

The Future of Civil Partnership in Scotland

Analysis of Consultation Responses

June 2019



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Executive Summary

1. This summary provides an overview of the analysis of the responses received to the Scottish Government's consultation on the Future of Civil Partnership in Scotland.

2. In June 2018, the UK Supreme Court ruled that the Civil Partnership Act 2004 is not compatible with the European Convention on Human Rights in that it prevents mixed (opposite) sex couples from entering into civil partnerships. This related to a case in England and Wales. Given that the facts and circumstances are very similar in Scotland, the Scottish Government consulted on the future of civil partnership in Scotland.

3. The consultation ran from 28 September to 21 December 2018. It set out two options for change: closure of civil partnerships to new relationships from a date in the future, or the introduction of mixed sex civil partnerships.

4. The purpose of the consultation was to seek fresh insight into the known arguments for and against the two options. As a result, this analysis provides a qualitative report on the points made by consultees. The consultation also asked for views on the respective advantages and disadvantages of recognising same sex civil partnerships registered elsewhere as civil partnerships or as marriages in Scotland, in the event of civil partnership being closed to new relationships.

5. The consultation received 481 responses. 462 were from individuals and 19 were from organisations. Of the respondents that specified where they were resident, 78% said that they were resident in Scotland.

6. Respondents who were broadly supportive of the extension option typically cited equality, diversity, inclusivity, freedom of choice, access to rights and responsibilities, family security and Scotland's image as a progressive nation as key considerations in their answers.

7. Respondents who broadly supported the closure option tended to frame the extension option as a threat to marriage, or to state that civil partnership is no longer needed now that marriage is open to all, and that having both systems running in parallel would be inefficient.

8. Overall, the consultation did not elicit substantial new insight into the arguments for and against the two options. However, it did raise a few new points or angles, including:

- **The advantages of civil partnership for women**

Extending the argument set out in the consultation that civil partnership offers an alternative for women who reject marriage as a patriarchal institution, it was further suggested that it also offers a valuable alternative for women who have negative past experiences of marriage, including abusive relationships.

- **Promotion of family stability**
It was argued that civil partnerships would promote family stability for couples who reject the option of marriage but would enter a civil partnership.
- **Fewer constraints for bisexual people**
Some comments highlighted that extending civil partnerships to mixed sex couples would ensure that for bisexual people, the sex of their partner would not have to influence whether they enter a marriage or civil partnership.
- **Objection to the widespread unavailability of marriage for same sex couples**
One argument presented was that civil partnership would offer an alternative for mixed sex couples who object to marriage on the grounds that it is still unavailable to same sex couples in many parts of the world.
- **Civil partnerships are a reminder of inequality**
Some respondents argued that civil partnerships are now an unnecessary reminder of the exclusion from marriage that same sex couples faced in the past.
- **The UK Government's announcement of intention to extend civil partnerships to mixed sex couples**
A number of respondents noted that, in light of the UK Government's decision to extend civil partnership to mixed sex couples, some in Scotland may travel south of the border to have a mixed sex civil partnership.
- **Changing marriages to civil partnerships**
Some respondents stated that they would have preferred to enter into a civil partnership rather than marry had the choice been available, raising the question of whether marriages should be capable of being changed into mixed sex civil partnerships.
- **Death benefits in pensions**
It was noted that, depending on the exact decisions in relation to pensions, the introduction of mixed sex civil partnership may open up the possibility of some civil partners being entitled to higher death benefits in pensions than spouses. This could mean that it would be more beneficial for some in mixed sex marriages to be in civil partnerships instead.
- **Equality Act 2010 – exemptions**
The Equality Network stated: "... we consider that it may be necessary to extend the religious and belief body exemption in the Equality Act. This could be needed where a religious body did not support same-sex marriage, but decided to register civil partnerships for same-sex couples instead. The body might consider, consistent with its doctrines, that it was not appropriate to register mixed-sex civil partnerships (but only to offer mixed-sex marriage). We do not think such a body should fall foul of the Equality Act by declining to register civil partnerships for mixed-sex couples."

