

Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill

HL Bill 140 of 2017–19

Summary

The Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill is a private member's bill consisting of six clauses. The bill would facilitate the move from a paper-based system of marriage registration towards a partially electronic system (allowing several connected changes to how marriages are registered) and would grant opposite-sex couples the right to form civil partnerships (currently, only same-sex couples can form civil partnerships). It would also require the Government to publish reports on whether the law should be changed to allow the registration of pregnancy losses which occur before 24 weeks gestation and on whether coroners should be allowed or required to investigate still-births.

The bill was introduced in the House of Commons on 19 July 2017 by Tim Loughton (Conservative MP for East Worthing and Shoreham). The bill received its second reading in the House of Commons on 2 February 2018, and completed its stages with cross-party support on 26 October 2018. The bill was introduced in the House of Lords on 29 October 2018 and is sponsored by Baroness Hodgson of Abinger (Conservative). It is scheduled to have its second reading on 18 January 2019. The bill has Government support, with the explanatory notes prepared by the Home Office with the consent of Baroness Hodgson.

Provisions

Marriages and Civil Partnerships

Clause 1 would give the Secretary of State the power to make regulations enabling changes to be made to the Marriage Act 1949 providing for a new system of marriage registration in England and Wales. The provisions in clause 1 largely mirror those contained in the [Registration of Marriage Bill \[HL\] 2017–19](#), a private member's bill which completed its Lords stages on 24 July 2018.¹ It is intended that the new system would replace the signing of marriage register books with the signing of “marriage schedules” (or “marriage documents”, where ecclesiastical preliminaries have been observed), which would then be returned to register offices to be entered onto a new electronic marriage register. The explanatory notes set out the potential benefits of a move away from a hard copy system of registration, and emphasise that the content of ceremonies themselves would not be changed:

With the introduction of a schedule system there will no longer be a requirement for the system of quarterly returns as all marriage entries will be held on the single electronic register maintained by the Registrar General. The provisions of this Bill do not prevent churches or other religious buildings from keeping their own record of marriages. There is no change to the content of the marriage ceremony and couples will still be able to obtain a marriage certificate following the registration of their marriage.

The changes will also increase the security of marriage records by removing the requirement for open marriage register books and blank certificates to be held in churches and other religious buildings, where they can be a target of theft.²

The explanatory notes also state that the move to electronic registration would enable other changes to be made to what details are recorded on the marriage register. For example, the register could be amended so that both parents of parties are included on the register, rather than just the fathers' details.³ Indeed, when the bill was first introduced in the House of Commons, clause 1 simply required the Secretary of State to review the system of marriage registration to achieve this goal (the clause was replaced with the current provisions at committee stage). Clause 1 also contains a sunset clause, stating that no regulations may be made under the provisions once three years have passed since the date the first regulations are made.

Clause 2 would require the Secretary of State to make regulations granting opposite-sex couples the same right to enter into a civil partnership as same-sex couples. However, it would not change the other eligibility criteria set out in section 3(1) of the Civil Partnerships Act 2004, meaning it would not be available to those:

- already in a civil partnership or lawfully married;
- under 16; or
- within prohibited degrees of relationship (eg siblings, adoptive children etc).

When the bill was first introduced in the House of Commons, the clause would only have required a report from the Secretary of State on whether and how the law should be changed to enable opposite-sex couples to form a civil partnership. However, this was changed to a requirement to make regulations following an amendment at report stage.

The principle of allowing siblings to form civil partnerships is the subject of the [Civil Partnership Act 2004 \(Amendment\) \(Sibling Couples\) Bill \[HL\] 2017–19](#), a private member's bill currently before the House, sponsored by Lord Lexden (Conservative). The bill is currently awaiting a date for committee stage.⁴

The Office for National Statistics (ONS) has reported:

- There were 239,020 marriages between opposite-sex couples (a 3.4 percent decrease on the previous year) and 6,493 marriages between same-sex couples in England and Wales in 2015.⁵
- There were 908 same-sex civil partnerships formed in 2017, with 890 formed in 2016 and 861 formed in 2015.⁶
- That 3.3 million people were living as a 'cohabiting couple family' in 2017, compared to 12.9 million living as a 'married or civil partner couple family' and 2.8 million living as a 'lone parent family'. It also stated that the cohabiting couple family was growing the fastest.⁷

