



## BRIEFING PAPER

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# Inheritance tax and civil partnerships

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## Summary

Inheritance tax (IHT) is levied on the value of a person's estate at the time of their death. It is charged at 40% above the nil-rate band, which is set at £325,000 for 2019/20. Certain gifts are exempt from tax irrespective of their size, and irrespective of whether they are made during one's life or made under the terms of one's will. Since the introduction of inheritance tax in 1986, this class of exempt transfers has included any transfer made to one's spouse.<sup>1</sup>

In June 2003 the Labour Government proposed the introduction of civil partnerships: a new legal status for same-sex couples. Many of those responding to the Government's consultation exercise argued that the IHT relief for transfers between spouses should be extended to couples in civil partnerships.

The *Civil Partnership Act 2004* received Royal Assent on 18 November 2004 and took effect from 5 December 2005. The Act contained provisions to replicate the rights and responsibilities of opposite-sex couples for same sex-couples in relation to certain tax credits and social security benefits only. However, during the passage of this legislation the Government made it clear that civil partners would be treated in the same way as married couples for tax purposes, and provisions to this effect were included in the *Finance Act 2005*.

At the time of this reform some commentators argued that the Government should extend IHT relief to siblings as well as couples, but without success. Despite a long-running court case which concluded in an unsuccessful appeal to the European Court of Human Rights in April 2008, it remains the case that this IHT relief is restricted to spouses and civil partners.

This note looks at the debate that was had on the way spouses, civil partners and siblings are treated for the purposes of IHT in the context of the introduction of civil partnerships. The issue has not come up very often since the passage of this legislation, although the Government has recently reiterated its opposition to extending civil partnerships to siblings in relation to a Private Members Bill, tabled this Session in the House of Lords by Lord Lexden, which sought to make this change.<sup>2</sup>

The *Marriage (Same Sex Couples) Act 2013* now enables same sex couples to marry.<sup>3</sup> It also enables civil partners to convert their partnership to a marriage, if they wish. At present, civil partnerships may be registered only by same sex couples. However, section 2 of the *Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019* requires 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. This issue is examined in a second Commons Briefing paper.<sup>4</sup>

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<sup>1</sup> For more details, see [Inheritance tax: a basic guide, Commons Briefing paper CBP573](#), 5 July 2019.

<sup>2</sup> [PO HL 270808, 23 July 2019](#)

<sup>3</sup> In England & Wales. The *Marriage and Civil Partnership (Scotland) Act 2014* enables same sex couples to marry in Scotland.

<sup>4</sup> [Civil partnership for opposite sex couples](#), Commons Briefing paper CBP8609, 11 July 2019

# 1. Exemption for gifts between spouses

Inheritance tax (IHT) is levied on the value of a person's estate at the time of their death. It is charged at 40% above the nil-rate band, set at £325,000 for 2019/20. Receipts from the tax are forecast to be £5.3 billion in 2018/19.<sup>5</sup> It is estimated that the tax was paid on 21,000 estates at death in 2017/18, representing under 4% of all deaths.<sup>6</sup>

When calculating the taxable value of a person's estate, transfers made out of someone's estate within seven years of their death are included (although there are some gifts which one can make in the last seven years of one's life which do not attract tax). Certain gifts are exempt from tax irrespective of their size, and whether they are made during one's life or made under the terms of one's will.<sup>7</sup> This class of exempt transfers includes a gift made to one's spouse or civil partner.<sup>8</sup>

Historically the exemption for gifts made to one's spouse was limited to £55,000, if one's spouse was not 'domiciled' in the UK – that is, the UK was not their permanent home. Since 2013/14 this has been set equal to the nil rate band, and a non-domiciled spouse or civil partner has the option to be treated as having UK domicile for IHT purposes.<sup>9</sup>

The exemption for spousal transfers has been a feature of inheritance tax since its introduction in 1988. It was also a feature of capital transfer tax – which inheritance tax replaced – introduced in 1974.<sup>10</sup> Clearly this reflects a long-standing consensus that marriage is a unique relationship, and its status should inform the way someone's estate is taxed after their death. As the debate over gay marriage emerged in the early years of the new century, some commentators highlighted this relief as a prominent example of the way the law in the UK discriminated against single sex couples.

During the 2001-02 session two Bills came before Parliament to establish a scheme for civil partnership registration - a method for both opposite and same sex couples to provide their relationship with a legal identity, so as to obtain certain of the rights and responsibilities that traditionally have been only extended to married couples: Jane Griffith MP's *Relationships (Civil Registration) Bill* (Bill 36 of 2001-02) and Lord Lester's *Civil Partnerships Bill* (Bill 41 of 2001-02). Neither Bill made any progress beyond the second reading stage; in the latter case, Lord Lester decided not to proceed with his Bill as the Government had given a commitment to review the issues raised. Notably when Lord Lester

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<sup>5</sup> OBR, *Economic & Fiscal Outlook*, CP 50, March 2019 ([Table 4.3](#)).

<sup>6</sup> HMRC, *Statistics: Numbers of taxpayers and registered traders*, May 2019; ONS, *Vital Statistics: Population and Health Reference Tables*, November 2018.

<sup>7</sup> The main provisions relating to this tax are consolidated in the [Inheritance Tax Act \(IHTA\) 1984](#), as amended.

<sup>8</sup> Under section 18 of *IHTA 1984*.

<sup>9</sup> *Budget 2013*, HC 1033, March 2013 para 2.77. Statutory provision for this is made by [s18 of IHTA 1984](#).

<sup>10</sup> For more background on the development of the tax see, [Inheritance tax, Commons Briefing paper CBP93](#), 5 July 2019.

introduced his Bill on second reading in the Lords, he argued that same-sex couples were unfairly penalised because IHT relief was restricted to married couples (*emphasis added*):

In England and Wales, when it comes to important questions of inheritance, pensions, next-of-kin entitlements and social security, cohabitants cannot obtain full recognition of their relationship ... *Unmarried couples who cohabit face immense and distressing difficulties in securing legal recognition of their caring and enduring family lives.* They do not enjoy full rights to communal property, or the right to be treated as next of kin by state agencies such as hospitals in the event of serious illness, or to make beneficial pension and life assurance arrangements. *Unlike widows and widowers, they are not relieved from inheritance tax on the death of their partner.*

Gay people have notoriously experienced cruel treatment after their partners have died, especially if they died intestate, when members of the family of the deceased partner, refusing to accept the relationship, have taken over the home and the property which the partners have shared in common for many years. It is even uncertain whether cohabitation contracts are enforceable in English law.<sup>11</sup>

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<sup>11</sup> HL Deb 23 January 2002 cc1692-3. See also, [Relationships \(Civil Registration\) Bill and Civil Partnerships Bill \(HL\) \(Bill 36 and HL Bill 41 of 2001-02\)](#), Commons Briefing paper 02/17, 19 March 2002.

## 2. The introduction of civil partnerships

### 2.1 The Labour Government's consultation (2002-03)

In February 2002 the Labour Government announced that it was "taking forward a cross-departmental exercise to examine all the issues relevant to civil partnerships in detail."<sup>12</sup> In June 2003 it published a consultation paper on "proposals for the creation of a new legal status for those same-sex couples wishing to have their relationships recognised in law."<sup>13</sup> The paper did not make any concrete proposals as to how a civil partnership might be recognised by the tax system:

The Government recognises that there would be implications for the tax system from any civil partnership registration scheme that is introduced. To ensure fairness, the Government believes that the tax system should, wherever possible, adapt to reflect changes in society. It will therefore consider the implications for the tax system of any scheme that is introduced following the outcome of this consultation and, as is usual for tax matters, in the context of the Budget process.<sup>14</sup>

An overwhelming majority of respondents – some 83 percent – supported the introduction of civil partnerships,<sup>15</sup> and "legislation on the registration of civil partnerships between same sex couples" was one of the measures in the Queen's Speech on 26 November 2003.