- **Civil partnerships for trans people without Gender Recognition Certificates**

Further to the point that introducing mixed sex civil partnership would allow a trans person seeking gender recognition to stay in their civil partnership, a consultee also noted that it would allow trans people who wish to enter into a civil partnership with a same sex partner to do so without a Gender Recognition Certificate.

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Introduction

9. The Scottish Government published a consultation paper, 'The Future of Civil Partnership in Scotland: A Consultation by the Scottish Government', on 28 September 2018. The consultation ran until 21 December 2018¹.

10. The purpose of the consultation was to seek fresh insight into the known arguments for and against the two options that exist for the future of civil partnership in Scotland: closure of civil partnerships from a date in the future, or the introduction of mixed sex civil partnerships. It also sought opinions on the two proposed options for recognition in Scotland of civil partnerships from other jurisdictions in the event that civil partnerships were closed here from a date in the future: recognition as civil partnerships, or as marriages.

11. Overall, the consultation did not elicit substantial new insight into the arguments for and against the two options on the future of civil partnership. Limited new information was received, along with some additional detail around existing areas.

12. This report presents a summary of the consultation responses received. Reflecting the nature of the questions asked, the analysis is qualitative and focuses on setting out the range of issues raised by respondents.

13. The consultation paper used the term 'opposite sex' (as in, 'opposite sex' civil partnership), but following responses noting that this is neither inclusive of non-binary people nor reflective of the terminology used in marriage legislation, 'mixed sex' has instead been used throughout this report.

Background to the Consultation

14. The Civil Partnership Act 2004 came into force across the United Kingdom in December 2005. It makes provision so that same sex couples can form a civil partnership through registration, and enjoy similar rights and responsibilities to that of a married couple.

15. The Marriage and Civil Partnership (Scotland) Act 2014 introduced same sex marriage and the religious and belief registration of civil partnership, as well as making other changes to marriage and civil partnership law. It also amended the Gender Recognition Act 2004 so that a married person who obtains legal gender recognition does not have to divorce.

16. In late 2015, the Scottish Government reviewed the law of civil partnership and concluded that further evidence was required before determining next steps. A consultation was conducted as part of this review.²

¹ The 2018 consultation can be found at: <https://www.gov.scot/publications/future-civil-partnership-scotland/pages/3/>

² Analysis of the 2015 consultation can be found at: <https://www.gov.scot/publications/review-civil-partnership-scotland-analysis-consultation-responses/>

17. In June 2018, the UK Supreme Court found that the Civil Partnership Act 2004 was incompatible with the European Convention on Human Rights (ECHR) in that it prevents mixed sex couples from entering into civil partnerships.

18. This case related to England and Wales. However, given that the facts and circumstances relating to civil partnership are very similar in Scotland to England and Wales, the Scottish Ministers have concluded that legislation is needed to deal with the incompatibility identified by the Supreme Court.

19. This consultation set out two options for the future of civil partnership in Scotland, either of which would be effective to remove the ECHR incompatibility from the current law. The consultation did not ask respondents to state their preferred option: rather, it sought to obtain fresh insight into the known arguments for and against the two options.

20. The two options outlined in the consultation paper are:

- Make provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future.
- The introduction of mixed sex civil partnership.

Profile of respondents

21. There were 481 responses to the consultation. 478 were submitted through the Scottish Government's Citizen Space consultation page, and the remaining 3 responses were submitted as hard copies. There were 61 responses (all from individuals) which contained no detail, leaving 420 responses which contained substantive information.

22. The vast majority (96%) of responses were received from individuals; 4% (19 responses) were from organisations. Further information on the organisations which responded is given in Annex A.

23. Of the 472 respondents who answered the question about where they were resident:

- 369 said that they were resident in Scotland (78%)
- 97 said that they were resident in the rest of the UK (21%)
- 6 said that they were resident in the rest of the world (1%)

24. Of the 481 respondents, 433 gave permission for their responses to be published.

Option of no new civil partnerships from a date in the future

25. Under the option of no new civil partnerships in Scotland from a date in the future, mixed sex and same sex couples would continue to be able to marry if they wished. However, same sex couples would no longer have the option of forming a civil partnership, after a given date. Civil partnerships created prior to the cut-off date would continue to be recognised and civil partners would continue to enjoy the same responsibilities and rights that were in place prior to the cut-off date. There would be no obligation to change existing civil partnerships to marriage, or to dissolve them.

