

# **The future of civil partnership in Scotland**

**A consultation by the Scottish Government**

**September 2018**

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## **MINISTERIAL FOREWORD**



The recent decision by the UK Supreme Court in a judicial review in England and Wales means that the Scottish Government is required now to consider the future of civil partnership in Scotland.

The Supreme Court made it clear that the Civil Partnership Act 2004 is not compatible with the European Convention on Human Rights as civil partnership is open to same sex couples only whereas marriage is open to both opposite sex couples and same sex couples. The judgment of the Supreme Court relates specifically to England and Wales but the facts and circumstances in Scotland are very similar.

Therefore, the Scottish Government is consulting now on the future of civil partnership in Scotland. This consultation outlines two options.

The first option would be to make provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future. Existing civil partners could remain in their civil partnership if they wish and would continue to enjoy the same rights and responsibilities as they do now.

The second option would be the introduction of opposite sex civil partnership. Opposite sex civil partnership would be along the same lines as same sex civil partnership.

Once the responses to this consultation have been analysed, the Scottish Government will take a decision on the way ahead and legislate. We will legislate by introducing a Bill into the Scottish Parliament, by making an Order under the Convention Rights (Compliance) (Scotland) Act 2001, or by way of a Bill in the UK Parliament with a legislative consent motion in the Scottish Parliament. The Scottish Government will take a swift decision on the best legislative route once the consultation closes.

I look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'S Somerville'. The signature is fluid and cursive.

**SHIRLEY-ANNE SOMERVILLE**  
**Cabinet Secretary for Social Security and Older People**

## **Glossary**

“the 1977 Act” is the Marriage (Scotland) Act 1977

“the 2004 Act” is the Civil Partnership Act 2004

“the 2014 Act” is the Marriage and Civil Partnership (Scotland) Act 2014

“the ECHR” is the European Convention on Human Rights

“NRS” means National Records of Scotland.

“opposite sex couple” means a man and a woman, and has been used throughout this consultation. The term “mixed sex” can also be used.

“the cut-off date” is the term used in this consultation for the date from which it would no longer be possible to register a civil partnership in Scotland, if that option should be chosen after the consultation.

“the Supreme Court case” is a reference to 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)<sup>1</sup>.

In this consultation, we have used the term “civil partnership” throughout, although other countries may use different terms for registered relationships other than marriage. English language versions of terms used in other countries include “civil unions” and “registered partnerships”.

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<sup>1</sup> The Supreme Court’s decision is at <https://www.supremecourt.uk/cases/uksc-2017-0060.html>

## **Chapter 1: How to respond to this consultation**

### **What this consultation is about**

1.01 This consultation is seeking views on the future of civil partnership in Scotland. Civil partnership is currently open to same sex couples only. This consultation outlines two options: legislating so that no new civil partnerships could be registered in Scotland from a date in the future or the introduction of opposite sex civil partnership. Existing civil partners will be able to remain in their civil partnership, if they so wish, and continue to enjoy the same rights and responsibilities as now.

### **Why we are consulting**

1.02 We are consulting following the Supreme Court case. More details on this case are at Chapter 2.

1.03 In the chapters that follow, we have set out two options for changing the law of civil partnership along with the arguments for and against each option, and related questions.

1.04 Consultation is an essential part of the policy-making process, and we aim to obtain qualitative evidence with this consultation. We will consider the views expressed in response to this consultation along with other available evidence to help inform the Scottish Government's decision.

1.05 Following this consultation, the Scottish Government intends to legislate, by introducing a Bill into the Scottish Parliament, by making an Order under the Convention Rights (Compliance) (Scotland) Act 2001 or by way of a Bill in the UK Parliament with a legislative consent motion in the Scottish Parliament.

### **Responding to this Consultation**

1.06 We are inviting responses to this consultation by **21 December 2018**.

#### **Through Citizen Space**

1.07 Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted by **21 December 2018**.

### Hard copy

1.08 If you are unable to respond using our consultation hub, please complete the Respondent Information Form and Consultation Questions and send them to:

The Future of Civil Partnership in Scotland  
Room GW-15  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### By email

1.09 We will not accept responses submitted by email.

### No need to answer all of the questions

1.10 We welcome responses to some or all of the questions on Citizen Space or in hard copy.

### **Handling your response**

1.11 If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

1.12 All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

1.13 If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

1.14 To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

### **Next steps in the process**

1.15 Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

1.16 Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

1.17 If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or

E-mail: [cpreview@gov.scot](mailto:cpreview@gov.scot)

Telephone: 0131 244 6142

### **Scottish Government consultation process**

1.18 Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

1.19 You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

1.20 Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

1.21 While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## **Chapter 2: Introduction**

### **Civil partnership in Scotland**

2.01 The Civil Partnership Act 2004 ("the 2004 Act"), which extends across the United Kingdom, came into force in December 2005. The 2004 Act 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.

2.02 In late 2015, the Scottish Government reviewed the law of civil partnership and concluded that further evidence was required before determining next steps<sup>2</sup>. Annex A to this consultation provides more detail on civil partnership in Scotland.

### **Marriage in Scotland**

2.03 The law of marriage has developed over many centuries. The current position is set out in multiple pieces of legislation, but the key statute is the Marriage (Scotland) Act 1977 ("the 1977 Act"). This sets out matters such as the minimum age for marriage and who can solemnise marriages. Annex A to this consultation contains more detail on marriage in Scotland.

### **The Marriage and Civil Partnership (Scotland) Act 2014**

2.04 The Marriage and Civil Partnership (Scotland) Act 2014 ("the 2014 Act") 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, in particular, a person seeking gender recognition does not have to divorce.

### **Cohabitation**

2.05 Cohabitants (both opposite sex and same sex) already have some rights in Scots law. The Family Law (Scotland) Act 2006 extended these rights, in particular with regard to financial provision when the cohabitation ends. The 2006 Act also established presumptions about equal shares in household goods and money. Annex B provides further information about cohabitation in Scotland. This consultation does not discuss any changes to the rights of cohabitants in Scotland.

### **Devolved/reserved**

2.06 Matters relating to civil partnership, marriage and cohabitation are devolved. Therefore, the Scottish Parliament can make provision on who can marry or enter a civil partnership, the process for registering a civil partnership or marriage, and the rules on ending a marriage or civil partnership. The Scottish Parliament can also make provision on rights and responsibilities of

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<sup>2</sup> Information on the previous consultation is at <https://www.gov.scot/Topics/Justice/law/17867/cpreview>



spouses, civil partners and cohabitants in devolved areas (eg on financial provision when the relationship comes to an end).

2.07. However, some rights and responsibilities (eg most issues in relation to pensions and benefits) are reserved matters for the United Kingdom Parliament.

### **The Supreme Court case**

2.08 In this case, the UK Supreme Court considered whether the inability of an opposite sex couple in England and Wales to form a civil partnership under the 2004 Act breached their rights under Article 14 (prohibition on discrimination) and Article 8 (right to a private life) of the European Convention on Human Rights (ECHR).

2.09 The Supreme Court made a declaration that provisions of the 2004 Act (to the extent that they preclude a different sex couple from entering into a civil partnership) are incompatible with Article 14 of the ECHR taken in conjunction with Article 8.

### **The implications of the Supreme Court decision for Scotland**

2.10 The Scotland Act 1998 places an obligation on the Scottish Ministers not to act in a way that is in contravention of ECHR rights. Given that matters relating to civil partnership are devolved and 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.

2.11 Therefore, this consultation outlines two options: make provision laying down that no new civil partnerships could be entered into in Scotland from a date in the future or the introduction of opposite sex civil partnership.

## **Chapter 3: No new civil partnerships from a date in the future**

### **Introduction**

3.01 This option does not involve civil partnerships in Scotland being abolished. Rather, from a given date in the future (“the cut-off date”), no more new civil partnerships in Scotland could be entered into. Under the 2004 Act, the minimum notice period for civil partnership is a clear 28 days<sup>3</sup>.

3.02 However, civil partnerships (and marriages) may be planned for some time before the actual ceremony takes place. Therefore, there may need to be a long lead-in period before the cut-off date comes into effect. As a result, the cut-off date might be, for example, two years from the date that a Bill is granted Royal Assent or two years from when a remedial Order is made.

3.03 After the cut-off date, opposite 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.

3.04 Civil partnerships created prior to the cut-off date would continue to be recognised. 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. However, dissolution would of course still be an option if the parties wished to end their civil partnership.

3.05 See Annex C for examples of jurisdictions where civil partnership has been closed to new relationships.

### **Demand in Scotland for same sex civil partnerships**

3.06 This option would prevent new civil partnerships from being created for same sex couples from the cut-off date. It is therefore appropriate to consider current levels of demand for same sex civil partnership and the probable impact of removal of the ability to form a civil partnership.

3.07 Information on the number of civil partnerships entered into in Scotland is at Annex A. This includes statistics published by NRS<sup>4</sup>.

3.08 In brief, there were usually around 500 civil partnerships registered in Scotland per year before the introduction of same sex marriage in December

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<sup>3</sup> The Registrar General can, in exceptional circumstances, waive the 28 day notice period. The 28 day notice period can also be extended if the Home Office has grounds to suspect the proposed civil partnership may be a sham to avoid immigration controls.

<sup>4</sup> <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>

2014<sup>5</sup>. Now that same sex marriage has been introduced, numbers have fallen and 70 civil partnerships were registered in each of 2016 and 2017.

3.09 Since the introduction of same sex marriage, more men than women register civil partnerships, whereas more women than men enter into same sex marriage. In 2017, 407 male couples entered into a same sex marriage in Scotland (61 of these couples were changing a civil partnership into marriage) and 575 female couples (66 of these couples were changing a civil partnership into marriage).<sup>6</sup>

3.10 NRS have also carried out an analysis of the total number of civil partners registered in Scotland that have changed their relationship to marriage. Approximately 28%<sup>7</sup> have done so.

3.11 In summary, the Scottish evidence suggests that:

- demand for same sex civil partnership has decreased, is low but there continues to be some demand; and
- demand for same sex marriage is higher than demand for same sex civil partnership.

3.12 These conclusions are consistent with those that can be drawn from evidence from other countries which suggests that, where civil partnership and marriage are both available to same sex couples, most will opt for marriage. Statistics are available at Annex D.

3.13 There is also evidence from other countries which suggests that more men than women enter civil partnerships and more women than men enter into same sex marriage. For example, an Office for National Statistics Statistical Bulletin on marriages in England and Wales in 2015 noted that a total of 6,493 marriages were formed between same sex couples in 2015. Of these, 44% (2,860) were between male couples and 56% (3,633) were between female couples. By contrast, in 2016 68% of same sex couples forming a civil partnership in England and Wales were male<sup>8</sup>.

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<sup>5</sup> Over 1,000 civil partnerships were registered in Scotland in 2006. This was due to build-up of demand prior to the 2004 Act coming into force in December 2005. Prior to that, no form of same sex relationship could be registered in Scotland.

<sup>6</sup> 2017 figures on marriage and civil partnership are at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2017/section-7-marriages> Quarterly figures are at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/births-deaths-and-other-vital-events-quarterly-figures>.

<sup>7</sup> NRS analysis, June 2018. This figure has not been adjusted to take into account civil partnerships that could not have been changed to marriage due to dissolution, separation or death of one or both parties.

