

# CIVIL PARTNERSHIPS, MARRIAGES AND DEATHS (REGISTRATION ETC.) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill as introduced in the House of Commons on 19 July 2017 (Bill 11).

- These Explanatory Notes have been prepared by the Home Office with the consent of Tim Loughton in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill requires the Secretary of State to review the system of registering marriages and civil partnerships to ascertain the changes that would be needed to enable the inclusion of both parents in a register entry. It requires the Secretary of State to prepare a report to assess the changes that ought to be made to ensure equality of treatment with respect to the future ability of opposite-sex and same-sex couples to form a civil partnership, and confers power to effect those changes. It also requires the Secretary of State to prepare a report on whether the law ought to be changed to require or permit the registration of pregnancy losses. Finally, it requires the Secretary of State to prepare a report on whether the law ought to be changed to enable or require coroners to investigate stillbirths, and confers powers to make those changes.

## Policy background

- 2 Since 1837, the marriage register entry in England and Wales (and consequently marriage certificates, which are a certified copy of the entry) has included details of the fathers of the spouses, but not their mothers. Although changes to the content of the register entry could be made by secondary legislation (as the particulars required to be registered are prescribed in regulations under section 55(1) of the Marriage Act 1949), any change would necessitate replacement of all 84,000 marriage register books currently in use.
- 3 The Civil Partnership Act 2004 was introduced to provide legal recognition to same-sex couples at a time when marriage was not available to them. Currently, only same-sex couples can form a civil partnership in England, Wales, Scotland and Northern Ireland; opposite-sex couples have never been able to form a civil partnership in any of those territories.
- 4 Many of the care considerations for parents experiencing a stillbirth (when a baby is born after 24 weeks gestation) will be similar for those experiencing a late miscarriage. Local policies, however, may affect the type and place of care offered or available depending on the gestation when baby loss occurs.
- 5 In particular, registration certificates are often greatly valued by parents as a way of recognising and naming their baby. Currently, parents whose babies are stillborn after 24 weeks gestation can register the baby's name and receive a certificate of registration of stillbirth. When a pregnancy ends before 24 weeks gestation however, there is no formal process for parents to legally register the loss. Some expectant parents find this to be particularly distressing.
- 6 Under the Coroners and Justice Act 2009, coroners have a duty to investigate deaths in certain circumstances, such as where the death is violent or unnatural. Coroners can only investigate the deaths of babies who show signs of life after being born, not babies who die before or during labour. Coroners can commence an investigation to decide if a duty to conduct an investigation arises if there is any doubt as to whether a baby was stillborn but their investigation must end if they find it was a stillbirth. They will not investigate into the circumstances of why the baby was stillborn.
- 7 On 28 November 2017 the Secretary of State for Health announced a number of new measures as part of the relaunch of the Maternity Safety Strategy to reduce the current rate of stillbirths in England and to spread knowledge and learning in the system. This includes a commitment that from April 2018, every case of stillbirth, neonatal death, suspected brain injury or maternal death that is notified to the Royal College of Obstetrician and Gynaecologists 'Each Baby Counts' programme will be investigated independently by the Healthcare Safety Investigation Branch (HSIB). This effectively removes responsibility for deciding whether and to what extent such cases should be investigated from the care provider and/or commissioner. The investigations will have

an explicit remit not just to get to the bottom of what happened in an individual instance, but to spread knowledge around the system and be learning focused, and will involve families from the outset. There is however a question of whether coroners should have a role to play in investigating stillbirths to contribute to learning and reducing the stillbirth rate. Additionally, concerns have also been raised by parents that some babies who showed signs of life after birth were being classified as stillborn and hence were not being reported to the coroner.