26. Scottish statistics³ suggests that demand for same sex marriage is higher than demand for same sex civil partnership.

27. There would not be significant costs or savings to this option.

Cross-border recognition

28. In the context of the option of ending the registration of civil partnerships in Scotland, one question that arises is how to recognise same sex civil partnerships from elsewhere. The Scottish Government's intention is that civil partnerships formed in other parts of the UK would continue to be recognised in Scotland. In addition, same sex relationships other than marriages registered overseas would continue to be recognised in Scotland, provided certain criteria are met.

29. There are two options for recognition of same sex civil partnerships registered elsewhere in the UK and overseas: recognition as civil partnerships or as marriages.

30. The consultation paper set out the following arguments for and against each option:

Recognition as civil partnership

31. Arguments for:

- The most accurate reflection of the nature of the relationship
- Aligned to the continued recognition of existing Scottish civil partnerships

32. Arguments against:

- An open-ended commitment to recognition
- Results in long-term recognition of legacy relationships

Recognition as marriage

33. Arguments for:

- Comparatively straightforward
- Reflects that same sex marriage is a permanent feature of Scottish life

³ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/marriages-and-civil-partnerships/marriages-and-civil-partnership-time-series-data>

34. Arguments against:

- Inconsistent with the nature of the relationship as created

35. The consultation asked two questions specifically about the options for recognition of same sex civil partnerships registered elsewhere:

Question 1. Are you aware of any **other** arguments **for** recognising civil partnerships from elsewhere in the UK and overseas as **civil partnerships** after the cut-off date?

Yes

No

If yes, please outline these arguments.

36. Many responses reiterated the argument that civil partnerships from elsewhere in the UK and overseas should be recognised as civil partnerships in Scotland since this would be the most accurate reflection of the nature of the relationship that was entered into. Some respondents also suggested that not to recognise the partnership in the terms that it was entered into would be an infringement of these people's human rights.

37. As an alternative to deciding that all civil partnerships from outside Scotland would be recognised in the same way (either as civil partnerships or as marriages), some respondents suggested that couples in a civil partnership from elsewhere be able to choose whether to have their relationship recognised as either a civil partnership or a marriage.

Question 2. Are you aware of any **other** arguments **for** recognising civil partnerships from elsewhere in the UK and overseas as **marriages** after the cut-off date?

Yes

No

If yes, please outline these arguments.

38. The following arguments in support of recognising civil partnerships from elsewhere in the UK and overseas as civil partnerships after the cut-off date were also presented:

- **Scotland as a progressive nation**
 A number of responses argued that not recognising civil partnerships from elsewhere as civil partnerships in Scotland would contradict Scotland's commitment to equality and its reputation and identity as a progressive, inclusive country.
- **Avoid deterring people from coming to Scotland**
 Some respondents suggested that not recognising civil partnerships as such may deter some people from coming to Scotland, whether to visit or to live here.
- **An alternative in the event of closure of civil partnerships in Scotland**
 It was also suggested that recognising civil partnerships from elsewhere as civil partnerships rather than as marriages would provide an alternative option in the event that civil partnerships were closed from a date in the future in Scotland. This would allow people who wanted a civil partnership the option of entering into one elsewhere in the UK or abroad, and still have their civil partnership recognised in Scotland.
- **Consistency with treatment of polygamous unions**
 One response suggested that while polygamous unions cannot be created in Scotland, those created abroad are given 'substantial legal effects', and consistency should therefore be applied by recognising civil partnerships created abroad.
- **International consistency**
 In support of recognising civil partnerships from elsewhere in the UK and overseas as civil partnerships, the Equality Network noted that they are 'not aware of any other jurisdiction which treats civil partnerships registered outwith the jurisdiction as if they were marriages.'