Still-Births and Pregnancy Losses

Clause 3 would require the Secretary of State to make arrangements for the publication of a report considering whether the law should 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. Currently, the law requires that still-births occurring after 24 weeks gestation be registered by a

registrar. However, there is no formal recognition of pregnancy losses before 24 weeks gestation, and these are not classified as still-births. The explanatory notes state that this can lead to less support being available for parents who suffer a pregnancy loss prior to the 24 week point:

Parents of babies who are still-born receive a medical certificate certifying the still-birth and, upon registration, can register the baby's name and receive a certificate of registration of still-birth. When a pregnancy ends before 24 weeks gestation, however, there is no formal process for parents to legally register the loss.

Many of the care considerations for parents experiencing a still-birth will be similar for those experiencing a pregnancy loss which occurs before 24 weeks gestation. Local policies, however, may affect the type and place of care offered or available depending on the gestation when pregnancy loss occurs. In particular, registration certificates are often greatly valued by parents as a way of recognising and naming their baby. Some parents who experience a pregnancy loss find it very distressing that they are unable to legally register their loss.⁸

In addition, clause 4 would require the Secretary of State to arrange the publication of a report considering whether there should be changes to the law enabling or requiring coroners to investigate still-births. The clause would also give powers to the Lord Chancellor to make regulations based on the report's recommendations. Currently coroners can only investigate the deaths of babies who showed signs of life after being born (or to look into whether there should be an investigation if there were any doubts over whether a baby was still-born).⁹ The report and regulations may specify circumstances in which investigations should take place; for example, they may provide that the duty to investigate still-births may only apply after a specified gestation period.¹⁰ The explanatory notes highlighted work being done in other areas to monitor still-births, and stated that coroners may also be able to contribute to attempts to learn from and reduce the still-birth rate:

In November 2017, the then Secretary of State for Health and Social Care announced that the Healthcare Safety Investigation Branch¹¹ would conduct independent investigations into all English cases of term intrapartum still-birth, neonatal and maternal death and birth-related brain injuries (as defined by the Royal College of Obstetricians and Gynaecologists' ['Each Baby Counts'](#) criteria). There is however a question of whether coroners should have a role to play in investigating still-births to contribute to learning and reducing the still-birth rate.¹²

The ONS has reported that, in 2017, the number of still-births in England and Wales was 2,873, a fall of 7.7 percent from 3,112 in 2016.¹³ The rate per 1,000 births also fell from 4.4 to 4.2 in 2017, which it stated was the lowest rate on record. However, these figures would not cover pregnancy losses suffered prior to 24 weeks gestation, as these are not currently recorded. Tommy's, a charity which funds research into pregnancy losses, estimated that 1 in 4 pregnancies may end in miscarriage (defined as a pregnancy loss within the first 24 weeks).¹⁴

Miscellaneous

Clause 5 would make supplementary provisions about the regulations provided for under the bill. Clause 6 sets out information on the bill's commencement and territorial extent; in general, the bill's provisions would only apply to England and Wales.

House of Commons Stages

Second Reading

Introducing the bill at second reading, Tim Loughton stressed the four objectives of his bill as introduced:¹⁵

- to progress work on how the Government can extend civil partnerships to opposite-sex couples;
- to allow mothers' names, or second parent names, to be included on marriage and civil partnership certificates;
- to amend the definition of a still-born child in the Births and Deaths Registration Act 1953 to include the "formal recording of a child who is still-born in the usual way" before the current threshold of 24 weeks gestation; and
- to give coroners the power to investigate "late-stage still-births if, for example, there is suspected medical negligence".