## Legal background

- 8 The registration of marriages in England and Wales is principally governed by the Marriage Act 1949 and regulations made under it (the Registration of Marriages Regulations 2015 and Marriage (Authorised Persons) Regulations 1952). The Marriage (Registrar General's Licence) Act 1970 provides an alternative procedure for marriages involving a person who is seriously ill and not expected to recover, and imports the registration provisions from the 1949 Act.
- 9 Section 1 of the Civil Partnership Act 2004 provides that a civil partnership is a relationship between two people of the same sex when they register as civil partners of each other.
- 10 Under section 3(1)(a) of the Civil Partnership Act 2004, two people are not eligible to register as civil partners of each other if they are not of the same sex. Equivalent restrictions apply to eligibility for registration in Scotland and Northern Ireland under s.86 and s.138 of the Act.
- 11 The Births and Deaths Registration Act 1953 ("the 1953 Act"), together with regulations made under that Act, set the legal framework for the registration of births. Section 1 of the 1953 Act requires every child born in England and Wales to be registered. Section 11 makes special provision about registration of stillbirths. The definition of "stillborn child" is in section 41 of the 1953 Act and provides as follows:
  - 12 "stillborn child" means a child which has issued forth from its mother after the twenty-fourth week of pregnancy and which did not at any time after being completely expelled from its mother breathe or show any other signs of life, and the expression "stillbirth" shall be construed accordingly.
- 13 Clause 4 provides a power to amend Part 1 of the Coroners and Justice Act 2009 ("CJA") to enable or require coroners to conduct investigations into stillbirths. Part 1 of the CJA is the current law governing coroners' investigations into deaths. Section 1(1) of the CJA places a duty on a senior coroner who is made aware that the body of a deceased person is within that coroner's area to conduct, as soon as practicable, an investigation into the person's death if one of the triggers in section 1(2) for an investigation applies. The triggers in section 1(1) are that the coroner has reason to suspect that:
  - (a) the deceased died a violent or unnatural death;
  - (b) the cause of death is unknown; or
  - (c) the deceased died while in custody or otherwise in state detention.
- 14 Under section 5(1) of the CJA the purpose of a coroner's investigation is to determine:
  - (a) who the deceased was;
  - (b) how, when and where the deceased came by his or her death; and
  - (c) the particulars (if any) required by the Births and Deaths Registration Act 1953 to be registered concerning the death.

- 15 Under section 5(2) of the CJA, where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)), the purpose in paragraph (b) above is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.
- 16 An inquest must be held as part of all investigations, subject to section 4(3)(a) of the CJA. Section 4(3)(a) provides that a coroner may discontinue an investigation without holding an inquest if the cause of death is revealed by a post-mortem examination and the death was not violent, unnatural or in custody or otherwise in state detention. Section 10 of the CJA sets out the determinations and findings to be made at the inquest and they cover the same matters as the purposes of the investigation under section 5 of that Act.
- 17 England and Wales are divided into coroner areas. Coroner areas are dealt with in Schedule 2 to the CJA. Each coroner area consists of the area of a local authority or the combined area of two or more local authorities. Paragraph 3 of Schedule 2 sets out the relevant authority for each coroner area. If the area consists of the one local authority area then that authority is the relevant authority. If the coroner area consists of two or more local authority areas then the relevant authority is the one they jointly nominate or, if they cannot agree, the authority as determined by the Lord Chancellor.
- 18 Each coroner area has a senior coroner appointed by the relevant authority in accordance with Schedule 3 to the CJA. A senior coroner is assisted by assistant coroners and sometimes by an area coroner, also appointed in accordance with Schedule 3. The terms of office of senior coroners, area coroners and assistant coroners are also provided for in Schedule 3. The Chief Coroner is a new office created by the CJA. The Chief Coroner is appointed under Schedule 8 to the CJA.
- 19 Part 1 of the CJA contains detailed provisions on the powers of coroners. Under section 14 a coroner may request a suitable practitioner to make a post-mortem examination of a body. This may be to further the coroner's investigation or to decide whether there is a duty to conduct a coroner's investigation. Under section 15 the coroner has the power to remove a body to a suitable place. Schedule 5 provides further powers including powers relating to the production of evidence, powers of entry, search and seizure and exhumation of a body for examination. Under paragraph 7 of Schedule 5 the coroner may make a report of action to prevent other deaths to an appropriate person. Schedule 6 makes provisions about offences in relation to coroner investigations, including offences relating to jurors and juries and offences relating to witnesses and evidence.
- 20 There is further detail on coroners' powers in the Coroners (Investigations) Regulations 2013 (SI 2013/1629) (made under section 43 of the CJA). There are also the Coroners (Inquests) Rules 2013 (SI 2013/1616) (made under section 45 of the CJA).

## **Territorial extent and application**

- 21 Legislative competence for marriage (and civil registration) has been devolved to Scotland and Northern Ireland and separate legislation exists to govern marriages solemnized in those jurisdictions. Legislative competence in these areas has not been devolved to the National Assembly for Wales.
- 22 The Civil Partnership Act 2004 extends to England and Wales, Scotland and Northern Ireland. Civil partnership and marriage are devolved to Scotland and Northern Ireland.
- 23 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

# Commentary on provisions of Bill

## Part 1:

### Chapter 1:

#### Clause 1: Registration of marriages and civil partnerships

- 24 Clause 1 requires the Secretary of State to review the system of registering marriages and civil partnerships to allow for the inclusion of both parents in a register entry.

#### Clause 2: Reform of civil partnerships

- 25 Clause 2 requires the Secretary of State to undertake an assessment (which may include assessing the demand for civil partnerships amongst opposite-sex couples) and then bring forward proposals for how the law ought to be changed to bring about equality of treatment with respect to the future ability of opposite-sex and same-sex couples to form a civil partnership. It then provides a power to amend the law accordingly. The power to make regulations is subject to the affirmative resolution procedure.

