



BRIEFING PAPER

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The future of civil partnership

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Summary

This briefing paper deals with the position in England and Wales unless otherwise stated

Civil partnership and marriage across the UK

In England, Wales and Scotland, same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship. In Northern Ireland, same sex couples may register a civil partnership but may not marry. Across the UK, opposite sex couples may marry but they may not register a civil partnership.

When consulting on the introduction of marriage for same sex couples, the Coalition Government considered that it was unnecessary to extend civil partnership to opposite sex couples, given the availability of both civil and religious marriage.

Statistics on civil partnerships and marriage of same sex couples

Following the introduction of marriage for same sex couples in England and Wales in March 2014, and in Scotland in December 2014, the number of civil partnerships fell. There were just over a thousand civil partnerships formed in the UK in 2016. This was roughly the same number as in 2015, suggesting that the level of civil partnership formation may have stabilised since the introduction of same sex marriages.

Between the introduction of same sex marriage in England and Wales on 29 March 2014 and 30 June 2015, there were 7,366 marriages formed between same sex couples in England and Wales. Couples in civil partnerships in England and Wales have been able to convert their civil partnership into a marriage since 10 December 2014. Between that date and 30 June 2015, 7,732 couples converted their civil partnership into a marriage in England and Wales.

Same sex marriage was introduced in Scotland on 16 December 2014. The legislation in Scotland allowed couples in a civil partnership to marry without first dissolving their civil partnership. In 2015, there were 1,671 marriages formed between same sex couples in Scotland, of which 936 were between couples who were already in a civil partnership. In 2016, there were 998 marriages formed between same sex couples in Scotland, of which 173 were between couples who were already in a civil partnership.

Consultations on the future of civil partnership

In 2014, the Coalition Government consulted on the future of civil partnership in England and Wales. Among other things, the Government asked for views on opening up civil partnership to opposite sex couples. In June 2014, the Coalition Government stated that, in responses to the consultation, there was no united call for reform and that it had decided not to do anything at that time.

The Scottish Government has also consulted on the future of civil partnership in Scotland. In November 2017, the Scottish Government published its response to the consultation. It stated that it did not intend to legislate on civil partnership at present but would continue to consider the evidence on potential take-up of mixed-sex civil partnership in Scotland. It considered it likely that it would be reasonable to reassess the position after 2019.

Calls for civil partnership to be opened to opposite sex couples

Calls continue to be made for civil partnership to be made available to opposite sex couples. Supporters of this position argue that opposite sex couples, like same sex couples, should be able to choose whether to marry or to register a civil partnership.

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Legal challenge

In January 2016, an opposite sex couple lost their claim for judicial review of the ban on civil partnership for opposite sex couples. The couple lost their appeal to the Court of Appeal but have been granted permission to appeal to the Supreme Court.

Government position

The Government has previously confirmed that it did not intend to consult further on the future of civil partnership or to change the law. In December 2017, the Government said that it was keeping the matter of civil partnerships under review and was assessing the demand amongst both same-sex and opposite-sex couples. The Government considered it to be still too early to judge how the law should be changed and declined to comment further because of the ongoing legal action.

Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19

In July 2017, having come fifth in the Private Members' Bill ballot which took place in June 2017, Tim Loughton (Conservative) introduced the [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill 2017-19](#) (the Bill). [Explanatory Notes](#) have been prepared by the Home Office with the consent of Tim Loughton. The Bill is due to have its second reading on 2 February 2018.

The long title to the Bill includes "to provide that opposite sex couples may enter a civil partnership".

The Bill would require the Secretary of State to "make arrangements for the preparation of a report assessing how the law ought to be changed to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships".

Another Library briefing paper provides further information about the Bill, which also deals with a number of other matters:

[Commons Library analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) (CPB 08217, 1 February 2018).

1. Civil partnership and marriage: current position

Summary

In England, Wales and Scotland, same sex couples have the option to marry or to register a civil partnership if they wish to gain legal recognition for their relationship. In Northern Ireland, same sex couples may register a civil partnership but may not marry. Across the UK, opposite sex couples may marry but there is no option for them to register a civil partnership.