Addressing the civil partnership provisions, he praised the Civil Partnerships Act 2004, which enabled same-sex couples to contract civil partnerships, describing it as "long overdue", but believed the subsequent Marriage (Same Sex Couples) Act 2013 had highlighted an "unintended new inequality" whereby opposite-sex couples could not form a civil partnership.¹⁶ He stated that there was a great deal of public support for the proposed change (indicating, for example, that 80,000 people had signed a petition calling for it), and outlined three reasons he believed it was important: to address the current inequality in the legislation; to encourage family stability; and to tackle the "common misconception" regarding the principle of common law wives or husbands.¹⁷ Regarding the latter point, he stated:

Particularly worrying is the common misconception that there is such a thing as a common-law wife or husband, as a woman typically finds out abruptly on the death of the partner when there is an inheritance tax bill on the estate and potentially on the family home. If a woman has a child with her partner and the relationship breaks down, she is not entitled to any form of financial support if they are not married. There is no automatic entitlement to property, even if she had been paying into the mortgage.¹⁸

Turning to his marriage registration proposals, he described the recording of the fathers' details only as an "anachronism".¹⁹ He explained that he was aware that one of the issues preventing this being changed was the current hard copy method of marriage registration, whereby "hard-copy register books are held in churches and other religious establishments as well as register offices".²⁰ He noted that it amounted to 84,000 open register books in 30,000 churches and religious buildings, making it a large undertaking to change each one. Therefore, he called for moves towards an electronic system, and highlighted government support for the principle.

Regarding the provision on still-births, Tim Loughton stated that it was of great importance to parents, as being able to have a baby formally recognised if they died prior to the 24 weeks gestation period could offer closure and better support in traumatic circumstances. He highlighted a number of expressions of support he had received on this basis. In addition, he noted it would enable better monitoring of the number of pregnancy losses. Therefore, he called for the Government simply to review the area:

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.²¹

Turning to investigations by coroners of still-births, he reasoned this could help in circumstances where it is believed delivery may have been “mismanaged”.²² He stated it would reassure parents that hospitals are doing everything possible to ensure deliveries are safe, and that it would improve transparency and would ensure lessons were learnt from such cases. Again, he stated that he was leaving it to the Government to decide how to proceed, but indicated his preference would be for the change to apply to “late-term still-births” and for “discretion to remain with coroners to determine which deaths they wished to investigate”. He stated that he had received reassurances from coroners that they would have capacity to take on the additional investigations, and believed it would cut down on related litigation.

The bill was supported by Labour MPs speaking in the debate, including the Shadow Minister for Public Health, Sharon Hodgson. Speaking to the bill, Ms Hodgson stated that she supported all four parts of it “wholeheartedly”, and particularly welcomed the provisions relating to civil partnerships and pregnancy losses occurring before 24 weeks.²³

The bill was also supported by the Parliamentary Under Secretary of State (Minister for Women), Victoria Atkins, who commended Tim Loughton’s hard work on the subject.²⁴ She indicated the Government would be working with Mr Loughton to agree amendments to the bill at committee stage and at report stage to shape the final clauses on civil partnerships and marriage registration. Indeed, she stated that Mr Loughton had already agreed to replace clause 1 of the bill with the provisions contained in the Registration of Marriage bills which had been introduced in both Houses this session.²⁵ She highlighted estimates that the changes to marriage registration could save £33.8 million over the next ten years, and stated that it would allow the register to be modified to reflect the changing nature of family circumstances (for example, it could allow details of same-sex parents).

On civil partnerships, Ms Atkins stated that the Government was only in a position to commit to producing a report on how to resolve the issue at that time, as it still needed to undertake four strands of work and analysis on the subject.²⁶ However, she stated that the Government was committed to resolving the issue as a matter of urgency.

Regarding still-births and pregnancy losses, the Minister stressed the Government’s view that it was important to fully consider how the laws should be changed in these areas.²⁷ For example, regarding pregnancy losses occurring before 24 weeks, she stated:

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.²⁸

As such, she emphasised the Government’s opinion that undertaking a review in both areas, as set out in the bill, was the best way to proceed.

