 Civil partnerships to be made available to mixed sex couples	10
3.4 Civil Partnership (Scotland) Bill	11
4. Civil partnership in Northern Ireland	12
4.1 Change of law	12
4.2 Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019	12

Summary

This briefing paper deals with the extension of civil partnership to opposite sex couples across the UK.

Background

The [Civil Partnership Act 2004](#) (CPA 2004), which extends across the United Kingdom, created a union, at that time for same sex couples only, which is very similar, but not fully identical, to marriage. At the time the CPA 2004 was enacted, it was not possible for same sex couples to marry in any part of the UK. Civil partners have the same rights and responsibilities as married couples in many areas.

A separate Library briefing paper, [The future of civil partnership \(CBP 7856\)](#), provides background information about progress towards opposite sex civil partnership.

England and Wales

Eligible same sex couples have been able to register a civil partnership since December 2005. With effect from December 2019, eligible opposite sex couples may also register a civil partnership.

Same sex couples may convert their civil partnership to a marriage, if they wish. At present, opposite sex couples do not have this right to convert.

Government consultation

On 10 July 2019, the Government Equalities Office published a policy paper and consultation, [Implementing Opposite-Sex Civil Partnerships: Next Steps](#). The consultation, which closed on 20 August 2019, sought views on proposals to introduce a new right for opposite sex couples to convert from a marriage to a civil partnership for a limited period of time, before this right, and the existing right for same sex couples to convert from a civil partnership to marriage, is brought to an end.

The Civil Partnership (Opposite-sex Couples) Regulations 2019

The [Civil Partnership \(Opposite-sex Couples\) Regulations 2019](#) (the Regulations), which were made on 5 November 2019 and came into force on 2 December 2019:

- amend the eligibility criteria in the CPA 2004 to allow opposite sex couples to register civil partnerships under the law of England and Wales;
- amend the Marriage (Same Sex Couples) Act 2013 to maintain the current position on conversion rights, so that only same sex couples may convert their civil partnerships to marriage for now. The Explanatory Memorandum published with the Regulations states:

“This approach avoids making short-term changes ahead of the outcome of the public consultation on the future of conversion rights conducted earlier this year... Further regulations on conversion rights may follow next year, depending on the outcome of the consultation”;
- make consequential and related changes to primary and secondary legislation.

Scotland

Issues in relation to civil status are devolved. The Scottish Parliament can make changes to the status of civil partnership in Scotland.

At present, the CPA 2004 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.

4 Civil partnership for opposite sex couples

Following consultation, on 25 June 2019, the Scottish Government announced that a Bill would be introduced in the Scottish Parliament in the autumn to ensure that mixed sex couples and same sex couples have the same choices of marriage or civil partnership.

On 30 September 2019, the Scottish Government introduced the [Civil Partnership \(Scotland\) Bill](#) in the Scottish Parliament.

The Scottish Government now uses the term 'mixed sex' rather than 'opposite sex'.

Northern Ireland

At present, opposite sex couples may marry but may not register a civil partnership.

Because the Northern Ireland Executive was not restored on or before 21 October 2019, section 8 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#) came into force on 22 October 2019. This section requires the Secretary of State to make regulations, to come into force on or before 13 January 2020, to provide that, in Northern Ireland, same sex couples are eligible to marry, and opposite sex couples are eligible to register a civil partnership. Further information is provided in another Library briefing paper, [Marriage of same sex couples: Northern Ireland](#) (CBP 8646).

The [Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019](#), intended to give effect to this requirement, were made on 19 December 2019 and are due to come into force on 13 January 2020.

The Government intends to publish a consultation in January 2020 on (among other things) what conversion entitlements should be available to couples in Northern Ireland, with further regulations to follow later in the year.

1. Background

1.1 Civil partnership

The [Civil Partnership Act 2004](#), which extends across the United Kingdom, created a union, at that time for same sex couples only, which is very similar, but not fully identical, to marriage. At the time it was enacted, it was not possible for same sex couples to marry in any part of the United Kingdom. Civil partners have the same rights and responsibilities as married couples in many areas.

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

The [Marriage \(Same Sex Couples\) Act 2013](#), which extends to England and Wales, enables same sex couples to marry and 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.

On 11 December 2012, the Coalition Government published its [response](#) to its consultation on the introduction of marriage for same sex couples.¹ 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.²

¹ HM Government, [Equal marriage: The Government's response](#), December 2012

² Ibid, p26

2. Civil partnership in England and Wales

2.1 Current position

Eligible same sex couples have been able to register a civil partnership since December 2005. With effect from December 2019, eligible opposite sex couples may also register a civil partnership.

Same sex couples may convert their civil partnership to a marriage, if they wish.³ At present, opposite sex couples do not have this right to convert.