1.1 Who can register a civil partnership?

Civil partnerships may be registered only by same sex couples.¹ The legislation provides specifically that opposite sex couples are not eligible to register a civil partnership.²

1.2 Marriage of same sex couples

England and Wales

The [Marriage \(Same Sex Couples\) Act 2013](#) enables same sex couples to marry. It also enables civil partners to convert their partnership to a marriage, if they wish.

In England and Wales, the first marriages of same sex couples took place on 29 March 2014. Conversion of civil partnerships to marriage has been possible since 10 December 2014.

Scotland

The [Marriage and Civil Partnership \(Scotland\) Act 2014](#) enables same sex couples to marry. The first ceremonies took place on 31 December 2014. The legislation has also enabled civil partners to convert their partnership to marriage since 16 December 2014.

Northern Ireland

Marriage of same sex couples is not possible in Northern Ireland. Same sex couples may register a civil partnership.

1.3 How does civil partnership differ from marriage?

The [Civil Partnership Act 2004](#) created a union for same sex couples which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas.

¹ [Civil Partnership Act 2004 section 1](#)

² [Civil Partnership Act 2004 section 3](#)

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The Coalition Government published a [table](#) setting out the similarities and differences between civil partnership and marriage as it applies to same sex couples.³

There are also some differences between how marriage applies to opposite sex couples and how marriage and civil partnership apply to same sex couples. For example, the definition of adultery, which has developed through case law, means sexual intercourse (within the meaning of the law for these purposes) between a man and a woman outside of marriage. All couples (opposite sex and same sex) may cite infidelity not covered by this definition as a basis for divorce due to “unreasonable behaviour”. Adultery has never been a basis for dissolution of a civil partnership (as it is for divorce).⁴

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

On 11 December 2012, the Coalition Government published its [response](#) to its consultation on the introduction of marriage for same sex couples.⁵ This set out why, given the availability of marriage for opposite sex couples, the then Government considered that it was unnecessary to extend civil partnership to opposite sex couples:

7.8 When civil partnerships were introduced in 2005, they were created to allow equivalent access to rights, responsibilities and protections for same-sex couples to those afforded by marriage. They were not intended or designed as an alternative to marriage. Therefore, we do not believe that they should now be seen as an alternative to marriage for opposite sex couples.

7.9 Opposite sex couples currently have access to marriage, either via a civil or religious ceremony, which is both legally and socially recognised. We understand that not all opposite sex couples wish to marry, but that decision is theirs to make and they have the option to do so if they wish. Through the responses received to this consultation, it has not been made clear what detriment opposite sex couples suffer by not having access to civil partnerships.

7.10 This consultation was not aimed at being a wider process of reform of marriage and civil partnership legislation and therefore we do not consider that it is necessary to open up civil partnerships to opposite sex couples in order to enable same-sex couples to get married.⁶

³ [Gov.UK, Department for Culture, Media & Sport, Comparison of Civil Partnership and marriage for same sex couples, 10 December 2013](#) [accessed 29 January 2018]

⁴ [Civil Partnership Act 2004 section 44](#)

⁵ HM Government, [Equal marriage: The Government's response](#), December 2012

⁶ *Ibid*, p26

2. Statistics on civil partnerships and same sex marriages

2.1 Civil partnerships

The table below shows the number of civil partnerships formed in the UK in each year from 2005 to 2016. Civil partnerships were introduced in December 2005 and the figures for 2005 relate to just the month of December in that year.

CIVIL PARTNERSHIP FORMATIONS					
United Kingdom, 2005-16					
Year	England	Wales	Scotland	Northern Ireland	United Kingdom
2005 ^A	1,790	67	84	12	1,953
2006	14,383	560	1,047	116	16,106
2007	7,635	294	688	111	8,728
2008	6,276	282	525	86	7,169
2009	5,443	244	498	96	6,281
2010	5,536	268	465	116	6,385
2011	5,900	252	554	89	6,795
2012	6,103	259	574	101	7,037
2013	5,381	265	530	100	6,276
2014	1,616	67	436	110	2,229
2015	832	29	64	89	1,014
2016	859	31	70	84	1,044

Notes
A. Data for 2005 includes only the month of December, when civil partnerships were introduced.