Committee Stage

In addition to a number of miscellaneous amendments made to the bill, three new clauses were added to the bill at committee stage, with each being agreed without a division. The third of these new clauses (clause 6 of the current bill) would make supplementary provisions about the regulations provided for in

the bill. The first new clause (clause 1 of the current bill) replaced the original clause 1 with the provisions of the two Registration of Marriage bills before the House. Tim Loughton gave details on how the new clause would operate, and reiterated that it would now allow registration to be adapted so that mothers' details could be included on the marriage entry.²⁹ He described it as the biggest reform to how marriages are registered since 1837. The new clause was tabled jointly with Victoria Atkins, who gave thanks to Dame Caroline Spelman (Conservative MP for Meriden) for her work on the Registration of Marriage (No. 2) Bill.³⁰

The second new clause would have required the Government to prepare a report setting out how the law might be changed to bring about equality for opposite and same-sex couples regarding the forming of civil partnerships. Although the clause was supported by all parties at the session, many MPs, including Tim Loughton and Andy Slaughter (Labour MP for Hammersmith), pressed the Government to go further with the clause, calling for it to immediately commit to change the law so that opposite-sex couples could form civil partnerships. In doing so, they referred to recent supportive statements by the Minister for Women and Equalities, Penny Mordaunt, and to a recent Supreme Court judgment³¹ that criticised the Government's failure to address the inequality.³² In response, Victoria Atkins again emphasised that the Government was working on how to address the issue as a matter of urgency. However, pending the completion of this work, the minister urged support for the new clause then before the House.³³

Report Stage and Third Reading

At report stage, the civil partnerships clause was replaced with the clause in the current bill (clause 2). The new clause, tabled by Tim Loughton and supported by a number of MPs from across the House, would require the Government to make regulations changing the law so that opposite-sex couples could form civil partnerships. It followed an announcement by the Prime Minister, Theresa May, in October 2018 supporting the change.³⁴ However, the Government indicated during the debate that it was not actively supporting the new clause tabled against the bill, but would also not be opposing it. Explaining its reasons for this, the Minister of State for Immigration, Caroline Nokes, stated that, although it supported the general principle of extending civil partnerships to opposite-sex couples, it still believed there were a number of issues to be worked out.³⁵ Therefore, the Government continued to advocate for a consultation on the subject, followed by a bill of its own:

I am disappointed that the amendment tabled today seeks to replace the provisions in clause 2, particularly the requirement for Government to consult and report to Parliament on the way in which they intend to equalise civil partnerships between same-sex and other couples. We particularly supported this original requirement, as we see consultation prior to the implementation of the extension of civil partnerships as key in both helping us to set out the Government's views on the issues [...] as well as getting a broader view of the implications of the various options.³⁶

The minister also expressed concerns that the new clause introduced a "wide-ranging" delegated power, stating:

We are not yet in a position to know precisely what will be required legislatively, which is why it would be too risky to take a power to change the law by secondary legislation when we are not yet able to explain how we intend to use that power.³⁷

Despite these concerns, the Government did not oppose the clause.

Speaking in defence of the new clause, Tim Loughton believed it was important to get a timescale in place for the law change, and suggested that it could actually be beneficial to the Government:

My Bill, with the addition of this new clause, is actually very helpful to the Government on a number of fronts. It confirms in law that civil partnerships will be equalised, and that the breach with the convention will be rectified. It gives a clear cut-off date for the Government to get on and do it, and it would be effective before the end of next year [...] A couple who have been looking to have a civil partnership rather than a marriage—for all the reasons we have debated at length—could make plans from the end of next year to make that a reality. Many people have waited years, and the Government have been on notice about this for years. This is now the time to end the delay.

Crucially, the new clause makes no prescription about the method, wording and reach of the legislative change that is required; that is entirely up to the Government. I know there are some technical matters still to be settled, and I do not want to dictate to them how we achieve that. That is why this is a very flexible amendment to what is a very flexible Bill.³⁸

The new clause was subsequently added to the bill without a vote.

Speaking to the bill at third reading, Tim Loughton thanked the House for supporting the bill, and thanked the Government for working with him during its progress. Although he recognised that it could set tight timeframes for the Government, he believed it resolved a number of “iniquities and inequalities” and that the changes it would bring about were “long overdue”.³⁹ Speaking for Labour, Sharon Hodgson praised Tim Loughton for his hard work on the bill and welcomed the Government’s acceptance of its provisions.⁴⁰ She described it as a “unique bill”, and expressed her view that the clauses “will help to ensure more equality and fairness in all four of the very different areas that we are discussing”. The Government minister, Caroline Nokes, also welcomed the bill’s progress, highlighting the positive changes it would make in a number of different areas.⁴¹ However, she again expressed some reservations regarding the work to be done to implement the new civil partnerships clause:

