

## EXPLANATORY MEMORANDUM TO

### THE CIVIL PARTNERSHIP (OPPOSITE-SEX COUPLES) REGULATIONS 2019

2019 No. 1458

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Government Equalities Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to allow two people who are not of the same sex to form a civil partnership in England and Wales. This instrument provides in the main for an opposite-sex couple who form a civil partnership to be treated in law in the same way as a same-sex couple who are in a civil partnership, but there are some exceptions (most notably in the law relating to parenthood and parental responsibility) where the instrument provides for them to be treated instead in the same way as an opposite-sex married couple.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is likely to come into force less than 21 days before the date on which it is made. The JCSI's first report of 2014-15 confirms that at least 21 days should be allowed between making and coming into force for an affirmative instrument which "*significantly diminishes the legal rights of persons affected, or imposes new duties on such persons which are significantly more onerous than before, and requires them to adopt different patterns of behaviour accordingly.*"
- 3.2 It is not considered that this instrument diminishes rights or imposes significant new obligations as it extends rights and is permissive. The registration service already conducts civil partnerships for same-sex couples and will not have to make significant changes to its procedures as a result of this instrument. The instrument is to come into force on 2 December, subject to Parliamentary time and approval, to enable opposite-sex couples who wish to form a civil partnership time to give the requisite 28 days' notice and hold the ceremony by the end of the year. This is in response to considerable pressure in Parliament for the first opposite-sex civil partnerships to be registered before the end of 2019.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 The territorial application of this instrument varies between provisions, and includes Scotland and Northern Ireland.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, except as follows.

- 4.2 Part 1, regulations 20, 21 and 22, Part 5 (except for regulations 25, 32, 33, and 36) and regulations 38 and 41 extend to the United Kingdom.
- 4.3 Regulations 10, 11, 16 and 25 extend to England and Wales and Scotland.
- 4.4 Schedule 3 contains consequential and related amendments to legislation. The amendments have the same extent as the provision amended, except that paragraphs 1, 8, 108, 109, 111(3)(b), 112(3)(b), 113(3)(b) and 114 extend to England and Wales only, and paragraph 116 extends to England and Wales and Scotland only.

## **5. European Convention on Human Rights**

- 5.1 Baroness Williams of Trafford has made the following statement regarding Human Rights:

“In my view the provisions of the Civil Partnership (Opposite-sex Couples) Regulations 2019 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 The Civil Partnership Act 2004 (“the 2004 Act”) introduced civil partnerships for same-sex couples in the law of England and Wales, Scotland and Northern Ireland. The Marriage (Same Sex Couples) Act 2013 (“the 2013 Act”) subsequently made it possible for same-sex couples to marry in England and Wales, and the Marriage and Civil Partnership (Scotland) Act 2014 made similar changes for Scotland.
- 6.2 This instrument gives effect to government commitments made during the passage of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 (“the 2019 Act”) to extend civil partnerships to opposite-sex couples in England and Wales and discharges the duty to do so under that Act. The 2019 Act was a Private Member’s Bill introduced by Tim Loughton MP which received Royal Assent on 26 March.
- 6.3 Sections 2 and 5(2) of the 2019 Act enable the Secretary of State, by regulations, to amend the eligibility criteria for civil partnerships and to make other appropriate and consequential provision. The Act requires the regulations extending eligibility to come into force no later than 31 December 2019.
- 6.4 This instrument:
- Amends the eligibility criteria in the 2004 Act to allow opposite-sex couples to register civil partnerships under the law of England and Wales.
  - Amends the 2013 Act to maintain the current position on conversion rights, so that only same-sex couples will be able to convert their civil partnerships to marriage for now. This approach avoids making short-term changes ahead of the outcome of the public consultation on the future of conversion rights conducted earlier this year (see below). Further regulations on conversion rights may follow next year, depending on the outcome of the consultation.
  - Makes consequential and related changes to primary and secondary legislation.
- 6.5 On 1 October the Scottish Government introduced the Civil Partnership (Scotland) Bill in the Scottish Parliament, which will allow opposite-sex couples in Scotland to form a civil partnership.
- 6.6 The Northern Ireland (Executive Formation etc.) Act 2019 places a duty on the Secretary of State to make regulations amending the eligibility criteria in the 2004 Act

to allow opposite-sex couples to form civil partnerships in Northern Ireland. The regulations must be in force no later than 13 January 2020, although this duty only comes into force if the Northern Ireland Executive does not re-form by 21 October 2019.