Sources
ONS, Civil Partnership Formations
NRS, Vital Events Reference Tables 2016
NISRA, Registrar General Annual Report 2016

There were 1,953 civil partnerships in December 2005, and 16,106 in 2006, which was the first full year civil partnerships were available.

This was much higher than in subsequent years, presumably due to pent-up demand for a legal form of same sex union.

After 2006 the number of civil partnerships fell, and from 2009 to 2013 the number of civil partnerships remained relatively stable at around 6,600 a year.

Following the introduction of same sex marriage in England and Wales in March 2014, and in Scotland in December 2014, the number of civil

partnerships fell. There were just over a thousand civil partnerships formed in the UK in 2016. This was roughly the same number as in 2015, suggesting that the level of civil partnership formation may have stabilised since the introduction of same sex marriages.

Between the introduction of civil partnerships in December 2005 and the end of 2016 there were 71,017 civil partnerships formed in the UK.

2.2 Same sex marriages

As same sex marriage is still relatively new, the UK's statistical agencies have so far only published limited data on the number of same sex marriages and on the conversion of civil partnerships to same sex marriages.

England and Wales

Between the introduction of same sex marriage in England and Wales on 29 March 2014 and 30 June 2015, there were 7,366 marriages formed between same sex couples in England and Wales.

Couples in civil partnerships in England and Wales have been able to convert their civil partnership into a marriage since 10 December 2014. Between 10 December 2014 and 30 June 2015, 7,732 couples converted their civil partnership into a marriage in England and Wales.⁷

Scotland

Same sex marriage was introduced in Scotland on 16 December 2014. The legislation in Scotland allowed couples in a civil partnership to marry without first dissolving their civil partnership.

In 2015, there were 1,671 marriages formed between same sex couples in Scotland, of which 936 were between couples who were already in a civil partnership.⁸

In 2016, there were 998 marriages formed between same sex couples in Scotland, of which 173 were between couples who were already in a civil partnership.⁹

Northern Ireland

Same sex marriage is not recognised in Northern Ireland.

⁷ ONS, [Marriages in England and Wales \(provisional\), for Same Sex Couples, 2014](#)

⁸ NRS, [Vital Events Reference Tables 2015](#)

⁹ NRS, [Vital Events Reference Tables 2016](#)

3. Government consultation on the future of civil partnership in England and Wales

Summary

In accordance with a requirement in the Marriage (Same Sex Couples) Act 2013 to do so, in 2014, the Coalition Government consulted on the future of civil partnership in England and Wales. Subsequently, the Coalition Government stated that, in responses to the consultation, there was no united call for reform and that it had decided not to do anything at that time.

3.1 Requirement to consult

In debates on the bill which became the [Marriage \(Same Sex Couples\) Act 2013](#), (the 2013 Act) calls were made for the Bill to enable opposite sex couples to register a civil partnership.

At report stage in the House of Commons, an amendment providing for a review of the Civil Partnership Act 2004 was agreed. The amendment became [section 15](#) of the 2013 Act:

- (1) The Secretary of State must arrange—
 - (a) for the operation and future of the Civil Partnership Act 2004 in England and Wales to be reviewed, and
 - (b) for a report on the outcome of the review to be produced and published.
- (2) Subsection (1) does not prevent the review from also dealing with other matters relating to civil partnership.
- (3) The arrangements made by the Secretary of State must provide for the review to begin as soon as practicable and include a full public consultation.

Commentary on the debate on the amendment is provided in the [Lords Library Note](#) on the Bill.¹⁰

3.2 Consultation paper

On 23 January 2014, the Coalition Government published its consultation paper, [Civil Partnership Review \(England and Wales\): a consultation](#). Among other things, the consultation asked for views on:

- abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages;
- stopping new civil partnerships being registered but retaining existing ones; and
- opening up civil partnership to opposite sex couples.

The consultation period ended on 17 April 2014.

¹⁰ LLN 2013/011, 30 May 2013, p7

3.3 Government response

In June 2014, the Coalition Government published its response, [Civil Partnership Review \(England and Wales\) - Report on Conclusions](#). This stated that there was no united call for reform in responses to the consultation. Some felt that it was too soon to change civil partnership, before the impact of extending marriage to same sex couples could be assessed. The Coalition Government decided not to do anything at that time:

A majority of respondents who expressed a view on them were opposed to each of the three main changes to civil partnership. There was therefore no united call for change from respondents to the consultation at this stage.

