



Same-sex marriage and civil partnerships

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Section Home Affairs Section

The *Civil Partnership Act 2004* creates a union which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas. However, civil partnership is a completely new legal relationship, distinct from marriage. A valid marriage can be entered into only by a male and a female, whereas a civil partnership is available only to same-sex couples.

Two separate but connected arguments have been advanced, that, based on perceived rights under human rights legislation, same-sex couples should be able to marry and opposite-sex couples should be able to enter into a civil partnership. In 2006, the Family Division ruled that withholding from same-sex partners the actual title and status of marriage did not constitute a breach of their rights under the European Convention on Human Rights. The European Court of Human Rights has since ruled, in a case brought by two Austrians, that there is no obligation, under Article 12, for states to recognize same-sex marriage.

The *Civil Partnership Act 2004* prohibits civil partnership registrations taking place in religious premises. However, section 202 of the *Equality Act 2010* removes this prohibition. Therefore, when the section is brought into effect, it will become possible for civil partnerships to be registered on religious premises where religious organisations permit this. The section also states, for the avoidance of doubt, that religious organisations will not be obliged to host civil partnerships if they do not wish to do so.

On 31 March 2011, the Government Equalities Office published [Civil partnerships on religious premises: a consultation](#). This consultation paper sought views on proposals to enable faith groups to host civil partnership registrations by implementing section 202. The consultation period ended on 23 June 2011.

The Government has also announced that it intends to consult separately on a move towards equal civil marriage and partnerships.

A separate Library standard note (SN/HA/5608) [Civil Partnerships](#) deals more generally with civil partnerships.

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Contents

- 1 How does civil partnership differ from marriage? 3**
- 2 The impact of the *Human Rights Act 1998* 3**
 - 2.1 Background 3
 - 2.2 Should marriage be an option for same-sex couples? 4
 - 2.3 Should civil partnerships be an option for heterosexual couples? 5
- 3 The *Equality Act 2010*: civil partnerships in religious buildings 5**
 - 3.1 Section 202 5
 - 3.2 Religious organisations not obliged to host civil partnerships 5
- 4 Government consultation on proposal to implement section 202 6**
- 5 Proposed consultation on equal civil marriage and partnerships 8**
- 6 Reaction to Government announcement 8**

1 How does civil partnership differ from marriage?

The *Civil Partnership Act 2004* (CPA 2004) creates a union which is very similar, but not fully identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas including tax, social security, inheritance and workplace benefits. However, civil partnership is a completely new legal relationship, exclusively for same-sex couples, distinct from marriage.

The most significant difference between the two types of union is that a valid marriage can be entered into only by a male and a female,¹ whereas a civil partnership is available only to same-sex couples.² There are also other differences:

- at present, civil partnership can only be a civil, and not religious, procedure, and cannot take place on religious premises, whereas opposite-sex couples can, in relevant circumstances, choose to have either a religious or a civil marriage ceremony (but see sections 4 and 5 of this note below for proposals relating to civil partnerships)
- adultery is not a ground for dissolution of a civil partnership (as it is for divorce), nor is consummation a criterion for validity (as it is in marriage); however, infidelity may be a contributory factor where 'unreasonable behaviour' is cited as a ground for seeking dissolution of a civil partnership
- there are differences in procedure: a civil partnership is formed when the second partner signs the relevant document, whereas a civil marriage is formed when the couple exchange spoken words and then the register is signed.

Successive Governments have steadily removed differences between married, cohabiting and same-sex couples by, for example: allowing single people and same-sex couples to adopt; extending domestic violence legislation to all couples; calculating benefits by household occupation rather than married status; extending occupation rights to partners and parental responsibilities to all categories of persons.

2 The impact of the *Human Rights Act 1998*

2.1 Background

Section 3(1) of the *Human Rights Act 1998* (HRA 1998) requires all UK legislation to be interpreted, as far as possible, in a way which is compatible with the rights laid down in the European Convention on Human Rights. Where it is not possible to interpret an Act in compliance with the Convention, then a declaration of incompatibility may be issued by the court under section 4 of the HRA 1998. The declaration does not invalidate the legislation; it is for the legislature to decide whether to amend the Act.

There have been some significant cases in UK courts on the status of same-sex couples since the HRA 1998. For example, in 2004, the House of Lords case of *Ghaidan v Godin-Mendoza* considered the right of a same-sex partner to succeed to a protected tenancy under the *Rent Act 1977* after the death of the tenant.³ The claimant based his claim on Article 8 (the right to a private life and family life) and Article 14 (that there should be no discrimination in the rights granted by the state). The House of Lords held that the law should be interpreted so as to avoid discrimination; and there was no reason for treating the

¹ *Matrimonial Causes Act 1973*, section 11(c)

² *Civil Partnership Act 2004*, section 3(1)(a)

³ *Ghaidan v Godin-Mendoza* [2004] UKHL 30

same-sex partner of the tenant any differently from the opposite-sex partner when it came to succession.