<sup>8</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriage/ohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2015#more-females-than-males-married-a-partner-of-the-same-sex> (point 5).

3.14 Overall, the available evidence suggests that:

- civil partners are often content to remain in their civil partnership, which recognises their relationship and offers very similar rights and responsibilities to marriage;
- if a choice is available when a registered relationship is first entered into, most couples choose marriage rather than civil partnership, although some choose civil partnership.

### **Cross-border recognition**

3.15 One of the questions that arises in the context of the option of ending the registration of civil partnerships in Scotland 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. This would apply whether the civil partnership had been formed before or after the cut-off date in Scotland.

3.16 In addition, same sex relationships other than marriages registered overseas would continue to be recognised in Scotland<sup>9</sup>, provided certain criteria are met (see sections 212 to 218 of the 2004 Act). Again, this would apply to these relationships whether formed before or after the cut-off date.

3.17 There are two options for recognition of same sex civil partnerships registered elsewhere in the UK and overseas: they could be recognised as civil partnerships or as marriages. There are arguments for and against each option, as set out below.

#### Recognition as civil partnership

##### ***Arguments for***

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

##### ***Arguments against***

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

#### Recognition as marriage

##### ***Arguments for***

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

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<sup>9</sup> Same sex marriages registered overseas, and elsewhere in the UK, are recognised as marriages in Scotland.

### **Arguments against**

- Inconsistent with the nature of the relationship as created

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.

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.

### **Gender recognition**

3.18 Currently, a person in a same sex civil partnership who is seeking gender recognition is required to end that civil partnership<sup>10</sup> (either by changing it to marriage or by dissolving it) as there is no recognition in Scotland of opposite sex civil partnership. That would remain the case under this option.

### **Legislation required**

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<sup>10</sup> Unless both parties to the civil partnership obtain gender recognition on the same day.

3.19. Even if this option is followed, civil partnership will continue in Scots law for the foreseeable future. Existing civil partnerships will remain and so there will be a continuing need for provisions on rights and responsibilities, and on dissolution.

3.20 Therefore, the Scottish Government considers that the legislation needed to enact this option would repeal:

- Chapter 2 of Part 3 of the 2004 Act on registration of civil partnerships in Scotland;
- Associated secondary legislation (for example, the Scottish Statutory Instruments (SSIs) that contain prescribed forms for registration of civil partnerships).

3.21 In practical terms, legislation to provide that no new civil partnerships could be entered into from a date in the future can be taken forward by primary legislation (a Bill in the Scottish Parliament). It may also be possible for the necessary changes to be made by a remedial order<sup>11</sup> under the Convention Rights (Compliance) (Scotland) Act 2001. Such an order can only be made if the Scottish Ministers are of the opinion that there are compelling reasons to do so as distinct from taking any other action. Another option could potentially be co-operation with the UK Government on a legislative solution to the matter. This would involve a legislative consent motion<sup>12</sup>. Following the consultation the Scottish Government intends to take a swift decision as to the appropriate legislative vehicle for making the necessary changes.

3.22 Changes would also be needed to guidance published for citizens on the registration of marriages and civil partnerships.

3.23 The Scottish Government would also need to discuss with the United Kingdom Government what changes would be needed to sections 210 and 211 of the 2004 Act and associated secondary legislation.

3.24 Sections 210 and 211 make provision on the registration of civil partnerships by UK consulates and UK armed forces when certain criteria are met. Changes may be needed to these provisions to lay down that a couple who identify with Scotland as the relevant part of the UK could no longer register a civil partnership through a UK consulate or through the UK armed forces.

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<sup>11</sup> This type of order can be used where the Scottish Ministers deem it necessary due to a provision in an Act of Parliament or Act of the Scottish Parliament not being compatible with ECHR rights.

<sup>12</sup> Generally, Legislative Consent Motions (LCMs) are used to provide Scottish Parliament consent to Bills under consideration in the UK Parliament which contain what are known as “relevant provisions”. These provisions could be those which change the law on a devolved matter, such as civil status.

## **Costs and savings**

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

3.26 Income to the public purse from the payment of registration fees to local authorities is unlikely to be adversely affected<sup>13</sup>. There are only 70 civil partnerships registered a year and so the amount raised is not significant. In addition, of course, the removal of registration of civil partnership would reduce to some extent the workloads of those who are currently required to carry this out. Some couples who may have opted for a civil partnership may choose to marry if civil partnership ceases to be available.

3.27 In time, there could be modest savings as some prescribed forms would be abolished. The Government considers that total savings from this option would be unlikely to exceed £100,000 in total.

## **Arguments for and against**

3.28 In the 2015 review of civil partnership, the Scottish Government set out arguments for and against the option of ending the registration of civil partnerships. Respondents were also asked for their views. The comments from both Government and respondents can now be reviewed in light of the need to consider whether ending the registration of civil partnership would be an appropriate response to the current requirement to amend civil partnership law. Arguments for and against are set out below. They are set out to aid discussion: the Scottish Government does not necessarily agree with the various arguments put forward.

### ***Arguments for ending the registration of new civil partnerships***

- 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.

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<sup>13</sup> Information on fees to register a civil partnership is at <https://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf>

- 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 opposite sex civil partnership

***Arguments against ending the registration of new civil partnerships***

- 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 opposite 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 opposite 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.

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.

## **Chapter 4: The extension option**

### **Civil partnership to be extended to opposite sex couples**

4.01 This option would result in civil partnership being made available to opposite sex couples.

4.02 The Scottish Government considers that opposite sex civil partnerships would be formed and dissolved in the same way as same sex civil partnerships and that the rights and responsibilities of opposite sex civil partners would generally be the same as for same sex civil partners.

4.03 The Scottish Government considers that eligibility criteria for entering an opposite sex civil partnership would reflect the criteria for entering a same sex civil partnership. In turn, these reflect the criteria for marriage. Therefore:

- The couple could not be related to each other in a way which would prevent them from entering a civil partnership. (Both marriage and civil partnership legislation make provision known as the “forbidden degrees” with people related to a “forbidden degree” not able to marry each other or enter a civil partnership with each other.)
- Both parties must be at least 16.
- Neither party must be married or already in a civil partnership.
- Both parties must be capable of fully understanding the nature of civil partnership and validly consenting to its formation.

4.04 The Scottish Government’s general intention for opposite sex civil partnership to be governed by the same rules that apply to same sex civil partnership would extend to the following situations:

- Couples in an opposite sex civil partnership registered in Scotland would be able to change their relationship to marriage through an administrative route or through having a marriage ceremony; and
- Couples in a relationship registered in another jurisdiction which is recognised as an opposite sex civil partnership in Scotland would be able to change their relationship to marriage in Scotland through a marriage ceremony.

4.05 In some cases, the UK consular service and the UK armed forces make provision so that couples may marry or enter a civil partnership overseas through the consular service or through the armed forces. If opposite sex civil partnership was introduced the Scottish Government would need to discuss with the UK Government whether opposite sex consular and armed forces civil partnerships should be available in certain circumstances.

### **Demand in Scotland for opposite sex civil partnerships**

4.06 There is little hard evidence on the demand for opposite sex civil partnerships in Scotland.

4.07 Some respondents to the 2015 consultation noted that they wished to enter an opposite sex civil partnership<sup>14</sup>.

4.08 The Scottish Government's view is that demand for opposite sex civil partnership in Scotland is likely to be low. The reason for that is examples from other countries suggest that when opposite sex marriage and opposite sex civil partnership is available and the two types of unions offer similar rights and responsibilities, as would be the case in Scotland, most couples opt for marriage. For example, in New Zealand, 96 civil unions and 23,730 marriages<sup>15</sup> were registered in 2017. Generally, the number of marriages there is increasing year-on-year as the number of civil partnerships drops.

4.09 In the Netherlands both marriages and registered partnerships are open to opposite sex and same sex marriages. In 2017 in the Netherlands, there were 64,402 marriages and 17,866 registered partnerships<sup>16</sup>. Therefore, of the 82,268 registered relationships in the Netherlands in 2017, 78.3% were marriages and 21.7% were registered partnerships. In Scotland in 2017, there were 28,440 marriages<sup>17</sup> and 70 (same sex) civil partnerships, giving a total of 28,510 registered relationships.

4.10 If, as in the Netherlands, 78.3% of registered relationships in Scotland were marriages and 21.7% were civil partnerships then, using the current figure of 28,510:

- 22,323 registered relationships would be marriage.
- 6,187 registered relationships would be civil partnership.

4.11. However, the Scottish Government does not consider there would be that number of civil partnerships in Scotland as:

- Civil partnerships in Scotland and registered partnerships in the Netherlands may not be directly comparable given in the Netherlands that if both parties have a registered partnership, are in agreement and do not have children, they can terminate the partnership out of court.<sup>18</sup>
- As indicated above, the number of (same sex) civil partnerships in Scotland has fallen markedly since the introduction of same sex marriage<sup>19</sup>.

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<sup>14</sup> The analysis of the 2015 consultation is at <https://www.gov.scot/Publications/2016/07/8130>. Page 22 outlines reasons for wishing to enter an opposite sex civil partnership.

<sup>15</sup> <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2017>. These figures may include civil partnerships that have been transferred to marriage, and vice versa.

<sup>16</sup> <http://statline.cbs.nl/Statweb/publication/?DM=SLLEN&PA=37772eng&D1=0-53&D2=0,10,20,30,40,50,65-67&LA=EN&VW=T>

<sup>17</sup> <https://www.nrscotland.gov.uk/files//statistics/vital-events-ref-tables/2017/vital-events-ref-tabs-7.xlsx>

<sup>18</sup> <https://www.government.nl/topics/divorce-separation-and-termination-of-registered-partnership/divorce-legal-separation-or-termination-of-a-registered-partnership>

<sup>19</sup> It could be argued that the introduction of opposite sex civil partnership might lead to more same sex civil partnerships being registered in Scotland as entering into a civil partnership would no longer result in couples effectively outing themselves.

4.12 See Annex D for details of extension models from other jurisdictions.

### **Cross-border recognition**

4.13 If opposite sex civil partnership should be introduced in Scotland, the Scottish Government would propose to recognise equivalent relationships registered in other jurisdictions, in the same way as we recognise same sex civil partnerships registered in other countries. However, opposite sex civil partnerships registered in other countries would not be recognised here if one or both of the parties is in a relationship (such as a marriage or a same sex civil partnership) which is already recognised here.

4.14 The Scottish Government would encourage other countries to recognise opposite sex civil partnerships registered in Scotland. However, it would be for other countries to determine whether or not such recognition would be granted.

4.15 If opposite sex civil partnership should be introduced in Scotland, the Scottish Government would discuss with the United Kingdom Government and the Northern Ireland Administration arrangements for recognising opposite sex civil partnerships registered in Scotland elsewhere in the United Kingdom. It would be for the UK Government (for England and Wales) and the Northern Ireland Administration (for Northern Ireland) to decide what recognition should be granted.

### **Gender recognition**

4.16 Currently, a person in a same sex civil partnership who is seeking gender recognition needs to end that civil partnership<sup>20</sup> (either by changing it to marriage or by dissolving it) as there is no recognition in Scotland of opposite sex civil partnership. If opposite sex civil partnership should be introduced, a couple in a civil partnership in which one civil partner is seeking gender recognition could stay in their civil partnership.

