Dear Sajid,

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

1. I am writing in relation to the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill, which makes provision about the registration of marriage, for a report on civil partnerships, for a report on the registration of pregnancy loss and about the investigation of still-births.

2. The Home Office has helpfully prepared an ECHR Memorandum which identifies a number of Articles of the European Convention on Human Rights which could be engaged by this Bill, including Article 6 (right to a fair trial), Article 8 (right to private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 12 (right to marry) and Article 14 (prohibition of discrimination) of the ECHR. We are grateful for this analysis; however, we have a few further queries as set out below.

Registration of marriages and civil partnerships

3. Clause 1 (registration of marriages and civil partnerships), as amended, enables changes to the marriage register to be made by Regulations. Such changes may update the marriage register, in particular allowing for both parents (and not only the father) to be entered on the marriage register, and also to provide that only marriage registrars could enter marriages onto the registrar (and not religious groups). It would also make changes towards an electronic (rather than book) register.

4. We note your explanation in the JCHR Memorandum (paragraph 20) that “it is not considered that removing the ability of religious groups to register marriages and issue marriage certificates on behalf of the State engages any of the rights protected by the Convention, particularly where the ability of religious groups to solemnise legally binding marriage is unaffected”.

Rt Hon Sajid Javid MP
Home Secretary
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5. However, we further note that the amended version of Clause 1 seems to make special provision for Church of England or Church in Wales marriages (as compared to any other religion or denomination). The Department has not explained how it thinks that this is justified given it would seem to be treating religious marriages differently by according special treatment only to Church of England or Church in Wales marriages. Thus there seems to be a distinction and preference based on religion/Christian denomination that would benefit from further explanation and justification.

6. We would therefore be grateful for an explanation as to what these provisions that pertain solely to the Church of England or the Church in Wales achieve, and how they are justified in human rights terms in seeming to accord special treatment only to Church of England/Church in Wales marriages. We note that marriages for all other denominations and religions (or indeed non-religious marriages) would need to use the regular system involving the super-intendant registrar, with the counter-fraud checks contained within that system.

Reform of Civil Partnerships

7. Clause 2 (reform of civil partnerships) requires the Secretary of State to report on how best to bring about equality between same-sex couples and other couples as concerns their ability to form civil partnerships. The amended clause 2 additionally requires a public consultation to be launched on this subject and includes an obligation for the Government to set out its plans for achieving equality, within its Report. The original clause would have given a power to make Regulations to seek to change the law following the Report, however, this power was removed by the amendments.

8. On 27 June 2018, the Supreme Court ruled in this matter in Steinfeld & Anor v Secretary of State for International Development [2018] UKSC 32. The Supreme Court declared that sections 1 and 3 of the Civil Partnership Act 2004 were incompatible with Article 14 ECHR (principle of non-discrimination) taken in conjunction with Article 8 ECHR (right to private and family life), to the extent that they preclude an opposite-sex couple from entering into a civil partnership. A declaration of incompatibility was accordingly made. It is therefore clear that steps should be taken as soon as feasible to remove this incompatibility in the legislation.

9. Ordinarily, a Declaration of Incompatibility, such as this, would require either a Bill to resolve the incompatibility, or, if a Bill was not available, Government could use the Remedial Order process to amend the Civil Partnership Act 2004.

10. With this in mind, we are concerned that there is a risk that, whilst well-meaning, the result of the consultation and reporting requirements in Clause 2 as amended could be to create significant delays to the ability of Government and Parliament to address the declaration of incompatibility.
made by the Courts. Such steps could therefore be considered to act as delays to resolving the incompatibility with the UK’s human rights obligations.

11. What alternative options have you considered to ensure that this human rights incompatibility is addressed as swiftly as possible? For example, have you considered using this Bill to address the incompatibility, or including a time limit for the procedural requirements (consultation, report and introducing the amendments) introduced by clause 2 this Bill?

Coroners’ investigation into still-births

12. Clause 4 (coroners’ investigations into still-births) requires the Secretary of State to undertake a report as to whether or not Coroners should be enabled or required to carry out investigations into still-births, and enables such changes to be made by Regulations. This does raise one query concerning Article 2 (right to life), as identified and considered in the Home Office’s ECHR Memorandum. Certain investigations or coronial inquests can be required under the procedural limb of Article 2 (right to life) where, for example, the State might be responsible for a death. It is conceivable that a still-birth could be attributable to the actions of the State (e.g. poor State healthcare or mistakes made; or a stillbirth due to mistreatment of a heavily pregnant woman in State custody). In such circumstances, it is conceivable that there could be significant benefit in an Article 2-compliant inquest which could consider the issues and any procedural improvements that might be necessary to avoid such incidents happening in the future. The Home Office’s ECHR Memorandum considers that it is unclear legally whether a still-born child would benefit from the protections of Article 2 ECHR (right to life) – and therefore whether the procedural protections afforded by that Article (such as Article 2-compliant inquests) would apply to such inquests.

13. Were the Report under clause 4 to recommend extending coronial investigations to cover investigations into still-births, it will be important to address the issue as to whether such investigations would ever need to be Article 2-compliant, or to have equivalent protections as would be required by an Article 2-compliant investigation. Coroners will need clear guidance on this point – and families involved will need clarity. Do you agree that any such Report that is undertaken should address this issue?

Yours sincerely

Rt Hon Harriet Harman MP, Chair