



Civil Partnership Act 2004 (Amendment) (Sibling Couples) Bill [HL]

HL Bill 25 of 2017–19

Summary

The [Civil Partnership Act 2004 \(Amendment\) \(Sibling Couples\) Bill \[HL\]](#) is a private member's bill introduced by Lord Lexden (Conservative). The Bill received its first reading in the House of Lords on 3 July 2017, and is scheduled to have its second reading on 20 July 2018.

The Bill intends to “amend the Civil Partnership Act 2004 [CPA] to include sibling couples”.¹ Lord Lexden provided the following paragraph on the purpose of the Bill:

Civil partnerships recognise in clear legal terms the value of close mutually supportive relationships outside traditional marriage. The exclusion of cohabiting blood relations from the right to form one is discriminatory. [The] Bill would begin the process of correcting a serious injustice. The rights that a civil partnership confers—inheritance of joint tenancies and pension rights, and of property free from tax—should be available to all long-term, financially inter-dependent cohabiting partners. [The] Bill represents the first step towards fairness and legal equality for platonic cohabittees by extending eligibility for civil partnerships to siblings over 30 years of age who have lived together continuously for twelve years.²

As set out in *Halsbury's Laws of England*, a civil partnership is a relationship between, and affording the same legal status and rights as a married couple, two people of the same sex which is formed when they register as civil partners of each other or which they are treated as having formed by virtue of having registered an overseas relationship.³ Two people are not eligible to register as civil partners of each other if they are not of the same sex, or if either of them is already a civil partner or is lawfully married.⁴ A civil partnership ends only on death, dissolution or annulment, or in the case of a civil partnership formed by registration in England and Wales or by registration abroad at British consulates or by armed forces personnel, on the conversion of the civil partnership into a marriage under the Marriage (Same Sex Couples) Act 2013.⁵

In 2018, the Supreme Court of the United Kingdom considered the ineligibility for different-sex couples to have a civil partnership. In the case of *Steinfeld and Keidan v Secretary of State for International Development*, a different-sex couple wished to formalise their relationship with a civil partnership, as they stated this most closely reflected their values and equal nature of their relationship, as opposed to marriage, which they considered to be historically patriarchal in nature.⁶ The Supreme Court unanimously allowed the couple's appeal, and declared relevant sections of the CPA—to the extent that they preclude a different-sex couple from entering into a civil partnership—incompatible with Article 14 and Article 8 of the European Convention on Human Rights. In light of the court's decision, the Government stated that it had already committed to further work on civil partnerships, and that its plans were set out in the paper, [The Future Operation of Civil Partnership: Gathering Further Information](#).⁷ It stated that these plans will be kept “under review in light of the recent Supreme Court judgment”.

By virtue of clause 1(2) of Lord Lexden’s Bill, the CPA would be amended to insert a new section 1A to include two persons who are considered to be a sibling couple. By virtue of clause 1(3), sibling couples would be made up of either brothers, sisters, half-brothers and half-sisters, both of whom would need to be aged over thirty years. To be eligible to register as civil partners, they would also need to have lived together for a continuous period of twelve years immediately prior to the date of registration and not already be married (as set out in the CPA). The Bill also provides for supplementary regulations to be made with respect to determining whether two siblings (as defined by the Bill) have lived together for the period of twelve years specified in section 1A. The Bill would extend to England and Wales, Scotland and Northern Ireland.

