



Department
for Culture
Media & Sport

Civil Partnership Review (England and Wales): a consultation

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Ministerial foreword

We recently celebrated a historic moment for our society – making marriage available to everyone, regardless of their sexuality or gender. Now all couples will be able to enjoy the opportunity to demonstrate their love for each other and the commitment they wish to make through marriage. This achievement says much about the society that we are and the value we place on equality and respect for all citizens. It will change people’s lives – for same sex couples who are able to marry, and for their families and friends who wish them well. Marriage is the bedrock of our society and now same sex couples too will be able to enjoy its unique bond.

Until now, same sex couples who wished to form a legal relationship could not marry but instead could form a civil partnership. There was no need to change civil partnership to achieve our goal of extending marriage to same sex couples. However, questions about the future of civil partnership were raised during the parliamentary passage of the Marriage (Same Sex Couples) Act 2013. Over time, the fact that same sex couples can now marry will clearly affect the future of civil partnership. It is right, therefore, to start a review of the operation and future of the Civil Partnership Act 2004. We are doing so by launching this consultation to seek people’s views on the main options for any future changes.

These measures are not Government policy proposals – they are ideas for changing civil partnership which others have suggested. We will carefully consider responses alongside other evidence in deciding the future of civil partnership in England and Wales.



Helen Grant MP
Minister for Sport, Tourism and Equalities

About this consultation

Topic	The Government is carrying out a review of the operation and future of the Civil Partnership Act 2004 in England and Wales. This consultation seeks your views on and evidence about civil partnership and its continuing role when all couples – whether they are of the same sex or opposite sex – are able to marry.
Geographical scope	England and Wales only
Impact assessment	None of the potential changes to civil partnership described in this consultation paper are currently Government proposals and an impact assessment has not been prepared on them at this stage. Costs and benefits will be assessed as part of the review and an impact assessment will accompany any subsequent consultation on any specific proposals that follow it.
Audience	This is a full public consultation that is open to all on the gov.uk website.
Duration	12 weeks. The consultation will close on 17 April 2014.
How to respond	<p>Please respond by completing the online survey.</p> <p>Alternatively you can complete a response form and either:</p> <p>Email to: civilpartnershipreview@geo.gsi.gov.uk</p> <p>Or write to :</p> <p>Civil Partnership Review consultation responses Government Equalities Office/DCMS 4th Floor 100 Parliament Street London SW1A 2BQ</p> <p>If you have any queries or require this consultation in an alternative format please email civilpartnershipreview@geo.gsi.gov.uk or write to us at the above address.</p>

	<p>When responding, please state if you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make clear whom the organisation represents and, where applicable, how you consulted your members.</p>
<p>Disclosure of responses</p>	<p>Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).</p> <p>The Government may publish responses received from organisations. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence.</p> <p>In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.</p> <p>The department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.</p>
<p>At the end of the consultation</p>	<p>A summary of responses will be published in due course following the closure of the consultation.</p>

Executive summary

This consultation document invites views as part of the review of the “operation and future of the Civil Partnership Act 2004 in England and Wales”, as required by section 15 of the Marriage (Same Sex Couples) Act 2013.

Chapter 1 introduces the consultation. It explains the background to the review and the purpose of the consultation – to gather views and evidence on the future of civil partnership, including a range of potential changes to civil partnership in England and Wales. It sets out principles and the scope of the review, which excludes changes to the law on cohabitation, marriage and the eligibility criteria for civil partnership other than the need for partners to be of the same sex. It also explains the legal position on civil partnership in Scotland and Northern Ireland.

Chapter 2 looks briefly at how well civil partnership has been working and sets out options for the future. It also addresses the context in which any reforms to civil partnership would be made. These include a comparison of the rights and responsibilities of marriage and civil partnership, as well as the requirements of the European Convention on Human Rights.

Chapter 3 discusses the main potential changes to civil partnership that have been proposed. These are: 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. For each of these possible changes, the chapter sets out the arguments which have been put forward in favour of or against them, describes how they could be made and identifies the detailed issues which would need to be considered. The chapter sets out the changes to administrative processes and IT systems which would be needed, summarises the main costs and benefits and asks specific questions about each of the potential measures.

Chapter 4 covers the process for forming civil partnerships and the language associated with them, the requirements of section 149 of the Equality Act 2010 (the public sector equality duty) and next steps in the civil partnership review.

Chapter 1: Introduction

Background

- 1.1 The Civil Partnership Act 2004 (“the CPA”) was introduced to enable same sex couples to obtain legal recognition of their relationship by registering a civil partnership in the United Kingdom (UK). The CPA contains separate provisions for civil partnership (covering for example, eligibility, formation and dissolution) in England and Wales, in Scotland and in Northern Ireland. In December 2011 it also became possible to register a civil partnership on religious premises in England and Wales, with the religious organisation’s consent. After civil partnership was introduced in December 2005, over 16,000 civil partnerships were registered in the UK within the first year. Around 6,000 couples each year now register civil partnerships in the UK and, by the end of 2012, 60,454 had been registered since the CPA came into force.

Review of civil partnership

- 1.2 Once the Marriage (Same Sex Couples) Act 2013 (“the Act”), which applies to England and Wales, is in force, all couples will be able to marry in England and Wales whether they are of the same or opposite sex. The Act will allow same sex couples to marry in civil ceremonies conducted by a registrar and, provided a religious organisation has “opted in” and a minister of religion who belongs to the religious organisation agrees to conduct the wedding, to marry in religious ceremonies¹. The Act also protects those religious organisations and their representatives who do not want to conduct marriages of same sex couples from being forced to conduct or participate in a religious marriage ceremony on the grounds that it is a marriage of a same sex couple. The Act will also enable civil partners to convert their civil partnership into a marriage, but otherwise will not change the nature of civil partnership; it will remain available only to same sex couples.