Many respondents to the consultation on civil partnerships were critical of the fact that the consultation paper had said little about taxation, as the Government noted in a report on the consultation, published at the time of the Queen's Speech:

A large number of people raised concerns that the consultation document did not sufficiently address issues surrounding inheritance tax, and sought confirmation that civil partners would be granted the same rights as spouses under any new legislation.

The comments showed that many respondents felt it would be unacceptable if the proposals did not contain sufficient provision for the transfer of assets without payment of inheritance tax upon the death of a civil partner.

"I am particularly keen to see this introduced quickly as I have a very close friend who is one half of a lesbian couple with twelve-year-old twins. She is dying of breast cancer. The effect on her partner will be to force her to sell their jointly owned house and uproot the children at a very difficult time in their lives. Her prognosis is a maximum of two years. This legislation may be too

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<sup>12</sup> HC Deb 14 February 2002 c533W

<sup>13</sup> HC Deb 30 June 2003 c2WS

<sup>14</sup> Women & Equality Unit, *Civil Partnership: a framework for the legal recognition of same-sex couples*, June 2003 para 6.6

<sup>15</sup> DTI press notice P/2003/570, 20 November 2003

late for her, but please do all you can to limit its effect on others.”<sup>16</sup>

In its response, the Government acknowledged “exemption from inheritance tax is a key issue for many same-sex couples”, adding, “the Budget process will take full account of the comments that have been received as part of the consultation process and their implications for the tax system.”<sup>17</sup>

In its response to the Government’s consultation the Tax Law Review Committee suggested that civil partnerships could be accorded the same tax treatment as married couples, but pointed to an underlying confusion in the approach taken by the tax system to marriage:

Despite the introduction of independent income taxation in 1990,<sup>18</sup> the tax system overall is neither neutral nor consistent with respect to marital status. For some purposes it matters critically whether two people of opposite sex are married or not, regardless of whether they are living together or separated (in some sense of that word); and in some cases, particularly in relation to inheritance tax, a former marriage is also relevant.

For other purposes it is critical to know of a married couple whether they are “living together”, in the meaning of the Taxes Act ... or not, i.e. they are permanently living separately (although possibly in the same property). For yet other purposes it is critical to know of an unmarried couple whether they are “living together as husband and wife” (they could even be divorced from each other but reconciling), which is decided by reference to established social security case law and practice.

To some extent these differences reflect different policy objectives. A husband and wife living together may be regarded as “independent” but they are clearly not “separate” in the same sense as two wholly unconnected individuals drawn at random from the population. They are however “separable”, most obviously through divorce, so that their relationship is different to that of blood relatives. The different policy objectives of income taxation and income support as applicable to married or cohabiting couples were clearer when the latter was within the Department of Social Security rather than the Inland Revenue [the revenue authority responsible for direct taxes, which was merged in 2005 with HM Customs & Excise to form HM Revenue & Customs]. Now that the two have been brought together in the system of “tax credits”, the differences in approach and detail are more striking by virtue of their juxtaposition.<sup>19</sup>

The Committee went on to discuss the way in which marital status was important in relation to inheritance tax, arguing that the exemption for transfers at death between married couples was “easily the most quantitatively important tax consequences of marriage”:

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<sup>16</sup> Women & Equality Unit, [Responses to Civil Partnership - A framework for the legal recognition of same-sex couples](#), November 2003 p18

<sup>17</sup> *ibid.*

<sup>18</sup> Prior to this major reform, a married woman’s income was treated as part of her husband’s total income and taxed as such.

<sup>19</sup> TLRC, [Response to Civil Partnership: a framework for the legal recognition of same-sex couples](#), September 2003 pp 3-4. [The Committee](#) was set up by the Institute for Fiscal Studies in 1994 to review the state and operation of tax law in the UK.

## 8 Inheritance tax and civil partnerships

In press coverage of the civil partnership proposals, the so-called “surviving spouse” exemption from inheritance tax has been prominent.

*A transfer of value is an exempt transfer to the extent that the value transferred is attributable to property which becomes comprised in the estate of the transferor’s spouse or, so far as the value transferred is not so attributable, to the extent that the estate is increased* (IHTA 1984, section 18(1)).

For the purpose of applying this inheritance tax exemption, it is completely irrelevant whether the two spouses are living together, in any sense, or separated. For certain esoteric purposes of the inheritance tax it may matter whether the spouses are resident or domiciled in different countries, but ordinarily that will usually be clear. The operation of this provision appears to be straightforward, in practice. A recent Special Commissioners’ decision<sup>20</sup> has confirmed that, in England and Wales, “spouse”, a term that is not explicitly defined anywhere in the tax statutes, means a person who is legally married and does not include a person who has lived with another as husband and wife (contrast the established social security policy [discussed elsewhere in the Commission’s paper]) ...

The Inland Revenue estimate the cost of the surviving spouse exemption in terms of inheritance tax forgone at £1.4 billion, and as such it is easily the most quantitatively important tax consequence of marriage.<sup>21</sup>

### 2.2 The Civil Partnerships Bill 2003-04

The *Civil Partnerships Bill [HL] 2003-04* was published on 31 March 2004. Details were given in a press notice, from which the following extract is taken:

Under the Civil Partnership Bill, same-sex couples would be able to make a formal, legal commitment to each other by entering into a civil partnership. At present same-sex couples have no way of gaining formal legal recognition of their relationships. A range of rights and responsibilities would flow from entering a civil partnership, helping same-sex couples to organise their lives together. The main provisions in the Bill include:

- Responsibility to provide reasonable maintenance for civil partners and children of the family;
- full recognition for the purposes of life assurance;
- ability to succeed to tenancy rights;
- social security and pension benefits; and
- ability to gain parental responsibility for their civil partner’s children ...

The process of entering a civil partnership would be administered by the local registration service. On the day of registration, each member of the couple would sign the register in the presence of

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<sup>20</sup> *K E Holland as executor of M J Holland deceased v. CIR*, SPC00350, November 2002; on the central question of the meaning of “spouse”, *Dyson Holdings Limited v Fox* [1976] QB 503 was followed.

<sup>21</sup> TLRC, [Response to Civil Partnership: a framework for the legal recognition of same-sex couples](#), September 2003 p15. HMRC now estimate the annual cost of this exemption is just over £2.5 billion (HMRC, [Principal Tax Reliefs](#), May 2019).



the registration officer and two witnesses. There would be a formal, court-based process for dissolution of a civil partnership.<sup>22</sup>

The background to the Bill and its provisions are discussed at length in two Library papers published at this time.<sup>23</sup>

The Bill did not contain any provisions to amend inheritance tax or tax law generally – although it contained provisions to give same sex-couples the same rights and responsibilities as opposite-sex in relation to child and working tax credits, child benefit and guardian's allowance. (This remains the case, following the *Civil Partnerships Act 2004* receiving Royal Assent in November 2004.)

Details on this aspect of the Bill were given in a second press notice published alongside the Bill, which noted "the Civil Partnership Bill is social policy legislation, so any tax consequences will be dealt with in the first available Finance Bill."<sup>24</sup> Nevertheless, it was widely reported that couples in civil partnerships would be granted the same tax treatment as married couples (*emphasis added*):

Homosexual and lesbian couples will have the opportunity to get similar rights to those of married couples under a Bill hailed by the Government as an "historic step towards greater equality, justice and dignity for same-sex couples". The Civil Partnership Bill gives legal rights to same-sex couples who register their partnership at a civil ceremony presided over by a local registrar. Homosexuals and lesbians will have to give 15 days' notice at a register office when they intend to enter into a civil partnership. Registration will be available only to homosexuals and not as an alternative to heterosexual marriage. The Bill covers England and Wales, but its proposals are also expected to be adopted in Scotland and more controversially in Northern Ireland, where a consultation exercise disclosed hostility to the idea.