Of the over 10,000 online survey answers to each of the relevant questions:

- Less than a third of respondents supported abolition of civil partnership
- The majority were against closing civil partnership to new couples
- Over three-quarters were against opening up civil partnership to opposite sex couples.

Several important organisations thought it was too soon to consider making changes to civil partnership – this should wait until we know the impact of extending marriage to same sex couples. Other organisations, in contrast, put forward a case for opening up civil partnerships to opposite sex couples now, for example because civil partnership and marriage were different relationships and couples should have equal access to both.

In time we will know how many same sex couples are marrying and how many entering a civil partnership, and how many couples are remaining in civil partnerships rather than converting them to marriages. At present we do not have this information, and civil partnership conversion to marriage will not be available until December 2014.

Given the lack of consensus on the way forward, the Government will not be making any changes.¹¹

¹¹ Department for Culture, Media and Sport, [Civil Partnership Review \(England and Wales\) - Report on Conclusions](#), June 2014, p4

4. Calls for civil partnership to be available to opposite sex couples

Calls have been made both inside and out of Parliament for civil partnership to be extended to opposite sex couples. Some examples are set out below

4.1 Equal Civil Partnerships Campaign

The [Equal Civil Partnerships Campaign](#) is calling on the Government to extend the right to civil partnership to all couples, regardless of sex or sexual orientation. Its reasons (extracted from the campaign's website, where details for each reason are provided) are stated to include:

- equality;
- a modern alternative to marriage;
- the family factor;
- the feminism factor; and
- for LGBT+ equality.¹²

4.2 The Times "Family Matters" campaign

In November 2017, The Times and the charity, [Marriage Foundation](#) [founded by former family High Court judge, Sir Paul Coleridge], launched their "Family Matters" campaign. The campaign is calling for the modernisation of family law, including extending civil partnerships to opposite sex couples.¹³

4.3 EDM

On 28 October 2016, Alistair Carmichael (Liberal Democrat) tabled an early day motion, [Civil partnerships and different-sex couples](#), which supported efforts to extend civil partnerships to opposite sex couples:

That this House notes that while same-sex couples are able to form a civil partnership, different-sex couples cannot; further notes that on 2 and 3 November 2016 the Court of Appeal will hear Rebecca Steinfield and Charles Keidan's appeal against the decision of the High Court to reject their application to form a civil partnership; notes that there are an estimated 3 million cohabiting different-sex couples and 1.8 million dependent children who could benefit from the extension of civil partnerships; believes that the current legal situation which prevents different-sex couples from gaining a civil partnership is unfair and prevents many different-sex couples from getting legal recognition and protection for their relationship in a way that matches their

¹² [Equal Civil Partnerships, Why does it matter?](#) [accessed 29 January 2018]

¹³ Frances Gibb, "Family Matters: 'Judges have too much power in divorce cases'", The Times, 23 November 2017 (subscription required) [accessed 29 January 2018]

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values; and supports efforts being made to extend civil partnerships to different-sex couples.¹⁴

The EDM gained 44 signatures including Members from all the main parties.

4.4 Previous Private Member's Bills

The [Civil Partnership Act 2004 \(Amendment\) Bill 2016-17](#), a Private Member's Bill, was presented to Parliament by Tim Loughton on 21 July 2016.¹⁵ The long title of the Bill was "to amend the Civil Partnership Act 2004 to provide that opposite sex couples may enter into a civil partnership; and for connected purposes".

On 21 October 2015, Tim Loughton had introduced a similar bill under the Ten Minute Rule procedure.¹⁶ That Bill made no further progress in the 2015-16 session of Parliament. When introducing that Bill, Tim Loughton spoke of his continued attempts to change the law:

The eagle-eyed among those remaining in the Chamber will have spotted that this Bill has form. It is identical to the Bill I brought before the House last year, and it mirrors the amendment I proposed during the report stage of the Marriage (Same Sex Couples) Bill in May 2013. My Bill therefore makes its hat-trick appearance today, unencumbered by any other legislation, in the hope that it will be third time lucky and will move into Committee.¹⁷

A second reading debate on the 2016-17 Bill took place on 13 January 2017.¹⁸

Tim Loughton spoke of the new inequality created when marriage of same sex couples was introduced: "That new inequality is that marriage is available to same-sex and opposite-sex couples, yet civil partnerships are available only to same-sex couples". He acknowledged that opposite sex couples may marry in a variety of places but said that many couples choose not to go down the traditional marriage route:

Indeed, cohabitation is the fastest growing form of family in the UK. We need to recognise that our society is changing, just as we did when recognising same-sex partnerships in law back in 2004.