## 7. Policy background

### *What is being done and why?*

- 7.1 There are over three million opposite-sex couples that cohabit but choose not to marry for personal reasons. These couples support a million children but do not have the security or legal protection that married couples or civil partners enjoy.
- 7.2 Civil partnerships were originally created to enable same-sex couples to formalise their relationships at a time when marriage was not available to them. The 2013 Act then gave same-sex couples the right to marry. There has been a significant campaign calling for civil partnership to be made available to opposite-sex couples, many of whom choose not to marry for personal reasons. In July 2017, Tim Loughton introduced a Private Members' Bill, the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill.
- 7.3 In June 2018, the Supreme Court found that the provisions in the 2004 Act preventing opposite-sex couples from entering into a civil partnership were incompatible with the European Convention on Human Rights. This followed a challenge brought by Rebecca Steinfeld and Charles Keidan, a couple who wished to enter into a legally recognised relationship with each other but who have a conscientious objection to marriage. The then Prime Minister announced on 2 October 2018 that the government would change the law to allow opposite-sex couples in England and Wales to enter into a civil partnership. The power to do so by regulations was granted via amendments to Tim Loughton's Bill in the House of Lords.
- 7.4 Through this instrument, the government is extending civil partnerships to opposite-sex couples in England and Wales and extending to such couples the same rights and protections that married couples or same-sex civil partners enjoy.
- 7.5 In the "Implementing Opposite-Sex Civil Partnerships: Next Steps" document<sup>1</sup>, published in July 2019 (the 'Next Steps paper'), the government explained its intention to maintain the existing right for same-sex civil partners to convert their relationship into a marriage, pending decisions about the future of conversion. These decisions will be made in light of the responses to the consultation on future conversion rights, which was published at the same time. That consultation sought views on a number of issues, including whether opposite-sex married couples should be able to convert their relationships to civil partnerships and whether, after a fixed period of time, all conversion rights should then be brought to an end.
- 7.6 Maintaining the existing conversion right for an interim period in this way does produce a difference in treatment between opposite and same-sex couples. It is considered to be compatible with the judgment in *Steinfeld v Secretary of State for International Development* [2018] UKSC 32 for a number of reasons.

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- 7.7 First, opposite-sex couples wishing to convert civil partnerships to marriage are not in a relevantly similar position to same-sex couples in relation to such conversion. The right to convert a civil partnership to marriage was introduced to enable same-sex couples to marry without having to dissolve their civil partnership, as marriage had historically been denied to them. That same consideration does not apply to opposite-sex couples, who have always been able to marry. The right to convert from civil partnership to marriage continued to be available after same-sex marriage was introduced so that couples could remain in a formalised relationship if one party changed gender. Again, that consideration now falls away because couples in a civil partnership, whether same-sex or opposite-sex, will be able to remain in a civil partnership on the change of gender of one partner, provided the other partner consents (see paragraph 7.12 below).
- 7.8 Second, extending conversion rights to allow opposite-sex couples to convert their civil partnership to marriage in the interim period, whilst the consultation responses are being considered, would risk creating uncertainty and confusion about future rights. The government does not wish to introduce a new, potentially short-term, conversion right (with associated consequential changes) for opposite-sex couples that might subsequently be withdrawn in 2020 following proper consideration of the consultation responses. In addition, allowing opposite-sex couples to convert their civil partnerships to marriage in this interim period is unnecessary as it is highly unlikely that any opposite-sex civil partners would wish to convert a relationship so recently formed, and in circumstances where the couple could have chosen to marry. As to according opposite-sex couples a right to convert marriage to civil partnership, that is not a right currently accorded to same-sex couples. It will, however, be a matter considered in light of responses to the consultation.
- 7.9 Part 2 of this instrument extends civil partnerships to opposite-sex couples in England and Wales, by amending the definition of civil partnerships and the eligibility criteria for registering as civil partners in the 2004 Act, to remove the same-sex requirement. It also amends Part 5 of the 2004 Act so that certain opposite-sex relationships formed in other countries, which are not marriages, can be recognised as civil partnerships in England and Wales.
- 7.10 Part 3 provides specific protections for religious organisations and persons acting on their behalf. The religious protections are modelled on those contained in the 2013 Act but recognise the potential for diversity of religious views in this area, particularly that some religious organisations may choose not to be involved in any civil partnerships, others may be content to host only civil partnerships between same-sex couples, and others may prefer only to be involved in civil partnerships between opposite-sex couples. In particular, this instrument:
- Amends the regime in place for the approval of religious premises as places at which two people may register as civil partners of each other. The changes will mean that religious premises can be approved for all civil partnerships, only for those between two people of the same sex, or only for those between two people of the opposite sex. As now, applications for approval of religious premises can only be made with the consent of the governing authority of the religious organisation. The consent will have to state what kind of civil partnerships are consented to.
  - Introduces a new ‘non-compulsion’ clause so that religious organisations and persons acting on their behalf cannot be compelled to do specified acts (such