In December 2019, the Government published [a table](#) which sets out the similarities and differences between civil partnership and marriage in England and Wales for same sex and opposite sex couples.⁴

2.2 Government consultation

The [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Act 2019](#) requires the Secretary of State to consult before making regulations relating to conversion of marriage into civil partnership and vice versa.⁵ Any such regulations may also restrict current or newly created conversion rights or bring them to an end.

On 10 July 2019, the Government Equalities Office published a policy paper and consultation, [Implementing Opposite-Sex Civil Partnerships: Next Steps](#). The consultation sought views on the future of conversion rights:

At present, same-sex couples can convert their civil partnership to a marriage, enabling them to transition to a form of relationship that was not previously available to them. We are seeking views on whether opposite-sex married couples should similarly have an opportunity to convert their relationships to a civil partnership. The consultation also asks whether all conversion rights should then be brought to an end.⁶

On the same date, Penny Mordaunt, who was then Minister for Women and Equalities, made a written Ministerial Statement which set out information about the limited extent of the consultation:

Today we have published a paper entitled “Implementing Opposite-Sex Civil Partnerships: Next Steps”, setting out how we intend to implement opposite-sex civil partnerships by the end of this year. This includes important issues such as parental responsibility and parenthood, financial benefits and entitlements and the protections we intend to put in place for religious organisations in relation to civil partnerships. The Government have already sought views from key stakeholders on most of these issues. We intend, wherever appropriate, to extend existing rights that apply to same-sex civil partners or opposite-sex married

³ [Marriage \(Same Sex Couples\) Act 2013](#): conversion of civil partnerships to marriage has been possible since 10 December 2014

⁴ Gov.UK, [Marriage and civil partnership in England and Wales](#) Section 2

⁵ Gov.UK, [Civil Partnerships: Next Steps and Consultation on Conversion](#), 10 July 2019

couples to opposite-sex civil partners. This document is not, therefore, a formal consultation.

The issue on which we are keen to hear views is conversion into and out of marriage. We know that there are some opposite-sex married couples who would have preferred to form a civil partnership, had this option been available to them, and may therefore wish to convert their marriages to a civil partnership. We are seeking views on proposals to introduce a new right for opposite-sex couples to convert from a marriage to a civil partnership for a limited period of time, before bringing this and the existing right for same-sex couples to convert from a civil partnership to marriage to an end. In this way, couples will have an opportunity to choose the relationship that best suits them, following which marriage and civil partnership will be once and for all established as two distinct and different legal unions by ending movement between them. Our consultation on conversion rights “Civil Partnerships: The Future of Conversion Rights” has also been published today and runs until 20 August.⁷

The Minister stated that, although the Government was aiming for opposite sex couples to be able to register and form civil partnerships by the end 2019, any substantive changes on conversion were likely to follow in 2020, after the consultation exercise.⁸

The consultation closed on 20 August 2019. The Government is still analysing feedback to the consultation.⁹

2.3 Background to current position

Progress towards civil partnership for opposite sex couples

Following the implementation of the [Marriage \(Same Sex Couples\) Act 2013](#), same sex couples wishing to gain legal recognition for their relationship could choose between marriage and civil partnership. Until December 2019, opposite sex couples did not have this choice and could only marry.

A separate Library briefing paper, [The future of civil partnership](#),¹⁰ provides background information about progress towards opposite sex civil partnership, including about:

- calls for civil partnership to be available to opposite sex couples;
- the legal challenge which culminated in the Supreme Court declaring, in 2018, that the Civil Partnership Act 2004 was incompatible with the European Convention on Human Rights to the extent that it precluded a different sex couple from entering into a civil partnership;¹¹

⁷ [HCWS1705 \[on Opposite-sex Civil Partnership\]](#), 10 July 2019

⁸ Ibid

⁹ Gov.UK, [Civil Partnerships: Next Steps and Consultation on Conversion](#) [accessed 2 January 2020]

¹⁰ CBP 7856

¹¹ [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](#)

8 Civil partnership for opposite sex couples

- progress of the Bill which preceded the Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019.

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019

The [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Act 2019](#) began as a Private Member's Bill introduced by Tim Loughton (Conservative). Section 2 required the Government to make and bring into force regulations to extend civil partnership to eligible opposite sex couples in England and Wales by no later than 31 December 2019.

The Civil Partnership (Opposite-sex Couples) Regulations 2019

The [Civil Partnership \(Opposite-sex Couples\) Regulations 2019](#) (the Regulations) were made on 5 November 2019 and came into force on 2 December 2019.¹² An [Explanatory Memorandum](#) was also published.