Tim Loughton said that people choose not marry for a variety of reasons:

It is seen as too much of an establishment thing to do. For many, it is identified as an innately religious institution; even if done in a register office, it has religious connotations. Some see it as having a patriarchal side—as being some form of social control and not a proper partnership. Those are not my own views, necessarily, but they are certainly how many people see it. There are a whole lot of complex motives as to why many of our constituents do not go down the formal marriage route. They are mostly still in committed, loving relationships, but if they do not want to go for traditional marriage, they have no way of having those

¹⁴ [EDM 619 of 2016-17](#)

¹⁵ Bill 58 of 2016-17

¹⁶ [Bill 83 of 2015-16](#)

¹⁷ [HC Deb 21 October 2015 c960](#)

¹⁸ [HC Deb 13 January 2017 cc639-51](#)

relationships recognised in the eyes of the state, just as was the case for same-sex couples pre-2004.

He spoke of the “common misconception that there is such a thing as a common-law wife or common-law husband” adding, “Surely couples should not be forced to choose between having no legal protection or entering into an institution that is not right for them”.

Tim Loughton said that a further “major practical benefit” of opening up civil partnership to opposite-sex couples was family stability:

We know that marriage works, but we also know that civil partnerships are beginning to show evidence of greater stability for same-sex couples, including those who have children, be it through adoption, surrogacy or whatever. There is a strong case for believing that extending civil partnerships would improve that stability for many more families in different ways. If just one in 10 cohabiting opposite-sex couples entered into a civil partnership, it would cover some 300,000 couples and their children. It would offer the prospect of yet greater security and stability, less likelihood of family breakdown, and better social and financial outcomes. That, surely, is progress, and would be particularly good for children in those families.

Tim Loughton described the current situation as “unfair, illogical and needs to change”.

Rupa Huq supported the Bill on behalf of the Opposition.

Replying for the Government, Robert Halfon, then Minister for Apprenticeships and Skills, referred to the 2014 consultation when 76% of the 11,500 respondents opposed extending civil partnerships. He reiterated that the Government wanted to look at the data before taking any further decisions on the matter. The Minister spoke of the way couples could personalise a civil marriage ceremony and said that “it is no longer for everybody a religious and patriarchal way of making a commitment”.

Robert Halfon also referred to ongoing legal proceedings¹⁹ and said that the Government would wait for the outcome. He listed reasons why Tim Loughton’s proposals would require “significant further work”. The Minister was still speaking when time ran out. The Bill made no further progress.

¹⁹ See the next section of this paper

5. Legal challenge

5.1 Judicial review case

In January 2016, an opposite sex couple (Rebecca Steinfeld and Charles Keidan) lost their claim for judicial review of the ban on civil partnership for opposite sex couples.²⁰ They were seeking a declaration that the Civil Partnership Act 2004 is not compatible with Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Mrs Justice Andrews DBE held that the restriction on opposite sex couples entering into a civil partnership had not become unlawful:

Those provisions have not become incompatible with Arts 14 and 8 of the Convention just because same-sex couples now have two routes to achieving legal recognition of their relationship by the state and opposite-sex couples continue to only have one. The difference in treatment complained of does not infringe a personal interest close to the core of the right to family life, still less the right to private life protected by Art 8.

The judge also considered that the Government was entitled to wait before making a decision on the future of civil partnership:

86. If for any reason I am wrong about this, and the difference in treatment does fall within the ambit of Art 8 read together with Art 14, then maintaining that difference in the short-term is objectively justified. By deciding to wait until it is in a better position to evaluate the impact of the 2013 Act on civil partnerships before taking any legislative steps, against a background where there is no consensus either domestically or within Europe as to the appropriate course to take, the Government is acting well within the ambit of discretion afforded to it with regard to the regulation of social matters. Opposite-sex couples are not disadvantaged by the hiatus, because they can achieve exactly the same recognition of their relationship and the same rights, benefits and protections by getting married, as they always could.