as allowing religious premises to be used for civil partnerships, or participating in civil partnerships on religious premises), where either the organisation, or the person, does not wish to do such acts in relation to all civil partnerships, or in relation to civil partnerships between either same-sex or opposite-sex couples.

- Amends the Equality Act 2010 so that religious organisations and persons acting on their behalf do not breach that Act if they do not act in relation to civil partnerships in reliance on the new non-compulsion clause.

7.11 Part 4 amends legislation relating to children and parenthood to provide opposite-sex parents in a civil partnership with generally the same rights as opposite-sex married parents in a number of areas to do with parenthood. In particular this instrument:

- Extends the provisions governing legitimacy, presumed paternity and parental status (in cases of assisted reproduction) in cases where a child's mother and father are married, to cases where a child's mother and father are in a civil partnership with one another.
- Provides for opposite-sex parents in civil partnerships to have the same rights and responsibilities as opposite-sex married parents in respect of parental responsibility and registration of births.
- Amends the British Nationality Act 1981 so that the male civil partner of a child's mother is considered the child's father (in the way her husband currently would be) for the purposes of the acquisition of nationality by descent.

7.12 Part 5 of this instrument amends the Gender Recognition Act 2004, which enables individuals to apply for a gender recognition certificate to change their sex and gender in law. The changes, which reflect those introduced for marriage by the 2013 Act, will allow applicants to obtain a full gender recognition certificate without the need to first dissolve their civil partnership, provided the other civil partner consents. Until now, because of the same-sex requirement, this was only possible where both civil partners obtained a gender recognition certificate on the same date. These changes only apply where the civil partnership was formed under the law of England and Wales, or where the relationship was formed overseas and is recognised as a civil partnership in England and Wales.

7.13 Part 6 makes miscellaneous amendments:

- The existing right for same-sex couples to convert their civil partnerships to marriage, in section 9 of the 2013 Act, will continue to apply only to same-sex couples. As mentioned above, the government has consulted on the question of future conversion rights and has decided to maintain the existing right for same-sex couples only until decisions about the longer-term position can be made, in light of the consultation responses.
- Amendments are made to the Civil Partnership (Registration Abroad and Certificates) Order 2005, which governs the formation of civil partnerships overseas by UK consular officials, to ensure that the Order applies appropriately to civil partnerships between two people of the opposite sex, in cases where the law of England and Wales is relevant.
- The 2004 Act currently contains provisions concerning the recognition of a dissolution, annulment or legal separation granted overseas. This instrument includes amendments to those provisions to cater for the fact that overseas

relationships which are recognised as civil partnerships will no longer be restricted to relationships between two people of the same sex.