Two separate but connected arguments have been advanced, that, based on perceived rights under the HRA 1998, same-sex couples should be able to marry and opposite-sex couples should be able to enter in to a civil partnership.

2.2 Should marriage be an option for same-sex couples?

Although civil partnerships confer many of the same rights and responsibilities as marriage, there have been calls for same-sex marriage to be permitted. The law does not allow this at present, and in a 2006 case, the Family Division ruled that this does not constitute a breach of human rights legislation.

The case in question was *Wilkinson v Kitzinger*. A same-sex couple had married in Vancouver where the law permits such marriages. They then came to the UK and wanted their marriage recognised as such here. They sought from the court a declaration under section 4 of the HRA 1998 that section 11(c) of the *Matrimonial Causes Act 1973*, which provides that a marriage is void unless the parties are respectively male and female, was incompatible with Articles 8 (right to respect for private and family life), 12 (right to marry) and 14 (prohibition of discrimination) of the European Convention on Human Rights; likewise section 215 of the CPA 2004 which provides that a relationship formed overseas, even if regarded as marriage there, is to be treated as a civil partnership in the UK. The claimants did not accept that civil partnerships were separate but equal to marriage; in their view, civil partnerships were not equal symbolically.

The court did not accept the couple's arguments and held that the withholding from same-sex partners of the actual title and status of marriage did not constitute a breach of their Convention rights:

By withholding from same-sex partners the actual title and status of marriage, the Government declined to alter the deep-rooted and almost universal recognition of marriage as a relationship between a man and a woman, but without in any way interfering with or failing to recognise the right of same-sex couples to respect for their private or family life in the sense, or to the extent, that European jurisprudence regards them as requiring protection. Withholding of recognition of their married status does not criminalise, threaten, or prevent the observance by, such couples of an intimate, private life in the same way as a married heterosexual couple and indeed provides them, as so far European jurisprudence does not dictate, with all the material legal rights, advantages (and disadvantages) of those enjoyed by married couples. Not only does English law recognise and not interfere with the right of such couples to live in a very close, loving, and monogamous relationship; it accords them also the benefits of marriage in all but name.⁴

More recently, in June 2010, in a case brought by two Austrians, the European Court of Human Rights ruled that there was no obligation under Article 12 for states to recognize same-sex marriage.⁵

⁴ *Wilkinson v Kitzinger* [2006], EWHC 222, [2007] 1FLR 295

⁵ Case of *Schalk and Kopf v Austria 2010* (Application No. 30141/04) 24 June 2010. See also, 'The European Court's Hidden but helpful message on same-sex marriage', *Guardian*, 29 June 2010

2.3 Should civil partnerships be an option for heterosexual couples?

When civil partnerships were introduced, the previous Government's stated view was that it was not necessary to extend eligibility to heterosexual couples because they already had the option to marry and the legal consequences of the two institutions are very similar.⁶

The CPA 2004 prohibits opposite-sex couples from entering into a civil partnership. In 2009, this prohibition was challenged by Tom Freeman and Katherine Doyle, who attempted to register as civil partners at their local register office. On being turned away, the couple were reported to have said that they would consider challenging the legislation in the European Court of Human Rights (ECtHR) claiming breaches of Articles 8, 12 and 14.⁷

It has been reported that in February 2011, eight couples, four same-sex and four opposite-sex, filed a joint application in the ECtHR in a bid to overturn the prohibition on same-sex civil marriages and on heterosexual civil partnerships.⁸

3 The *Equality Act 2010*: civil partnerships in religious buildings

The CPA 2004 prohibits civil partnership registrations taking place in religious premises.⁹ However, section 202 of the *Equality Act 2010* (EA 2010) removes this prohibition. This means that, when the section is brought into effect, it will become possible for civil partnership registrations to take place in religious premises where religious organisations permit this.

3.1 Section 202

Section 202 of the EA 2010 amends section 6 of the CPA 2004, by repealing the legal prohibition on civil partnerships being registered in religious premises in England and Wales and repealing the definition of 'religious premises'. This section also amends section 6A of the CPA 2004, which contains a power to make regulations about the approval of premises for the registration of civil partnerships, by specifying that such regulations may provide for different premises to be approved for registration of civil partnerships from those approved for registration of civil marriages, and for different provision to be made for different kinds of premises. Section 202 does not specifically amend section 2(5) of the CPA 2004 which provides that "no religious service is to be used while the civil partnership registrar is officiating at the signing of a civil partnership document".