¹ The Act contains a ‘quadruple lock’ of measures to ensure that religious rights are protected. These are:

1. Making clear that a religious marriage ceremony of a same sex couple will only be possible if:
 - a. the governing body of the religious organisation has opted in by giving explicit consent to marriages of same sex couples;
 - b. the individual minister is willing to conduct the marriage, and
 - c. if it takes place in a place of worship, those premises have been registered for marriages of same sex couples.
2. Stating explicitly that no religious organisation can be compelled to opt in to marry same sex couples or to permit this to happen on their premises, and that no religious organisation or representative can be compelled to conduct marriage ceremonies for same sex couples.
3. Amending the Equality Act 2010 to make clear that it is not unlawful discrimination for a religious organisation or individual minister to refuse to marry a same sex couple.
4. Ensuring that the common law duty on the clergy of the Church of England and the Church in Wales to marry parishioners does not extend to same sex couples. The Act also protects the Church of England’s canon law, which says that marriage is the union of one man with one woman, so that it does not conflict with civil law.

- 1.3 During debates in Parliament on the Act, concerns were raised about the continuing role of civil partnership once marriage is extended to same sex couples. Parliament agreed to insert a provision into the Act² to require a formal review of the operation and future of the CPA in England and Wales. The Act requires the review to begin as soon as practicable and to include a full public consultation, and for a report on the outcome of the review to be produced and published.
- 1.4 The Government's decision not to make changes to civil partnership in the Act was because civil partnership currently plays an important role in the lives of many couples. Civil partnership was created to give same sex couples access to equivalent legal rights to marriage at a time when they did not have access to marriage itself. The Government saw little benefit at that stage in changing a well-understood legal institution without evidence of a clear need to do so and of the impact such a step would have.
- 1.5 Enabling same sex couples to marry is likely to have an impact on the volume of, and demand for, civil partnerships and it is important to determine their future based on an analysis of this data.

Purpose of the consultation

- 1.6 This consultation document does not set out Government proposals. Instead it invites views and seeks further evidence on the various potential measures/reforms that have been suggested in Parliament and beyond. This full public consultation is one element of the review of the operation and future of the CPA in England and Wales. We will consider responses to the consultation alongside evidence about the impact of possible options for the future of civil partnership before deciding the way forward. We want people to be able to express informed views on these options, with the benefit of knowing what they would mean in practice. People will also want to be aware of the legal implications, costs and benefits and arguments which have been made for and against potential changes and these are set out below.

Principles

- 1.7 The Government's approach to civil partnership has been guided by the principles set out below.
- Any changes should deliver clear benefits to individuals and society.
 - We should avoid taking action that we believe would be detrimental to society or individuals' relationships.
 - The fundamental nature of civil partnership as legal recognition of the relationship and public expression of commitment of a loving couple should not be altered, for example to encompass siblings or carers and those they care for.

We believe that these principles remain valid. We should avoid acting prematurely, before the impact of same sex couples having access to marriage is known.

² Section 15 of the Act.

Matters which are outside the scope of the review

1.8 The review will not consider the areas listed below and therefore any responses relating to them will be disregarded:

- Views about marriage for same sex couples and about same sex relationships in general, as these subjects were covered in the equal marriage consultation³ which led to the Act.
- Changes to family law concerning the rights of cohabiting couples - the Government has made clear that no changes will be made in this area in this Parliament.
- Changes to marriage law or the creation of a new form of civil union in addition to, or to replace, either or both of marriage and civil partnership.
- Any changes to the eligibility criteria⁴ for civil partnership other than the need for the partners to be of the same sex.
- Differences between same sex survivor benefits and opposite sex survivor benefits in relation to occupational pension schemes. This issue is being considered as part of a separate review required by other provisions of the Act⁵ and is not therefore covered by this consultation.

Devolution

1.9 Responsibility for the legal framework for civil partnership in Scotland and Northern Ireland rests with the Scottish Parliament and Northern Ireland Assembly respectively. Any proposals for changes to civil partnership made as a result of this review would apply to England and Wales only.

1.10 The Scottish Government announced in June 2013 that it will carry out a review of the operation and future of the CPA in Scotland. The remit for the review can be viewed at: <http://www.scotland.gov.uk/Topics/Justice/law/17867/cpreview>. Formal public consultation will take place after the Marriage and Civil Partnership (Scotland) Bill has completed its parliamentary passage. Following consultation, the Scottish Government will publish a conclusion on the review for civil partnership arrangements in Scotland.

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<http://webarchive.nationalarchives.gov.uk/20120412093704/http://www.homeoffice.gov.uk/publications/about-us/consultations/equal-civil-marriage/>

⁴ Two people are not eligible to register as civil partners of each other if either of them is already a civil partner or married, or under the age of 16 or they are within defined prohibited degrees of relationship. Paragraph 1 of Schedule 1 to the CPA lists the people who are absolutely prohibited from forming a civil partnership with each other (broadly speaking, blood relationships). Paragraphs 2 and 3 list the people who are prohibited from forming a civil partnership with each other unless certain conditions are met (broadly speaking, "in-laws").

⁵ Section 16 of the Act

We will work with the Scottish Government and Northern Ireland Executive to ensure that the arrangements in England and Wales, Scotland and Northern Ireland are compatible. Particular devolution issues are discussed below alongside the potential changes which raise them.