- 7.14 Schedule 1 inserts a new Part 2 into Schedule 20 to the 2004 Act setting out a list of opposite-sex relationships under the law of other countries that can be recognised as civil partnerships in England and Wales.
- 7.15 Schedule 2 contains transitional provision in relation to opposite-sex overseas relationships that will be recognised as civil partnerships in England and Wales as a result of this instrument. This provision reflects similar provision made in relation to same-sex overseas relationships in the Civil Partnership (Treatment of Overseas Relationships) Order 2005 (S.I. 2005/3042), and the Civil Partnership (Treatment of Overseas Relationships No. 2) Order 2005 (S.I. 2005/3284).
- 7.16 Schedule 3 contains consequential and related amendments. Part 1 sets out amendments to primary legislation, Part 2 sets out amendments to secondary legislation and Part 3 amends certain public service pension schemes and makes amendments in relation to civilian war injuries.
- 7.17 The government set out its proposals for this legislation in the Next Steps paper, published on 10 July 2019. This document was accompanied by a consultation on the right to convert a civil partnership to marriage and vice versa. The consultation closed on 20 August and the government is considering responses to this. If the government decides to legislate on conversion rights, a further instrument may follow in 2020.
- 7.18 There is uncertainty over the estimated take up of opposite-sex civil partnerships in England and Wales. The Impact Assessment that accompanied the ‘Next Steps’ document estimated that there will be around 70,000-75,000 per year (central estimate).

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 Not applicable.

## **10. Consultation outcome**

- 10.1 The ‘Next Steps’ document set out the government’s proposed changes to existing legislation in order to allow opposite-sex couples in England and Wales to form civil partnerships. This followed engagement with key stakeholders, including religious organisations, the Equal Civil Partnerships campaign and LGBT groups on most of the key issues, including the decision to restrict conversion rights to same-sex couples pending decisions about future conversion rights. The Secretary of State has therefore complied with the requirement, in section 2(6) of the 2019 Act, to consult such persons as the Secretary of State considers appropriate before making regulations restricting conversion rights. The longer-term position on conversion rights will be determined following the outcome of the consultation that accompanied the ‘Next Steps’ document, which closed on 20 August.
- 10.2 Officials in the Welsh Government have agreed to the amendments to Welsh legislation made in Schedule 3 to this instrument. The government has also specifically consulted the Welsh Ministers on the amendment to the Welsh language

text of the Access to Information (Post-Commencement Adoptions) (Wales) Regulations 2005 (the ‘2005 Regulations’), as required by section 64(6) of the Human Fertilisation and Embryology Act 2008 (‘HFEA 2008’). This amendment simply reflects in the Welsh language text of the 2005 Regulations an amendment (to the definition of ‘birth relative’) that was made to the English language text in consequence of the HFEA 2008 by S.I. 2009/1892. The amendment to the Welsh language text is made in this instrument to enable the same provision of the 2005 Regulations to be further amended in consequence of opposite-sex civil partnership.

- 10.3 Although there is no statutory requirement to consult the devolved administrations on the other amendments made in this instrument, officials in the Government Equalities Office have worked closely with their counterparts in the devolved administrations in preparing this instrument.

## **11. Guidance**

- 11.1 The government will update the guidance on civil partnerships on the gov.uk website around the time of implementation. The General Register Office will also issue guidance on these changes to local registration services.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies. The key monetised annual recurring cost for business is from civil partners gaining survivor rights to their partners’ defined benefit (DB) pension scheme. As such, the reforms impact on businesses with DB pensions schemes only.
- 12.2 There will be an impact on the public sector from DB public sector pension schemes, and from other tax impacts (e.g. married tax allowance). The GEO is currently working with HM Treasury, the Department for Work and Pensions and other departments to assess the overall impact of opposite-sex civil partnerships on public expenditure.
- 12.3 A full Impact Assessment was published alongside the ‘Next Steps’ document<sup>2</sup>. It is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The Government Equalities Office will keep this legislation under review and will monitor the uptake of opposite-sex civil partnerships. A statutory review clause is not included in this instrument as the provisions do not impact on the activities of small businesses.

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## **15. Contact**

- 15.1 Dominic Smales at the Government Equalities Office Telephone: 07540 315236 or email: [dominic.smales@geo.gov.uk](mailto:dominic.smales@geo.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Charles Ramsden, Deputy Director for Equality Framework Team, at the Government Equalities Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Williams of Trafford at the Government Equalities Office can confirm that this Explanatory Memorandum meets the required standard.