On civil partnerships, the Bill certainly sets the Government a challenge, particularly on timing. As I pointed out, there is a great deal of work to be done, including a substantial legislative trawl to ensure that the existing statute book works for opposite-sex civil partnerships. There are policy decisions to be made, and consultations on issues such as the conversion and dissolution of marriages and civil partnerships, as well as the resolution of cross-border issues. Although the Government are firmly committed to equal civil partnerships, for all those reasons, we must ensure that we proceed carefully and thoroughly, as I am certain we will.⁴²

The bill was read a third time without a vote.

Further information on each of the areas covered in the bill can be found in the House of Commons Library briefing, [Civil Partnerships, Marriages and Deaths \(Registration Etc\) Bill: Committee Stage Report](#) (24 October 2018).

-
- ¹ For further details on this bill, see: House of Lords Library Briefing, [Registration of Marriage Bill \[HL\]](#), 19 January 2018.
- ² [Explanatory Notes](#), p 3.
- ³ *ibid.*
- ⁴ For further information on the bill, see: House of Lords Library Briefing, [Civil Partnership Act 2004 \(Amendment\) \(Sibling Couples\) Bill \[HL\]](#), 13 July 2018.
- ⁵ Office for National Statistics, [Marriages in England and Wales: 2015](#), 28 February 2018.
- ⁶ Office for National Statistics, [Civil Partnerships in England and Wales: 2017](#), 16 August 2018.
- ⁷ Office for National Statistics, [Families and Households: 2017](#), 8 November 2017.
- ⁸ [Explanatory Notes](#), p 3.
- ⁹ *ibid.*
- ¹⁰ *ibid.*, p 8.
- ¹¹ Healthcare Safety Investigation Branch, '[Statement on Maternity Investigations](#)', 28 November 2017.
- ¹² [Explanatory Notes](#), pp 3–4.
- ¹³ Office for National Statistics, [Births in England and Wales: 2017](#), 18 July 2018.
- ¹⁴ Tommy's, '[Miscarriage Statistics](#)', accessed 10 January 2018.
- ¹⁵ [HC Hansard, 2 February 2018, cols 1096–7.](#)
- ¹⁶ *ibid.*, col 1097.
- ¹⁷ *ibid.*, cols 1098–100.
- ¹⁸ *ibid.*, col 1100.
- ¹⁹ *ibid.*, col 1104.
- ²⁰ *ibid.*, col 1105.
- ²¹ *ibid.*, col 1108.
- ²² *ibid.*, col 1109.
- ²³ *ibid.*, cols 117–19.
- ²⁴ *ibid.*, cols 119–20.
- ²⁵ *ibid.*, col 1123. See, for example: [Registration of Marriage Bill \[HL\] 2017–19.](#)
- ²⁶ *ibid.*, cols 1120–1.
- ²⁷ *ibid.*, cols 1123–5.
- ²⁸ *ibid.*, col 1124.
- ²⁹ [Public Bill Committee, Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill, 18 July 2018, 1st sitting, col 6.](#)
- ³⁰ *ibid.*, col 8.
- ³¹ [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.](#)
- ³² [Public Bill Committee, Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill, 18 July 2018, 1st sitting, cols 10–14.](#)
- ³³ *ibid.*, cols 14–20.
- ³⁴ Joe Murphy, '[Straight Couples to Be Allowed to Enter Civil Partnerships, Theresa May Reveals](#)', *Evening Standard*, 2 October 2018.
- ³⁵ [HC Hansard, 26 October 2018, cols 560–4.](#)
- ³⁶ *ibid.*, col 562.
- ³⁷ *ibid.*, col 563.
- ³⁸ *ibid.*, col 557.
- ³⁹ *ibid.*, col 569.
- ⁴⁰ *ibid.*, cols 569–70.
- ⁴¹ *ibid.*, cols 584–7.
- ⁴² *ibid.*, col 585.
-

House of Lords Library briefings are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the briefings with the Members and their staff but cannot advise members of the general public.

Any comments on briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.