Chapter 2: Review of the Civil Partnership Act 2004

How well the CPA is working

- 2.1 Almost three times as many couples have entered civil partnerships than was expected at the time the CPA was introduced⁶. In 2009 a major study of the impact of the CPA⁷ from the perspective of same sex couples pointed to many significant benefits including access to rights, greater equality, acceptance and social recognition for lesbian and gay relationships and reduced discrimination. The main reservations expressed about the CPA were about not having access to marriage or conversely that civil partnership too closely resembled marriage⁸.
- 2.2 There have been no legal challenges to how the CPA operates generally; any representations seeking changes have been confined to attempts to broaden its scope, for example to include siblings. However, following the passage of the Act the Government is reviewing the differences between survivor benefits for same sex and opposite sex couples in relation to occupational pension schemes⁹. That review will look specifically at survivor benefits provided to civil partners in occupational schemes.

Options for change which have been raised

- 2.3 While there have been few complaints about how civil partnership works for same sex couples, the extension of marriage to same sex couples has led to questions being raised about the operation and future of the CPA - both in response to the consultation on equal marriage¹⁰ and during parliamentary debates on the Act. Under the Act, the treatment of married same sex couples in terms of their entitlements to survivor benefits from occupational pension schemes will be the same as for civil partners. This issue is being considered as part of a separate review required by other provisions of the Act and is not therefore covered by this consultation.

⁶ The regulatory impact assessment on the CPA published in 2004 estimated that by 2010 the likely take up of civil partnerships in Great Britain would be between 11,000 and 22,000 people

⁷ Martin Mitchell, Sarah Dickens, and William O'Connor (2009). Same Sex Couples and the Impact of Legislative Changes <http://www.natcen.ac.uk/study/same-sex-couples>

⁸ There was also unhappiness that same sex partners started to be assessed as couples for means tested benefits.

⁹ In the case of *Walker V Innospec Ltd* the Employment Tribunal concluded that treating married couples and civil partners differently for the purposes of survivor benefits breached the EU Framework Directive on Equal Treatment in Employment. The Government disagrees and is supporting an appeal against this as an interested party.

¹⁰ See footnote 3.

- 2.4 There have been some calls to reconsider civil partnership as a result of the extension of marriage to same sex couples. One change advocated is to stop new civil partnerships being formed, or alternatively, to abolish civil partnership altogether, as marriage now fulfils the need for legal recognition of same sex couples' relationships which the CPA originally sought to address. Another is to extend civil partnership to opposite sex couples. As changes to the law on cohabitation are out of scope, this review will not address the issue of rights for cohabiting couples.

Context for the future of civil partnership

- 2.5 It is important that there is a full understanding of the context in which any reforms to civil partnership would be made. The main issues are set out below.

Marriage and civil partnership

- 2.6 Since 2008 in the UK approximately 6,000 couples a year have formed a civil partnership and around 240,000 couples a year have married in either a civil or a religious ceremony. In practice there is little practical difference between civil partnership and marriage; they give couples the same rights and responsibilities in most respects. However, many people, regardless of their sexual orientation, place a particular social value on marriage. Marriage is an institution which has long had particular significance and importance in our society. Some people feel that the way a civil partnership is formed and the fact that couples are not entitled to call each other "husband" or "wife" for legal purposes indicates that civil partnership is not regarded as highly as marriage. This view is not shared by everyone and these differences are seen as positive by some people.
- 2.7 The main rights and duties of marriage and civil partnership are set out below. Both marriages and civil partnerships can only be ended if one party dies, or by applying to court to bring the legal relationship to an end, which can happen only after it has lasted at least one year¹¹.

¹¹ Apart from proceedings for nullity or judicial separation.

Main rights and duties of marriage and civil partnership

Rights

Married people and civil partners have benefits in the following areas:

- access to certain tax reliefs and exemptions, including exemption from inheritance tax for transfers of assets between spouses or civil partners
- employment benefits
- most state and occupational pension benefits
- ability to apply for parental responsibility as a step-parent of your spouse or civil partner's child
- inheritance of a tenancy agreement
- recognition under intestacy rules on death of spouse or civil partner
- access to fatal accidents compensation
- recognition for immigration and nationality purposes
- a right to apply for dissolution (civil partnership) or divorce (marriage) or annulment to bring your legal relationship to an end
- a right to apply for financial provision when your marriage or civil partnership is brought to an end.

Duties

The main duty placed on married people and civil partners is the duty to provide reasonable maintenance for their spouse or civil partner and any children of the family.

2.8 There are some minor differences between marriage and civil partnership. In the case of marriage, adultery¹² is a fact upon which a court can grant a divorce on the ground that a marriage has broken down irretrievably. This is not the case for civil partnership, though it is the case for marriage of same sex couples (using the long-established case law definition of adultery). In addition, a marriage of an opposite sex couple is voidable on the ground that it has not been consummated; this is not the case for civil partnerships or marriages of same sex couples. There are also differences between the survivor benefit pension entitlements that must be provided by occupational pension schemes to civil partners and people married to someone of the same sex on the one hand and people married to someone of the opposite sex on the other (see paragraphs 2.2 and 2.3 above – this is part of a separate review and therefore does not form part of this consultation). The legal procedures for forming civil partnerships and marriages are also not identical. Civil partnerships are formed by the couple signing the civil partnership document, while marriages require a couple to exchange specific words of declaration and contract. Couples have long been able to marry in either a civil or a religious ceremony. Under the Act, religious marriage ceremonies for same sex couples will be allowed only where the religious organisation concerned has opted in to solemnizing marriages for same sex couples and a minister of religion belonging

¹² The legal definition of adultery applies only to conduct between one party to the marriage and a person of the opposite sex outside the marriage.

to that organisation is willing to conduct the ceremony. Civil partnership registration is always secular, but may take place on religious premises where the religious organisation has consented to this. More details of how marriage and civil partnership compare are set out in Annex A.