Cohabiting Rights

According to the Office for National Statistics (ONS), 51 percent of respondents to the British Social Attitudes Survey in 2008 thought that unmarried couples who live together for some time probably or definitely had a ‘common law marriage’ which gives them the same legal rights as married couples.⁸ However, this is a “myth” and there is no legal recognition of a ‘common law’ wife or husband.⁹ The law provides a “full array” of remedies to people who are married, or since 2005, have formed a civil partnership.¹⁰ The family law academic, Jane Sendall, has stated that, for cohabitants, “the law is a patchwork of remedies and lacks the cohesion of the law relating to spouses or civil partners”.¹¹ She also described it as “complex, uncertain, and expensive to litigate and not designed for families”, with “often very unjust conclusions to such proceedings”.¹² The differences in treatment, are seen in particular, in the areas of property rights; rights in relation to children; and rights on death.¹³ In 2008, two sisters who had lived together all their lives, and for 31 years in a jointly owned house, argued at the European Court of Human Rights that when one of them died, the surviving sister would be liable to pay inheritance tax, and accordingly, the law was discriminatory.¹⁴ The court found that there had been no discrimination.¹⁵

Prevalence of Cohabiting in General

According to the ONS, the fastest growing family type over the 20-year period was the cohabiting couple family (those not married nor in a civil partnership), which more than doubled from 1.5 million families in 1996 to 3.3 million families in 2017.¹⁶ The percentage of dependent children living in cohabiting couple families (including both opposite and same-sex couples) increased from 7 percent in 1996 to 15 percent by 2017.¹⁷

Potential Remedies Available to Sibling Cohabitants

With the Bill seeking to give siblings the right to register as civil partners, the following section compares some of those remedies available to civil partners with those that may be beneficial to sibling-cohabitants, as opposed to couple-cohabitants.

If a civil partnership breaks down, the courts have the power to resolve financial and property matters by virtue of the dissolution of the civil partnership under the CPA, whereas cohabitants have no specific rights or remedies and parties would need to negotiate to reach a settlement. In relation to property, unless it is jointly owned, cohabitants have no specific rights to ownership of each other’s property on relationship breakdown and proceedings can be taken in property and trust law—namely under section 14 of the Trust of Land and Trustees Act 1996.¹⁸ Whilst each case will be decided on its own facts, the court will use the rules of equity to determine the share that has been acquired in the property.¹⁹ One party may be found to have a beneficial (or equitable) interest in the property even

where the property is in the sole name of the other party; or to have a greater share than the other party where the property is held in joint names.²⁰

In the absence of a will, a surviving civil partner can still inherit some, or possibly all, of the property.²¹ In the case of cohabitants, the surviving cohabitant has no automatic right under the intestacy rules to inherit any part of his or her partner's property,²² though siblings may inherit under the intestacy rules.²³ Alternatively, a cohabitant may make a claim against the deceased's estate pursuant to the Inheritance (Provision for Family and dependants) Act 1975 (as amended by the CPA), subject to specific requirements.²⁴ In terms of inheritance, when a civil partner dies, transfer of property is exempt from inheritance tax, but a cohabitant left with the property may have to pay inheritance tax on it depending on its value.²⁵

In relation to inheritance of housing tenancies, the rules for succession vary between private and council tenancies. For example, the surviving civil partner or cohabitee will succeed a private regulated tenancy, but it is also possible for a family member to succeed if they were residing with the deceased for at least two years prior to death.²⁶ It is also possible for civil partners and cohabitees to inherit assured tenancies, but subject to requirements.²⁷ For secure council tenancies, the surviving civil partner can inherit the tenancy if it was also their home when then tenant died, whereas cohabitees can inherit subject to specific requirements, such as living with the tenant for at least twelve months prior to their death.²⁸

In relation to taxation, whilst there are both advantages and disadvantages to cohabitation rather than marriage or civil partnership, unmarried couples or same-sex cohabitants who have not entered into a civil partnership (or same-sex marriage) are "not treated as favourably as married couples or civil partners in relation to the current fairly limited allowances for tax relief".²⁹ For example, a spouse or civil partner on a lower rate income can transfer 10 percent of their personal allowance to their higher-income spouse or civil partner subject to requirements; married couples or civil partners may freely transfer sums between themselves; and married couples or civil partners may receive capital from their partner free of tax on death.³⁰

