

## Civil partnerships for all?

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When the Marriage (Same Sex Couples) Act was passed into law in 2013 an anomaly emerged in that same sex couples now had a choice of whether to marry in a civil ceremony or to register a civil partnership under s1 Civil Partnership Act 2004. Whilst Professors Johnson and Vanderbeck (2017) have explained that inequalities remain for same sex couples in the locations available for the celebration of their marriages and the form of words they can use in that celebration, the ability to enjoy the status of being married or having a civil partnership is not something a different sex couple have been able to enjoy. The campaign for extending civil partnerships to different sex couples recently culminated in the Supreme Court decision in *R (on the application of Steinfeld and Keidan)(Appellants) v Secretary of State for International Development (In substitution for the Home Secretary and the Education Secretary)(Respondent)* [2018] UKSC 32.

Just before and just after the passing of the 2013 Act the Government undertook consultations which were deemed inconclusive as to any consensus on the future of civil partnerships. Three options for reform were considered in these consultations and included either abolition of civil partnerships, closure to any new registrants or extension to different sex couples. At this stage the Government decided they would not undertake any reform at that time preferring to wait and see what the impact of same sex marriage would be on the take up of civil partnerships. Meanwhile Rebecca Steinfeld and Charles Keidan had been in a committed relationship since 2010 and in wishing to formalise their relationship preferred the status of civil partnership to marriage which they believed to be an outdated and patriarchal institution. In response to the Government decision not to extend civil partnerships to different sex couples, Ms Steinfeld and Mr Keidan sought judicial review on the basis that the provisions of the Civil Partnership Act 2004 were incompatible with their article 8 and article 14 rights of the European Convention on Human Rights. The application was dismissed at the High Court where the argument was accepted that article 8 (and correspondingly article 14) was not engaged and it was acceptable for the maintenance of any disparity in the short term whilst the government waited to see the impact of the 2013 Act on civil partnerships. At the Court of Appeal, it was held, by a majority, that any interference with the appellants rights (which were now engaged) was, for the time being, justified as it was pursuing a legitimate aim. At the Supreme Court, however, it was decided that given the Government were consciously aware when they passed the 2013 Act that an inequality would emerge the 'wait and see' approach was not a legitimate aim and therefore continued differential treatment was unjustified. The Supreme Court therefore issued a declaration of incompatibility that sections 1 and 3 of the Civil Partnership Act 2004 are incompatible with articles 8 and 14 of the European Convention on Human Rights. In response to this landmark ruling the Government declared in October 2018 that civil partnerships would now be extended to different sex couples and meanwhile the Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill 2017-2019 (A Private Members' Bill) is due to have its second reading in the House of Lords on January 18<sup>th</sup> 2019.

It is assumed the part of the Bill that will compel an extension of civil partnerships to different sex couples will get through Parliament and this form of discrimination will then come to an end. This extension though to different sex couples has seen a renewed interest in civil partnerships being available for siblings. Back in 2008 the Burden sisters lost their case at the European Court of Human Rights when it was held that the sisters were not in an analogous situation to civil partners because siblingship is a different form of relationship to civil partnership and marriage. They argued that

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even though they had lived together all their lives, their treatment under inheritance tax laws was discriminatory when compared to married couples or those in a civil partnership. Given any couple who are not already married, or in a civil partnership with someone else and are of the requisite age should now be able to marry or register a civil partnership, it remains the case that the only group now excluded will be those within the prohibited degrees of relationship. This would continue to preclude siblings.

In July 2018 Lord Lexden introduced a Private Members Bill into the House of Lords. The Civil Partnership Act 2004 (Amendment) (Sibling Couples) (Bill) proposes to insert s1A into the Civil Partnership Act 2004 where sibling couples would be two people who are considered to be siblings and both over thirty years old and who have lived continuously together for a period of twelve or more years and would be able to register for a civil partnership. In the debate Lord Lexden argued that 'in conformity with the spirit of our times' sibling couples should be permitted to enjoy the same rights as other registered couples. In support of the Bill, Lord Alton referred to the case of the Burden sisters where he said they were not entitled to be treated as civil partners because they had not made a binding commitment to each other, but they could not make a binding commitment to each other because they were sisters. Lord True, in support of the Bill, argued that 'Society today is increasingly atomised. We surely need to honour and sustain those affinities that bind it together' and Baroness Deech, supporting the Bill stated that given the law has already been extended 'to those who are fortunate enough to enjoy a formal partnership should not claim a monopoly on benefits that might appropriately benefit others'.

Support for the Bill was not however universal. Baroness Barker argued that 'it is wrong to equate the relationship between siblings and family members with relationship between adults which are entered into voluntarily as loving relationships... Consanguinity is not something that we can ignore in this matter because it has a profound effect upon relationship.' In addition to believing the relationship is different Baroness Barker also explained that whilst a civil partnership can be dissolved it is not possible to dissolve a relationship with your family in the same way. Lord Collins, agreed with Baroness Barker, making the point that extension of civil partnerships 'cannot also be a mechanism for simply driving a coach and horses through tax legislation.' Baroness Williams (The Minister of State) also made it clear that regardless of the poignant stories she heard during the debate, the Government has significant reservations about this Bill believing it to be the 'wrong remedy to the issue at hand.'

The Bill was then committed to a Committee of the Whole House although a date for the second reading has not yet been fixed.

The question asked at the beginning of this vlog then is 'civil partnerships for all?' The answer would appear to be not yet. Whilst different sex couples are likely to be able to enjoy the opportunity to register a civil partnership in the near future, siblings are likely to remain disappointed. The current Government does not support the reform for sibling couples on the basis that any practical injustices suffered by sibling couples would best sorted by reforms to the inheritance tax system. In addition, any arguments for recognition, even to the European Court of Human Rights, would appear to remain largely unchanged. The overriding concern would appear to be that civil partnerships for sibling couples, according to Baroness Williams 'seeks to redefine the very nature of what a civil partnership is.' The UK, it would appear, is not yet ready for such a development.