Legal issues

- 2.9 Under current UK law, civil partnership is limited to same sex couples. Marriage, on the other hand, will be available in England and Wales to both opposite sex couples and same sex couples once the Act is brought into force. This means that same sex couples will have a choice as to whether to marry or register a civil partnership but opposite sex couples will only have the option of marriage.
- 2.10 An opposite sex couple who wish to form a civil partnership might argue that, if the choice of marriage or civil partnership is available to same sex couples, there is no reason why that choice should not also be available to opposite sex couples. Whilst there is no evidence to support this, it could be argued that they may not wish to marry because of ideological objections to marriage, but may nevertheless wish to be accorded the legal rights and recognition available to civil partners. An application was made to the European Court of Human Rights (ECtHR) in February 2011 by individuals involved in the Equal Love campaign. As part of that application, four opposite sex couples claim that their rights under the European Convention on Human Rights (the Convention) are being breached because they cannot form a civil partnership¹³. No notification of the ECtHR's decision on admissibility has been received by the Government regarding this application.
- 2.11 The Government is satisfied that its decision to retain civil partnership for same sex couples only is compatible with the Convention. Even if an opposite sex couple were able to show that the difference in treatment compared to a same sex couple is within the ambit of Article 8, because the ability to form a civil partnership concerns family life, and to show that the treatment is based on a personal characteristic or status, such as sexual orientation, it is the Government's view that it is within a State's margin of appreciation to recognise different forms of relationship for same sex and opposite sex couples. In the past, prior to the introduction of the CPA, it was not unlawful for opposite sex couples to enjoy greater legal recognition of their relationship than same sex couples. That was a choice States were permitted to make. We consider that, equally, it is not unlawful for same sex couples now to have more options available to them in terms of the legal recognition of their relationship than opposite sex couples. This is particularly the case given the historical context, namely that civil partnership is a relationship which was specifically created and designed for same sex couples to give them similar legal recognition to that afforded by marriage, which at the time was not open to them. Civil partnership was never intended for opposite sex couples as an alternative to marriage.

¹³ They claim breach of Article 8 (the right to privacy and respect for family life), alone or in conjunction with Article 14 (prohibition of discrimination).

2.12 Although there is no legal reason for changing the position, the Government is considering the policy and practical issues through this review. Changing the legal framework for civil partnership would be a significant endeavour as it is made up of a large volume of primary and secondary legislation. The CPA itself has 264 sections and 30 Schedules.

Chapter 3: Potential changes to civil partnership

3.1 We would welcome views and evidence about the following potential changes to civil partnership:

- Abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages.
- Stopping new civil partnerships being registered but retaining existing ones.
- Opening up civil partnership to opposite sex couples.

Abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages

Context

3.2 Several countries and jurisdictions¹⁴ abolished same sex civil unions as a legal relationship on introduction of marriage for same sex couples, in some cases converting these unions to marriages and in others retaining existing civil unions but not allowing new ones. We decided not to remove civil partnership for same sex couples alongside extending marriage to them as such a change would require further consideration. We do not have any research evidence on how abolishing civil partnership could affect people in civil partnerships or those who may be thinking about forming one in future. The impact of extending marriage to same sex couples on the demand for civil partnership will take some time to become clear; it is only once marriage of same sex couples is firmly established, and same sex couples who wish to convert their civil partnership into a marriage have done so, that we will have evidence of the effect of the availability of marriage to same sex couples on the continued demand for civil partnership.

3.3 Arguments which have been made in support of or against the idea of abolishing civil partnership include those set out below; though it should be noted that there is little research evidence to underpin these ideas:

¹⁴ These include Norway, Denmark, Sweden and Connecticut and New Hampshire in the United States

In favour

- Civil partnership is no longer needed. It was a stepping stone for same sex couples on the way to gaining the ability to marry.
- Would achieve fairness as opposite sex and same sex couples would have the same opportunities to gain legal recognition of their relationships.
- Would be simpler both legally and administratively once complete, avoiding the complication of having two types of legal relationship.

Against

- It is not evident who would benefit from the abolition of civil partnership.
- Couples in civil partnerships would need to choose between ending their relationship and conversion of their relationship into a marriage.
- Complicated because of the conversion of existing civil partnerships into marriages and the other legal and administrative changes that would be needed.

What it would require

- 3.4 The CPA would need to be repealed in respect of England and Wales, removing the opportunity for couples to form new civil partnerships in these countries. Provision would need to be made to end existing civil partnerships formed under the law of England and Wales - by converting them into marriages. There would also need to be consequential changes to laws and procedures which specifically cater for or refer to civil partnership.
- 3.5 Consideration would need to be given to a range of specific issues set out below:
- The treatment of existing civil partnerships - whether they should be converted into marriages and how long civil partners should be given to adjust before this happens.
 - Meeting the costs of conversions.
 - Some civil partners may not want to become married – whether these couples should be given an alternative way to end their relationship, as opposed to dissolution, which is linked to the breakdown of relationships.
 - How to deal with the differences in same sex couples' legal relationships in England and Wales where there would be only marriage for same sex couples and no civil partnership, Northern Ireland where there will be only civil partnership and Scotland where there is presently civil partnership but there will be marriage of same sex couples as well or instead in the future.

- The treatment in England and Wales of overseas civil unions of same sex couples which are currently treated as civil partnerships in the UK¹⁵, and any impact on the treatment of overseas opposite sex civil unions, which currently are not legally recognised in the UK.