Scotland and Northern Ireland

In Scotland, under the Family Law (Scotland) Act 2006, cohabitants (opposite-sex and same-sex couples) may make limited claims against each other in the event of their relationship terminating or on the death of one cohabitant, but they do not have the same rights as married couples and civil partners.³¹ In Northern Ireland, cohabitants have legal protection in some areas. However, they and their families have fewer rights and responsibilities than those who are married or who have formed a civil partnership.³²

Legislative Attempts to Include Siblings into the Civil Partnership Act 2004

Family situations were considered at various stages during the passage of the Civil Partnership Bill ('the Bill'), now the Civil Partnership Act 2004. For example, Baroness O'Cathain (Conservative) successfully moved an amendment which would have extended the benefits of the Bill to family members who have lived together on a long-term basis.³³ She argued that in terms of "inheritance tax, joint assessment for income-related benefit and tenancy succession rights" the position for family members "is essentially the same as for single-sex couples", and therefore the Bill provided a "legal remedy for same-sex couples, but not family members".³⁴ In response, Baroness Scotland of Asthal, then Minister of State for the Criminal Justice System and Law Reform, stated that such changes should not be brought about through

the Bill. She stated “it would mark a serious departure from the way in which this country has traditionally looked at inheritance tax and capital gains. This is not a tax Bill”.³⁵ Highlighting comments made by the Bishop of Worcester, that family relationships come about by birth and not choice, she stated that the Bill was dealing with a “very different relationship, and one to which [the Government seeks] to give acknowledgement, is a relationship of choice between two adults who wish to commit their lives together”.³⁶ The amendment was overturned by the House of Commons, and Baroness O’Cathain’s retabled proposals were subsequently defeated in the House of Lords during its consideration of Commons amendments.³⁷

On 9 September 2015, Lord Lexden asked the Government why it had no plans to amend the Civil Partnership Act 2004 to enable siblings to register as civil partners.³⁸ The then Parliamentary Under Secretary of State at the Department for Communities and Local Government, Baroness Williams of Trafford, stated:

My Lords, the Government have no plans to amend the Civil Partnership Act 2004 to enable siblings to register as civil partners. Civil partnerships are the equivalent of a marriage: a loving union. They were created to enable same-sex couples to obtain legal recognition of their relationship at a time when marriage was not possible for them.³⁹

Lord Lexden questioned how the Government proposed to address the “injustice” that arose when one sibling died and the survivor had to sell the family home to pay inheritance tax from which civil partners were exempt.⁴⁰ Baroness Barker (Liberal Democrat) stated that siblings were already “next of kin” and described the proposal as “wholly inappropriate application of the legislation”.⁴¹ Lord Cashman (Labour) argued that the “commitment to a civil partnership is not about financial incentive but is an emotional commitment, as well as a celebration of that partnership in wider society”.⁴² In addition, Baroness Hollis of Heigham (Labour) questioned whether there “may well be a case for reviewing inheritance tax status” and highlighted the potential social security implications of the proposal that could make siblings financially responsible for each other.⁴³

On 2 February 2018, the issue was raised during the second reading of the Civil Partnerships, Marriages and Deaths (Registration Etc) Bill (a House of Commons private member’s bill), which included provisions to enable different-sex couples to enter into a civil partnership.⁴⁴ Sir Edward Leigh (Conservative MP for Gainsborough) raised the issue of two siblings living together all their lives, but when one of them dies, the other one potentially having to move out of their home due to the costs of inheritance tax. He argued that “only the Treasury stands in the way of righting this injustice; it is about money”, but hoped that the Bill may assist in due course.⁴⁵ In response, the Bill’s sponsor, Tim Loughton (Conservative MP for East Worthing and Shoreham), acknowledged that it was a “worthy cause”, but stated it was “different from enabling people to have their relationship recognised by the state”. Mr Loughton stated he “[did] not propose to deal with it at this stage”, as doing so “would make the Bill even more complicated than it already is”.⁴⁶ At the time of writing, the committee stage of this Bill is yet to be announced.⁴⁷

¹ [Civil Partnership Act 2004 \(Amendment\) \(Sibling Couples\) Bill \[HL\] 2017–19.](#)

² Paragraph provided to the Library by Lord Lexden upon the Library’s request.