### **Pensions**

4.17 Most issues in relation to pensions are reserved but the Scottish Government has devolved responsibility for some public sector pensions (the main ones are police; fire; local government; teachers and the NHS).

4.18 Survivor benefits in devolved public sector schemes for opposite sex civil partners would be aligned with the rules for survivor benefits for same sex civil partners and same sex spouses in place at the time of introduction of opposite sex civil partnerships.

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<sup>20</sup> Unless both parties to the civil partnership obtain legal gender recognition on the same day.

## Family law

4.19 There are a number of provisions in family law in relation to married men which the Scottish Government would plan to replicate for men in opposite sex civil partnerships.

4.20 Section 5(1)(a) of the Law Reform (Parent and Child) (Scotland) Act 1986 provides that the husband of a woman is presumed to be the father of her child. The Scottish Government has carried out a consultation on family law<sup>21</sup> and has sought views on whether the presumption should remain. If, following the family law consultation, the presumption remains, the Scottish Government would propose to extend it so that a man in a civil partnership with a mother would be presumed to be the father of her child.

4.21 Under section 3 of the Children (Scotland) Act 1995, a man married to the mother of a child receives Parental Responsibilities and Rights (PRRs). However, the consultation on family law noted above has also sought views on whether all fathers should automatically be granted PRRs. Should section 3 in the 1995 Act remain unchanged, the Scottish Government would propose that a male civil partner of a woman would have PRRs in the same way as a married man. If section 3 should be amended so that all fathers automatically have PRRs, it would not be necessary to make provision for PRRs for opposite sex civil partnerships: all fathers would have them regardless of their marital or civil partnership status.

4.22 The Human Fertilisation and Embryology Act 2008, which is reserved, makes provision on assisted conception. Section 35 provides that the man married to a woman at the time of treatment is to be treated as the father unless it can be shown he did not consent to the treatment. Section 42 provides that a woman married or a in a civil partnership with a woman at the time of treatment is to be treated as a parent unless it can be shown she did not consent to the treatment.

4.23 As explained above, in terms of section 3 of the 1995 Act, a man married to the mother of a child receives Parental Responsibilities and Rights (PRRs). Similarly, a woman treated as a parent under section 42 of the 2008 Act has PRRs.

4.24 Therefore, the Scottish Government would propose that a male civil partner of a woman at the time of treatment would be treated as the father of the child, and would have PRRs unless it can be shown he did not consent to the treatment. However, the 2008 Act is reserved and the Scottish Government would need to discuss this approach with the UK Government.

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<sup>21</sup> The consultation on family law is at <https://consult.gov.scot/family-law/children-scotland-act/>

## Peerages, honours and dignities

4.25 Hereditary peerages are usually inherited by children born to opposite sex parents who are married to each other. A number of courtesy titles are held by persons who are married to someone with a title. For example, the wife of a knight may use the title of lady. This is a reserved area, and it would be for the UK Government to determine the appropriate course of action if opposite sex civil partnership should be introduced.

## Adultery

4.26 There are currently two grounds for dissolving a civil partnership: that the civil partnership has broken down irretrievably or that an interim Gender Recognition Certificate has been issued to either of the civil partners<sup>22</sup>.

4.27 The irretrievable breakdown of a civil partnership is taken to be established if:

- Since the date of registration of the civil partnership, the defender has at any time behaved in such a way that the pursuer cannot be expected to cohabit with the defender;
- The couple have not lived together for one year, where they both consent to the dissolution;
- The couple have not lived together for two years.

4.28 In relation to marriage (whether opposite sex or same sex), irretrievable breakdown can also be shown by adultery. Adultery is defined as opposite sex intercourse outside the marriage<sup>23</sup>.

4.29 The Scottish Government's view is that adultery should not be added to the law on the dissolution of civil partnership. Adultery has remained part of divorce law due to a number of religious bodies and people of faith being of the view that it should be a reason for ending a marriage. It does not seem to the Scottish Government that these arguments apply in relation to ending a civil partnership.

## Impotence

4.30 At present, permanent incurable impotence is grounds for opposite sex marriages to be voidable. There is no such rule for same sex marriage or civil partnership. The Scottish Government's understanding is that permanent incurable impotence is rarely used to void a marriage. Given this, it appears to the Scottish Government that it would not be necessary to provide in legislation that opposite sex partnerships should be voidable on the grounds of permanent incurable impotency.

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<sup>22</sup> The Scottish Government has recently consulted on proposed changes to the system for obtaining legal gender recognition: <https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/> Question 9 asked whether legal gender recognition should stop being a ground for divorce or dissolution.

<sup>23</sup> MacLennan v MacLennan 1958 SC 105

## Religious and belief celebrants and opposite sex civil partnerships

4.31 When same sex marriage and the religious or belief registration of civil partnership was introduced, the UK Equality Act 2010 was amended, by way of an Order under section 104 of the Scotland Act 1998<sup>24</sup>, to reflect that some celebrants do not wish to take part in the solemnisation of same sex marriage and the registration of civil partnerships

4.32 These exemptions from the Equality Act provisions refer, both in relation to marriage and in relation to civil partnership, to the couple being of the same sex. If civil partnership is extended to opposite sex couples, the Scottish Government has considered whether an Equality Act exemption would be needed to cover religious and belief bodies who do not wish to register opposite sex civil partnership.

4.33 The Scottish Government's view is that no provision would be needed as:

- The rationale for the existing exemptions is that some religious or belief bodies would not wish, for doctrinal reasons, to take part in ceremonies relating to same sex relationships. That remains the rationale.
- If a religious or belief body decides not to register civil partnership generally, there is no discrimination on the grounds of sexual orientation or sex as the service is not provided generally rather than not provided to a particular group in society who share a protected characteristic.

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.

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<sup>24</sup> Paragraph 19 of Schedule 5 to SI 2014/3229 refers:  
<http://www.legislation.gov.uk/uksi/2014/3229/schedule/5/made>

## **Legislation required**

4.34 This option is likely to require more changes than the option to stop registration of civil partnerships. As indicated above, the Scottish Government's starting position is that opposite sex civil partnership would be along the same lines as same sex civil partnership. Therefore, it is likely to be necessary to check legislative references to civil partnership to ensure that they work for opposite sex couples as well as for same sex couples. In addition, some of the points made in this Chapter of the consultation may require specific legislation.

4.35 In practical terms, legislation to allow opposite sex civil partnerships to be entered into from a date in the future can be taken forward by primary legislation (a Bill in the Scottish Parliament). It may also be possible for the necessary changes to be made by a remedial order under the Convention Rights (Compliance) (Scotland) Act 2001. Such an order can only be made if the Scottish Ministers are of the opinion that there are compelling reasons to do so as distinct from taking any other action. Another option could potentially be co-operation with the UK Government on a legislative solution to the matter. This would involve a legislative consent motion. Following the consultation the Scottish Government intends to take a swift decision as to the appropriate legislative vehicle for making the necessary changes.

4.36 Changes would also be needed to guidance for citizens on marriage and civil partnership.

4.37 In addition, the introduction of civil partnership will affect reserved legislation and so an order under section 104 of the Scotland Act 1998 would be required<sup>25</sup>. This would need to cover key areas like pensions, benefits and recognition of opposite sex civil partnerships across the United Kingdom.

## **Costs and savings**

4.38 Extension of civil partnership has costs and savings implications in a number of areas: registration, legal aid, pensions and social security. Key figures are set out below, and Annex E contains further information and analysis about the possible implications for these areas.

### Registration costs

4.39 There would be costs to National Records for Scotland in relation to any proposed introduction of opposite sex civil partnership. These costs would relate to adjusting IT systems and the creation of new forms and extracts. We estimate these one-off costs at around £200,000 in total. This figure is based on the recent experience with same sex marriage.

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<sup>25</sup> If a Bill at Westminster on civil partnership extended to Scotland, that could cover reserved matters and there would not be a section 104 Order.



4.40 There would also be training and familiarisation costs for local authorities. We estimate there would be total one-off costs of a further £200,000.

#### Opposite sex civil partnership – legal aid

4.41 Any proposed introduction of opposite sex civil partnership could lead to eventual costs to the legal aid budget when some opposite sex couples sought to dissolve their civil partnership.

4.42 Total costs here depend on whether there is an overall increase in the number of registered opposite sex relationships. As indicated above, we expect take up of opposite sex civil partnerships in Scotland to be low. If the total number of registered opposite sex relationships increased by 1%, the costs to the legal aid budget might be around £225,000 a year. This figure is based on current legal aid expenditure on divorce and dissolution. However, this figure may decrease based on existing demands on the legal aid funds from unmarried opposite sex couples when they separate.

#### Opposite sex civil partnership –pensions

4.43 Most issues in relation to pensions are reserved but the Scottish Government has devolved responsibility for some public sector pensions (the main ones are police; fire; local government; teachers and the NHS).

4.44 We have assumed that survivor benefits for opposite sex civil partners would be aligned with survivor benefits for same sex civil partners and same sex spouses. However the final position on how opposite sex civil partner survivor benefits would be treated would need to reflect the approach taken on survivor pensions at the time of any implementation.

4.45 If the total number of registered opposite sex relationships increases by 1%, it is estimated that the costs to the devolved public sector pensions could be up to £1.75 million a year. However, that level of increase is unlikely to have a material impact on scheme contribution rates which are set by quadrennial valuations. HM Treasury consent would be required to include benefits payable for opposite sex civil partners for the NHS and Teachers' scheme.

4.46 However, in practice, costs could be lower. More details are contained in Annex E.

4.47 In relation to reserved pensions, it is uncertain whether there would be any recognition of opposite sex civil partners in reserved public sector pension schemes (e.g. the Principal Civil Service Pension Scheme) and in private sector occupational pension schemes.

4.48 The state pension is also reserved. However, the general rule is that ability of a surviving spouse or civil partner to inherit a state pension depends on the point in time he or she reaches state pension age, and when the relationship was formed. Further details are at Annex E.

### Social security

4.49 At present, civil partners are treated as any other couple who are living together when assessing entitlement to means-tested benefits and tax credits. The introduction of opposite sex civil partnership would not affect this for devolved or reserved social security benefits. However, the interplay between benefits is highly complex, and detailed exploration of the various regulated schemes would be required to ensure that there would be no circumstances in which people in an opposite sex civil partnership would be unfairly disadvantaged.

### **The extension option: arguments for and against**

4.50 In the 2015 review of civil partnership, the Scottish Government set out arguments for and against the option of ending the registration of civil partnerships. Respondents were also asked for their views. The comments from both the Scottish Government and respondents can now be reviewed in light of the need to consider if introducing opposite sex civil partnership would be an appropriate response to the current requirement to amend civil partnership law. Pros and cons are set out below. They are set out for completeness and to aid discussion: the Scottish Government does not necessarily agree with the various arguments put forward.

### ***Arguments for the introduction of opposite sex civil partnership***

- It is inherently fair and equitable for civil partnerships and marriage to be available to both opposite 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, an opposite 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 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.

### ***Arguments against the introduction of opposite sex civil partnership***

- Marriage is the established, long-standing arrangement through which opposite 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 opposite sex couples.
- Evidence from other countries indicates that demand in Scotland for opposite sex civil partnership would be low, with the majority of opposite sex couples preferring to marry where both options are available.
- The costs inherent to the introduction of opposite sex civil partnership do not appear to be justified in the light of likely demand for it.
- The recognition of opposite sex civil partnership elsewhere in the UK and overseas is likely to be limited. 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.
- Opposite 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 opposite sex civil partnership might also be limited.
- It could prompt opposite 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.
- Opposite sex civil partnership would increase complexity.
- It would increasingly undermine marriage.