3.6 There would need to be a range of changes to administrative processes, IT and record keeping. The main organisations affected would be the General Register Office (maintains records of all marriages and civil partnerships formed in England and Wales), local authorities (employ registrars, civil partnership registrars and authorised persons¹⁶), Her Majesty’s Revenue and Customs/Department for Work and Pensions (administer pensions), the Ministry of Justice/ Her Majesty’s Courts and Tribunal Service (responsible for the courts system, granting divorces etc, forms and data management), the Gender Recognition Panel (issues Gender Recognition Certificates) and the Office for National Statistics. Once no civil partnerships remained, the separate system for registering civil partnerships would no longer be required. It would be possible to streamline some other arrangements and systems under which civil partners and married couples are distinguished, for example the separate court procedures for ending marriages through divorce and civil partnerships through dissolution.

Costs and benefits

- 3.7 There would be a one-off cost to the public sector of the administrative changes that would follow from the abolition of civil partnership. In the medium term there could be scope for savings to the public sector through no longer needing to provide separately for two forms of legal relationship.
- 3.8 There could be a cost associated with the mandatory conversion of civil partnerships into marriages if this involves issuing marriage certificates to every couple in a civil partnership without requiring them to cover the costs.

Q1 What are your views about abolishing the legal relationship of civil partnership once same sex couples can marry? Please choose one answer only.

I believe civil partnership should be abolished because _____

I believe civil partnership should not be abolished because _____

I have no particular view.

¹⁵ A couple in a qualifying registered same sex relationship from another country is treated in the UK as being in a civil partnership. Chapter 2 of Part 5 of the CPA set out the requirements that must be met. Briefly these are that under the relevant law the relationship is open only to people who at the time of registration of the relationship are not already married or in a civil union, the relationship is continuing and that people in the relationship are treated as a couple or married.

¹⁶ A person authorised by the local authority to take civil partnership notices.

Stopping new civil partnerships being registered, but retaining existing ones

Context

- 3.9 If it were decided that all couples who wished to gain legal recognition of their relationship should marry in future, another option would be to stop new civil partnerships being registered. There would be no changes to civil partnerships which had already been registered. A similar approach has, for example, been taken in Norway and Sweden on the introduction of marriage for same sex couples. This would cater for those couples currently in a civil partnership who did not want to convert their relationship into a marriage. The impact of this measure would depend on future demand for civil partnership once same sex couples are able to marry. It is not possible to estimate this reliably from existing evidence.
- 3.10 Many of the arguments in favour of and against abolishing the legal relationship of civil partnership apply also to stopping new civil partnerships being registered. Additional arguments specific to stopping new civil partnerships being registered include:

In favour

- Symmetry of treatment of same sex and opposite sex couples at some point in the future.
- Avoids need to convert or end existing civil partnerships. Less intrusive for existing civil partners.

Against

Up to 50,000 UK couples could be left in a legacy relationship which would increasingly become a legal relic and which the State would have to continue to administer.

- Risks diminishing the perceived status of civil partnership.

What it would require

- 3.11 This measure could be taken forward by amending the CPA to ensure that after a particular date nobody could form a new civil partnership under the law of England and Wales¹⁷. Provisions covering specific issues relating to civil partnership (for example, provisions about separation, dissolution etc) would be needed until no more civil partnerships formed under the law of England and Wales remained in existence. To avoid the difficulties of establishing exactly when this happened, it might make sense to set a deadline for the CPA to be repealed in relation to England and Wales on a date when it was certain that there would be no remaining living civil partners. Consequential changes to legislation and procedures would need to be made at the same time as the repeal of the CPA.

¹⁷ In practice this would be a date after which nobody could give notice of a proposed civil partnership.

3.12 The specific issues which would need to be considered include:

- As with outright abolition of civil partnership, the consequences for and interaction with Scotland and Northern Ireland on issues such as whether to treat civil partnerships registered in these countries as marriages and if so from when.
- Similar questions would also arise about the treatment of overseas same sex civil unions which are currently treated as civil partnerships in the UK.

Costs and benefits

3.13 There would be a one-off cost to the public sector to make the administrative changes required by the measure. This could be lower than for outright abolition as there would be no conversion into marriage and processes which specifically cater for civil partnership would not need to be updated immediately. The State would need to continue to administer, for example, pensions and court procedures until no civil partnerships remained in existence.

Q2 Once marriage is available to same sex couples, do you think it should still be possible for couples to form a civil partnership as an alternative to marrying?

Yes

No

Don't know

Opening up civil partnership to opposite sex couples

Context

3.14 Currently civil partnerships can only be formed by same sex couples. It has been asserted that some opposite sex couples in long-term committed relationships would like to enter a legal relationship, but one or both partners have an ideological objection to marriage. There is no evidence to validate this; indeed experience in other countries where opposite sex couples have a choice of legal relationship suggests that marriage remains the norm.

3.15 Arguments which have been put forward in support of or against opening up civil partnership to opposite sex couples include:

In favour

- Enables opposite sex couples to have a choice of type of legal recognition of their relationship.
- Removes unfairness - all couples should have the same options for formalising their relationship.
- Would give long-term opposite sex cohabiting couples who do not want to marry the opportunity to gain rights, protections and recognition, encouraging stable family relationships.
- Would enable couples to remain in a civil partnership if one partner changed their legal gender.
- Being in a civil partnership would no longer effectively be a declaration of sexual orientation.