*The partnerships will allow homosexuals to benefit from a dead partner's pension, grant next-of-kin rights in hospitals and exempt them from inheritance tax on a partner's home. They will also get the chance to assume parental responsibility for a partner's children, full recognition for life assurance, responsibility to provide reasonable maintenance for partners and children and the same tax treatment as married couples ...*

The 196-clause Bill does not use the term "gay marriage", but the civil partnerships have clearly been designed to be as close to a marriage contract as possible. Partners will even be able to dissolve the agreement in a form of "divorce" ... The Bill predicted that the change would cost the Government £20 million to set up. The total annual cost to the Government by 2050 would be more than £26 million. The annual cost to private pension schemes was predicted to be £1.25 million to £2.5 million.<sup>25</sup>

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<sup>22</sup> DTI press notice P/2004/129, 31 March 2004

<sup>23</sup> *The Civil Partnership Bill [HL]: background and debate & The Civil Partnership Bill [HL]: the detail & legal implications*, Library Research papers 04/64 & 04/65, 7 & 8 September 2004

<sup>24</sup> Inland Revenue press notice 18/04, 31 March 2004. For details on the Bill's provisions relating to social security, tax credits and child support see, Library Research paper 04/65 (pp 47-57).

<sup>25</sup> "The wedding's off for thousands of gay couples", *Times*, 1 April 2004. The *Guardian* also reported this ("Rights for gay couples - but not marriage", 1 April 2004).

In an editorial on the Bill, the *Times* referred specifically to the extension of inheritance tax relief for civil partnerships (*emphasis added*):

Ten years ago, the introduction of civil unions between gay partners in Britain would have been unthinkable ... It is a measure of how much more liberal social values have become, then, that the Civil Partnership Bill, published yesterday, looks set to be far less contentious than the other Bill voted upon yesterday, on tuition fees ... Far from undermining marriage, the Bill encourages the long-term commitment and mutual support that make marriage such a benefit to society. Gay couples will not enter lightly into civil partnerships, for their dissolution will be as complicated and painful as divorce.

In order to avail themselves of the tax and legal advantages of a civil partnership, they will also have to take on the responsibility to care for each other and live together as a loving and supportive couple. Even when children are not involved, this form of commitment is of huge social benefit. In return, they will at last have equal treatment under the law. *It is grossly unfair that, at the moment, when one member of a gay couple dies, the other may have to sell their shared house in order to pay inheritance tax.* It is inhumane to prohibit one partner from visiting the other in hospital or from agreeing to medical treatment for the other. It is inequitable to exclude same-sex couples from the pension benefits that married couples enjoy ...

*The only "couples" who might justifiably feel aggrieved at their exclusion from the Bill are those in a non-sexual relationship who nonetheless live together, support each other and care for each other, in sickness and in health. If one dies, the other still has to pay inheritance tax on their shared house. Legislating for these "couples", however, could be difficult, since to do so would open a gaping loophole for siblings or friends who simply want to avoid tax.* The final objection to the Bill comes from gay people who want total equality, including the word "marriage". The trouble is that "marriage" still carries such strong religious connotations, and to use the word in the context of gay relationships would unnecessarily inflame the feelings of many social conservatives and faith communities.

Social liberalisation is best undertaken one step at a time. The gay age of consent was rightly reduced slowly: first to 18, then to 16. There may come a time when the British will be perfectly happy to countenance gay marriage. For now, though, civil partnerships are a very good start.<sup>26</sup>

The Bill was introduced in the Lords, and had its Second Reading on 22 April. On this occasion several Lords were critical of the lack of detail that had been given of any future tax changes. Speaking for the Conservatives Baroness Wilcox said, "it must be wrong for the decisions which surely must have been made to be kept secret from Parliament or delayed until next year." She was also concerned that the House of Lords would be deprived a scrutiny role if these proposals were contained in a future Finance Bill.<sup>27</sup>

Speaking for the Liberal Democrats Lord Goodhart asked for a statement to clarify if the Government was intending to "treat civil

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<sup>26</sup> "Leader: Commitment rewarded", 1 April 2004

<sup>27</sup> HL Deb 22 April 2004 c394. At a later stage of the debate Lord Higgins made a similar criticism (*op.cit.* c427).

partnerships in a similar way to spouses for tax purposes.” He went on to ask if “the right to enter into a civil partnership and the consequential tax changes [are to] come into effect simultaneously ... in October 2005.”<sup>28</sup> Speaking for the Government at the close of the debate Baroness Scotland responded to this point as follows:

The noble Lord, Lord Goodhart, was right ... in his surmise that it is likely that this legislation, if passed, will not come into operation until October 2005, therefore there is plenty of time for there to be another Finance Bill other than that which is currently going through Parliament in which these provisions could appear ... I should have reassured the House that when the proposed tax changes come in they will be implemented at the same time. We anticipate that that will be about a year after Royal Assent. Of course, we do not know the precise date when the Bill will finish its passage through this House and the other place.<sup>29</sup>

During the progress of the Bill Lord Higgins raised this issue on two occasions,<sup>30</sup> and at the third reading moved a new clause to the effect that “for tax purposes civil partners shall be treated as in the Finance Act 2004.” (This move followed the amendment agreed at report stage on 24 June extending civil partnerships to certain family members – discussed in the next section of this paper.) Lord Higgins introduced the clause as follows:

I have tried on two previous occasions to refer to the press release issued by the Inland Revenue ahead of this Bill, saying that the Civil Partnership Bill is social policy legislation, so any tax consequences would be dealt with in the “first available Finance Bill.” It seems absolutely clear that the first available Finance Bill is the one now going through the House of Commons, but as far as I can see no tax consequences of this Bill appear in that Finance Bill, at any rate as far as government amendments are concerned. Was the press release simply wrong, or will some clauses appear in the Finance Bill that will eventually become the Finance Act 2004? Repeated attempts to get an answer to that have totally failed. I should like to have an answer.<sup>31</sup>

Speaking for the Government, Baroness Hollis responded to this point as follows:

Lord Higgins [asked] ... whether the unamended Bill would be incorporated into the first available Finance Bill. As the Finance Bill is currently going through the House of Commons, he asked about the Government’s intention. There are two “ifs” relating to that. First, the Bill as unamended must go through; and, secondly, the amendment that your Lordships chose to pass last week must be overturned. In either circumstance, we could not incorporate a version of civil partnership before the other place had made a decision on what it embraced. That must be determined before anything could be incorporated in a Finance Act. The Finance Bill makes no mention of civil partners and cannot do so until the Civil Partnership Bill passes ...

I do not see how any Bill can pre-judge another Bill that has not yet concluded its proceedings. In so far as the press release said

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<sup>28</sup> *op.cit.* c397

<sup>29</sup> *op.cit.* c431, c433

<sup>30</sup> HL Deb 10 May 2004 cc36-42GC; HL Deb 25 May 2004 c463GC

<sup>31</sup> HL Deb 1 July 2004 c418

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“the next available”, it could only have meant the next available Finance Bill after this Bill had terminated its parliamentary progress. Therefore, it seems to me that, as described, the Inland Revenue’s press release was exactly correct.<sup>32</sup>

Baroness Hollis went on, in her words, to “put the Government’s intentions on record”, given that it appeared Lord Higgins was “using the amendment as a probing amendment”:

The fiscal consequences of the Civil Partnership Bill are crystal clear. We have already announced that, for all tax purposes, same-sex civil partners will be treated in the same way as married couples, if the Bill proceeds in its original form, without the extension to the categories of civil partners made last week by the amendment tabled by the noble Baroness, Lady O’Cathain.