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.

## **Chapter 5: Conclusion**

### **Key aim**

5.01 The key aim of this consultation is to gather qualitative information on the arguments made for and against each of the two options for the future of civil partnerships. Along with other available information, this will be used to inform our approach to the future of civil partnerships.

### **Impact Assessments**

5.02 In line with usual practice, draft Impact Assessments have been prepared and are attached at the following Annexes:

- Annex H: draft Business and Regulatory Impact Assessment (BRIA)
- Annex I: draft Equality Impact Assessment Record (EQIA)
- Annex J: draft Child Rights and Wellbeing Impact Assessment (CRWIA)

5.03 The Government would produce a final BRIA, EQIA and CRWIA for any Bill it introduced into Parliament or any Order under the Convention Rights (Compliance) (Scotland) Act 2001 it laid before Parliament.

5.04 The Government does not consider that a Strategic Environmental Assessment (SEA) is required as there is no significant impact on the environment.

5.05 The Government does not consider that a Data Protection Impact Assessment (DPIA) is required. Clearly, if opposite sex civil partnership should be introduced, registrars would be receiving civil partnership notice forms from opposite sex couples and would be registering opposite sex civil partnership. However, data protection for these couples would be on the same basis as existing arrangements for couples seeking to marry and couples seeking to enter a same sex civil partnership.

5.06 The Government does not consider that an Islands Impact Assessment (IIA) is required. No differential impact on the islands is envisaged.

5.07 The Government does not consider that a Fairer Scotland Duty Assessment (FSDA) is required. It does not appear that policies on civil partnership can reduce inequalities of outcome caused by socioeconomic disadvantage.

5.08 In accordance with Parliamentary Standing Orders, the Government would prepare the following Accompanying Documents for any Bill it introduced into Parliament:-

- A Policy Memorandum
- A Financial Memorandum
- Explanatory Notes to the Bill.

5.09 The Government would also prepare a Delegated Powers Memorandum.

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

Yes

No

If yes, please outline these comments.

5.10. Consultees may have further comments:

Question 9. Do you have any other comments?

Yes

No

If yes, please outline these comments.

**Family Law  
Justice Directorate  
Scottish Government**

## **Annex A: Civil partnership and marriage in Scotland**

### **Background**

1. Key legislation on marriage in Scotland is the Marriage (Scotland) Act 1977, as amended. Marriage has been available to opposite sex couples in Scotland for centuries; for same sex couples, it became available on 16 December 2014. Marriages<sup>26</sup> are created through a marriage ceremony.
2. The Civil Partnership Act 2004 extends across the UK and makes provision about the formation and status of a civil partnership. It took effect from 5 December 2005. Civil partnerships are created by registration.

### **Eligibility**

3. The 1977 Act, as amended, and the 2004 Act lay down criteria for entering into a marriage or civil partnership.
  - Neither party may already be party to a civil partnership or marriage (although it is possible to change a civil partnership to a marriage)
  - Both parties must be over 16.
  - The couple must not be too closely related (this is known as “the forbidden degrees of relationship”).
  - The couple must be capable of understanding the nature of civil partnership or marriage, and be able to validly consent to it being created.
4. In relation to civil partnership, both parties must be of the same sex.

### **Types of ceremony**

5. Marriage and civil partnership ceremonies can be religious or belief<sup>27</sup>, or civil.

### **Creation**

6. A religious or belief marriage ceremony<sup>28</sup> can be held anywhere but must be solemnised by a minister, clergyman, pastor, priest or other person approved to do so under the 1977 Act. Civil marriage ceremonies can take place at a registration office or at a place (other than religious premises) that has been agreed by the couple and the registration authority.

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<sup>26</sup> In this Annex, “marriage(s)” refers to same sex and opposite sex marriage unless otherwise stated.

<sup>27</sup> The Marriage and Civil Partnership (Scotland) Act 2014 amended the Civil Partnership Act 2004 to introduce the religious or belief registration of civil partnership.

<sup>28</sup> Detailed information on how to get married is available on the NRS website <https://www.nrscotland.gov.uk/registration/getting-married-in-scotland/how-do-i-go-about-it>

7. Regardless of the type of ceremony, a marriage notice must be submitted to the registrar for the district where the marriage is to take place, and a fee paid. The registrar will produce a Marriage Schedule, without which the marriage cannot take place.

8. Similarly, civil partnerships can be registered<sup>29</sup> by a registrar or by an authorised religious or belief celebrant.

9. As with marriage, notice must be given to the registrar in the district where the civil partnership is to take place, and a registration fee must be paid. A civil partnership schedule will be produced, without which the civil partnership cannot proceed.

### **Rights and responsibilities**

10. Generally, couples in marriages or civil partnerships have the same rights and responsibilities (regardless of the type of ceremony), including:

- Succession: a surviving spouse or civil partner is entitled to prior and legal rights<sup>30</sup>.
- Recognition for immigration and nationality purposes (reserved to the UK Government).
- A right to live in the family home, regardless of who bought it, has a mortgage, or whose name is on a tenancy agreement.
- The right to obtain civil protection orders to protect against domestic abuse (for example, an order prohibiting someone from approaching a certain person or place).
- Obligations of aliment (to financially maintain each other and any children).
- The right to a financial settlement on divorce or dissolution based on the principles set out in the Family Law (Scotland) Act 1985.
- Eligibility for the Marriage Allowance<sup>31</sup> in taxation (also reserved to the UK Government).

### **Rights and responsibilities: differences**

11. The main difference arises in pensions, where survivor benefits in some pension schemes may be lower for some surviving civil partners when compared with some surviving spouses. This is because, in some cases, not all of the service in the pension scheme will be taken into account. This is also the case for same sex surviving spouses, in relation to whom survivor benefits are generally aligned with civil partners. This is largely a reserved matter for

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<sup>29</sup> Detailed information is available on the NRS website:

<https://www.nrscotland.gov.uk/files//registration/rcp1-leaflet-a.pdf>

<sup>30</sup> The entitlement to make certain claims on a deceased spouse's or civil partner's estate. See <https://www.gov.scot/Publications/2005/12/05115128/51285> for additional information.

<sup>31</sup> The ability, provided certain criteria are met, to transfer £1,190 of one's own Personal Allowance to a spouse or civil partner, in order to reduce tax paid where the spouse or civil partner earns more. See <https://www.gov.uk/marriage-allowance> for further details.



the UK Government, although the Scottish Government has devolved responsibilities for some public sector pension schemes.

### **Ending a marriage or civil partnership**

12. To end a marriage, a divorce can be obtained on two possible grounds: irretrievable breakdown or if one party obtains an interim gender recognition certificate. In either case, a court application is required, although a simplified process can be followed where certain criteria are met.

13. As with divorce, there are two possible grounds for dissolution of a civil partnership: irretrievable breakdown, or if one party to the civil partnership obtains a gender recognition certificate. Again, in either case, an application to the court is required, and where certain criteria are met, a simplified application process may be followed.

14. While irretrievable breakdown is grounds for both divorce and dissolution, there is a difference in the way that this can be established. Adultery (defined under common law as heterosexual intercourse outwith marriage) can be used to establish the irretrievable breakdown of a marriage but cannot be used to establish the irretrievable breakdown of a civil partnership.

15. In Scotland, a marriage is voidable (i.e. a court action may be raised to challenge and end the marriage) if one of the parties is at the time of the marriage permanently and incurably impotent in relation to the other spouse. This only applies to opposite sex marriages: it does not apply to same sex marriages or civil partnerships. However, the Scottish Government understands that this rule is very rarely used.

### **Change to marriage**

16. A civil partnership will also come to an end if the couple decides that they wish to change to marriage. This change can be achieved in one of two ways: an administrative route involving an application to the local registrar, or by having a civil or religious or belief ceremony. Figures<sup>32</sup> on civil partnerships that have changed to marriage are below.

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<sup>32</sup> Figures provided by NRS on 28 June 2018. This includes civil partnerships from elsewhere.

Year	Civil partnerships changed to marriage		
	Male	Female	Total
2014 <sup>33</sup>	170	189	359
2015	380	556	936
2016	76	97	173
2017	61	66	127
Total	687	908	1,595

17. In total, as of June 2018, of the 5,605 civil partnerships registered since introduction in 2005, 1,561 (27.8%) had been changed to marriage.

18. Since 31 October 2015, it has also been possible for couples in qualifying equivalents to civil partnership from other jurisdictions to change their relationship to a marriage by having a marriage ceremony. To June 2018, 34 civil partnerships registered outwith Scotland have changed to marriage in this way.

19. It is not possible to change a marriage to a civil partnership.

### **Recognition of overseas marriage and civil partnerships**

20. Section 38 of the Family Law (Scotland) Act 2006 makes provision on the validity of marriages outwith Scotland. In general terms, the question of whether a marriage is formally valid is determined by the law of the place where the marriage was celebrated.

21. The 2004 Act makes provision on same sex overseas relationships other than marriage being treated as civil partnerships in Scotland. In order to be treated as a civil partnership, the overseas relationship must be:

- Either a specified relationship or a relationship which meets general conditions.
- Registered by a responsible authority outside the United Kingdom.
- Formed by two people of the same sex.
- Formed by two people who are neither married nor already in a civil partnership.

22. In respect of the first requirement, under the 2004 Act, "a specified relationship" is a relationship listed in Schedule 20 to that Act. It is also possible for a relationship from outside the UK to be treated as a civil partnership in Scotland if general conditions are met. These provide that, according to the relevant law (i.e. the law of the country or territory where the relationship is registered):

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<sup>33</sup> From 16 December 2014 only.

- The relationship may not be entered into if either of the parties is already a party to a relationship of that kind or is lawfully married.
- The relationship is of indeterminate duration.
- The relationship is not one of marriage.
- The effect of entering into it is that the parties are treated as a couple either generally or for specified purposes but are not treated as married.

## Marriage and civil partnership statistics

23. National Records of Scotland have produced figures on the number of civil partnerships and marriages entered into each year in Scotland, as below<sup>34</sup>:

Year	Opposite sex marriage	Same sex marriages <sup>35</sup>			Civil partnerships		
		Male	Female	Total	Male	Female	Total
2005	30,881	–	–	–	53	31	84
2006	29,898	–	–	–	578	469	1,047 <sup>36</sup>
2007	29,866	–	–	–	340	348	688
2008	28,903	–	–	–	245	280	525
2009	27,524	–	–	–	219	279	498
2010	28,480	–	–	–	197	268	465
2011	29,135	–	–	–	229	325	554
2012	30,534	–	–	–	257	317	574
2013	27,547	–	–	–	217	313	530
2014 <sup>37</sup>	28,702	173	194	367	193	243	436
2015	28,020	696	975	1,671	33	31	64
2016	28,231	391	607	998	42	28	70
2017	27,458	407	575	982	41	29	70

24. These figures show that in 2017, per 1000 inhabitants, there were 5 opposite sex marriages, 0.2 same sex marriages, and 0.01 civil partnerships.<sup>38</sup>

<sup>34</sup> <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2017/section-3-births>

<sup>35</sup> The figures for same sex marriages include changes from civil partnerships to marriages.