87. The Government's decision to wait and see serves the legitimate aim of avoiding the unnecessary disruption and the waste of time and money that plunging into a programme of legislative reform without waiting is likely to produce.

The Government welcomed the decision.²¹

Information about the case, and the views of the couple, is provided on the [Equal Civil Partnerships website](#).²²

²⁰ [Rebecca Hannah Steinfeld and Charles Robin Keidan v Secretary of State for Education](#) [2016] EWHC 128 (Admin)

²¹ [PQ HL6809 \[on Civil Partnerships\], 16 March 2016](#)

²² [Equal Civil Partnerships, The legal challenge](#) [accessed 29 January 2018]

5.2 Court of Appeal decision

The couple appealed to the Court of Appeal which dismissed their appeal and upheld the High Court decision.²³ In part, the decision was by majority (2:1).

The majority held that the Government's policy of "wait and evaluate" was proportionate, and therefore justifiable, at present.

The Judiciary of England and Wales has published the following [summary of the Court of Appeal decision](#):

In their judgment all the members of the Court consider that:

1. the bar constitutes a potential violation of the appellants' human rights under Article 14 (prohibition of discrimination) taken with Article 8 (right to respect for private and family life) of the European Convention on Human Rights; and
2. the Court should not make any declaration of incompatibility with the couple's human rights. There is in any event a Private Member's Bill proposing the removal of the bar, so that question is already before Parliament.

The Court's reasons on the final issue of justification differ:

- The majority, Lord Justices Beatson and Briggs, in agreement with the decision of the Judge in the High Court, consider that the difference of treatment of same-sex and opposite-sex couples is justified by the Secretary of State's policy of "wait and evaluate". While recognising that the focus of the review on the demand by same-sex couples for civil partnerships rather than the position of all couples is open to criticism, Lord Justices Beatson and Briggs consider it proportionate, and therefore lawful, for the Secretary of State to have further time to undertake a proper assessment of the best way forward on what is an important matter of social policy, when a number of options, including the extension of civil partnership to different-sex couples, or its phasing out, fall to be considered.
- Lady Justice Arden, dissenting on the justification issue, considers that the potential violation of the appellants' rights is not justified by the Secretary of State's current policy of "wait and see", though it is open to the Secretary of State to reformulate her policy.

The Secretary of State's current policy is that she will not propose any change to the Civil Partnerships Act 2004 until she has more statistical data about whether the number of same-sex couples choosing or remaining in civil partnerships rises or falls following the introduction of same-sex marriage. This policy is both open-ended in time and focused solely on the reduction in number of civil partnerships, and it does not address not the wider issues.

²³ [2017] EWCA Civ 81

5.3 Leave to appeal to Supreme Court

The couple have been granted permission to appeal to the Supreme Court.²⁴ The date of the hearing is not yet known.

²⁴ UKSC 2017/0060 Granted 8 August 2017

6. Government's position

The Government has set out its position in a number of written answers to Parliamentary questions, including:

- In November 2016, following the introduction of civil partnership for opposite sex couples in the Isle of Man, the Government confirmed that, at that time, it did not intend to consult further on the future of civil partnership or to change the law:

The Government has already carried out a consultation on the future of civil partnerships in 2014, and has no plans to carry out another consultation on this issue.

Following the passage of the Marriage (Same Sex Couples) Act 2013, we carried out a full review of the operation and future of the Civil Partnership Act 2004, which included a thorough public consultation on potential changes to civil partnership. Views were invited on three options: abolishing civil partnerships; phasing them out; or extending them to opposite sex couples.

The review found that there was no clear consensus on the future of civil partnerships. A majority of respondents to the consultation were against extending civil partnerships to opposite sex couples and a significant number of stakeholders thought it was too soon to consider making changes to civil partnerships until the impact of extending marriage to same sex couples is known. Given the lack of any consensus, the Government has no current plans to make changes to the Civil Partnership Act 2004.

