

HOUSE OF LORDS

Select Committee on the Constitution

17th Report of Session 2017–19

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

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Matt Korris (Clerk), Matt Byatt (Policy Analyst) and Lloyd Whittaker (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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

1. The Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill is a private member's bill introduced to the House of Commons by Tim Loughton MP and passed on 26 October 2018. It was brought to the House of Lords on 29 October, had second reading on 18 January 2019, and is scheduled for committee stage on 1 February.
2. The Bill is concerned with a range of matters including marriage registration, civil partnerships, registration of “pregnancy loss”, and investigations by the coroner into stillbirths. The main provisions in the Bill extend only to England and Wales, with some minor provisions also extending to Northern Ireland and Scotland.
3. While the subject matter of the Bill is not constitutionally controversial, it is effectively a skeleton bill containing Henry VIII powers and other regulation-making powers.
4. Clause 1 is a broad Henry VIII power that allows the Secretary of State to make regulations to amend the Marriage Act 1949. It is supplemented by a further consequential power in clause 5. Clause 2 contains an even broader Henry VIII power to “make regulations to change the law relating to civil partnership to bring about equality between same-sex couples and other couples in terms of their future ability or otherwise to form civil partnerships.” Clause 4 provides a power that allows for the Lord Chancellor to amend Part 1 of the Coroners and Justice Act 2009 to require coroners to investigate stillbirths and set out the purposes of such investigations. Clause 5 permits the Secretary of State to amend the Marriage of British Subjects (Facilities) Acts 1915 and 1916 so that they no longer apply in England and Wales.
5. The Delegated Powers and Regulatory Reform Committee (DPRRC) has reported on the powers in the Bill in detail. It has made recommendations for the amendment or removal of provisions in order that the delegations of power are appropriate.¹ The Government has expressed concerns about the lack of detail in one of the regulation-making powers and stated its intention to bring forward amendments following discussion with the Bill's sponsors.²
We share the DPRRC's reservations about the powers in the Bill.
6. In our recent report, *The Legislative Process: The Delegation of Powers*, we concluded that skeleton bills “inhibit parliamentary scrutiny” and that it was “difficult to envisage any circumstances in which their use is acceptable.”³ We said that Henry VIII clauses are a “departure from constitutional principle” that should be “contemplated only where a full and clear explanation and justification is provided.”⁴ **While we recognise that there is a pressing**

1 Delegated Powers and Regulatory Reform Committee, *45th Report* (45th Report, Session 2017–19, HL Paper 274)

2 HL Deb, 18 January 2019, [col 452](#)

3 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 58

4 *Ibid.*, para 67

need for a legislative response to the Supreme Court judgment⁵ that found that provisions of the Civil Partnership Act 2004 were incompatible with the European Convention on Human Rights, we regret that this Bill contributes to the trend of normalising the inclusion of Henry VIII powers in legislation.

⁵ *R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for the International Development (in substitution for the Home Secretary and the Education Secretary) (Respondent)* [2018] UKSC 32: <https://www.supremecourt.uk/cases/uksc-2017-0060.html> [accessed 31 January 2019]