Against

- Civil partnership was created specifically for same sex couples who were at that time unable to marry.
- There is no legal detriment to opposite sex couples from not being able to register a civil partnership, because the equivalent rights and responsibilities are available to them through marriage.
- There is no evidence of significant demand from opposite sex couples wishing to form a civil partnership.
- There would be no practical benefit to opposite sex couples. Civil partnership entails the same level of legal and financial responsibilities as marriage – it would therefore not act as a form of additional cohabitation rights or a ‘stepping stone’ for couples not ready to marry – it would be equivalent to marriage.
- Allowing more couples to enter an alternative parallel legal relationship would weaken the institution of marriage.
- Inequalities would remain between same sex couples and opposite sex couples – for example in access to religious marriage ceremonies. There will always be a degree of asymmetry.
- Making this change could entail significant costs.

What it would require

3.16 Civil partnership has its own separate legal regime which largely follows that of marriage. The CPA established civil partnership as a legal relationship between two people of the same sex. It provides for a civil partnership to be formed when two people register as civil partners of each other in the UK or in some British consulates or Armed Forces bases overseas. In addition, a couple in a qualifying registered same

sex relationship from another country is treated in the UK as being in a civil partnership. A civil partnership is formed when both partners sign the civil partnership document and ends only on death, dissolution, legal separation or annulment. The CPA specifies the legal consequences of forming a civil partnership, including the rights and responsibilities of civil partners.

- 3.17 The critical step in enabling opposite sex couples to form civil partnerships would be to remove the requirement for couples to be of the same sex. Many of the arrangements for civil partnership follow those for opposite sex married couples and could apply as they are. Examples include the procedures for forming and ending civil partnerships, rules about age, parental consent and family relationships, and rights and responsibilities for children.
- 3.18 Decisions would be needed on some features of civil partnership and whether special provision should be made for opposite sex couples. Some are linked to differences in treatment between married opposite sex couples on the one hand and married same sex couples and civil partners on the other. Of these some arise from historical differences in treatment between women and men and others from the physical differences between opposite sex and same sex relationships. Others result from the interaction with marriage and, where these exist, civil unions of opposite sex couples in other countries. Scotland and Northern Ireland, for example, would need to consider whether and how these opposite sex civil partnerships would be treated in their jurisdictions.
- 3.19 Issues which would need further consideration if civil partnership was opened up to opposite sex couples include:
- There is a common law presumption that a child born to a woman married to a man is also the child of her husband. This presumption does not apply to civil partnerships or marriages of same sex couples, because it relates to biological fatherhood. Consideration would be needed about whether to apply it to civil partnerships of opposite sex couples.
 - State pension rules apply differently to married men and married women in marriages of opposite sex couples. Civil partners and married same sex couples are treated as married men for state pension purposes. Consideration would need to be given as to how to treat opposite sex civil partners for the purposes of state pensions.
 - Occupational pension schemes in both the public and private sectors have the option of providing “survivor benefits” for the surviving partner of a couple when their partner dies. In the case of civil partners and same sex married couples, these benefits may disregard rights accrued before December 2005 (when the CPA came into force). The Government is carrying out a separate review of the costs and effects of equalising survivor benefit entitlements in occupational pension schemes. It would be premature to consider entitlement to survivor benefits for opposite sex civil partners before that review concludes in July 2014.
 - A same sex couple will have the right to convert their civil partnership into a marriage under section 9 of the Act, without breaking the continuity of their legal union. A married same sex couple will not be able to convert their marriage into a civil partnership. Consideration would need to be given to whether opposite sex

civil partners should have the same opportunity to convert their civil partnership into a marriage. It would also be necessary to consider whether opposite sex married couples should be given the opportunity to convert their marriage into a civil partnership, noting that same sex married couples do not have this option, and if so whether the opportunity should be time-limited.

- At present if one civil partner undergoes gender reassignment and seeks a Gender Recognition Certificate, the transsexual person and their civil partner have to annul their civil partnership and then marry each other (because a civil partnership cannot be between two people of the opposite sex). Consideration would be needed about whether and how to make provision for such couples to remain in a civil partnership in the same way as they will be able to remain in a marriage, once the relevant provisions of the Act are brought into force.
- UK citizens may enter into a civil partnership in British consulates where the couple would not be able to marry or form a civil union under the laws of that country and where the host country agrees. Consideration would need to be given as to whether to extend this to opposite sex couples. The same issue would apply to Armed Forces personnel overseas.
- At present overseas opposite sex civil unions are not legally recognised in England and Wales and their treatment would need to be reviewed. It is anticipated that such unions would need to meet requirements equivalent to those for treatment of overseas same sex civil unions as civil partnerships in the UK under chapter 2 of Part 5 of the CPA¹⁸.
- Any legal recognition of overseas opposite sex civil unions in England and Wales would not extend to Scotland and Northern Ireland. It would be for the Scottish Parliament and Northern Ireland Assembly to decide how to treat overseas opposite sex civil unions and also opposite sex civil partnerships registered in England and Wales. The treatment abroad of opposite sex civil partnerships registered in England and Wales would be a matter for the country concerned.

3.20 Changes would need to be made to administrative processes and IT systems in order to register and record opposite sex couples as being in a civil partnership and there would need to be staff training in the new arrangements. The main organisations affected would be the same as those affected by abolition of civil partnership (see paragraph 3.6).

Costs and benefits

3.21 There would be a one-off cost to the public sector to make the IT system and administrative changes which would be required to accommodate civil partnerships of opposite sex couples. The main factor for determining the costs and benefits of opening up civil partnership to opposite sex couples would be the number of opposite sex couples who would form a civil partnership. Further evidence is needed to estimate this. As outlined to the Joint Committee on Human Rights, there are potentially substantial costs and benefits linked to State pensions and survivor benefits

¹⁸ See footnote 16.

in occupational pension schemes¹⁹. The treatment of opposite sex civil partners for pension purposes would need to be considered in the light of the outcome of the separate review of occupational pension survivor benefits.