Section 202 originates from amendments to the *Equality Bill* moved in the House of Lords by the Labour peer, Lord Alli. It was passed by both Houses of Parliament on a free vote. However, further legislation is needed to amend the approved premises regulations.

3.2 Religious organisations not obliged to host civil partnerships

The EA 2010 specifies that regulations may set out, in relation to particular denominations, who has the authority to decide whether civil partnerships can be registered on any of their

⁶ Women and Equality Unit, *Civil Partnership – A framework for the legal recognition of same-sex couples*, June 2003

⁷ See, for example, "[Heterosexual couple begin legal fight after being refused civil partnership](#)", *guardian.co.uk*, 24 November 2009

⁸ See, for example, "[Gay wedding ban in church may be lifted](#)", *Guardian*, 13 February 2011, see also the [Equal Love campaign](#) website (at 20 July 2011)

⁹ The regulations governing the approval of premises for the registration of civil partnerships are the *Marriages and Civil Partnerships (Approved Premises) Regulations 2005*. They currently align provision for civil partnerships with that for civil marriage.

premises. It also states, for the avoidance of doubt, that religious organisations will not be obliged to host civil partnerships if they do not wish to do so.

The [Explanatory Notes](#) published with the EA 2010 include the following examples of how the provision might operate:

- Regulations under section 6A could provide that, for example, Church of England premises may be approved for the registration of civil partnerships only with the consent of the General Synod of the Church of England.
- A couple seeking to register their civil partnership in a church that had not been approved for that purpose could not require those responsible for the church to allow them to hold the registration there. Nor could they require the denomination responsible for the church to seek approval to enable this.

4 Government consultation on proposal to implement section 202

On 31 March 2011, the Government Equalities Office published [Civil partnerships on religious premises: a consultation](#). This consultation paper sought views on proposals to enable faith groups to host civil partnership registrations by implementing section 202 of the EA 2010. The consultation period ended on 23 June 2011.

The consultation paper stated that the proposed arrangements were designed to achieve a number of objectives:

- To enable decisions about whether to consent to religious premises being used for civil partnership registration to be taken in a way that accommodates faith groups' different structures and degrees of autonomy for individual ministers.
- To guard against drawing Government or local authorities into any regulation of faith groups or involvement in their governing processes.
- To enable local authorities to establish easily and with confidence whether each individual application for religious premises to be approved for the registration of civil partnerships is eligible because the specified person or body of the faith group concerned has consented to it, either generally or specifically.
- To prevent competing claims about the authority for giving consent, and to permit challenges where consent is contested.
- To enable faith groups to change their position in future if they choose to, in a straightforward way.¹⁰

The consultation paper proposed a two stage process for enabling civil partnerships to be registered on particular religious premises:

- first, the faith group concerned would have to agree to permit civil partnership registrations on their premises; faith groups would be able to specify a person or body of persons entitled to consent to applications being made for individual premises to be approved for the registration of civil partnerships
- second, on proof of consent from the faith group, the local authority in whose area the premises are located would have to approve the premises – the approval process would

¹⁰ p19

be similar to that for secular buildings applying to become approved premises for civil marriages and civil partnerships.

The consultation paper included detailed proposals relating to these two stages.

Registration of civil partnerships would remain secular, despite taking place on religious premises. This means that the registration could not be led by a minister of religion or other religious leader, must not include extracts from an authorised religious marriage service or readings from sacred religious texts, hymns or other religious chants, or involve any religious ritual or any form of worship. However, a separate religious service could be held to mark the registration.¹¹

The consultation paper stated that the measure would be entirely voluntary and that no faith group would be forced to host civil partnership registrations. Instead, faith groups would have to opt-in, to allow their premises to be used for civil partnership registrations. The consultation paper set out the envisaged protection for faith groups and asked whether it would be sufficient:

Some concern has been expressed that enabling civil partnerships to be registered on religious premises where faith groups want this may lead to legal challenges against faith groups or ministers of religion who do not. It is important to be quite clear that this is a voluntary measure. When commenced, section 202 of the Act will insert a new provision in the Civil Partnership Act 2004 which states: 'For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnerships if they do not wish to do so.' There is also an exception in paragraph 2 of Schedule 23 to the Act which allows a religious organisation to restrict the use of premises that it owns or controls in certain circumstances.