The Government went further and made it clear that all tax consequences of the Civil Partnership Bill, as it applied to same-sex couples, would be addressed and debated at the appropriate time in the first available Finance Bill. That is still the case if the Bill completes the legislative process with the category of civil partners defined only as same-sex couples. We expect that, if the Bill that we are debating is passed and concerns same-sex couples only, it will come into force about a year after Royal Assent. There will be plenty of time for another Finance Bill, to include provisions dealing with the tax consequences of the Civil Partnership Bill. If the Bill proceeds in its current form, the tax matters will be dealt with in the normal Budget process.<sup>33</sup>

The point was underlined by Anne McGuire (then Parliamentary Under-Secretary of State for Scotland), at the end of the Bill’s second reading in the Commons: “we have made it clear that we will use the first available Finance Bill to ensure that registered same-sex couples will be treated the same as married couples for tax purposes.”<sup>34</sup> When the commencement of the *Civil Partnerships Bill* was discussed in Standing Committee, Alan Duncan asked if the passage of ‘the first available Finance Bill’ might delay implementation. Jacqui Smith (then Deputy Minister for Women and Equality) replied as follows:

I think that we already said publicly that we envisage that—assuming that the Bill completes the stages of its consideration in this House and in another place and that it receives Royal Assent—implementation will take about a year following Royal Assent. Interestingly, that is not largely because of the tax provisions, which I will return to, but because some complex changes need to be made to, for example, court rules. There are some lengthy conditions about consultation with respect to court rules. Changes would need to be made to registration arrangements. Training would, of course, need to be given to judicial officers with respect to the legal implications, not least the requirements on dissolution and annulment. We have been honest in saying that although we are very keen to ensure that the provision is implemented as quickly as possible, there are some complex issues of implementation that will need to be put into operation.

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<sup>32</sup> *op.cit.* c420, c421

<sup>33</sup> HL Deb 1 July 2004 c420. In the event Lord Higgins withdrew the amendment (*op.cit.* c421).

<sup>34</sup> HC Deb 12 October 2004 c250

Notwithstanding what might or might not occur in a general election next year, I therefore find it difficult to envisage that within a year of gaining Royal Assent for this Bill we will not have had an available Finance Bill. I have made it clear, but I shall reiterate it, that the tax consequences of the policy that we have identified in the Bill and have stated publicly will take effect on the commencement of the Bill's provisions. I hope that that will give the hon. Gentleman the certainty that he understandably asks for on behalf of those who are keen not only that the Bill goes through but that its provisions come into effect as soon as possible.<sup>35</sup>

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<sup>35</sup> SC Deb (D) 26 October 2004 c208

## 3. Carers, civil partnerships and inheritance tax

### 3.1 The Lords amendment to the Civil Partnerships Bill

Despite the Government's opposition, at the Report stage of the Bill in the House of Lords, the Lords agreed a fundamental change to its scope. The House agreed a group of amendments moved by Baroness O'Cathain to – in the Baroness' words – “extend the benefits of the Bill to family members who have lived together on a long term basis.”<sup>36</sup> Taken together the amendments provided that, in addition to same-sex couples, people would be eligible to register as civil partners if they were close family relations, both over thirty years of age and had lived together for a continuous period of twelve years immediately prior to the date of registration.<sup>37</sup>

Baroness O'Cathain had set out her position some weeks before, when the Bill had its Second Reading in the Lords on 22 April 2004. On this occasion she raised two objections to the Bill. First, it was “wrong to create a parody of marriage for homosexual couples.” Second, “if we are to extend all the rights of married couples to others, what should be the criteria? Should they be extended only to those in homosexual relationships? ... if the Bill is to become law, it must be amended radically to benefit far more people.” In describing these rights the Baroness focused on the fact that a family home would be treated as part of someone's estate for tax purposes at their death:

The advocates of this Bill say that it is needed to help people who are in genuine difficulties. But there are many such people in equally difficult, heart-wrenching situations who will not be helped by this Bill ...

The theoretical examples are known to everybody: people who move into a flat to care for a friend with a long-term ill illness; a daughter giving up a well-paid job to care for a sick mother; or two sisters who never marry, living together all their lives in the home inherited from their parents. All of these people, when it comes to the death of one or other of them, will face a swingeing inheritance tax bill, which will in most cases lead to increasing dependency on the state by those people. These sorts of cases are appalling and something has to be done about them.<sup>38</sup>

Though Baroness O'Cathain provided only anecdotal evidence of this tax burden, it was certainly the case that over the previous decade the number of estates liable to tax had grown, along with total tax receipts

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<sup>36</sup> HL Deb 24 June 2004 c1362. The division was 148 contents to 130 not-contents.

<sup>37</sup> Schedule 1 to the Bill set out the relevant degrees of family relationship. As Baroness O'Cathain explained in introducing these amendments, “it is the standard list of close relationships of affinity and consanguinity, which is used in the Bill and in marriage law” (*op.cit.* c1365).

<sup>38</sup> HL Deb 22 April 2004 cc405-6

and at this time there were widespread concerns about the continued growth in house prices would continue this trend.<sup>39</sup>

At the Report stage on 24 June, Baroness O’Cathain returned to this theme: that one of the principal advantages offered by a civil partnership was the ability to make transfers exempt from IHT to one’s partner, and that it was unfair not to extend this tax relief to unmarried family members:

Under my amendments, two sisters or any two close relations who have lived together for 12 years would be able to register a partnership and take advantage of the provisions of the Bill. These are benefits which are currently unique to married couples and under the Government’s Bill will be extended only to one other group; namely, those in same-sex relationships.

If a daughter gives up her job to look after her elderly mother for 20 years, should she be denied the same rights, including the financial benefits, which the Bill gives to same-sex couples? If a niece goes to live with her disabled aunt and looks after her for 15 years, is her love and commitment for her close relation considered to be less important than that of a same-sex couple? The niece has to pay inheritance tax if she inherits her aunt’s estate, but the survivor of a same-sex couple in a registered partnership would not. Is this situation fair and just? I think not.<sup>40</sup>

Those peers who spoke opposing these amendments acknowledged the Baroness’ concern about adult carers but raised two basic objections: that it was inappropriate to use the Bill to address concerns about the potential burden of inheritance tax on family members; and that the amendments proposed would create serious anomalies.

In his contribution to the debate Lord Alli said, “there is an injustice here and it needs to be dealt with, but this is not the Bill in which to do it. This Bill is about same-sex couples whose relationships are completely different from those of siblings.” He went on to quote the Solicitor Family Law Association, on their reasons for opposing this change:

Having heard cross-party support for the Bill at Second Reading, we are disappointed by the Committee Stage amendments seeking extension of the Bill to other relationships. Civil partnership is not a suitable arrangement for relieving carers and adult children of the burden of paying inheritance tax. Civil partnership will be more than a financial relationship—it is designed to provide a legal recognition for committed loving relationships *between couples* and, as such, it will work well within the family justice system.<sup>41</sup>

In his speech Lord Goodhart echoed this sentiment:

There is a strongly arguable case for some kind of relief from inheritance tax for family members who have been carers to enable them to continue living in the house where they have carried out their caring duties. But that is a different argument

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<sup>39</sup> eg, “Inheritance tax clash foreshadows poll battle”, *Financial Times*, 17 August 2004; “Inheritance tax to hit many more homes, says lender”, *Financial Times*, 12 March 2005. HMRC collate statistics on the tax [on their site](#). National Archives publish historical figures showing the rise in tax-paying estates liable to IHT [at this time](#).