In most cases, the Regulations provide for an opposite sex couple who form a civil partnership to be treated in law in the same way as a same sex couple who are in a civil partnership. There are some exceptions, most notably in the law relating to parenthood and parental responsibility. In these cases, the Regulations provide for an opposite sex couple who form a civil partnership to be treated instead in the same way as an opposite sex married couple.¹³

The Regulations:

- amend the eligibility criteria in the Civil Partnership Act 2004 to allow opposite sex couples to register civil partnerships under the law of England and Wales;
- amend the Marriage (Same Sex Couples) Act 2013 to maintain the current position on conversion rights, so that only same sex couples are able to convert their civil partnerships to marriage for now. The Explanatory Memorandum states:

This approach avoids making short-term changes ahead of the outcome of the public consultation on the future of conversion rights conducted earlier this year... Further regulations on conversion rights may follow next year, depending on the outcome of the consultation.

- make consequential and related changes to primary and secondary legislation.¹⁴

The Regulations include provisions dealing with a range of issues including religious protection, parenthood and gender recognition.

The Explanatory Memorandum sets out further detailed information.

¹² SI 2019/1458

¹³ [The Civil Partnership \(Opposite-Sex Couples\) Regulations 2019 Explanatory Memorandum, paragraph 2](#)

¹⁴ Ibid, paragraph 6.4

Preceding draft Regulations

The preceding draft Regulations were subject to the affirmative resolution procedure meaning that they required the approval of both Houses of Parliament before becoming law.

The draft Regulations were considered by the [Joint Committee on Statutory Instruments \(JCSI\)](#)¹⁵ and the [House of Lords Secondary Legislation Committee](#).¹⁶ Both Committees drew attention to the unequal conversion rights.

The House of Commons approved the draft Regulations following a debate in the Chamber on 31 October 2019.¹⁷

Junior Home Office Minister, Victoria Atkins, addressed the concerns about unequal conversion rights which had been raised by the JCSI:

Our approach on conversion—that is, conversion from marriage to civil partnership and vice versa—maintains a difference between opposite-sex and same-sex couples in their ability to convert their civil partnerships into marriages. Importantly, those two groups are not in a directly comparable position. The right to convert a civil partnership to marriage was introduced to enable same-sex couples to marry without having to dissolve their civil partnership as marriage had historically been denied to them. That same consideration does not apply to opposite-sex civil partners, who will always have been able to marry.

Even if same-sex and opposite-sex couples can be compared, the Government consider that maintaining the status quo in the short term is justified. Extending conversion rights to allow opposite-sex couples to convert their civil partnership to marriage now, while we are considering responses to the consultation, would risk creating uncertainty and confusion about future rights. We do not wish to introduce a new, potentially short-term conversion right that might subsequently be withdrawn in 2020.

Once we have made civil partnerships available to opposite-sex couples, our priority will be to resolve our longer-term position on conversion rights for all civil partners and to bring forward further regulations as soon as possible next year. I hope this reassures hon. Members that we have considered these issues carefully and we consider the regulations to be compliant with the Human Rights Act 1998.¹⁸

On 5 November 2019, following debate in the Chamber, the [House of Lords also approved the draft Regulations](#).

¹⁵ Joint Committee on Statutory Instruments, [Third Report of Session 2019](#), HL 13 HC 65-iii, 1 November 2019, pp3-5

¹⁶ Secondary Legislation Scrutiny Committee, [4th Report of Session 2019](#), HL Paper 17, 4 November 2019

¹⁷ [HC Deb 31 October 2019 cc586-592](#)

¹⁸ [HC Deb 31 October 2019 cc586-587](#)

3. Civil partnership in Scotland

3.1 Civil partnership in Scotland

Issues in relation to civil status are devolved. The Scottish Parliament could make changes to the status of civil partnership in Scotland.¹⁹

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.²⁰ 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.

3.2 Review of civil partnership in Scotland

A separate Library briefing paper, [The future of civil partnership](#),²¹ provides information about Scottish Government consultations in 2015 and 2018 on the future of civil partnership in Scotland.

The 2018 consultation sought views on the arguments for and against two options for change, to address the decision of the Supreme Court that the law on civil partnership was incompatible with the European Convention on Human Rights:

- making provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future; or
- making civil partnership available to opposite sex couples.²²

3.3 Civil partnerships to be made available to mixed sex couples

On 25 June 2019, the Scottish Government announced that a Bill would be introduced in the Scottish Parliament in the autumn to ensure mixed sex couples and same sex couples have the same choices of marriage or civil partnership.²³

The 2018 consultation paper used the term 'opposite sex' (as in, 'opposite sex' civil partnership), but the Scottish Government said that, following responses noting that this is neither inclusive of non-binary people nor reflective of the terminology used in marriage legislation, the term 'mixed sex' had instead been used throughout their report.²⁴