³ *Halsbury’s Laws of England*, 2015, vol 73, paras 466–941.

⁴ *ibid.*

⁵ *ibid.*

- ⁶ [R \(on the application of Steinfeld and Keidan\) \(Appellants\) v Secretary of State for International Development \(in substitution for the Home Secretary and the Education Secretary\) \(Respondent\)](#) [2018] UKSC 32.
- ⁷ House of Commons, '[Written Question: Civil Partnerships: Heterosexuality](#)', 2 July 2018, 158342.
- ⁸ Office for National Statistics, [Statistical Bulletin: Families and Households: 2015](#), 5 November 2015, p 7.
- ⁹ Jane Sendall, *Family Law*, 2016, chapter 23, para 23.1.
- ¹⁰ *Butterworths Family Law Service*, 1A, chapter 7, para 3001.
- ¹¹ Jane Sendall, *Family Law*, 2016, chapter 23, para 23.2.
- ¹² *ibid.*
- ¹³ *Butterworths Family Law Service*, 1A, chapter 7, para 3024.
- ¹⁴ *Burden and Burden v United Kingdom* (2008) 44 EHRR 51.
- ¹⁵ *ibid.*
- ¹⁶ Office for National Statistics, [Statistical Bulletin: Families and Households: 2017](#), 8 November 2017, pp 3–8. This includes any type of 'cohabiting couple' (with or without children) that are not married and are not in a civil partnership. It includes both same-sex and opposite-sex couples. There are no statistics available specifically on sibling cohabitation.
- ¹⁷ *ibid.*
- ¹⁸ House of Commons Library, '["Common Law Marriage" and Cohabitation](#)', 14 June 2018, p 9.
- ¹⁹ *ibid.*
- ²⁰ *ibid.*
- ²¹ Citizen's Advice, '[Living Together and Civil Partnership: Legal Differences](#)', accessed 10 July 2018.
- ²² *ibid.*
- ²³ Citizen's Advice, '[Who Can Inherit if There is No Will: The Rules of Intestacy](#)', accessed 19 July 2018.
- ²⁴ House of Commons Library, '["Common Law Marriage" and Cohabitation](#)', 14 June 2018, p 11.
- ²⁵ UK Government website, '[Inheritance Tax](#)', accessed 10 July 2018.
- ²⁶ Shelter, '[Regulated Tenancies](#)', accessed 10 July 2018.
- ²⁷ Shelter, '[Assured Tenancies](#)', accessed 10 July 2018.
- ²⁸ Shelter, '[Can You Inherit a Council Tenancy?](#)', accessed 10 July 2018.
- ²⁹ *Butterworths Family Law Service*, 1A, chapter 7, para 3069.
- ³⁰ *ibid.*
- ³¹ House of Commons Library, '["Common Law Marriage" and Cohabitation](#)', 14 June 2018, p 26.
- ³² *ibid.*, p 27.
- ³³ [HL Hansard, 24 June 2004, col 1362.](#)
- ³⁴ *ibid.*, col 1364.
- ³⁵ *ibid.*, col 1384.
- ³⁶ *ibid.*
- ³⁷ [HL Hansard, 17 November 2004, col 1481.](#)
- ³⁸ [HL Hansard, 9 September 2015, cols 1427–8.](#)
- ³⁹ *ibid.*
- ⁴⁰ *ibid.*
- ⁴¹ *ibid.*
- ⁴² *ibid.*
- ⁴³ *ibid.*
- ⁴⁴ UK Parliament website, '[Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill 2017–19](#)', accessed 6 July 2018.
- ⁴⁵ [HC Hansard, 2 February 2018, cols 1097.](#)
- ⁴⁶ *ibid.*
- ⁴⁷ UK Parliament website, '[Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill 2017–19](#)', accessed 6 July 2018.

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