<sup>40</sup> HL Deb 24 June 2004 cc1362-3

<sup>41</sup> *op.cit.* c1369

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and this is not the place or the time for that argument. This Bill is inappropriate for dealing with that issue.<sup>42</sup>

He went on to raise some of the potential anomalies in extending this tax relief by means of this change:

Even the movers of the amendment do not suggest that it should be possible, at the same time, to combine a civil partnership and a marriage. Among other things, that means that tax relief would not extend to a married child caring for a parent, which is a very common situation. The country is, after all, full of grandparents. That would be so even if the child who was caring was separated but not divorced.

A daughter looking after elderly married parents could not enter into a civil partnership with either of them. She would have to wait until one of them died, by which time the other might not have the mental capacity to enter into one. It would also mean that if one member of a family civil partnership wished to enter into a marriage, he or she could not do so without going to the court to get an order dissolving the civil partnership. A dissolution order must show that the civil partnership has irretrievably broken down. That would not necessarily be the case—a daughter might well want to marry a man who is willing to move in with her and to help care for her parents. That shows that the Bill is wholly unsuitable because it shows up all sorts of unnecessary anomalies.<sup>43</sup>

Speaking for the Government on this occasion Baroness Scotland discussed some of the anomalies that would be created from these amendments:

Those who will enjoy the benefits of a civil partnership will enjoy the rights confirmed as a result of the new creation of that relationship in terms of inheritance provision. But they will also have to accept the responsibilities for social security and financial support. These amendments would require the tearing up of all social security law since Beveridge.

No pensioner would get an income-related benefit such as pension credit from the state if their civil partner son could support them. No brother could get an income-related disability benefit if his civil partner sister could support him. No unemployed adult son could get jobseeker's allowance if his civil partner mother could support him, and no son could fail to pay child support if his mother could meet the Bill. I could go on. All such benefits would belong not to the individual but to the relationship, which in social security terms would put the clock back to the 1930s. I know that that is not the intention of the noble Baroness. So that is in part why we say, "not this Bill".<sup>44</sup>

The Minister went on to note that the potential for tax avoidance was considerable:

The noble Baroness has given voice to many issues in relation to those who care. But we must also recognise that these provisions would apply to all families and all estates. The reality of that is

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<sup>42</sup> *op.cit.* c1374. As Lord Goodhart argued in an earlier debate on the Bill, "if tax reduction is desirable under the circumstances, it should be based on the fact of co-residence and not on the adoption, or entering into, of some special contract of this kind" – that is, a civil partnership (HL Deb 10 May 2004 c15GC).

<sup>43</sup> HL Deb 24 June 2004 c1374

<sup>44</sup> *op.cit.* cc1384-5



that the greatest estates in this country could be passed from father to son or son to sister without there ever being payment of inheritance tax. I know that the noble Baroness, Lady O’Cathain, has made it very clear that she would like to see the abolition of all inheritance tax so that no estate would ever be burdened with it. I understand that position and I understand, in tabling these amendments, that that is what she desires. But I say to her, "not in this Bill". 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.<sup>45</sup>

Baroness Scotland also argued that the Bill could not be used to tackle the *specific* problems of carers faced on inheriting property. (The Minister raised wider objections to the amendments as well, but these are not discussed here.) In doing so, she referred to *Sharing homes*, a report by the Law Commission on devising a statutory scheme for determining shares in a shared home: “[the report concluded] no single solution was possible for all the different permutations of home sharers ... it is a difficult and problematic issue. The needs of closely related family members who live together are very different from those of same-sex couples, who lack legal recognition of their relationship together as a couple because they cannot marry.”<sup>46</sup>

The Law Commission’s report was discussed at an earlier stage of the Bill’s progress, when debated in Grand Committee. On this occasion Baroness O’Cathain had moved similar amendments to extend the scope of civil partnerships.<sup>47</sup> (In this instance the Baroness proposed that family members, disabled people and their carers, and pensioners over 70 would be entitled to enter a civil partnership if they had lived together for at least seven years.) Speaking for the Government Baroness Scotland argued the amendments “would be well founded if the issue were merely one of tax avoidance or an opportunity to expunge a category of person’s entitlement to pay inheritance tax. If that were the case, the noble Baroness’s qualifications would perhaps be merited, but it is not.”<sup>48</sup> Baroness Scotland went on to suggest why, in the Government’s view, the concerns of same-sex couples and siblings sharing a home were quite distinct:

Let us not mistake ourselves. A wide category of provision is already made for siblings and for those who live together. The issues faced by same sex-couples are very different from that category. Perhaps I may give some examples. Siblings are recognised in the intestacy rules in a way that same-sex couples are not. Siblings already have succession rights in the case of secure and introductory tenancies if they resided with the tenant for 12 months preceding the tenant’s death. In the case of Rent Act tenancies, siblings have succession rights if they resided with the tenant for two years preceding the tenant’s death. Usually, there is a question over a close relation’s ability to attend a funeral

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<sup>45</sup> HL Deb 24 June 2004 c1385

<sup>46</sup> HL Deb 24 June 2004 c1387. For details see, Law Commission, [Sharing homes: a discussion paper \(Law Com No 278\)](#), Cm 5666 November 2002.

<sup>47</sup> HL Deb 10 May 2004 cc10-26GC. The House did not vote on this occasion as the procedure for the Bill’s scrutiny in Grand Committee precluded divisions.

<sup>48</sup> *op.cit.* cc19-20GC

or to visit a sick person in hospital. Those are not issues which arise.

The position of carers and companions over 70 who share a home is different again. For example, should they really have joint financial responsibilities which could be set aside only after court proceedings for dissolution? We already have a difficulty persuading people that they wish to undertake the care of those in need. If they are to be financially and otherwise responsible for them as well, and have to bind themselves and be financially responsible for discharging their care, we may well find that fewer carers than there are at present will wish to enter into that estate.

Should a person in such a relationship have an automatic pre-emptive share of the estate if the person he or she lives with dies without making a will, particularly a paid carer? We know that some carers are very expensive indeed, particularly if they live in. Should they, therefore, automatically receive half the person's estate when they die?

As those questions show, the concerns of homesharers, whether as family, carers or companions, are a separate issue to the concerns of same-sex couples. The Law Commission's report on home sharers in 2002 supports that fact. That report concluded that no single solution was possible for all the different permutations of home sharer. The Law Commission considered that the solution to the specific issues raised would be best determined by reference to the nature of the relationship in each case. Thus, the solution to the needs of those in caring relationships may not be the same solution to the needs of siblings who live together. So, it is clear that their problems are different from those of same-sex couples who lack legal recognition of their relationship because they cannot now marry.<sup>49</sup>

### 3.2 The Bill's progress in the Commons

Following its Third Reading in the Lords, the Bill passed to the Commons, and received its Second Reading on 12 October. Introducing the Bill Jacqui Smith (then Deputy Minister for Women and Equality) reiterated the Labour Government's determination to reverse the Lords amendment that would have "[allowed] close relatives over the age of 30 who have lived together continuously for 12 years to form civil partnerships."<sup>50</sup>

On this occasion the Minister acknowledged concerns about unmarried opposite-sex couples "many of whom are under the misapprehension that they enjoy more rights than they actually do" going on to note "the Department for Constitutional Affairs is running a campaign to inform cohabitants of the significant differences between their rights and responsibilities and those of married couples", and that the Law Commission were to "carry out a project on cohabitation for inclusion in its ninth programme of law reform."<sup>51</sup> Ms Smith also stated she would not recommend any new IHT relief for carers, saying "it is rather

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<sup>49</sup> HL Deb 10 May 2004 c20GC

