

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 brought from the House of Commons on 29 October 2018 (HL Bill 140).

- These Explanatory Notes have been prepared by the Home Office with the consent of Baroness Hodgson of Abinger 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 purpose of the Bill is fourfold. Firstly, it confers powers on the Secretary of State to enable them to reform the way in which marriages are registered in England and Wales, moving from a paper-based system to registration in an electronic register. This will facilitate change to the register entry both now and in the future, including a line for the inclusion of the mother in the marriage entry, and create a more secure system for the maintenance of marriage records. Secondly, it requires the Secretary of State to make regulations to bring about equality between same-sex and other couples regarding their ability or otherwise to form civil partnerships. Thirdly, it 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 which cannot be registered as still-births under the Births and Deaths Registration Act 1953. 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 still-births, and confers powers to make those changes.

Policy background

2. This Bill enables the introduction of a “schedule” system for the registration of marriages in England and Wales, similar to that already in place for civil partnerships in England and Wales and for marriages and civil partnerships in Scotland and Northern Ireland. The basis of this system is that the parties sign a document (called a “marriage schedule”) instead of signing the marriage register book. The schedule is then returned to the register office for the marriage to be registered in an electronic register maintained by the Registrar General.
3. Under the proposed new system, instead of superintendent registrars in the district(s) of the parties' residence issuing two certificates authorising the marriage to proceed, the superintendent registrar in the district in which the marriage is to be solemnized will issue one schedule for the couple. The schedule will contain all the information to be entered into the marriage register. The marriage will not be able to proceed without a schedule being issued.
4. The schedule will be taken to the marriage and, following the ceremony, it will be signed by the couple, witnesses, the person officiating and the person responsible for ensuring the schedule is signed. This is in place of signing the current marriage register book.
5. The couple will be responsible for ensuring the signed schedule is returned to the register office to be registered in the electronic marriage register. However, for all civil marriages (and those religious marriages attended by a registrar) it is anticipated that the registrar will retain the schedule and take it back to the register office to be registered.
6. Those marrying in the Church of England or Church in Wales will still be able to marry by ecclesiastical preliminaries, i.e. banns, common licence or Archbishop of Canterbury's Special Licence. These preliminaries will continue to act as the authority for the marriage to proceed.
7. Where ecclesiastical preliminaries are used, the member of the clergy will issue a “marriage document” similar to the schedule issued by the superintendent registrar but which does not act as the authority for the marriage to proceed. This will be taken to the marriage and signed by the couple, their witnesses and the member of the clergy. The couple will be responsible for returning the signed marriage document to the register office.
8. In all cases, marriage certificates can be issued from the electronic register when the marriage has been registered. Only registration officials (the Registrar General, superintendent registrars and registrars of marriage) will be able to issue marriage certificates.

9. With the introduction of a schedule system there will no longer be a requirement for the system of quarterly returns as all marriage entries will be held on the single electronic register maintained by the Registrar General.
10. The provisions of this Bill do not prevent churches or other religious buildings from keeping their own record of marriages. There is no change to the content of the marriage ceremony and couples will still be able to obtain a marriage certificate following the registration of their marriage.
11. The changes will also increase the security of marriage records by removing the requirement for open marriage register books and blank certificates to be held in churches and other religious buildings, where they can be a target of theft.
12. 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. The change to an electronic system will enable the form and content of the marriage register entry to be easily amended to include, for example, the details of both parents of the couple, without having to replace all marriage register books.
13. 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.
14. The Births and Deaths Registration Act 1953 requires all still-births (where a baby is still-born after 24 weeks gestation) to be registered by a registrar. Parents of babies who are still-born receive a medical certificate certifying the still-birth and, upon registration, can register the baby's name and receive a certificate of registration of still-birth. When a pregnancy ends before 24 weeks gestation, however, there is no formal process for parents to legally register the loss.
15. Many of the care considerations for parents experiencing a still-birth will be similar for those experiencing a pregnancy loss which occurs before 24 weeks gestation. Local policies, however, may affect the type and place of care offered or available depending on the gestation when pregnancy loss occurs.
16. In particular, registration certificates are often greatly valued by parents as a way of recognising and naming their baby. Some parents who experience a pregnancy loss find it very distressing that they are unable to legally register their loss.
17. 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 still-born but their investigation must end if they find it was a still-birth. They will not investigate the circumstances of why the baby was still-born.
18. In November 2017, the then Secretary of State for Health and Social Care announced that the Healthcare Safety Investigation Branch would conduct independent investigations into all English cases of term intrapartum still-birth, neonatal and maternal death and birth-related

brain injuries (as defined by the Royal College of Obstetricians and Gynaecologists' "Each Baby Counts" criteria). There is however a question of whether coroners should have a role to play in investigating still-births to contribute to learning and reducing the still-birth rate.