The case for no new civil partnerships from a date in the future

39. The consultation paper set out the following arguments for and against the option of no new civil partnerships from a date in the future:

40. Arguments for this option:

- The introduction of same sex marriage has rendered civil partnerships obsolete.
- Civil partnership was introduced at a time when same sex marriage was not seen as realistic. Society and the law have moved on, and there is no longer a need for civil partnerships, the existence of which currently serves to promote out-dated perceptions about the type of civil union that same sex couples should be able to form.
- There is a misperception that the existence of both marriage and civil partnership provides a choice, whereas in fact the difference lies only in the name: the rights provided by both are virtually the same.
- Ending the registration of civil partnership would reduce complexity: only a single option for couples would exist in the future.
- Ending the registration of civil partnership could make international recognition issues less complex. Marriage is typically recognised in other jurisdictions whereas civil partnership systems (if they exist) can differ considerably from country to country.
- It could drive a change in perceptions. Some believe that marriage is an old fashioned or patriarchal institution. The repeal of civil partnership could remove an unhelpful contrast and recast marriage as modern and inclusive.
- There is limited demand for same and mixed sex civil partnership.

41. Arguments against this option:

- Ending the registration of civil partnership would remove an option that is currently available to same sex couples.
- Civil partnership allows same sex couples who believe marriage to be a union meant for mixed sex couples to have their relationship formally and legally recognised, and to obtain responsibilities and rights.
- The legacy status of civil partnerships if new registrations are ended could make it unattractive, create insecurity and inadvertently pressurise couples to change their relationship to marriage.
- The passage of time may create a lack of understanding about the status of legacy civil partnerships. This could cause problems for recognition and understanding of rights.
- The existence of legacy relationships is likely to create complexity in administrative arrangements that relate to marital or civil partnered status and that require disclosure of information about that status. For example, simplification of prescribed forms may not be possible where both marriage and civil partnership are available.
- Notwithstanding the introduction of same sex marriage in Scotland, some people of faith may perceive marriage to be a union for mixed sex couples. These people may prefer to retain the system of civil partnerships.

- LGBTI people who have experienced discrimination from religious bodies, and who perceive marriage as primarily religious in nature, may not wish to enter into a union perceived as having close connections with religion and those religious bodies.
- If civil partnership continues to be available in England and Wales that could potentially result in civil partnership registration being exported across the border. [Very shortly after the consultation issued, the UK Government announced its intention to introduce mixed sex civil partnership].

42. The consultation asked two questions specifically about the options of ending the registration of civil partnerships:

Question 3. Are you aware of any **other** arguments **for** ending the registration of civil partnership?

Yes

No

If yes, please outline these arguments.

Question 4. Are you aware of any **other** arguments **against** ending the registration of civil partnership?

Yes

No

If yes, please outline these arguments.

43. Respondents who broadly supported the closure option included some religious organisations, which framed the extension option as a threat to marriage. Other respondents who supported the closure option typically stated that civil partnership is no longer needed now that marriage is open to all. Respondents highlighted the similarity between marriage and civil partnership (and the resulting absence of a need for both systems) and the inefficiency of two similar systems running in parallel.

44. The following points were also made:

- **Civil partnerships are a reminder of inequality**
Some respondents argued that civil partnerships were an unsatisfactory compromise used to suppress the campaign for marriage equality at a time when same sex couples were not allowed to marry, and that they are now an unnecessary reminder of this past inequality.

- **Challenges in light of the UK Government's announcement of intention to extend civil partnerships to mixed sex couples**

After the Scottish Government's consultation was published, the UK Government announced that civil partnership will be extended to mixed sex couples in England and Wales. A number of respondents to this consultation noted that one argument against the closure of civil partnerships is that couples may consequently travel south of the border (or overseas) to have a mixed sex civil partnership. The Equality and Human Rights Commission suggested that same sex couples who cannot travel outside Scotland would be at a disadvantage and that the Scottish Government may wish to conduct a Fairer Scotland Duty Assessment.

A number of respondents to the Scottish consultation mentioned the UK Government decision as added impetus for Scotland to also introduce mixed sex civil partnerships, and suggested that not doing so would contradict Scotland's reputation as an open, forward-thinking country.