Q3 What are your views about extending civil partnership to opposite sex couples? Please choose one answer only.

I believe civil partnership should be extended to opposite sex couples because_____

I believe civil partnership should not be extended to opposite sex couples because_____

I have no particular view.

Q4 Given the choice between forming a civil partnership or living together as an opposite sex couple, which would you personally prefer? Please choose one answer only.

I would prefer to form a civil partnership because_____

I would prefer to live together because_____

I have no preference

This question does not apply to me

Q5 Given the choice of forming a civil partnership or marrying your opposite sex partner, which would you personally prefer? Please choose one answer only.

I would prefer to form a civil partnership because_____

I would prefer to marry because_____

I have no preference

This question does not apply to me

¹⁹ [Second evidence session of the Joint Committee on Human Rights on the Marriage \(Same Sex Couples\) Bill, Tuesday 14 May 2013.](#)

Evidence about costs and benefits and implementation issues

3.22 Costs and benefits associated with each of the potential changes are briefly described above. The Government is interested to know if there are costs and benefits which have not been covered in this document.

Q6 Are there any costs and benefits which are not included in this document linked to:

- a) Abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages.
- b) Stopping new civil partnerships being registered, but retaining existing ones.
- c) Opening up civil partnership to opposite sex couples.

If so, please say briefly what they are _____

3.23 The detailed issues which would need to be considered in order to implement changes are listed for each of the options above. The Government is interested to know whether any such issue has not been included in the document.

Q7 Are there any detailed implementation issues which are not included in this document linked to:

- a) Abolishing the legal relationship of civil partnership and converting existing civil partnerships into marriages.
- b) Stopping new civil partnerships being registered, but retaining existing ones.
- c) Opening up civil partnership to opposite sex couples.

If so, please say briefly what they are _____

Chapter 4: Other issues and next steps

Other potential changes to civil partnership

- 4.1 There has been some debate on the process for forming a civil partnership and the language used to describe it. Some couples would like the formal procedures around civil partnership to more closely resemble marriage, while some believe that, as marriage and civil partnership are not the same thing, these differences in process and terminology are important ways of maintaining that distinction.

Q8 Are there any proposals for changes to the legal terminology and processes for forming civil partnerships which are consistent with civil partnership being different from marriage?

If so, please say briefly what these are _____

- 4.2 This consultation document invites views and evidence on the major options for significant changes to civil partnership in the light of marriage being extended to same sex couples. Other changes which have been raised, such as allowing siblings to form civil partnerships, creating new forms of civil unions, or giving cohabiting couples similar rights and responsibilities to those of married couples or civil partners, are outside the scope of this review and responses on these topics will not be taken into account.

Q9 Are there other options for civil partnership which have not been raised so far but which are within the scope of the review and consistent with its principles?

If so, please say briefly what they are _____

Public sector equality duty

4.3 Section 149(1) of the Equality Act 2010 requires public bodies, including the Department of Culture, Media and Sport/Government Equalities Office, when exercising their functions, to have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics for this purpose are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation²⁰. The Government believes that the potential changes to civil partnership listed in section 3.1 above are particularly likely to have an impact on people who share the protected characteristics of sexual orientation, gender reassignment, and religion or belief.

Q10 Are there people who share a relevant protected characteristic other than those identified above who would be particularly affected by a decision to make, or not to make, one or more the potential changes to civil partnership highlighted in section 3.1 of this document?

If so please explain briefly _____

Next steps

4.4 This consultation will be open for 12 weeks. During this time the Government will be reviewing the available evidence. Please draw our attention to any published material or research which you believe is relevant to the review.

²⁰ The equality duty does not apply to the protected characteristic of marriage and civil partnership. This protected characteristic applies only in relation to work (Part 5 of the Equality Act 2010). Consideration would be given to the need for consequential changes to provisions of the Equality Act 2010 concerning this protected characteristic if significant changes were made to civil partnership.

Annex A Comparison of Marriage and Civil Partnership

Note: this table sets out the similarities and differences between marriage and civil partnership²¹.

	Marriage	Civil Partnership
Legal provisions	Separate legal regime from civil partnership. Provisions set out in Marriage Act 1949, Matrimonial Causes Act 1973, Marriage (Same Sex Couples) Act 2013 and Family Law Act 1986.	Separate legal regime from marriage. Provisions set out in the Civil Partnership Act 2004.
	Married couples cannot call themselves civil partners for legal purposes.	Civil partners cannot call themselves married for legal purposes.
Formation	Marriages are solemnized by saying a prescribed form of words.	Civil partnerships are registered by signing the civil partnership document, with no words required to be spoken.
	Marriages can be conducted through either a civil or a religious ceremony. Same-sex couples can have a religious ceremony only where the religious organisation has agreed to host same-sex marriage ceremonies.	The formation of a civil partnership is an entirely civil event. Civil partners can choose to add a ceremony to follow the formation of their civil partnership but this is not part of the formation. Where the civil partnership is formed on religious premises (where the religious organisation agrees to host it), the ceremony may be religious, as long as the actual formation remains secular.
	Civil marriage ceremonies are conducted by a superintendent registrar and registered by a registrar.	Civil partnerships are formed in the presence of a civil partnership registrar.

²¹ There are some differences in how marriage applies to opposite sex and same sex couples and the most relevant are highlighted in the table.