<sup>36</sup> This high figure is attributable to build-up of demand prior to introduction.

<sup>37</sup> From 16 December 2014.

## **Annex B: Cohabitation in Scotland**

### **Background**

1. In Scotland, cohabitants are given some rights although these are generally lower than rights for married couples or civil partners.
2. In particular, the Family Law (Scotland) Act 2006 made provisions on rights for cohabitants. Cohabitants are defined as a couple who live together as if married<sup>39</sup>. The 2006 Act provisions apply equally to same and opposite sex couples. Their application may vary depending on the length and nature of the relationship, and any financial arrangements.

### **Rights**

3. The provisions made by the 2006 Act mean that cohabitants have:
  - A presumption of an equal share in household goods bought during the time the couple lived together.
  - An equal share in money derived from an allowance made by one or other of the couple for household expenses and/or any property bought out of that money.
  - On separation, a right in certain circumstances to ask the court to make an order for financial provision against the other former cohabitant.
  - A right to apply to the court for an order for money or property from the estate if a cohabitant dies without leaving a will.
  - The right to apply to court for a “domestic interdict” in domestic abuse cases. Such orders could, for example, restrain or prohibit conduct of a person towards the applicant or any child in the care of the applicant.

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<sup>38</sup> Based on the NRS estimate of the Scottish population in June 2017 as 5,424,800. See <https://www.nrscotland.gov.uk/files/statistics/nrs-visual/mid-17-pop-est/mid-year-pop-est-17-info.pdf>

<sup>39</sup> Section 4(4) of the Marriage and Civil Partnership (Scotland) Act 2014 removed references in legislation to people living together as if they were in a civil partnership. This reflects that references to living together as if married now covers both opposite sex and same sex couples.

## Statistics

4. The most recent figures on cohabiting couples in Scotland are from the 2011 Census. This found that:

- In 2011, there were 1.5 million families<sup>40</sup> living in households in Scotland. Of these, 65 per cent (967,000) were married couple families, 16 per cent (237,000) were cohabiting couple families and 19 per cent (291,000) were lone parent families.<sup>41</sup>
- Of the 2.4 million households<sup>42</sup> at the time of the 2011 census, 9% of households were cohabiting couple families (217,000) in comparison to 32% (758,000) of households which were married or same sex civil partnered couple families (either with or without children).<sup>43</sup>
- While marriage/civil partnership is still the most popular option for couples, the percentage of married or civil partnered families has fallen since 2001, from 38% to 32% of all households. In comparison, the percentage of cohabiting couple families has risen from 7% to 9%.<sup>44</sup>
- 17% of those aged 20-24 and 28% of those aged 25-29 lived as a cohabiting couple. In comparison 3% and 18% respectively were living as a married couple.<sup>45</sup>
- Of the 614,000 families with dependent children in 2011, 15% (91,000) were cohabiting couple families.<sup>46</sup>
- Married or same sex civil partnered couples were more likely to have children than cohabiting couples (61 per cent of married or same sex civil partnered couple families compared with 46 per cent of cohabiting couple families).<sup>47</sup>

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<sup>40</sup> A family is defined as a group of people who are either a married, same-sex civil partnership, or cohabiting couple, with or without child(ren); a lone parent with child(ren); a married, same-sex civil partnership, or cohabiting couple with grandchild(ren) but with no children present from the intervening generation, or a single grandparent with grandchild(ren) but no children present from the intervening generation.

<sup>41</sup> <https://www.nrscotland.gov.uk/news/2014/census-release-3e>

<sup>42</sup> A household is: one person living alone; or a group of people (not necessarily related) living at the same address who share cooking facilities, and share a living room or sitting room or dining area.

<sup>43</sup> <https://www.nrscotland.gov.uk/news/2013/census-2011-release-2c>

<sup>44</sup> <https://www.nrscotland.gov.uk/news/2013/census-2011-release-2c>

<sup>45</sup> <https://www.nrscotland.gov.uk/news/2014/census-release-3d>

<sup>46</sup> <https://www.nrscotland.gov.uk/news/2014/census-release-3e>

<sup>47</sup> <https://www.nrscotland.gov.uk/news/2013/census-2011-release-2c>

## Annex C: Closure of civil partnership in other jurisdictions

### Introduction

1. The term "civil partnership" is used in Scotland and in the United Kingdom as a whole. Other countries use different terms, such as "civil union", "domestic partnership" or "registered partnership". The terms used below reflect the English language terminology used by the governments of the various jurisdictions in relation to their own systems of civil union.

2. The following (not exhaustive) list contains examples of jurisdictions where civil partnership has been closed as an option for couples. By closure we mean no new civil partnerships could be registered. The Scottish Government's understanding is that existing civil partnerships in the jurisdictions below could be retained if the couples wished.

Jurisdiction	Route to repeal of civil partnership
Denmark	Denmark introduced registered partnerships for same sex couples in 1989. Denmark introduced same sex marriage in 2012 and registered partnerships are no longer available.
Finland	Registered partnerships for same sex couples were in place from 2002 until 2017. That ended on 1 March 2017 when same sex marriage was introduced.
Germany	From 2001 until 2017, same sex couples were able to enter into registered life partnerships. That came to an end upon the introduction of same sex marriage on 1 October 2017.
Iceland	Registered partnerships for same sex couples were introduced in 1996. They became unavailable when same sex marriage was introduced in 2010.
Ireland	Ireland introduced same sex civil partnership on 1 January 2011. Upon the introduction of same sex marriage on 16 November 2015, civil partnership was closed to new couples.
Norway	Same sex registered partnerships were introduced in 1993. Following the introduction of same sex marriage in 2009, no new registered partnerships could be created.
Sweden	Registered partnerships for same sex couples were introduced in 1995. Following the introduction of same sex marriage in 2009, registered partnerships are no longer available.

3. In the cases above, in each jurisdiction the introduction of same sex marriage led to the withdrawal of the civil partnership option at the same time; repeal did not occur *after* same sex marriage becoming available.

### Information from other jurisdictions: some examples

#### Denmark

4. Denmark<sup>48</sup> was the first country in the world to introduce civil unions for same sex couples in 1989. Called registered partnerships, they were replaced by same sex marriage in 2012. Statistics<sup>49</sup> on marriages and registered partnerships in Denmark since 1989 are below.

Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
1989	30,894	-	-	-	267	62	329
1990	31,513	-	-	-	342	115	457
1991	31,099	-	-	-	192	89	281
1992	32,188	-	-	-	187	90	277
1993	31,638	-	-	-	175	64	239
1994	35,321	-	-	-	165	101	266
1995	34,736	-	-	-	181	85	266
1996	35,953	-	-	-	155	108	263
1997	34,244	-	-	-	128	111	239
1998	34,733	-	-	-	133	131	264
1999	35,439	-	-	-	164	137	301
2000	38,388	-	-	-	179	131	310
2001	36,567	-	-	-	176	166	342
2002	37,210	-	-	-	136	162	298
2003	35,041	-	-	-	145	171	316
2004	37,711	-	-	-	133	200	333
2005	36,148	-	-	-	173	217	390
2006	36,452	-	-	-	175	218	393
2007	36,576	-	-	-	189	236	425

<sup>48</sup> Not including Greenland and the Faroe Islands.

<sup>49</sup> <https://www.statbank.dk/VIE7>. Please note that in some marriages, the sex is of one party is not stated because he or she is not in the Danish population register. Where this is the case, the marriages are defined as opposite sex marriages. This means that same sex marriages may be underestimated and opposite sex marriages overestimated.

Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
2008	37,376	-	-	-	187	254	441
2009	32,934	-	-	-	145	243	388
2010	30,949	-	-	-	163	247	410
2011	27,198	-	-	-	124	222	346
2012	28,235	104	164	268	56	61	117
2013	27,140	129	234	363	0	2	2
2014	27,967	155	209	364	3	3	6
2015	28,482	163	208	371	3	3	6
2016	30,389	160	218	387	3	3	6
2017	31,341	190	246	436	3	3	6

5. Generally, the above shows that registered partnerships were more popular with men than women: while available, there were on average 174 male registered partnerships per year and 154 female registered partnerships. However, from 2002 to 2012, more women entered into registered partnerships each year than men. In the six years since introduction of same sex marriage, the figures show that on average marriage is more popular with female same sex couples than with male: respectively, 213 and 150 per year.

#### Finland

6. Finland introduced registered partnerships on 1 March 2002. That was repealed fifteen years later, when same sex marriage was introduced on 1 March 2017, along with the repeal of the law on creation of registered partnerships. Existing registered partnerships could remain in place after 1 March 2017 if the couple wished. Figures<sup>50</sup> from Finland are set out below.

Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
2002	28,522	-	-	-	240	206	246
2003	26,923	-	-	-	84	106	190
2004	30,844	-	-	-	84	102	186
2005	30,974	-	-	-	100	100	200
2006	29,946	-	-	-	84	107	191

<sup>50</sup>[http://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/StatFin\\_vrm\\_ssaaty/statfin\\_ssaaty\\_pxt\\_001.px#\\_ga=2.41423586.1556789464.1534755111-975297130.1534755111](http://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/StatFin_vrm_ssaaty/statfin_ssaaty_pxt_001.px#_ga=2.41423586.1556789464.1534755111-975297130.1534755111)



Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
2007	31,420	-	-	-	93	120	213
2008	32,947	-	-	-	91	158	249
2009	31,975	-	-	-	91	155	246
2010	31,925	-	-	-	124	198	322
2011	30,557	-	-	-	111	222	333
2012	31,008	-	-	-	110	219	329
2013	27,238	-	-	-	126	247	373
2014	26,551	-	-	-	117	216	323
2015	26,735	-	-	-	97	221	318
2016	26,503	-	-	-	94	157	251
2017	25,988	181	374	554	21	15	36

7. Statistics Finland said when discussing the 2017 data<sup>51</sup>,

*“One could say that the amendment to the Marriage Act inspired same-sex couples to get married when we compare the number of marriages contracted to the number of partnership registrations in recent years. In all, 554 contracted marriages in ten months is more than one and a half times the average number of registered partnerships in the previous five years and more than double the number in 2016.”*

8. The Finnish Population Register reported<sup>52</sup> that in the period March to August, 1122 registered partnerships had changed to marriage. This is some 28% of the 4,006 partnerships registered in total since introduction in 2002.

### Ireland

9. In Ireland, the Marriage Act 2015 removed the legislative requirement for marriage to be between parties of the opposite sex and repealed provisions that had provided for the creation of same sex civil partnerships by registration.

10. The reason for contemporaneous introduction of same sex marriage and repeal of same sex civil partnership was – perhaps unusually in closure models – constitutional. Article 41 of the Irish Constitution sets out that the State is required to *“guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.”* When civil

<sup>51</sup> [https://www.stat.fi/til/ssaaty/2017/ssaaty\\_2017\\_2018-05-08\\_tie\\_001\\_en.html](https://www.stat.fi/til/ssaaty/2017/ssaaty_2017_2018-05-08_tie_001_en.html)

<sup>52</sup> [https://vrk.fi/artikkeli/-/asset\\_publisher/maalis-elokuussa-yhteensa-1578-samaa-sukupuolta-olevaa-paria-avioliittoon](https://vrk.fi/artikkeli/-/asset_publisher/maalis-elokuussa-yhteensa-1578-samaa-sukupuolta-olevaa-paria-avioliittoon)(Finnish only)

partnership was introduced, it was not made available to opposite sex couples on the grounds that it would breach that obligation by creating a competition to marriage. Similarly, upon the introduction of same sex marriage, same civil partnership could not continue to be available without competing with the new form of marriage and consequently breaching the obligation.