- **Review of legally recognised family relationships altogether**

One perspective presented was that civil partnerships should be closed from a date in the future, but only in the context of a wider review of regulated family relationships. It was proposed that all marriages recognised by the state should be civil (as happens in some Continental jurisdictions), with couples of faith choosing to having a private religious or belief ceremony if they so wish.

Additional suggestions included for all divorces to be no fault and for adultery to be removed from the law on divorce, and for consideration of whether people sharing a life in some way, albeit not in a physically intimate relationship (such as sisters living together) should be able to form some sort of legally recognised partnership. However, one respondent concluded that, 'In the absence of more fundamental reform of marriage and divorce, the fairest and most egalitarian solution is to continue to offer both [marriage and civil partnerships].'

Option of extending civil partnership to mixed sex couples

45. Under the option of extending civil partnerships to mixed sex couples, mixed sex civil partnerships would be formed and dissolved in the same way as same sex civil partnerships and the rights and responsibilities of mixed sex civil partners would generally be the same as for same sex civil partners. Eligibility criteria for entering a mixed sex civil partnership would reflect the criteria for entering a same sex civil partnership.

46. There is little hard evidence on the demand for mixed sex civil partnerships in Scotland, but examples from other countries suggest that demand is likely to be low.

47. This option is likely to require more legislative changes than the option to stop registration of civil partnerships. Legislation to allow mixed sex civil partnerships could be taken forward by primary legislation (a Bill in the Scottish Parliament). It would also be possible for the necessary changes to be made by a remedial order under the Convention Rights (Compliance) (Scotland) Act 2001, or potentially via co-operation with the UK Government on a legislative solution to the matter.

48. Extension of civil partnership has costs and savings implications in a number of areas, including registration, legal aid, pensions and social security as summarised in the consultation paper.

49. The consultation paper set out the following arguments for and against the option of extending civil partnerships to mixed sex couples:

50. Arguments for this option:

- It is inherently fair and equitable for civil partnerships and marriage to be available to both mixed and same sex couples.
- Civil partnership does not include the societal expectations faced by women in the context of marriage or the wedding ceremony. Such expectations include wearing white, being given away, and the wedding celebrations being led by men.
- Limited demand is irrelevant: rather, it is crucial and necessary for the law to be fair.
- Marriage is seen by some as old fashioned, religious and patriarchal. The option to enter into a civil partnership will permit those who feel this way to make a commitment to their partner while avoiding these connotations.
- For people who have been unhappily married in the past, a mixed sex civil partnership might be perceived as an opportunity to form a union without risk of a similar experience, and without negative connotations.
- Civil partnership will be an opportunity for people who have been married in the past and are not able to remarry on religious or ethical grounds.
- Entering into a civil partnership would no longer result in couples effectively outing themselves as civil partnership is only available to same sex couples (if it is known that a couple has formed a civil partnership, it is then currently known that the relationship must be a same sex one).

- There would be fewer administrative burdens on transgender people who are in civil partnerships when they obtain gender recognition: they would simply be able to stay in the civil partnership.
- Cost and complexity may not be that significant.

51. Arguments against this option:

- Marriage is the established, long-standing arrangement through which mixed sex couples make a lifelong commitment to each other and receive certain legal protections. An alternative option is not required.
- Generally, the legal effect, benefits and implications of marriage and civil partnership are the same for civil partners and the married. There is little or no additional benefit to be gained by making civil partnerships available to mixed sex couples.
- Evidence from other countries indicates that demand in Scotland for mixed sex civil partnership would be low, with the majority of mixed sex couples preferring to marry where both options are available.
- The costs inherent to the introduction of mixed sex civil partnership do not appear to be justified in the light of likely demand for it.
- The recognition of mixed sex civil partnership elsewhere in the UK and overseas is likely to be limited⁴. This may have adverse consequences in relation to legal presumptions that flow from marriage status in other jurisdictions. This could impact on matters such as parentage, next of kin status and succession.
- Mixed sex civil partnership is perceived by some as requiring less commitment than marriage and, in consequence, as less likely to result in long-standing, stable unions. That would be particularly detrimental to any children of these unions and, by extension, to wider society.
- It is possible that society's understanding of mixed sex civil partnership might also be limited.
- It could prompt mixed sex civil partnership tourism to Scotland, with couples left uncertain as to their status in their own countries.
- If cohabitants prefer not to marry, they already benefit from some rights in Scots law.
- Civil partnership is more attractive to people who feel that marriage is an old fashioned, religious or patriarchal institution. However, civil or belief marriage ceremonies are available at present and are widely used.
- Mixed sex civil partnership would increase complexity.
- It would increasingly undermine marriage.