<sup>50</sup> HC Deb 12 October 2004 c177

<sup>51</sup> HC Deb 12 October 2004 c179. The Minister set out the Government's work on cohabitation in more detail at the Committee stage of the Bill: SC Deb (D) 21 October 2004 c53.

unfortunate that some Opposition Members have chosen to use an important equality Bill to pursue their campaign about inheritance tax.<sup>52</sup>

The Conservative front bench spokesman, Alan Duncan, strongly supported the Bill – in its original form – as did most Members who spoke during the second reading. Although Mr Duncan did not support the Lords amendment, he argued that it had been right to raise the position of carers in debate, and asked if the Minister could give more details of the Government's plans:

It is profoundly unfair that carers and siblings who cohabit are disadvantaged on the death of one or other of them by being forced out of their home by their tenancy terms or by the burden of inheritance tax. So ... I am glad that the efforts and effective advocacy of colleagues in another place resulted in the Government promising ... to take further action to address these issues ... I look to the Government, as I think all Opposition Members do, to fulfil that undertaking.<sup>53</sup>

The Lords amendments were overturned on the first day of the Bill's Committee stage on 19 October.<sup>54</sup> On this occasion Jacqui Smith noted there was cross party support for this move on the grounds the Bill was not an appropriate vehicle to extend tax reliefs for carers. The Minister went on to express the view that changes to inheritance tax reliefs were not a 'top priority':

We heard a widespread agreement from Members across almost all parties [at the Bill's second reading] that the *Civil Partnership Bill* is not the place to deal with the concerns of relatives, not because those concerns are not important, but because the Bill is not the appropriate legislative base on which to deal with them ... This legislation has been introduced primarily not to deal with inheritance tax issues, but as an equality measure because of the discrepancies between the situation of opposite-sex partners with the option to marry and the situation of same-sex couples with no option to marry or have any legal recognition of their relationship ... We can and, I have no doubt, will discuss inheritance tax provisions, but I do not believe that this legislation or future Finance Bills should necessarily have as a top priority the reduction of inheritance tax, which at the moment impacts on only 5 per cent. of estates where someone has died.<sup>55</sup>

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<sup>52</sup> HC Deb 12 October 2004 c174

<sup>53</sup> HC Deb 12 October 2004 c188

<sup>54</sup> SC Deb (D) 19 October 2004 c28. see also, [HC Deb 25 October 2004 c996W](#).

<sup>55</sup> SC Deb (D) 19 October 2004 cc8-9

## 4. Budget 2005

In February 2005 the Labour Government announced that the *Civil Partnership Act (CPA) 2004* would be brought into force on 5 December 2005. As a press notice explained, “any couple wishing to form a civil partnership will be able to give notice of their intention to register at a Register Office from that date. This will allow the first civil partnerships to be formed in time for Christmas on 21 December, after the 15 day waiting period has passed.”<sup>56</sup>

Subsequently the 2005 Budget confirmed that the forthcoming Finance Bill would enable the revenue authorities to introduce regulations, amending all existing tax legislation, both primary and secondary, so that civil partners would be treated the same as married couples for tax purposes. The tax changes would take effect from 5 December 2005 – the date the *CPA 2004* came into force. It was estimated that these would cost £5 million by 2006/07.<sup>57</sup>

Details of all of the changes required to tax legislation were given in a Budget note: a long extract from this is reproduced in the text box overleaf.

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<sup>56</sup> DTI press notice, *Civil partnerships before Christmas 2005*, 21 February 2005

<sup>57</sup> *Budget 2005* HC 372 March 2005 p192, p188

**Inland Revenue Budget press notice REV28, [Tax and civil partners](#), 16 March 2005**

**Current law and proposed revisions**

Married and unmarried couples are usually treated differently for tax purposes. For example a husband and wife are protected from tax charges that might otherwise arise if they transfer assets between them. This protection is not available to unmarried couples. On the other hand, there are situations where husband or wives can be taxed on certain benefits that are provided for their spouse but if the persons concerned are unmarried that is not the case. There are, in addition, limited circumstances in which unmarried couples are treated as if they were married.

The Civil Partnerships Act (CPA) creates an entirely new legal status of civil partner, giving same-sex couples in the UK the opportunity of acquiring a legal status for their relationship. Couples who enter into a civil partnership will gain a package of rights and responsibilities reflecting those already available to a married couple.

For tax purposes, the Government has announced that civil partners will be treated the same as married couples. Therefore, from the start of the civil partnership scheme, tax charges and reliefs and anti-avoidance rules will apply equally to married couples and civil partners, and those treated as such. Full details will be published with the regulations.

The key areas affected include:

**Inheritance Tax (IHT)**

Transfers between married couples in lifetime or on death are generally exempt from IHT without limit. On a par with married couples, civil partners will be able to make gifts or bequests to their partners with the benefit of IHT exemption. There will be consequential changes elsewhere in the IHT code to extend to civil partners other provisions currently applying to spouses. For example, IHT anti-avoidance provisions that apply to marriage will be applied to civil partnerships.

**Capital Gains Tax (CGT)**

CGT will apply in relation to civil partners as it applies in relation to married couples. In particular:

- Private Residence Relief. Only one property owned by a couple, whether that property is owned solely or jointly, may be treated as the principal private residence of either of them at any time for CGT purposes and thus qualify for private residence relief;
- transfers of assets between persons who are civil partners who are living together will be on a no-gain no-loss basis, and thus not attract an immediate CGT charge; and
- civil partners will be "connected persons" in the same way as husbands and wives. They will also be connected with certain other persons, such as close relatives of their civil partner, in the same way as husbands and wives. Furthermore, where one partner settles property into a settlement under which the other partner can benefit, the settlor may be liable to CGT by reference to capital gains realised by the trustees if the relevant conditions as to the residence of the settlor, and certain other conditions, are met.

**ISAs**

There are two minor areas where the ISA rules will be amended to cover a civil partner: firstly the eligibility of a spouse of a Crown employee serving overseas to subscribe to an ISA; and secondly the ability of a husband or wife to subscribe to an ISA account on behalf of their spouse who lacks the mental capacity to operate their own ISA account.

**Bank and building society interest paid to individuals**

Banks and building societies are required by law to deduct tax at the lower rate (20%) before paying interest to savers, unless they have authority to pay the interest gross, that is, without tax taken off. The category of people who can sign a gross registration declaration (on form R85) on behalf of a person who lacks the mental capacity to operate their own bank or building society account will be extended to include civil partners.

### **Pension Schemes (other than state)**

The current pension tax legislation will be amended so that references to husband, wife, ex-husband, ex-wife, spouse, ex-spouse, surviving spouse, widow, widower will include civil partner, former civil partner and surviving civil partner under the terms of the CPA. Changes will also be made to the pension tax simplification legislation that takes effect from 6 April 2006 to account for the terms of the CPA.

### **Settlements**

Anti-avoidance legislation will be extended to include civil partners in the same way as spouses. The anti-avoidance Settlements legislation prevents people avoiding tax by transferring their income to other people who pay less tax. There are special rules for husbands and wives and these will be extended to civil partners.

### **Beneficial Ownership - Sections 282A and 282B ICTA 1988**

Married couples frequently own property jointly and the Inland Revenue treats them as though the property is held equally so any income arising is taxed 50/50. However, if the couple are not in fact entitled to half the income each, they can elect to have income from property they hold jointly taxed on a basis other than 50/50. Civil partners will be treated in exactly the same way.

### **Company Control Tests**

Section 416 of the Income and Corporation Taxes Act (ICTA) 1988 provides various tests for identifying who controls a company. It also deems a company to be under the control of a person if it is controlled by an associate of that person. The term "associate" is defined in section 417 and includes husband or wife. The definition of "associate" will also include civil partner.