	Marriage	Civil Partnership
Administrative processes²²	Notice of marriage is given by each party in the registration district(s) in which he/she has lived for the previous 7 days.	Notice for civil partnership is given by each partner anywhere within the local authority in which he/she has lived for the previous 7 days.
	Marriage notices display the name, date of birth, gender, condition, occupation, address and period of residence, place of marriage, nationality and district of residence of both parties.	Civil partnership notices display the name, date of birth, gender, condition, occupation, period of residence, place of civil partnership formation, nationality and Registration Authority of residence of both partners (not addresses).
	Marriages are registered on paper, in a hard copy register.	The details of civil partnerships are recorded in an electronic register.
Certificates²³	Marriage certificates include only the names of the fathers of the bride and groom.	Civil partnership certificates include the names of both parents of both partners.
	Marriage certificates are available to anyone to purchase provided they can identify the entry.	Civil partnership certificates are available to anyone to purchase provided they can identify the entry. The address will only be shown on the certificate if it is provided by the applicant.
	Marriage	Civil Partnership
Annulment	A marriage can be annulled for the following reasons:	A civil partnership can be annulled for the following reasons:
	If the marriage has not been consummated either through wilful refusal of the respondent or incapacity of either party (but these are not grounds for annulling a marriage of a same sex couple)	This is not a ground for annulling a civil partnership.
	If either party did not validly consent to the marriage.	If either party did not validly consent to the civil partnership formation.
	If either party was suffering from a mental disorder of such a kind as to render them unfit for marriage.	If either party was suffering from a mental disorder of such a kind as to render them unfit for civil partnership.

²² Based on current position. There may be some changes as part of the implementation of the 2013 Act.

²³ See footnote 22

	If at the time of the marriage the respondent was suffering from a venereal disease in a communicable form.	This is not a ground for annulling a civil partnership.
	If the respondent was pregnant at the time of the marriage by some person other than the petitioner.	If the respondent was pregnant at the time of the civil partnership formation by some person other than the applicant.
	If an interim gender recognition certificate has been issued to either party after the marriage.	If an interim gender recognition certificate has been issued to either partner after the formation of the civil partnership.
	If a full gender recognition certificate has been issued as at the date of the marriage to the respondent.	If a full gender recognition certificate has been issued as at the date of the civil partnership to the respondent.
	Marriage	Civil Partnership
Divorce / Dissolution	Marriages are ended by divorce, by obtaining a decree absolute. Some effects of marriage of the couple end on the issue of the decree nisi.	Civil partnerships are ended by a dissolution order. Some effects of civil partnership of the couple are ended on the issue of an interim order of dissolution.
	A marriage can be ended on the ground that the marriage has broken down irretrievably, relying on one or more of the following facts:	A civil partnership can be dissolved on the ground that the partnership has broken down irretrievably, relying on one or more of the following facts:
	Adultery and the petitioner finds it intolerable to live with the respondent. The definition of adultery is sexual intercourse with someone of the opposite sex outside of marriage.	This is not a fact which could be relied on for ending a civil partnership.
	Unreasonable behaviour.	Unreasonable behaviour.
	Desertion for 2 years	Desertion for 2 years.
	Separation for 2 years (with the respondent's consent to the divorce)	Separation for 2 years (with the respondent's consent to the dissolution).
	Separation for 5 years (no consent required).	Separation for 5 years (no consent required).

	Marriage	Civil Partnership
State pensions	Those rules which applied differently to married men and women at the time civil partnership was introduced were extended to civil partners on the same terms as they applied to married men.	
	In marriages of opposite sex couples, men may be entitled to a lower-rate basic pension based on their wife's National Insurance record only where the wife was born after 5 April 1950. Married women may qualify irrespective of their husband's date of birth. Same-sex married couples are treated the same as opposite-sex married men, irrespective of gender.	Civil partners are treated the same as married men. They may be entitled to a lower-rate basic pension based on their civil partner's National Insurance record only where the civil partner was born after 5 April 1950.
	In marriages of opposite sex couples, a widower bereaved over state pension age whose late wife had not reached state pension age when she died can inherit earnings-related state pension only if he reaches state pension age after 5 April 2010. A married woman who is widowed in the same circumstances may qualify irrespective of when she reached state pension age. Same-sex married couples are treated the same as opposite sex married men, irrespective of gender.	Surviving civil partners are treated the same as widowers. Where a surviving civil partner is over state pension age and the late civil partner died while under state pension age, the survivor can inherit earnings-related state pension only if he or she reaches state pension age after 5 April 2010.
Survivor benefits – occupational pension schemes	For opposite sex married couples, where an occupational pension scheme provides discretionary survivor benefits, schemes will take into account the rights accrued from the date of entering the scheme. Same-sex married couples (like civil partners) may only get survivor benefits (occupational pensions) accrued since 2005, unlike married couples.	Where an occupational pension scheme provides discretionary survivor benefits, schemes may only take into account the rights accrued from the date the CPA came into force (December 2005). Where an occupational scheme is contracted out ²⁴ , schemes are required to pay surviving civil partners of either gender half of the Guaranteed Minimum Pension (GMP) accrued based on accruals back to April 1988.

²⁴ An individual can contract out of (leave) the additional state pension (ASP) if their employer runs a contracted out pension scheme. A member of such a scheme does not contribute to the ASP for the time they belong to the scheme. When they retire they won't get any ASP or it might be reduced. They should receive a pension from their employer

<p>Survivor benefits – public sector service pensions</p>	<p>In marriages of opposite sex couples, public service pensions currently treat widowers and widows differently. Widows can accrue survivor benefits pre-1988, whereas widowers accrue benefits post-1988. Same sex married couples are treated as widowers, irrespective of gender.</p>	<p>Public service pensions go further and have, in most cases, back dated survivor benefits to 1988 for civil partners, which is in line with widower’s survivor benefits.</p>
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