52. The consultation asked three questions specifically about the option of extending civil partnerships to mixed sex couples:

⁴ It does now seem clear that there would be recognition in England and Wales, and in relation to reserved matters, of mixed sex civil partnership given the UK Government decision. However, the position on recognition in Northern Ireland and other jurisdictions remains unclear.

Question 5. We have explained what opposite sex civil partnership would look like. Do you have any comments on this?

Yes

No

If yes, please outline your comments.

Question 6. Are you aware of any **other** arguments **for** extending civil partnership to opposite sex couples?

Yes

No

If yes, please outline these arguments.

Question 7. Are you aware of any **other** arguments **against** extending civil partnership to opposite sex couples?

Yes

No

If yes, please outline these arguments.

The case for extending civil partnership to mixed sex couples

53. Respondents who were broadly supportive of the extension option typically cited equality, diversity, inclusivity, freedom of choice, access to rights and responsibilities, family security, and Scotland's image as a progressive nation as key considerations in their answers. A number of individual respondents indicated that they wished to enter into a mixed sex civil partnership, and a number of organisations supported the view that there would be demand for mixed sex civil partnerships.

54. The consultation raised a few new points or arguments in support of extending civil partnerships to mixed sex couples:

- **Gender recognition**

A consultee noted that “We recognise there to be a further benefit for trans people in extending civil partnership to mixed-sex couples. Trans people who wish to enter in to a civil partnership with a same-sex partner would currently be unable to do so without a Gender Recognition Certificate ... extending the option for civil partnership to all would lessen the complications trans people face in relation to the conflicts between legal gender recognition and civil partnership.”

- **The advantages of civil partnership for women**

The consultation paper noted that one argument for civil partnership was that some women may not wish to marry as the institution of marriage may be seen as patriarchal and some women may reject traditional societal expectations of women at wedding ceremonies. A number of respondents also made similar points.

One respondent suggested that economic gender inequality can mean that women are at risk of being affected by the absence of legal rights more than men. Mixed sex civil partnership will provide women with expanded access to the rights and protections that stem from a legally recognised relationship.

- **Death benefits in pensions**

The Pensions Advisory Service noted that:

“Since Walker v Innospec⁵ [a court case on death benefits in pensions and same sex couples], same sex Civil Partners and same sex surviving spouses are now entitled to the same Death Benefits as widows. This usually includes backdating of pensionable service to 1978, as compared to the previous backdating of service only to 2004.

Widowers are currently entitled to service only backdated to 1988.

It is not clear to us whether surviving opposite sex partners would receive death benefits at the same level as widows regardless, or on the basis of their gender.

If death benefits are paid out to opposite sex civil partners on the same basis as widows, and same sex civil partners, then it may be more beneficial for some in opposite sex marriages to be in civil partnerships instead.

If death benefits are paid out to opposite sex civil partners on the basis of their gender, this may be a cause for future disputes in the courts as beneficiaries seek equality with same sex civil partners and widows.”

⁵ <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

- **Promotion of family stability**
It was argued that if civil partnerships are taken up by some of the substantial number of unmarried mixed sex couples with children, then this would promote family stability as well as offering benefits to wider society.
- **Fewer constraints for bisexual people**
Some comments highlighted that extending civil partnerships to mixed sex couples would ensure that for bisexual people, the sex of their partner would not have to play a role in determining whether they enter into a marriage or civil partnership.
- **Objection to the widespread unavailability of marriage for same sex couples**
One argument presented was that civil partnership would offer an alternative for mixed sex couples who object to marriage on the grounds that it is still unavailable to same sex couples in many parts of the world.
- **Demand may increase**
Some comments argued that even if the demand for civil partnerships was initially low, this would be likely to increase in the future as they become better established.