¹⁹ [Review of civil partnership A consultation by the Scottish Government, September 2015, paragraph 1.02](#)

²⁰ The [Parliament website](#) defines a legislative consent motion as follows: "A legislative consent motion is the means by which a devolved legislature indicates that it is content for the UK Parliament to pass a law on a devolved matter. Sometimes referred to as Sewel motions, they arise out of the convention that the UK Parliament will not normally legislate on a devolved matter without the consent of the relevant devolved legislature"

²¹ CBP 07856

²² Scottish Government, [The future of civil partnership in Scotland](#)

²³ Scottish Government News, [Civil partnerships to be extended to all](#), 25 June 2019 [accessed 2 January 2020]

²⁴ Scottish Government, [The future of civil partnership: analysis of consultation responses](#), 26 June 2019 paragraph 13

3.4 Civil Partnership (Scotland) Bill

On 30 September 2019, the Scottish Government introduced the [Civil Partnership \(Scotland\) Bill](#) in the Scottish Parliament. Progress of the Bill can be followed on the [Bill page on the Scottish Parliament website](#), which also has links to related documents.

4. Civil partnership in Northern Ireland

At present, opposite sex couples may marry but may not register a civil partnership. Same sex couples may register a civil partnership but may not marry.

4.1 Change of law

Because the Northern Ireland Executive was not restored on or before 21 October 2019, section 8 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#) came into force on 22 October 2019. This section requires the Secretary of State to make regulations, to come into force on or before 13 January 2020, to provide that, in Northern Ireland, same sex couples are eligible to marry, and opposite sex couples are eligible to register a civil partnership.

Further information is provided in another Library briefing paper, [Marriage of same sex couples: Northern Ireland](#).²⁵

4.2 Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019

The [Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019](#), intended to give effect to this requirement, were made on 19 December 2019 and are due to come into force on 13 January 2020.²⁶

An [Explanatory Memorandum](#) was also published. This sets out the purpose of the Regulations:

The purpose of this instrument is to allow same-sex couples in Northern Ireland and under Northern Ireland law to form a civil marriage and opposite-sex couples to register a civil partnership. It provides such couples with a range of associated rights and entitlements, ensuring that these relationships are recognised throughout the Northern Ireland statute book, in particular in relation to pensions and social security, but also in relation to children and families, and gender recognition. It also provides for how equivalent overseas relationships should be treated in Northern Ireland.²⁷

The Explanatory Memorandum also states that, in 2020, it is intended that further regulations will be made under section 8 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#):

These will follow a consultation on same-sex religious marriage and the associated protections for that, and conversion entitlements from civil partnership to marriage (and vice versa). A consultation on conversion entitlements in England and Wales

²⁵ CBP08646

²⁶ SI 2019/1514

²⁷ [Explanatory Memorandum to the Marriage \(Same-Sex Couples\) and Civil Partnership \(Opposite-Sex Couples\) \(Northern Ireland\) Regulations 2019](#), paragraph 2

was conducted in 2019. Given the various potential policy options and the need to ensure that protections balance the rights of religious bodies and religious couples who are in favour of same-sex marriage or opposite-sex civil partnership with the rights of those who are not, and taking into account the particular legal and religious landscape in Northern Ireland, it was decided that a consultation on these areas is necessary. This will allow full account to be taken both of the practical and operational issues in Northern Ireland, as well as relevant rights under the European Convention on Human Rights. A staggered approach to implementation was announced in Parliament on 21 October 2019.²⁸

The Government intends to publish its consultation in January 2020.²⁹

The Regulations are to affect civil partnership in Northern Ireland as follows:

Part 3 extends civil partnerships to opposite-sex couples in Northern Ireland by amending the definition of civil partnership and the eligibility criteria for registering as civil partners in the 2004 Act, to remove the same-sex requirement. The effect of the Regulations is to apply the current preliminaries of civil partnership in Northern Ireland to opposite-sex couples. It also amends Part 5 of the 2004 Act so that certain opposite-sex relationships formed in other countries, which are not marriages, can be treated as civil partnerships under Northern Ireland law.

Part 4 amends legislation relating to children and parenthood to provide opposite-sex parents in a civil partnership with generally the same rights as opposite-sex married parents. In particular the instrument extends the provisions governing legitimacy, presumed paternity and parental status (in cases of assisted reproduction), in cases where a child's mother and father are married, to cases where a child's mother and father are in a civil partnership with one another. It also provides for opposite-sex parents in civil partnerships to have the same rights and responsibilities as opposite sex married parents in respect of parental responsibility and registration of births.³⁰

²⁸ Ibid, paragraph 6.4

²⁹ Ibid, paragraph 10.3

³⁰ Ibid, paragraphs 7.6 and 7.7

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](#).