Legal background

19. 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 registration provisions from the 1949 Act. The Marriage of British Subjects (Facilities) Acts 1915 and 1916 provide for marriage preliminaries to be completed when one party is resident in England and Wales and the other is resident in certain Commonwealth countries.
20. The Bill will enable regulations, subject to the affirmative resolution procedure, to amend the Marriage Act 1949 and make consequential amendments to other enactments to provide for a new system for recording and storing marriage registration details.
21. 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.
22. 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 section 86 and section 138 of the Act.
23. 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 still-births. The definition of "still-born child" is in section 41 of the 1953 Act and provides as follows:

"still-born 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 "still-birth" shall be construed accordingly.
24. 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 still-births. 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(2) 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.
25. 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.

26. 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 (chapter 42)), the purpose of determining how, when and where the deceased came by his death is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.
27. 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.
28. 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 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.
29. 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.
30. 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.
31. 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

32. 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.
33. 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.
34. The registration of births and deaths is devolved to Scotland and Northern Ireland and reserved in relation to Wales. Health is a devolved matter in relation to Wales, Scotland and Northern Ireland. Clause 3 extends and applies to England and Wales. To the extent that the policy behind Clause 3 is to improve healthcare for parents who experience pregnancy loss, the production of the report will require input from Wales.

35. 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 and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Marriage Registration

36. Clause 1 (1) empowers the Secretary of State to make regulations which amend the Marriage Act 1949 (the 1949 Act) for a system under which details relating to marriages in England and Wales will be recorded in documents used in marriage procedures and be entered onto an electronically accessible central register.
37. Subsection (2) sets out amendments that the regulations may, in particular, make to the 1949 Act:
- Paragraph (a) enables the replacement of the existing superintendent registrar's certificates for marriage (which serve as the authority for the marriage to proceed after civil preliminaries) with a marriage "schedule", which will function not only as the authority for the marriage, but also as the document the parties sign at the solemnization (instead of a register book) and which records the particulars to be registered.
 - Paragraph (b) makes similar provision for marriages following ecclesiastical preliminaries, providing for a document that will form the basis of the registration of (although not the authority for) a marriage conducted according to the rites of the Church of England or Church in Wales.
 - Paragraphs (c), (d) and (f) enable the amendments to provide for the signing of the above-mentioned documents, their delivery to a registrar, and the registration of the particulars they contain.
 - Paragraph (e) enables amendments to be made to require the Registrar General to maintain a marriage register, which will replace the bound marriage register books currently held in register offices but also in some 30,000 churches and other religious buildings.
 - Paragraph (g) enables the regulations to amend the 1949 Act to remove provisions in the 1949 Act which are no longer required under the new system of marriage registration.
38. Subsection (3) empowers the Secretary of State to amend the 1949 Act to create a specific criminal offence, aimed at enforcing the registration of marriages. This offence is to be modelled on section 24(2)(e) of the Marriage (Scotland) Act 1977. If a signed schedule or marriage document is not delivered to the registrar to be registered within a certain timescale, the registrar may require a party to the marriage to attend personally at the register office for the purpose of delivering the signed document. Subsection (3) enables the regulations to provide that failure to attend constitutes a criminal offence. The maximum penalty (a fine not exceeding level 3 on the standard scale, currently £1000) is specified in the Bill.

39. Subsection (4) empowers the Secretary of State to sub-delegate certain administrative aspects of the registration provisions to regulations made by the Registrar General under section 74(1) of the 1949 Act with the approval of the Secretary of State. The provisions that may be delegated are:
- The power to prescribe the form and content of documents including the marriage schedule and marriage document. These documents will include the particulars to be registered in respect of each marriage. This power is also likely to be used to prescribe notices to be given by the registrar to the parties to the marriage in the event that a signed marriage schedule or document is not delivered for registration.
 - The power to make provision in relation to corrections to, or the re-issue of a marriage schedule or marriage document before the marriage is solemnized. Such provision will be necessary to enable the re-issue of documents that have been lost or damaged, or to enable corrections in case of error or where a party's details have changed, for example.
 - The power to make provision in relation to the keeping of a signed marriage schedule or document after the particulars set out in it have been entered in the marriage register. It is likely that the signed documents will be retained either by the Registrar General (as is the case for civil partnerships) or by superintendent registrars.
 - The power to make provision in relation to corrections to entries in the marriage register or a pre-commencement marriage register book.
 - The power to make provision in relation to the keeping of pre-commencement register books, for example whether they should remain in the custody of those who currently hold them (such as members of the clergy and persons authorised by other religious groups).
 - The power to make provision in relation to the keeping in a church or chapel of records of marriages solemnized according to the rites of the Church of England. It is not intended that such provision will apply in respect of marriages solemnized in the Church in Wales.
40. Subsection (5) clarifies that provision in relation to the keeping of books, documents or other records (such as signed marriage schedules, or records held by the Church of England) may specify who may keep them and how they must be stored, and the circumstances in which the book, document or other record must be annotated. This might be used to require pre-commencement marriage register books to be marked to show that they are no longer in use. Subsection (5)(c) also enables the sub-delegated regulations to require books, documents or other records to be sent to the Registrar General or a superintendent registrar.
41. Subsection (6) places a time limit on the Secretary of State's use of the power to amend primary legislation to a period of three years beginning on the day the regulations are first made.
42. The content in subsection (7) is self-explanatory.