### **Stamp Duty and Stamp Duty Land Tax (SDLT)**

There is currently an exemption from stamp duty and SDLT for transactions carried out in connection with divorce such as a transfer of shares or the transfer of the marital home from joint ownership into the sole ownership of one of the ex-spouses. There will be a similar exemption for transactions carried out in connection with the dissolution of a civil partnership.

### **Transfer of assets abroad**

Civil partners will be treated in the same way as married persons under the transfer of assets abroad legislation in sections 739-746 ICTA 1988. This legislation aims to prevent individuals avoiding income tax by means of the transfer of assets. It applies where, as a result of a transfer and/or any associated operations, income becomes payable to persons resident or domiciled outside the UK. The legislation provides that an income tax charge may arise on the husband or wife of an individual who makes a transfer of assets, where the spouse is involved in the transfer or associated operations. This will in future apply equally to civil partners. In addition, we will extend to civil partners the practice of not normally seeking to tax under section 739 UK domiciled individuals in relation to income of their non-domiciled husband or wife, where that spouse would be outside the section 739 charge because of his or her entitlement to the remittance basis.

### **Married couple's allowance**

Married couple's allowance is currently available to married couples where one of the spouses was born before 6 April 1935. Civil partners will have similar rights so that from the date that the registration scheme commences, civil partnerships and also new marriages meeting the age criteria will have an allowance based on the income of the highest earner. There will be no change to the arrangements for existing marriages.<sup>1</sup>

### **Blind person's allowance**

The Blind Person's Allowance (BPA) contains a provision that any unused allowance (because the person does not have sufficient income) can be transferred to their spouse. Surplus BPA will also be transferable to a civil partner.

<sup>1</sup> In fact the regulations made provision for those married before 5th December 2005 to elect to opt into the new scheme, but also to leave the present scheme untouched for those who do not want change.

Provision to make these changes by regulation was made by the *Finance (no.2) Bill 2005*; the explanatory notes to the Bill gave this summary:

Couples who enter into a civil partnership will gain a package of rights and responsibilities. The Government believes that the tax system should, wherever possible, adapt to reflect changes in society and recognises that there are implications for the tax system arising from the new legal relationship that can be established under the Civil Partnership Act. Because civil partnership is a parallel status to marriage, the Government's policy is that civil partners should be subject to all the same legal rights and responsibilities as spouses.

To ensure fairness, the Government made the commitment that legislation would be introduced to ensure that civil partners would be treated the same as married couples for tax purposes. Finance (No. 2) Bill 2005 contains the powers to make the necessary regulations and to ensure that the results are compatible with the Human Rights Act.

It is planned to lay two affirmative Instruments, one amending primary, the other with secondary legislation. This package will ensure that tax charges and reliefs and anti-avoidance rules will apply equally to married couples and civil partners and in each case those treated as such. It is intended that these changes will apply from the commencement of the civil partnership scheme on 5 December 2005.<sup>58</sup>

The Bill was scrutinised on the floor of the House in a single day, and this provision was not debated.<sup>59</sup>

In October 2005 draft regulations to bring in these tax changes were laid before the House, as well as a regulatory impact assessment (RIA) on these changes. The assessment set out the advantages of introducing full parity between civil partners and married couples:

Currently, married couples and unmarried opposite-sex co-habitants are treated differently for tax purposes, mainly affecting how they might arrange their own financial affairs and how relatives, associates and connected persons might arrange their own. Each party may be deemed to have an interest in assets or income not directly under their own control but held by or arising to others within defined family relationships.

Married couples are protected from certain charges that might otherwise arise say from the transfer of an asset one to the other. If they were not married, a transfer of value might be a taxable transaction. But there is another side to the coin. Where a married couple holds assets or receives income, legislation might deem ownership or receipt to the other spouse and this could give rise to a charge. Further, on marriage defined family relationships are extended. Opting to marry therefore alters their tax status.

On exercising the option to form a civil partnership, same-sex couples take on a package of legal rights and responsibilities, no distinction being drawn from a married couple. And the registration process ensures that there will be legal certainty about who has opted in and who has not and when the legal relationship begins and ends. Clear rights and obligations will be

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<sup>58</sup> Bill 104 of 2004-05-EN, 6 April 2005. The timing of the General Election meant that the Government published a second, shortened Bill some days after the first.

<sup>59</sup> HC Deb 6 April 2005 cc1432-1491. The Bill received Royal Assent the next day. This measure now forms [section 103 of the Finance Act 2005](#).

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created. This level of certainty enables an assessment of when liabilities accrue and cease.<sup>60</sup>

The RIA gave detail of the expected take-up of the civil partnership scheme, and the net tax costs involved :

Allowing for an initial surge of applicants, it is estimated that by the end of the first 12 months there are likely to be between two and four thousand partners registered. (One to two thousand partnerships.) The Government expects between 11,000 and 22,000 people to be in a civil partnership by 2010 ...

There is the assumption that by the third year, the scheme will be fully up and running. Our estimate is that the tax cost from then (once the scheme is no longer novel) will be up to £5 million per annum. For the period from implementation to the end of the tax year 2005/06, and for the next two tax years, 2006/07 and 2007/08, we have estimated the costs as negligible or up to £5 million. No estimate can be made of the tax yield that might arise from couples deciding to form a civil partnership despite its tax disadvantages ... Changes will be made to IT systems, guidance, forms, leaflets, and learning material etc. to accommodate these tax changes. We estimate start-up costs and the first 5 years support costs will total up to £3.25 million.<sup>61</sup>

The regulations were debated and approved on 21 November, with cross-party support: on this occasion both Richard Spring, speaking for the Conservatives, and Dr Vincent Cable, speaking for the Liberal Democrats, asked about the Government's position on providing IHT relief for carers and siblings, though in reply the then Paymaster General, Dawn Primarolo, simply referring to the Law Commission's ongoing work regarding cohabitation.<sup>62</sup>

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<sup>60</sup> HMRC, [Regulatory impact assessment: Tax effects of the Civil Partnership Act \(2004\)](#), 24 October 2005 paras 3(19)-(22)

<sup>61</sup> *op.cit.* para 2(8), paras 5(49)-(50)

<sup>62</sup> First Standing Committee on Delegated Legislation, 21 November 2005. SI 2005/3229 & SI 2005/3230.



## 5. Further debate

In the months following the passage of the *Civil Partnerships Act 2004*, there was little discussion of this issue, although public interest in inheritance tax and its perceived burden on families grew considerably. This was due, for the most part, to the strong growth in house prices at this time and projections that, if uninterrupted, this would result in many more estates being worth over the nil-rate threshold.