The case against extending civil partnership to mixed sex couples

55. Those who presented arguments against extending civil partnerships to mixed sex couples tended to state that it would be purposeless since civil partnership does not differ significantly from marriage and cohabiting couples already benefit from many rights (more so than in England and Wales). Responses also echoed the argument that mixed sex civil partnerships would introduce unnecessary complexity. Some also said mixed sex civil partnership were a threat to marriage and to family values.

56. In addition, some responses also suggested that civil partnerships were created as an unsatisfactory compromise used to suppress the campaign for marriage equality at a time when same sex couples were not allowed to marry, and that they are now an unnecessary reminder of this past inequality. This argument was also presented as a reason to close civil partnerships from a date in the future.

Impact Assessments

57. In line with usual practice, draft Impact Assessments were prepared and attached as annexes to the consultation paper. These included:

- A draft Business and Regulatory Impact Assessment (BRIA)
- A draft Equality Impact Assessment Record (EQIA)
- A draft Child Rights and Wellbeing Impact Assessment (CRWIA)

58. The consultation paper noted that the Government did not consider a Strategic Environmental Assessment (SEA), a Data Protection Impact Assessment (DPIA), an Islands Impact Assessment (IIA) or a Fairer Scotland Duty Assessment (FSDA) required.

59. Respondents to the consultation were asked whether they had any comments on the three drafts presented.

Question 8. Do you have any comments on the draft Impact Assessments?

Yes

No

If yes, please outline these comments.

General

60. Many responses to this question reiterated arguments outlined above, for and against the two options.

61. Some comments on the Impact Assessments in general included suggestions that they were thorough and understandable.

62. Other comments suggested that they were too long and not sufficiently impartial.

63. One respondent suggested that children of couples with a civil partnership might be at a disadvantage should the closure option be pursued: "There is also potential for children to experience negative impact if their parents or guardians have joined in a form of partnership which is no longer legally available. It would be appropriate, therefore, to include these groups in the sections on sectors and groups affected in the EQIA and CRWIA."

64. Responses also included proposals that both an FSDA and an assessment of the impact on Human Rights be conducted.

65. As mentioned above, the Equality and Human Rights Commission suggested an FSDA in light of the possibility that same sex couples who cannot travel outside Scotland would be at a disadvantage should civil partnerships close and couples would consequently have to travel south of the border (or overseas) to have a mixed sex civil partnership. A further suggestion was that an FSDA should consider the higher expenditure expectations around marriages than civil partnerships.

Draft Business and Regulatory Impact Assessment (BRIA)

- **Costs**

A number of comments queried how costs were estimated, or suggested that the costs of the extension option would be insignificant, and perhaps lower than those presented.

Others argued that the cost is less important than ensuring equality and choice.

However, it was also contended that any costs involved in the extension option could not be justified when there are no substantial differences between civil partnership and marriage.

- **Take up**

Some respondents reiterated the point that there is a lack of evidence to support the claim that take up of civil partnerships would be low, and that efforts should have been made to identify the amount of mixed sex couples that would like to take up a civil partnership.

- **Loss of business**

One argument put forward was that hospitality and events businesses in Scotland might miss out should civil partnership be closed and people then choose to travel elsewhere to have one.

Draft Equality Impact Assessment (EQIA)

66. Many responses agreed that the extension option would eliminate unlawful discrimination and advance equality of opportunity for people of all sexual orientations.

- **Promoting good relations**

The draft EQIA suggested that neither option would contribute to promoting good relations (for any of the protected characteristics). However, one respondent suggested that the extension option would have a positive impact in this regard on the basis that mixed sex and same sex couples would have parity. That respondent pointed out that the availability of marriage to same sex couples and the absence of availability of civil partnership to mixed sex couples could have a detrimental effect on relations.

- **Sexual orientation – eliminating discrimination and advancing equality of opportunity**

Some comments argued that in practice, the closure option would cause problems for those with existing civil partnerships, and that they might feel pressure to change their civil partnership to a marriage. Others suggested that it is fairer to correct inequality of opportunity by extending the existing options to everyone, rather than removing options from some groups.