The Isle of Man is a self-governing crown dependency. We are not required to carry out an assessment on their legislation.²⁵

- In December 2016, the Government acknowledged receipt of a petition, but declined to comment further, pending ongoing legal action:

The Government received a petition on extending civil partnerships to opposite sex couples from the Equal Civil Partnerships Campaign on 17 November.

We are currently waiting for a judgment from the Court of Appeal on this matter and are unable to comment whilst legal action is ongoing.

The Government is committed to equality, and we will provide an update on the Government's position on civil partnerships once legal proceedings have concluded.²⁶

- In December 2017, the Government said that it was keeping the matter of civil partnerships under review:

The government is proud to have introduced marriage for same-sex couples.

We continue to keep the matter of civil partnerships under review. The government has consulted on the continued operation of civil partnerships and there has been little

²⁵ [PQ 48964 \[on Civil Partnerships: Isle of Man\], 2 November 2016](#)

²⁶ [PQ HL3455 \[on Civil partnerships\], 5 December 2016](#)

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consensus. It is right that we evaluate the demand for civil partnerships before we make changes to the law. We are assessing the demand amongst both same-sex and opposite-sex couples. We believe it is still too early to judge how the law should be changed.

There was a Judicial Review of our decision not to extend civil partnerships to opposite-sex couples and the claimants have recently been granted an appeal to the Supreme Court.

As this is an ongoing legal case, we are unable to comment further at this stage.²⁷

²⁷ [PQ HL4043 \[on Civil Partnerships\], 22 December 2017](#)

7. Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-19

Tim Loughton came fifth in the Private Members' Bill ballot which took place in June 2017. In July 2017, he introduced the [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill 2017-19](#) (the Bill).²⁸ The Bill was published on 31 January 2018 as Bill 11 of 2017-19 and is due to have its second reading on 2 February 2018. [Explanatory Notes](#) have been prepared by the Home Office with the consent of Tim Loughton.

Information about the Bill is provided on the [Bill page on the Parliament website](#).

The long title to the Bill includes "to provide that opposite sex couples may enter a civil partnership".

Clause 2 ("Reform of civil partnership") would require the Secretary of State to "make arrangements for the preparation of a report assessing how the law ought to be changed to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships".

The Secretary of State would be required to publish the report.

Following publication, the Secretary of State would have power to "make regulations to change the law relating to civil partnership to bring about such equality". The regulations would be subject to the affirmative resolution procedure, requiring the approval of both Houses of Parliament to become law.

Delegated powers that enable ministers to amend primary legislation via secondary legislation are referred to as "Henry VIII powers" and, have sometimes (but not always) proved controversial – particularly if the powers are very wide-ranging. They are seen by their critics as transferring legislative power from Parliament to Government. The Delegated Powers and Regulatory Reform Committee in the House of Lords has noted that by long-established practice, Henry VIII powers are subject to the affirmative procedure, as they are in this Bill.

The Bill would also deal a number of other matters. Another Library briefing paper provides further information:

[Commons Library analysis: Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) (CPB 08217, 1 February 2018).

²⁸ [HC Deb 19 July 2017c875](#)

8. The future of civil partnership in Scotland

8.1 Civil partnership in Scotland

Issues in relation to civil status are devolved.

The Civil Partnership Act 2004 extends across the United Kingdom. [Part 3](#) of the Act deals with civil partnership in Scotland and was included following a Legislative Consent Motion. Section 86 provides that two people are not eligible to register in Scotland as civil partners of each other if (among other reasons) they are not of the same sex.

The Scottish Parliament could make changes to the status of civil partnership in Scotland.²⁹

8.2 Review of civil partnership in Scotland

Consultation

During the Parliamentary passage of the Marriage and Civil Partnership (Scotland) Act 2014, the Scottish Government said that it would carry out a review of civil partnership in Scotland.

As part of that review, in September 2015, the Scottish Government published a consultation paper seeking views on three options:

- no change, so that civil partnership would remain available for same sex couples only;
- stopping new civil partnerships being registered at some date in the future;
- introducing opposite sex civil partnership in Scotland.