11. Statistics from Ireland<sup>53</sup> are below.

Year	Opposite sex marriage	Same sex marriage			Civil partnership		
		Male	Female	Total	Male	Female	Total
2011	19,855	-	-	-	335	201	536
2012	20,713	-	-	-	263	166	429
2013	20,680	-	-	-	208	130	338
2014	22,045	-	-	-	242	150	392
2015 <sup>54</sup>	22,025	47	44	91	250	126	376
2016	21,570	606	450	1,056	5	2	7 <sup>55</sup>
2017	21,262	424	335	759	-	-	-

### Norway

12. Same sex registered partnerships were introduced in Norway on 1 August 1993. It was the second country to do so, after Denmark (discussed above). Same sex marriage became possible on 1 January 2009, after which no new registered partnerships could be created. The intention behind its introduction was to ensure that opposite and same sex couples are both equal under the law.

13. Norwegian statistics<sup>56</sup> on registered partnerships (from 1993 to 2008) and same sex marriage (from 2009 to 2016) are below.

Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
1993	18,897	-	-	-	115	41	156
1994	19,999	-	-	-	86	47	133

<sup>53</sup> <https://www.cso.ie/en/statistics/birthsdeathsandmarriages/marriagescivilpartnerships/>

<sup>54</sup> For same sex marriages, the figures are in relation to which notice was given, as per Irish law, after 16 November 2015. For civil partnerships, the figures are those where notice was given up to that date.

<sup>55</sup> These couples had given notice prior to 16 November 2015 and thus could competently enter into a civil partnership after this date.

<sup>56</sup> <https://www.ssb.no/en/statbank/list/ekteskap>

Year	Opposite sex marriage	Same sex marriages			Registered partnerships		
		Male	Female	Total	Male	Female	Total
1995	21,079	-	-	-	64	34	98
1996	22,605	-	-	-	80	47	127
1997	23,050	-	-	-	74	43	117
1998	22,464	-	-	-	71	44	115
1999	23,600	-	-	-	82	62	144
2000	25,510	-	-	-	78	76	154
2001	23,152	-	-	-	108	77	185
2002	24,252	-	-	-	105	78	183
2003	22,565	-	-	-	116	88	204
2004	22,546	-	-	-	107	85	192
2005	22,584	-	-	-	97	95	192
2006	21,948	-	-	-	102	125	227
2007	23,728	-	-	-	110	157	267
2008	25,349	-	-	-	90	134	174
2009	24,582	105	178	283	-	-	-
2010	23,577	97	167	164	-	-	-
2011	23,135	93	166	259	-	-	-
2012	24,346	102	167	269	-	-	-
2013	23,410	90	162	252	-	-	-
2014	22,887	106	163	269	-	-	-
2015	22,738	113	187	300	-	-	-
2016	22,537	121	157	278	-	-	-
2017	22,111	119	214	333	-	-	-

14. The figures from Norway are consistent with those from other jurisdictions in showing that more female same sex couples than male same sex couples get married: for each male same sex marriage there are 1.6 female same sex marriages.

## Annex D: Extension of civil partnership to opposite sex couples in other jurisdictions

### Introduction

1. The term "civil partnership" is used in Scotland and in the United Kingdom as a whole. Other countries use different terms, such as "civil union", "domestic partnership" or "registered partnership". The terms used below, where possible, reflect the English language terminology used by the governments of the various jurisdictions in relation to their own systems of civil union.

2. The table below sets out key details of some jurisdictions where civil partnership (or similar) and marriage are both available to opposite sex and same sex couples.

Jurisdiction	Route to opposite sex civil partnership
Belgium	Same sex marriage was introduced in Belgium in 2003. In 2000, "cohabitation légale" was introduced for both opposite sex and same sex couples. Both options remain available to same sex and opposite sex couples.
Brazil	União Estável (stable union) is available to opposite sex and same sex couples. Marriage has been an option for same sex couples since May 2013.
France	The Pacte Civil de Solidarité (civil solidarity pact) or PACS was established in 2000 for both opposite sex and same sex couples. Marriage has been open to opposite and same sex couples from 18 May 2013.
Isle of Man	UK civil partnerships have been recognised in the Isle of Man since their introduction for pension purposes. In 2011, an Act of the Manx Parliament introduced civil partnership. In 2016, a further Act introduced opposite sex partnership and same sex marriage.
Luxembourg	Same sex marriage was introduced on 1 January 2015. Partenariats (similar to French PACS) became available on 1 November 2000 for opposite sex and same sex couples, and remain in place.
The Netherlands	The Netherlands introduced same sex marriage in 2001. Registered partnerships for both opposite sex and same sex couples were introduced in 1998 and remain available.

New Zealand	Civil unions for both opposite sex and same sex couples were introduced in 2005 and remain available. Same sex marriage was introduced in 2013. De facto relationships are also recognised.
South Africa	The Civil Union Act 2006 made two types of civil union available: civil partnerships for both opposite sex and same sex couples, and marriages for same sex couples.
Uruguay	Uruguay has had Unión Concubinaria [cohabiting union] law in place since 2008. This allows couples, both opposite sex and same sex, who have been cohabiting for at least five years to register their relationship. Same sex marriage was introduced in 2013.

### Extension in other jurisdictions: some examples

#### France

3. The French PACS was introduced in October 1999, and is open to same and opposite sex couples. At heart it is a contract between two parties that undergoes a court authentication process. Same sex marriage was introduced 14 years later, in May 2013.

4. French statistics<sup>57</sup> on marriage and PACS are below.

Year	Marriages			PACS		
	Opposite sex	Same sex	Total	Opposite sex	Same sex	Total
1999	293,544	–	293,544	3,551	2,600	6,151
2000	305,234	–	305,234	16,589	5,412	22,271
2001	295,720	–	295,720	16,603	3,232	19,629
2002	286,169	–	286,169	21,683	3,622	25,305
2003	282,756	–	282,756	27,276	4,294	31,570
2004	278,439	–	278,439	35,057	5,023	40,080
2005	283,036	–	283,036	55,597	4,868	60,462
2006	273,914	–	273,914	72,276	5,071	77,347

<sup>57</sup> <https://www.insee.fr/fr/statistiques/2381498#tableau-Donnes> (French only)

Year	Marriages			PACS		
	Opposite sex	Same sex	Total	Opposite sex	Same sex	Total
2007	273,669	–	273,669	95,772	6,206	101,978
2008	265,404	–	265,404	137,766	8,194	145,960
2009	251,478	–	251,478	166,192	8,437	174,629
2010	251,654	–	251,654	196,405	9,145	205,550
2011	236,826	–	236,826	144,714	7,499	152,213
2012	245,930	–	245,930	153,715	6,975	160,690
2013	231,225	7,367	238,592	162,609	6,083	168,692
2014	230,770	10,522	241,292	167,469	6,262	173,731
2015	228,565	7,751	236,316	181,930	7,017	188,947
2016	225,612	7,113	232,725	184,425	7,112	191,537
2017 <sup>58</sup>	221,000	7,000	228,000	*	*	*

\*Figures not yet available.

5. The above shows that in recent years demand for same sex PACs and marriage has been at around the same level. However, as demand for opposite sex marriage has generally fallen since 1999, demand for opposite sex PACS has increased approximately fifty-fold. For every opposite sex PACS, there are 1.2 opposite sex marriages.

#### Netherlands

6. Registered partnerships were introduced to the Netherlands on 1 January 1998 for opposite sex and same sex couples. A few years later on 1 April 2001, same sex marriage became available.

7. Key statistics<sup>59</sup> from the Netherlands are set out in the table below.

<sup>58</sup> Provisional figures

<sup>59</sup> <http://statline.cbs.nl/Statweb/publication/?DM=SLLEN&PA=37772eng&D1=0-53&D2=0,10,20,30,40,50,65-67&LA=EN&VW=T>

Year	Marriages				Registered partnerships			
	Opposite sex	Male couples	Female couples	Total same sex	Opposite sex	Male couples	Female couples	Total same sex
2015	62,912	647	749	1,396	12,331	202	239	441
2016	63,813	655	771	1,426	15,090	286	330	616
2017	63,027	620	755	1,375	17,194	316	356	672

8. The number of opposite sex and same registered partnerships has increased by, respectively, 39% and 52% in the period 2015 to 2017, with the number of opposite and same sex marriages experiencing only minor fluctuations in the same period.

#### New Zealand

9. The Civil Union Act 2004 introduced civil unions for same sex and opposite sex couples at the same time, on 26 April 2005. Same sex marriage was introduced on 19 August 2013. Generally civil unions and marriages enjoy the same benefits.

10. De facto relationships were also introduced in 2005. These are open to same and opposite sex couples whose relationship meets certain statutory criteria. De facto relationships largely have the same benefits as a marriage or civil partnership.

11. Figures from New Zealand<sup>60</sup> are below.

Year	Marriages			Civil union		
	Opposite sex	Same sex	Total	Opposite sex	Same sex	Total
2005	22,515	–	22,515	45	204	249
2006	23,445	–	23,445	48	297	275
2007	23,448	–	23,448	63	252	315
2008	23,919	–	23,919	69	255	327
2009	23,682	–	23,682	66	246	312
2010	23,136	–	23,136	72	201	273
2011	22,431	–	22,431	69	234	300

<sup>60</sup> <http://archive.stats.govt.nz/infoshare/Default.aspx>

Year	Marriages			Civil union		
	Opposite sex	Same sex	Total	Opposite sex	Same sex	Total
2012	22,944	–	22,944	69	234	303
2013	21,297	354	21,654	66	120	186
2014	22,146	876	23,025	30	21	51
2015	21,909	882	22,974	39	18	57
2016	22,203	933	23,136	33	18	48
2017	22,773	960	23,730	57	21	81

12. The figures above show that there is generally a preference for marriage across same and opposite sex couples. For example, in 2017, for each same sex civil union, there were 80 same sex marriages; for every opposite sex civil union, there were 340 opposite sex marriages. On average, for every civil union, there were 292 marriages.

### South Africa

13. The 2004 South African Act that introduced same and opposite sex civil partnerships and same sex civil marriages was the result of a 2005 judgment from the Constitutional Court which found that the common law definition of marriage as being that of an opposite sex couple was unconstitutional.

14. The Court provided Parliament with a year to cure this defect through legislation, which it duly did through the Civil Union Act 2004. Civil partnerships and marriages in terms of the 2004 Act are jointly termed “civil unions”. Opposite sex marriages are called “civil marriages”.

15. From 2000, when the Recognition of Customary Marriages Act 1998 came into force, South Africa has also given legal recognition to marriages in terms of the usually uncodified legal systems of indigenous South African communities. The 1998 Act does not use gender-specific language but the underlying legal systems appear not to include same sex marriages. This type of marriage is called a “customary marriage”.