Draft Child Rights and Wellbeing Impact Assessment (CRWIA)

67. There were no further substantial points made on the draft CRWIA beyond that outlined above.

Other comments on the future of civil partnerships

68. The responses to the consultation included a number of other points which relate to the subject of civil partnerships in Scotland, but which are not directly arguments for or against the options set out. Some of these were responses to question 9, which asked for other comments.

Question 9. Do you have any other comments?

Yes

No

If yes, please outline these comments.

These points included:

- **Terminology**
The Equality Network noted that the ‘use of the term “opposite sex couples” in the consultation paper is not inclusive of non-binary people, and is inconsistent with the term used in marriage legislation, which is “persons of different sexes”’. Stonewall Scotland also made this point.
- **Changing marriages to civil partnerships**
The consultation did not discuss changing marriages to civil partnerships. However, some respondents stated that they would have preferred to enter into a civil partnership rather than marry had that choice been available.
- **Registration of civil partnership by religious or belief bodies: exemption in the Equality Act 2010**
In Scotland, same sex civil partnership can be registered by religious or belief bodies. There are exemptions in the Equality Act 2010 for religious or belief bodies who do not wish to register civil partnership or solemnise same sex

marriage. The consultation suggested no exemption would be needed in the 2010 Act for religious or belief bodies who do not wish to register mixed sex civil partnership.

The Equality and Human Rights Commission agreed, saying that ‘A religious or belief body that decides not to register civil partnership in general would not be discriminating on the grounds of sex or sexual orientation, as it does not provide the service to anyone.’

However, the Equality Network disagreed, saying:

‘... we consider that it may be necessary to extend the religious and belief body exemption in the Equality Act. This could be needed where a religious body did not support same-sex marriage, but decided to register civil partnerships for same-sex couples instead. The body might consider, consistent with its doctrines, that it was not appropriate to register mixed-sex civil partnerships (but only to offer mixed-sex marriage). We do not think such a body should fall foul of the Equality Act by declining to register civil partnerships for mixed-sex couples.’

- **Opposition to same sex marriage**

Although this consultation did not seek views on the future of same sex marriage, a number of responses presented the view that marriage should be for mixed sex couples only and that this form of marriage is an important foundation for society. In some cases, this view was presented as an argument against mixed sex civil partnership.

- **Adultery and civil partnership law**

It was suggested by some responses, including that from the Equality Network, that adultery should not form part of the law on civil partnership given that sexual infidelity can be considered as unreasonable behaviour and demonstration of irretrievable breakdown of the partnership, and thus grounds for dissolution.

However, the Glasgow Bar Association highlighted the inconsistency between civil partnerships and marriage in this regard and suggested that this ‘may be a reason to abolish adultery as a separate ground of divorce’.

- **The Human Fertilisation and Embryology Act 2008**

The consultation paper suggested that the Human Fertilisation and Embryology Act 2008 is reserved, and that if mixed sex civil partnership were introduced then the Scottish Government would therefore need to discuss its approach to this subject with the UK Government. The proposal set out in the consultation paper was that a male civil partner of a woman at the time of assisted conception and would be treated as the father of the child and would have Parental Responsibilities and Rights unless it can be shown that he did not consent to the treatment.

Annex A: Organisational Respondents

19 organisations responded to the consultation. Annex G to the consultation noted that even where an organisation chose the “do not publish response” option, the organisation name may still be listed as having responded to the consultation in the analysis report.

Aberdeen City Council
Association of Registrars of Scotland
Catholic Parliamentary Office of the Bishops' Conference of Scotland
EdenPromise Community Churches
Equality and Human Rights Commission
Equality Network
Faith and Order Board of the General Synod of the Scottish Episcopal Church
The Family Education Trust
The Glasgow Bar Association
Humanist Society Scotland
LGBT Youth Scotland
Law Society of Scotland
NHS Health Scotland
The National Synod of Scotland of The United Reformed Church
The Pensions Advisory Service
Scottish Courts and Tribunals Service
Stirling Council
Stonewall Scotland
United Free Church of Scotland – Church and Society Committee

Scottish Government
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