Clause 2: Reform of civil partnerships

43. Clause 2 requires the Secretary of State to make regulations to change the law relating to civil partnership, to bring about equality between same-sex and other couples, with such regulations coming into effect within 6 months of the Bill being passed.

Clause 3: Report of registration of pregnancy loss

44. Clause 3 requires the Secretary of State to prepare and publish a report on whether, and if so how, the law ought to be changed to require or permit the registration of pregnancy losses which cannot currently be registered as still-births under the Births and Deaths Registration Act 1953.

Clause 4: Coroners' investigations into still-births

45. Clause 4 requires the Secretary of State to prepare and publish a report into whether and, if so, how the law should be changed to enable or require coroners to investigate still-births. There is further supplementary provision about the power to make the regulations under in the Bill in Clause 5. 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 still-births. Under Clause 4(2) "still-births" is given the meaning in section 41 of the Births and Deaths Registration Act 1953. Under Clause 4(3) the Secretary of State must publish the report produced.
46. Subsection (4) of Clause 4 confers a power on the Lord Chancellor, after the report under clause 4(1) has been published, to make regulations. Those regulations may amend Part 1 of the Coroners and Justice Act 2009 ("CJA") to enable or require coroners to conduct investigations into still-births. 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.
47. Clause 4(4)(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 still-births only applies to still-births of more than a specified gestation. Clause 4(4)(c) provides that investigation regulations may provide the purposes of a coroner's investigation. Under Clause 4(4)(d) investigation regulations may make provision equivalent or similar to provisions in Part 1 of the CJA that relate to investigations into deaths.
48. Under subsection (5) of Clause 4, 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 still-births. Subsection (5) also provides that 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.
49. Under Clause 4(6) the power to make 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).
50. The power to make regulations amending the CJA under clause 4 is subject to the affirmative resolution procedure (Clause 5(6)).

Clause 5: Supplementary provision about regulations

51. Clause 5 includes supplementary provision about regulations under the Bill.

52. Subsection (1)(b) enables the Secretary of State to make consequential provision in respect of regulations amending the Marriage Act 1949 made under Clause 1 of the Bill. Paragraph (1)(a) of the new clause contains the power to make a consequential amendment that enables the Secretary of State to amend, by regulations, the rarely used Marriage of British Subjects (Facilities) Acts 1915 and 1916 so that they no longer apply in England and Wales.
53. Subsection (2) enables the Lord Chancellor to make consequential provision in respect of regulations amending part 1 of the Coroners and Justice Act 2009 made under Clause 4.
54. Regulations made under subsections (1) or (2) may include provision to amend, repeal or revoke provisions made under primary legislation. The regulations may make different provision for different purposes or for specific cases. Regulations that amend, repeal or revoke any provision in primary legislation would be subject to the affirmative resolution procedure and require the approval of both Houses of Parliament.

Commencement

55. Clause 6 provides for commencement. The Bill comes into force two months after the day on which it is passed.

Financial implications of the Bill

56. It is estimated that the set up costs of the new registration system for both the General Register Office and the Local Registration Service will be £1,298,000. The reforms of the marriage registration system are expected to lead to net savings of £29,532,000 over 10 years, with further net savings of £4,306,000 for the clergy and other religious groups involved in the registration of marriages. The detailed financial implications of the Bill are set out in the accompanying impact assessment.
57. Preparation of regulations on civil partnerships would be done in-house and not incur any additional costs, although there will be costs incurred in extending civil partnerships to couples currently prohibited from forming them. An impact assessment of these costs will accompany a Government consultation to be issued before the regulations are laid.
58. The report on registration of pregnancy loss would be done by the Department for Health and Social Care and not incur any additional costs.
59. The preparation of a report as to whether still-births should be referred to the coroner would be done by the Ministry of Justice and not incur any additional costs. An impact assessment will be published alongside any proposals for introducing regulations to provide for coroners to investigate still-births.

Parliamentary approval for financial costs or for charges imposed

60. A money resolution was passed on 9 July 2018 for the provisions in the Bill
61. 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

62. As this is a Private Member's Bill, the Secretary of State is not required to make a statement under section 19(1)(a) of the Human Rights Act 1998. However, a memo was prepared for the Joint Committee on Human Rights in which the Government indicated that its view is that the provisions of the Bill are compatible with 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	Yes	Yes	No	No	N/A	N/A	N/A	No
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	No
Clause 4	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Subsection 2 only	Subsection 2 only	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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