In early 2005 the *Observer* newspaper made the case for a substantial reform to inheritance tax.<sup>63</sup> Although the paper's main concern was that far too many estates would come under the scope of the tax in future years, owing to continued rise in house prices, it did suggest that opposite sex couples who were not married should be allowed to make transfers exempt of tax.<sup>64</sup> In February 2005 Harry Barnes MP put down an EDM endorsing this idea, though only 40 Members signed this,<sup>65</sup> and the position of cohabiting siblings was not a strong theme to an emerging campaign over the next eighteen months to abolish, or substantially cut the tax.<sup>66</sup>

In response to this campaign the then Chancellor, Alistair Darling, announced an important extension in the 'surviving spouse' exemption, when he gave his Pre-Budget statement to the House on 9 October 2007.<sup>67</sup> From the date of his statement, widows, widowers and civil partners would be entitled to use the share, if any, of their partner's tax-free allowance which was unused when they died, to set against tax on their own estate. This transferable allowance would be available to all survivors of a marriage or civil partnership who died on or after 9 October 2007 – whenever their first partner died. It is important to underline the fact that the new nil-rate transferable allowance, although worth a considerable amount of money in certain circumstances, was not, and is not, equivalent to simply doubling the exempt threshold for couples & civil partners.<sup>68</sup>

In April 2008 the European Court of Human Rights ruled against a long-running appeal by two elderly sisters, who argued that restricting IHT relief to spouses and civil partners breached their human rights: crucially the Court found that the relationship between siblings was 'qualitatively of a different nature' to that between spouse and partners – so that their situation could not be compared to people in these relationships.<sup>69</sup>

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<sup>63</sup> for example, "Snare for super-rich traps a third of middle Britain", *Observer*, 23 January 2005

<sup>64</sup> "Why it's time to defuse the time bomb facing couples", *Observer*, 13 February 2005

<sup>65</sup> EDM 732 of 2004-05, 21 February 2005. Only 12 Members signed a similar motion put down later that year (EDM 409 of 2005-06, 27 June 2005).

<sup>66</sup> The issue is examined in more detail in, [Inheritance tax, Commons Briefing paper CBP93](#), 5 July 2019.

<sup>67</sup> HC Deb 9 October 2007 c174; HM Treasury, [Pre-Budget Report](#), Cm 7227 October 2007 paras 5.76-8

<sup>68</sup> For details on this, and subsequent provision introduced from 2017 for a new main residence nil-rate band, see, HMRC, [Inheritance Tax: transferring unused tax-free residence nil rate band](#), September 2019.

<sup>69</sup> *Burden v United Kingdom* (Application No 13378/05), 29 April 2008; "Final defeat for sisters in 32-year tax fight", *Times*, 30 April 2008

Following the judgement, there was a short debate on the case in the Lords in May that year: speaking for the Labour Government, Lord Davies said that it had no plans to amend the tax rules, adding, “the inheritance tax spouse relief is long-standing and reflects the formal legal obligations that marriage and civil partnership relationships necessarily entail.”<sup>70</sup>

In 2013 the Coalition Government introduced the *Marriage (Same Sex Couples) Act 2013* to enable same sex couples to marry.<sup>71</sup> By contrast with the introduction of civil partnerships, the Government’s proposals for same sex marriage did not trigger an equivalent debate over inheritance tax and the position of siblings, although in answer to a PQ at this time Treasury Minister David Gauke summarised the Government’s position saying, “changing the current regime so that siblings receive the same reliefs as married couples and civil partners would not provide level treatment for different families’ circumstances and would add complexity to the tax regime.”<sup>72</sup>

Much more recently the Office of Tax Simplification completed review of the IHT regime in 2019-19, publishing a first report in November 2018 with recommendations on administrative issues,<sup>73</sup> and a second report with proposals to simplify the design on IHT in July 2019.<sup>74</sup>

In the latter case, the OTS noted that several respondents to its review had made the case that, “the current system fails to take account of family relationships that are not based on a marriage or civil partnership, such as cohabiting couples”:

Cohabiting couples and siblings cannot make use of the spouse exemption. This means that in a small number of unfortunate cases, the survivor may have to sell the joint home to pay Inheritance Tax. This would be the case if the value of the deceased’s estate is higher than their remaining nil rate band, and if the survivor is unable to make use of the facility to pay by instalments over ten years.

For its part the OTS argued that, “any change to the definition of spouse to include a cohabiting partner or sibling would be far reaching. This would most naturally form part of a wider response to social change considered across government rather than being driven primarily by Inheritance Tax considerations.”<sup>75</sup>

To date the Government has not published its response to the OTS’ review, although the proposal for extending civil partnerships to siblings, to enable them to make tax-free transfers, has been discussed, with the introduction of a [Private Members Bill](#) by Lord Lexden in July

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<sup>70</sup> HL Deb 7 May 2008 c562

<sup>71</sup> Two Library papers provide background on the Bill, and its scrutiny in the Commons: [Marriage \(Same Sex Couples\) Bill, Library Research paper 13/8](#); 1 February 2013; [Marriage \(Same Sex Couples\) Bill: Committee stage report, library Research paper 13/22](#), 19 March 2013.

<sup>72</sup> HC Deb 11 March 2013 c39W

<sup>73</sup> OTS, [Inheritance Tax Review – first report: Overview of the tax and dealing with administration](#), November 2018

<sup>74</sup> OTS, [Inheritance Tax Review – second report: Simplifying the design of Inheritance Tax](#), July 2019

<sup>75</sup> *op.cit.* p64

this year. The Bill received a Second Reading on 20 July, although to date it has made no further progress. Introducing the Bill Lord Lexden identified the extension of inheritance tax relief as the principal advantage to allowing siblings to enter civil partnerships:

Why do committed platonic sibling couples need the legal rights they would gain by becoming civil partners? The cruellest aspect of the current state of affairs is the terrible situation that can arise when one member of the committed sibling couple dies. Their joint home, owned by them both and the repository of a lifestyle of shared experiences and memories, has an importance to them that goes beyond bricks and mortar.

Yet the rise in the value of property in our time often means that a home that has been shared for decades must be sold when the first sibling dies to raise the inheritance tax on his or her share. Living with the knowledge that this could happen at any time can cause years of apprehension and anxiety that members of the committed, platonic family unit ought surely to be spared. Loss of the shared home creates huge additional misery when two siblings are parted by death ...

Fourteen years ago, when the civil partnership legislation was going through Parliament, the force of these arguments was recognised in your Lordships' House. An amendment was carried to include sibling couples, but it did not find favour in the Commons. Then and since, there has been a curious reluctance in the Commons to face up to the issue properly and decide what should be done about it, in part perhaps because successive Governments, including this one so far, have irresponsibly shied away from it.<sup>76</sup>

Several Lords spoke in support of the Bill, although Baroness Barker and Lord Collins opposed it, speaking for the Liberal Democrats and the Labour Party respectively.<sup>77</sup> Speaking for the Government on this occasion Baroness Williams also opposed the Bill:

By attempting to extend civil partnerships to sibling couples, this Bill seeks the wrong remedy to the issue at hand ...

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

My noble friend Lord Lexden, the noble Lord, Lord Alton, and the noble Baroness, Lady Deech, referred to the case of Sybil and Joyce Burden, two sisters who took a case to the European Court of Human Rights in 2008 to seek the right to enter a civil partnership with one another. The court ruled against the claimants, arguing that there was a clear distinction between intimate couple relationships and sibling and other types of familial relationships. The official report of the court stated that,

“the relationship between siblings was of a different nature to that between married couples and homosexual civil partners under the United Kingdom’s Civil Partnership Act. One of the defining characteristics of a marriage or Civil Partnership ... union

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<sup>76</sup> [HL Deb 20 July 2019 c1398](#)

<sup>77</sup> [HL Deb 20 July cc1409-11; cc1411-12](#)

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was that it was forbidden to close family members. The fact that the applicants had chosen to live together all their adult lives did not alter that essential difference between the two types of relationship”.

The Bill seeks to redefine the very nature of what a civil partnership is and who is, or is not, eligible to enter one. As the noble Baroness, Lady Barker, pointed out, it also raises the question of why, were it to be extended beyond the intimate couple relationship, it should be extended only to siblings and not to other long-standing relationships such as disabled parent and caring son or daughter, or even to more than two people ...

I have listened with care to the views of noble Lords this morning, and while I recognise the difficulties faced by the individuals which have been raised, I remain unconvinced that this Bill’s approach to altering civil partnership is the solution.<sup>78</sup>

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<sup>78</sup> [HL Deb 20 July 2019 cc1413-5](#). See also, [PQ HL 270808, 23 July 2019](#)

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