16. Figures from South Africa<sup>61</sup> are below.

<sup>61</sup> [http://www.statssa.gov.za/?page\\_id=1866&PPN=P0307&SCH=5403](http://www.statssa.gov.za/?page_id=1866&PPN=P0307&SCH=5403)



Year	Civil marriages	Customary marriages	Civil unions <sup>62</sup>
2003	178,689	17,283	-
2004	176,521	20,301	-
2005	180,657	19,252	-
2006	184,860	14,039	-
2007	183,030	20,259	80
2008	186,522	16,003	732
2009	171,989	13,506	760
2010	170,826	9,996	888
2011	167,264	5,084	867
2012	161,112	4,555	987
2013	158,642	3,498	993
2014	150,852	3,062	1,144
2015	138,627	3,467	1,185
2016	139,512	3,978	1,331

17. The civil unions figure encompasses three types of relationship: same sex and opposite sex civil partnerships, and same sex marriages. Therefore, it is difficult to identify opposite sex couples' preferred type of union from the figures above. That said, generally it appears that demand for both civil and customary marriages is decreasing and demand for civil unions is increasing. However, there is still proportionally a significant gap between the two: for every civil union entered into in 2016, there were 105 civil marriages.

18. South Africa is the only country in the African continent to have same sex marriages and civil unions. As there is no residence requirement to enter into either union in South Africa, the figures above may reflect marriage or civil union tourism to South Africa from the wider region.

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<sup>62</sup> Figures for civil unions are not available before 2007.

## **Annex E: Extension of civil partnership to opposite sex couples – costs and savings**

### **General**

1. The costs and savings that stem from the extension option can be split into two areas. The first is registration and the second relates to rights and responsibilities (particularly when the civil partnership comes to an end, though death or dissolution).

### **Registration**

2. On registration, there would be initial start-up costs. National Records of Scotland (NRS) would require to adjust its IT systems, and create new forms and processes in order for opposite sex civil partnerships to be registered. Its staff would also require training, and its existing publicly available guidance on the registration of civil partnerships would need to be updated. However, the costs involved in this would be a one-off. It is expected that this would be around £200,000.

3. Local authorities are also involved in the registration process for civil partnerships. As with NRS, the costs here would be a one-off. They are estimated to be around £200,000 and would relate to training and guidance for staff. Once opposite sex civil partnership is up and running, couples seeking to enter into an opposite sex civil partnership would pay a registration fee in the same way as couples seeking to enter into a same sex civil partnership or seeking to marry.

### **Rights and responsibilities**

4. Opposite sex couples already have the option of getting married, which attracts rights and responsibilities. In addition, cohabitants have some rights and responsibilities although in some areas these can be lower than the rights and responsibilities held by people who are married or in a civil partnership.

5. In broad terms, therefore, opposite sex civil partnership could lead to costs in relation to rights and responsibilities if:

- There is an increase in the number of registered opposite sex relationships (ie the number of opposite sex marriages plus opposite sex civil partnerships is higher than the number of opposite sex marriages now); and
- Opposite sex civil partners would gain rights which they would not have as cohabitants.

6. There is discussion below on some specific areas:

## Legal aid

7. Any proposed introduction of opposite sex civil partnership could lead to eventual costs to the legal aid budget if an opposite sex couple who has entered into a civil partnership sought to dissolve their relationship.

8. If the total number of registered opposite sex relationships increased by 1%, the costs to the legal aid budget could be around £225,000 a year. In the event of a 10% increase, the cost would rise proportionately to around £2.3 million per year.<sup>63</sup>

9. In some instances, these may be displaced rather than additional costs as the couple might also have sought legal aid in relation to ending their cohabitation (eg in relation to financial provision when cohabitation comes to an end).

## Pensions

### General

10. Most issues in relation to pensions are reserved but the Scottish Government has devolved responsibility for some public sector pensions (the main ones are police; fire; local government; teachers and the NHS).

11. In *Walker v Innospec Limited*, the UK Supreme Court determined<sup>64</sup> that benefits for same sex spouses should be provided on the same basis as currently exists for opposite sex spouses, and the existing exemptions in the Equality Act 2010 were incompatible with EU Directive 2000/78/EC and should therefore be disapplied. The implications of this for both devolved and reserved pensions are still being considered and the information set out below should be understood in that context.

### Devolved pensions

12. We have assumed that survivor benefits for opposite sex civil partners would be aligned with survivor benefits for same sex civil partners and same sex spouses. This means that in some cases the survivor benefit would be lower for a surviving opposite sex civil partner than for a surviving opposite sex spouse<sup>65</sup>. Again, the potential costs will be driven by uptake of opposite sex civil partnership. Some examples may help explain this.

13. For example, if the total number of registered opposite sex relationships increases by 1%, the costs to the devolved public sector pensions could be up to £1.75 million a year. Alternatively, if the total number of registered opposite sex relationships increases by 10%, the costs to the

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<sup>63</sup> These figures are based on the Scottish Legal Aid Board's experiences with divorce and dissolution cases.

<sup>64</sup> <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

<sup>65</sup> This is because in some cases not all service will be taken into account.

costs to the devolved public sector pensions could be up to £17.5 million a year.

14. However, those levels of increase are unlikely to have a material impact on scheme contribution rates which are set by quadrennial valuations. HM Treasury consent would be required to include benefits payable for opposite sex civil partners for the NHS and Teachers' scheme.

15. It is possible that costs could be lower in practice. More details are contained in the BRIA at Annex H. To summarise, the devolved public sector schemes often already provide benefits for opposite sex cohabitants (which are generally linked to those benefits paid to civil partners). These particular benefits are conditional on meeting certain conditions such as financial interdependency, cohabiting, being free to marry and completing the necessary partner nomination form.

#### Reserved public sector pension schemes

16. It is uncertain whether there would be any recognition of opposite sex civil partners in reserved public sector pension schemes (e.g. the Principal Civil Service Pension Scheme) which extend to Scotland that could lead to cost implications. The regulation of such schemes is a reserved matter for the UK Government.

#### Private sector occupational pension schemes

17. Similarly, it is uncertain whether there would be any recognition of opposite sex civil partners in private sector occupational pension schemes that could lead to cost implications. The regulation of such schemes is a reserved matter for the UK Government.

#### The state pension scheme

18. The state pension is a reserved matter for the UK Government. The general rule is that differing systems of spousal or civil partner entitlement apply depending upon the point in time at which a person reaches state pension age and when the relationship was formed. Guidance on inheriting or increasing state pension from a spouse or civil partner has been published by the UK Government.<sup>66</sup>

### **Social security**

19. For the purposes of social security, civil partners are treated in the same way as any other couple who are living together when assessing entitlement to means-tested benefits and tax credits.

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<sup>66</sup> <https://www.gov.uk/new-state-pension/inheriting-or-increasing-state-pension-from-a-spouse-or-civil-partner>

20. However, the interplay between benefits is highly complex. The various regulated schemes would require examination in order to ensure that there would be no circumstances in which people in an opposite sex civil partnership would be unfairly disadvantaged in comparison to cohabiting couples or couples in other legally recognised relationships.

## Annex F: Consultation questions

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.

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.

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.

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.

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

Yes

No

If yes, please outline these comments.

Question 9. Do you have any other comments?

Yes

No

If yes, please outline these comments.



## The future of civil partnership in Scotland

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

## Annex H

### Draft Business and Regulatory Impact Assessment (BRIA)

#### **Title of Proposal**

The future of civil partnership

#### **Purpose and intended effect**

- **Background**

The UK Supreme Court has declared that the Civil Partnership Act 2004 is incompatible with the European Convention on Human Rights (ECHR) in that civil partnership is currently only open to same sex couples. The Scottish Ministers are now required to consider the future of civil partnership in Scotland.

This BRIA considers two possible options in relation to civil partnership:

- option 1: repeal, meaning that no more new civil partnerships would be entered into from a date in the future.
- option 2: extension, meaning the introduction of opposite sex civil partnership.

- **Objective**

The objective is to set out the two options for the future of civil partnership in Scotland following the UK Supreme Court declaration of non-compatibility, and to seek views on these options.

- **Rationale for Government intervention**

The Scotland Act 1998 requires the Scottish Ministers not to act in a way that contravenes ECHR rights. Civil status is a devolved matter. Consequently, the Scottish Ministers must now act to remove the unlawful discrimination from the existing legislation where it relates to Scotland. This could be achieved by a Bill in the Scottish Parliament, a remedial order under the Convention Rights (Compliance) (Scotland) Act 2001 or a Westminster Bill.

## Consultation

- **Within Government**

In preparing this consultation, the Scottish Government's Family Law team have worked closely with the Equality Unit, Benefits Division and Analytical Services. We have also consulted National Records of Scotland and the Scottish Public Pensions Agency on the possible impact the introduction of opposite sex civil partnership could have on, respectively, registration and survivor benefits in pensions.

- **Public Consultation**

This draft BRIA forms part of a full public consultation.

We will meet with external stakeholders to discuss the options presented in this consultation during the consultation period.

- **Business**

The Scottish Government carried out three face to face interviews when we consulted on the review of civil partnership in 2015<sup>67</sup>.

## Options

This BRIA outlines two possible options for the future of civil partnership:

- no more new civil partnerships to be entered into (option 1: repeal)
- the introduction of opposite sex civil partnership (option 2: extension)

## Sectors and groups affected

Sectors and groups who could be affected are as follows:

- Couples seeking to enter into a legally recognised relationship
- Local authority registrars.
- Religious or belief bodies involved in the registration of civil partnership and the solemnisation of marriage.

## Benefits

### Option 1: repeal

Opposite sex couples and same sex couples would have the option of marriage. There would be no new civil partnerships registered in Scotland.

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<sup>67</sup> Details of these interviews can be found at <https://www.gov.scot/Publications/2015/09/4223/16>

However, there would continue to be existing civil partnerships as there would be no obligation on existing civil partners to change. Scotland would continue to recognise civil partnerships from elsewhere in the UK and overseas.

#### Option 2: the introduction of opposite sex civil partnerships

This would give opposite sex couples and same sex couples the option to marry or enter into a civil partnership.

#### **Costs**

There would be no capital expenditure in relation to any of the options.

#### Option 1

Option 1 (repeal) would reduce complexity. There might be some modest savings (e.g. reduction in the number of forms) but these are unlikely to be significant.

Therefore, the Government expects that any total savings from this option are unlikely to be more than £100,000 in total.

#### Option 2

##### *General*

Option 2 (extension) would lead to two types of costs: registration processes, and rights and responsibilities.

##### *Registration process costs*

These costs would be one-off as they would relate to required changes to IT systems and forms, and to training and familiarisation. They could be kept down as the registration of opposite sex civil partnership would be along the same lines as the registration of same sex civil partnership.

Based on experience with same sex marriage, the Government estimates that costs in relation to registration would be along the following lines:

Costs for NRS for IT systems and forms: £200,000 in total.

Costs for local authorities for familiarisation and training: £200,000 in total.

If opposite sex civil partnership were to be introduced, couples would be charged fees to cover the cost of registration. These fees would be set at the same level as fees for entering into a same sex civil partnership<sup>68</sup>.

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<sup>68</sup> The current fees for entering a civil partnership are at <https://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf>.

### *Rights and responsibilities costs*

On-going costs in relation to the introduction of opposite sex civil partnerships would depend on take-up. Furthermore, these costs would be influenced by source of the take-up: couples who would have married if that was the sole option, or couples who otherwise would not have married while civil partnership was not available to opposite sex couples.

If take-up is by couples who would have married anyway, there would be no on-going costs in relation to opposite sex civil partnership as the couples would have obtained rights and responsibilities anyway through the marriage route.