No faith group will therefore have to consent to allowing civil partnerships to be registered on their religious premises, and no faith group or minister of religion will have to apply to the local authority for their premises to be approved for this purpose. If religious premises have not been approved, by law, a civil partnership registration cannot take place there, so no minister of religion could be sued for not allowing one.¹²

Subject to the outcome of the consultation, the Government intends to commence section 202 of the EA 2010 and make the necessary amendments to the *Marriages and Civil Partnerships (Approved Premises) Regulations 2005*. The consultation paper indicated an intention that religious premises could apply to be approved as a place where civil partnerships may be registered by the end of this year.¹³

The Government is currently considering the responses to the consultation and has said that it will publish its response in due course.¹⁴

The removal of the ban on civil partnership registrations in religious premises would affect England and Wales. In Scotland and Northern Ireland, marriage and civil partnerships are matters for the devolved administrations.

¹¹ pp32-3

¹² pp37-8

¹³ p11

¹⁴ Home Office Equalities Office, *Lesbian, gay, bisexual, transgender* at 20 July 2011

5 Proposed consultation on equal civil marriage and partnerships

At the same time as announcing the publication of the consultation on the implementation of section 202, the Government indicated that it would be consulting separately on a move towards equal civil marriage and partnerships:

This consultation document deals only with this specific measure and does not set out proposals for any other changes to civil partnerships or any changes to marriage. However, in our work on civil partnerships we have identified a desire from many to move towards equal civil marriage and partnerships, and will be consulting separately on how legislation can develop, working with all those who have an interest in this area.¹⁵

In April 2011, Lord Tebbit asked how the Government defined "equal civil marriage and partnerships". Lord Wallace of Saltaire replied for the Government that a definition of "equal civil marriage and partnerships" would be "one of the key issues to be considered during the further consultation with all those who have an interest in this area in due course".¹⁶

In an oral answer on 5 May 2011, Lynne Featherstone, Minister for Equalities, indicated that discussions on this subject would be started over the summer:

Stephen Gilbert: Does the Minister agree that, when it comes to equality before the law, there can be no such thing as "almost equal"? Bearing that in mind, what further steps will the Government take to end the inequality in marriage and civil partnership rights between straight and homosexual couples?

Lynne Featherstone: Yes, I agree that "equal rights" means "equal rights", not "similar rights" or "nearly but not quite as good" rights. Having listened to stakeholders, it is clear that there is a genuine desire among many of them to move forward to equality between marriage and civil partnerships. Over the summer we shall start a discussion with all those with an interest in the matter on how legislation can develop.¹⁷

6 Reaction to Government announcement

The Government's announcement, made in February 2011, that it intended to consult on implementing section 202, received a mixed reaction. It was welcomed by those who have campaigned for greater equality, although some expressed disappointment at the delay in starting the consultation on equal civil partnerships and marriage.¹⁸ Faith groups were divided. It was reported that the Church of England had said that it would not host blessings for civil partnerships.¹⁹ The Roman Catholic Church stated that civil partnerships would not take place in Catholic churches. Groups reported to be sympathetic to the possibility of same-sex civil partnership ceremonies include the Quakers in Britain, Liberal Judaism and Unitarianism. Fears have been voiced that same-sex couples might take anti-discrimination action against religious groups if they were barred from getting married in the place of worship of their choice.

Published statements include:

- Catholic Communications Network, [Statement From Archbishop Smith](#), 21 February 2011

¹⁵ HC Deb 31 March 2011 cc36-7WS

¹⁶ HL Deb 26 April 2011 c24WA

¹⁷ HC Deb 5 May 2011 c778

¹⁸ See, for example, Stonewall, [Stonewall welcomes government pledge on 'Alli amendment'](#), at 20 July 2011

¹⁹ ["Gay church 'weddings' move closer"](#), *BBC News*, 17 February 2011

- Joint Statement by Affinity, The Christian Institute, Christian Concern, Reform and the Fellowship of Independent Evangelical Churches, [Homosexual marriage and the registration of civil partnerships in churches](#), 16 February 2011
- Stonewall, [“Stonewall welcomes government pledge on ‘Alli amendment’”](#), 17 February 2011
- Church of England, [Registration of Civil Partnerships in Religious Premises](#), 23 June 2011
- Quakers in Britain, [Quakers welcome consultation on civil partnerships](#), 23 June 2011

Media and other coverage includes:

- [“Gay ‘marriages’ to be allowed in church”](#), *Telegraph*, 12 February 2011
- [“Gays will get right to marry; Coalition blesses marriage for gays”](#), *Sunday Times*, 13 February 2011
- [“Resistance mounts to gay couples being allowed to marry in church”](#), *The Independent*, 13 February 2011
- [“Gay church ‘weddings’ move closer”](#), *BBC News*, 17 February 2011
- [“Gay couples will be allowed to marry under Coalition plan”](#), *Telegraph*, 17 February 2011
- [“Civil partnerships will not be forced on Church, says May”](#), *Church Times*, 18 February 2011
- [“Will churches really be sued for not allowing civil partnerships?”](#), *UK Human Rights Blog*, 24 February 2011