Although the consultation paper asked for views on the subject, the Scottish Government stated that it was not persuaded that opposite sex civil partnership should be introduced in Scotland. The consultation paper set out the Scottish Government's reasons for taking this position:

- The Government considers that demand for opposite sex civil partnership in Scotland would be low. Evidence from other countries is that when the rights and responsibilities of opposite sex married couples and opposite sex civil partners are on the same lines, the vast majority of opposite sex couples seeking to enter into a registered relationship get married.
- The recognition of opposite sex civil partnership elsewhere in the UK and overseas would be limited.
- Society's understanding of opposite sex civil partnership might be limited.
- If couples do not wish to marry, Scots law provides some rights already for cohabitants.

²⁹ [Review of civil partnership A consultation by the Scottish Government, September 2015, paragraph 1.02](#)

- Some of the arguments for opposite sex civil partnership seem to be based on perceptions that, for example, marriage is a religious or patriarchal institution. However, it is perfectly possible to have a civil (or belief) marriage ceremony, if the couple so wish. And it is for the couple themselves to determine the nature of their own marriage.
- Opposite sex civil partnership would increase complexity.
- There would be disproportionate costs to opposite sex civil partnership.³⁰

Further information is provided in Annex C of the consultation paper.

Response to consultation

In August 2016, the Scottish Government published an [Analysis of Consultation Responses](#). A section beginning on page 19 sets out views received, for and against, the introduction of opposite sex civil partnership.

In November 2017, the Scottish Government published its [response](#) to the consultation. This stated that an informal analysis of the number of respondents showed that:

- 52% of respondents supported mixed sex civil partnership;
- 30% were specifically against mixed sex civil partnership;
- 9% supported no more new civil partnerships;
- 2% supported the status quo (most of the respondents arguing for this were corporate bodies rather than individuals);
- 7% were in an “other” category.

The Scottish Government referred to the Court of Appeal decision in *Steinfeld and Keidan v Secretary of State for Education*,³¹ and noted that the UK Supreme Court had granted permission to appeal the judgment. The Scottish Government said that it would monitor developments.

The Scottish Government stated that it did not intend to legislate on civil partnership at present but would continue to consider the evidence on potential take-up of mixed-sex civil partnership in Scotland. It considered it likely that it would be reasonable to reassess the position after 2019:

No legislation on civil partnership now

9. The Scottish Government has decided not to legislate on civil partnership now but does not rule out legislation later in this Parliament. The future of civil partnership raises difficult and sensitive issues that affect the public at large. It is therefore necessary to carry out further work, as outlined below, to obtain further evidence to evaluate the impact of same sex marriage on the number of civil partnerships being entered into and on the demand and support for mixed sex civil partnerships. This further evidence-gathering and evaluation will be carried out as

³⁰ Ibid, Chapter 4, p9

³¹ See section 5 of this paper above

part of the Scottish Government's on-going work on the future of civil partnership.

Further analysis of evidence

10. The Scottish Government will continue to consider the evidence on potential take-up of mixed-sex civil partnership in Scotland. In particular:

- The Scottish Government will include questions on potential take up of mixed sex civil partnership in one of our omnibus surveys of social attitudes. We will publish the results of those questions, once available.
- We will carry out, and publish, further analysis of take up of mixed sex civil partnership (and equivalent relationships) in other jurisdictions, including jurisdictions which have established mixed sex civil partnership since the Scottish Government consultation issued.³²

11. The Scottish Government will continue to consider the evidence on the impact of same sex marriage on the number of civil partnerships being entered into. In particular:

- We will continue to monitor take up of same sex civil partnership in Scotland. Statistics on the number of civil partnership being entered into are regularly published by National Records of Scotland [NRS].
- We will monitor take up of same sex civil partnership (and equivalent relationships) in other jurisdictions, particularly where these other jurisdictions have also introduced same sex marriage.

12. The Scottish Government considers that five years from the introduction of same sex marriage in 2014 (i.e. the end of 2019) is likely to be a reasonable time period to obtain such evidence and the Scottish Government will further evaluate and assess the best way forward as soon as possible thereafter. The Scottish Government will keep the timescales for consideration of the way forward under review as further evidence and evaluation emerges.

³² Footnote to text: "The Scottish Government is aware that since its consultation issued civil union legislation (including mixed sex couples) has come into force in Chile and Estonia and that the Isle of Man and the Falkland Islands have established mixed sex civil partnership"

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