#### Clause 3: Report of registration of pregnancy loss

- 26 Clause 3 sets out a provision by which Secretary of State must undertake the preparation and publication of a report on whether or not legislation is required to register pregnancy loss which cannot currently be registered as stillbirths under the Births and Deaths Registration Act 1953.

#### Clause 4: Coroners' investigations into stillbirths

- 27 Clause 4(1) places a duty on the Secretary of State to make arrangements for the preparation of a report on whether, and if so how, the law ought to be changed to enable or require coroners to investigate stillbirths. Under clause 4(2) "stillbirths" is given the meaning in section 41 of the Births and Deaths Registration Act 1953. Section 41 of that Act provides: "stillborn child" means a child which has issued forth from its mother after the twenty-fourth week of pregnancy and which did not at any time after being completely expelled from its mother breathe or show any other signs of life, and the expression "stillbirth" shall be construed accordingly". Under clause 4(3) the Secretary of State must publish the report produced.
- 28 Subsection (4) of clause 4 confers a power on the Lord Chancellor, after the report under clause 4(1) has been published, to make investigation regulations in accordance with clause 4. Under clause 4(5) investigation regulations may amend Part 1 of the Coroners and Justice Act 2009 ("CJA") to enable or require coroners to conduct investigations into stillbirths. Part 1 of the CJA contains the current powers of coroners to investigate deaths. A description of the current provisions in Part 1 is provided above in the Legal Background section of these Explanatory Notes.
- 29 Clause 4(5)(b) provides that investigation regulations may limit the circumstances in which investigations are to take place. For example, this could be used to provide that a power or duty to investigate stillbirths only applies to stillbirths of more than a specified gestation. Clause 4(5)(c) provides that investigation regulations may provide the purposes of a coroner's investigation. Under clause 4(5)(d) investigation regulations may make provision equivalent or similar to provisions in Part 1 of the CJA that relate to investigations into deaths.
- 30 Subsection (6) of clause 4 makes further provision about the power to make investigation regulations and includes a power to make incidental, consequential or supplemental provision including making provision amending provisions made by or under an Act, whenever passed or made. Under subsection (7) of clause 4, investigation regulations may not create criminal offences other than by applying (with necessary modifications), or making equivalent or similar provision to,

provision already contained in Part 1 of the CJA. For example, this power could be used to apply the offences in Schedule 6 to the CJA to investigations into stillbirths. Subsection (7) also provides that investigation regulations may not confer any power to make provision of a legislative character other than applying, or making equivalent or similar provision, to provision already contained in Part 1 of the CJA. For example, this power could be used to make provision equivalent to the Lord Chief Justice's power in section 45 of the CJA to make rules relating to inquests.

- 31 The power to make investigation regulations is subject to the affirmative resolution procedure (clause 4(9)). Under clause 4(10) the power to make investigation regulations will cease to be exercisable after the period of five years beginning with the day on which the report is published under clause 4(3).

## Commencement

- 32 Clause 5 provides for commencement. This Act comes into force on such day or days as the Secretary of State may by regulations appoint.

## Financial implications of the Bill

- 33 The review of marriage/civil partnership registration details would be done in house and not incur any additional costs. Some work has already been completed in this respect as there are currently two Private Members' Bills in Parliament which seek to amend how marriages are registered.
- 34 If civil partnerships were extended to opposite-sex couples as a result of these proposals, amending the eligibility criteria for entering a civil partnership would cost at least £3.3 million to £4.4 million to update administrative processes relating to registration. There would be additional potential costs relating to taxation and pension rights that may be accrued by opposite-sex couples who form a civil partnership, and who would not have otherwise formed a religious or civil marriage. These costs cannot be quantified at this time.
- 35 The report on registration of pregnancy loss would be done in house and not incur any additional costs.
- 36 The preparation of a report as to whether stillbirths should be referred to the coroner would be done in house and not incur any additional costs.

## Parliamentary approval for financial costs or for charges imposed

- 37 A money resolution will be needed because regulations under the Bill may increase the sums that will be payable out of money provided by Parliament. Any extension of eligibility for civil partnerships would lead to additional administrative and other costs, for example those of the General Register Office. Coroner services are funded by local authorities and any extension of these services may lead to an increase in the sums paid to those authorities (such as those under section 78 of the Local Government Finance Act 1988).

# Compatibility with the European Convention on Human Rights

38 As this is a Private Members Bill, the Secretary of State is not required to make a statement under section 19(1)(a) of the Human Rights Act 1998. Nonetheless, in the Government's view, the provisions of the Bill are compatible with the Convention rights.

## Annex A - Territorial extent and application in the United Kingdom

The Bill extends to England and Wales only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1								
Clause 2	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 3	Yes	Yes	No	No	N/A	N/A	N/A	
Clause 4	Yes	Yes	No	No	N/A	N/A	N/A	
	Yes	Yes	No	No	N/A	N/A	N/A	





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