If take-up is by couples who would not have married anyway (e.g. by cohabitants who do not want to marry but do wish to enter a registered relationship), there would be costs.

The Scottish Government is not aware of firm evidence of likely take-up of opposite sex civil partnership.

Therefore, the figures below consider the costs likely to arise from three differing take-up possibilities: A (zero or nominal increase), B (1% increase), and C (10% increase).

#### *A. Zero or nominal increase in the number of registered opposite sex relationships*

If the number of registered opposite sex relationships does not increase, there would be no costs arising from option 2 in relation to rights and responsibilities. In this scenario, the number of registered relationships would be the same (although the type of relationship would differ), meaning that the same number of couples as before would gain rights and responsibilities. This scenario reflects, for example, experiences in New Zealand, where comparatively few couples have chosen to enter into an opposite sex civil union where marriage is also available.<sup>69</sup>

#### *B. 1% increase in the number of registered opposite sex relationships*

There could be a very small increase in the number of registered opposite sex relationships. We have calculated the number of marriages that this could involve based on figures from 2017. There were 28,440 marriages in Scotland in that year, of which 27,458 were opposite sex.<sup>70</sup>

If the total number of registered opposite sex unions in Scotland increased by 1% following the introduction of opposite sex civil partnership, there would be an additional 275 registered unions.

<sup>69</sup><https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2017>

<sup>70</sup><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>

There are calculations below on what this might mean in terms of costs.

*C. 10% increase in the number of registered opposite sex relationships.*

There could be a more significant take-up of opposite sex civil partnerships. This has happened in the Netherlands where, in 2017, around 21% of all opposite sex registered unions were civil partnerships rather than marriages.<sup>71</sup>

As indicated above, there were 27,458 opposite sex marriages in Scotland in 2017. If the total number of registered opposite sex unions in Scotland increased by 10% following the introduction of opposite sex civil partnership, there would be an additional 2,746 registered unions.

There are calculations below on what this might mean in terms of costs.

*Public sector pension schemes*

Pensions policy is a reserved matter for the UK Government, although there are some devolved public sector pension schemes in Scotland.<sup>72</sup>

There are some differences between civil partners and married couples in relation to survivor benefits in the pensions. The key difference is that the member service used to calculate female spouse survivor benefits from an opposite sex marriage is not restricted. The Government assumes that survivor benefits for opposite sex civil partners would be aligned with survivor benefits for same sex civil partners (following the example of same sex spouses, which were aligned in a similar way).

Total survivor benefits in the five devolved public sector schemes are around £175 million a year. This is based on the following estimates of current survivor benefits paid:

NHS:	£59 million (in 2013/14)
Local Government:	£48 million (in 2013/14)
Teachers:	£42 million (in 2013/14)
Police:	£19 million (in 2012)
Fire:	£4 million (in 2012)

A 1% increase would suggest total costs to the devolved public sector schemes of £1.75 million a year (in the longer term).

A 10% increase would suggest total costs to the devolved public sector schemes of £17.5 million a year (in the longer term).

However, there are two factors which suggest that costs of this nature may not be at these levels following the introduction of opposite sex civil partnership. These factors are outlined below.

<sup>71</sup> <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37772eng&LA=EN>

<sup>72</sup> More details can be found on the Scottish Public Pensions Agency website: <http://www.sppa.gov.uk/>

First of all, there is no guarantee that the number of registered opposite sex relationships would increase following any introduction of opposite sex civil partnership. Take up of opposite sex civil partnership may be low. And couples entering opposite sex civil partnership may have married if opposite sex civil partnership had not become available.

Secondly, the devolved public sector schemes often already provide benefits for opposite sex cohabitants (which are generally linked to those benefits paid to civil partners). These particular benefits are conditional on meeting certain conditions such as financial interdependency, cohabiting, being free to marry and completing the necessary partner nomination form. In short, cohabitants who would enter into an opposite sex civil partnership may, in some circumstances, already be entitled to pension benefits.

Therefore, people who would be likely to receive benefits as opposite sex civil partners would also be likely to receive the benefits as spouses or as nominated beneficiaries even if opposite sex civil partnership were not introduced.

As a result, the cost of their benefits could be a displaced existing cost rather than a new additional cost.

There are also various uncertainties.

For example, it is possible that an increase in the number of registered opposite sex relationship might be greater than 10%.

Not all the costs will occur at the same time. People marry, retire and die at different ages. Therefore, any additional costs would occur at different times, be spread over different periods and be for the longer term.

If a scheme member decides not to marry but to register an opposite sex civil partnership, that could result in a saving to the scheme. The resulting survivor benefit might be calculated using restricted service.

In some cases the person who was not the member of the pension scheme will die before their partner so there would never be any survivor benefit.

Around 1 in 3 of these additional unions are likely to result in dissolution/divorce<sup>73</sup>.

In conclusion, therefore, the Scottish Government is of the view that the introduction of opposite sex civil partnership would be unlikely to lead to the costs to the devolved public sector schemes which are shown above. It would appear that most costs which could arise would be displaced existing costs rather than new additional costs.

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<sup>73</sup> Around 1 in 3 marriages end in divorce in Scotland: Statistics on divorce are at <http://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/Datasets/DatasetsCJS>



Regular scheme valuations identify both the on-going costs of the schemes and the contributions required to meet scheme liabilities going forward. It is estimated that introducing opposite sex civil partnerships would not have a material impact on either the costs of the scheme or contribution rates.

#### *Equalisation of survivor benefits*

Section 16 of the UK Marriage (Same Sex Couples) Act 2013 required the UK Government to conduct a review of survivor benefits. This review found:

- The capitalised cost of removing differences in survivor benefits between opposite sex surviving spouses, same sex surviving spouses and surviving civil partners in public sector pension schemes is around £2.9 billion (for the UK as a whole).
- The estimated costs to private sector schemes of removing these differences is around £0.4 billion (for the UK as a whole).
- Removing differences in survivor benefits provided to surviving same sex spouses and civil partners on the one hand and those provided to opposite sex widows on the other is estimated to have a capitalised cost of around £0.08 billion to the public service schemes).
- The estimated cost to private sector schemes of removing these differences is around £0.1 billion.<sup>74</sup>

In addition, in *Walker v Innospec Limited*, the UK Supreme Court determined<sup>75</sup> that benefits for same sex spouses should be provided on the same basis as currently exists for opposite sex spouses, and the existing exemptions in the Equality Act 2010 were incompatible with EU Directive 2000/78/EC and should therefore be disapplied. The implications of this for both devolved and reserved pensions are still being considered. The terms of this BRIA where they relate to benefits for surviving same sex spouses should be understood in this context.

#### *Legal aid*

There could potentially be costs for the Scottish Legal Aid Board in relation to the dissolution of opposite sex civil partnerships. These are discussed further in the legal aid section below.

### **Scottish Firms Impact Test**

The work carried out for this BRIA does not suggest that there would be a significant impact on firms in Scotland. The only significant impact might arise

<sup>74</sup> The UK Government's review of survivor benefits in occupational pension schemes is at <https://www.gov.uk/government/publications/occupational-pension-schemes-review-of-survivor-benefits>.

<sup>75</sup> <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

in relation to survivor benefits in pension schemes for opposite sex civil partners.

### **Competition Assessment**

There is no impact on competition. Marriage and civil partnership ceremonies should not be carried out for profit or gain.

### **Test run of business forms**

There would be no new forms for business.

If option 1 (repeal) were chosen, there would be a reduction in the number of forms used by local authority registrars and couples as the option of entering a civil partnership would no longer be available. As a result, there would no longer be any need for the civil partnership notice form or civil partnership schedule.

If option 2 (extension) were chosen, some amendments might be needed to a number of forms used by local authority registrars, couples and pension providers.

### **Legal Aid Impact Test**

There could be costs to the Scottish Legal Aid Board (SLAB) if legal aid is needed to cover the dissolution of opposite sex civil partnerships.

Around one in three marriages end in divorce in Scotland. There are around 30,000 marriages a year; 10,000 divorces. We assume the dissolution rate for opposite sex civil partnerships would be about the same.

The majority of divorces<sup>76</sup> and dissolutions<sup>77</sup> are dealt with in the local Sheriff Court. Typically, around 60% of these are handled through the simplified procedure, which can be used where there are no children under 16 and no financial issues to be sorted out between the spouses.<sup>78</sup> The procedure is straightforward and therefore has few legal aid implications. The remaining 40% of divorces and dissolutions may have implications for legal aid.

The Scottish Legal Aid Board has introduced cost limitations on grants of civil legal aid.<sup>79</sup> For divorce/dissolution in the sheriff court, the case cost limit (which can be increased on cause shown) is £6,000.

<sup>76</sup> See table 9 at <https://www.gov.scot/Publications/2017/03/5915/25>.

<sup>77</sup> See table 10 at <https://www.gov.scot/Publications/2017/03/5915/26>.

<sup>78</sup> Guidance on the simplified procedures for divorce can be found on the Scottish Courts and Tribunals Service website: <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>

<sup>79</sup> [http://www.slab.org.uk/common/documents/profession/mailshots/2013/Cost\\_Limitations\\_Mailshot\\_-\\_27\\_February\\_2013.pdf](http://www.slab.org.uk/common/documents/profession/mailshots/2013/Cost_Limitations_Mailshot_-_27_February_2013.pdf)

The likely number of dissolutions, the number of dissolutions and divorces with implications for legal aid, and case cost limits can be taken into account when examining the implications for legal aid of the various possibilities for take up of opposite sex civil partnership.

#### No increase in opposite sex unions

If there is no increase in the number of opposite sex unions, there would be no additional costs to SLAB, although there could be a shift in the proportion of legal aid needed for the dissolution of civil partnerships if opposite sex couples decide to enter into civil partnerships rather than marry.

Similarly, there are no implications for case costs.

#### 1% increase in opposite sex unions

With a 1% increase in opposite sex unions, there could be 92 additional dissolutions (one third of 275). If we assume that, as with existing divorces, 40% of those 92 dissolutions might have legal aid implications, this means that there would be an additional 37 dissolutions with a possible impact on SLAB.

For case costs, with a 1% increase in registered opposite sex unions, £6,000 multiplied by 37 produces a figure of £222,000.

#### 10% increase in opposite sex unions

With a 10% increase, there could be 915 additional dissolutions (one third of 2,746). Again, based on the assumption that 40% of those 915 dissolutions would have legal aid implications, this means that there would be an additional 366 cases with a possible impact on SLAB.

For case costs, with a 10% increase in registered opposite sex unions, £6,000 multiplied by 366 produces a figure of £2,196,000.

#### Unknown factors

However, there are some matters which could have an impact on these calculations that we have not been able to take into account.

- Not everybody is entitled to legal aid. In these calculations, we have assumed that one member of the couple obtains legal aid and the other does not.
- We have also assumed that these couples would not otherwise have been involved in litigation to resolve rights/responsibilities regarding children and/or property on the break-up of their relationship.
- We have assumed that maximum sum available for case costs would be used.
- If the increase in opposite sex unions is a one-off (e.g. because of

pent-up demand), these figures would be a one-off, as legal aid costs in relation to a dissolution only occur once. However, if the increase in opposite sex unions is permanent, they would be an annual figure, as there would eventually be dissolutions from each year's increased number of opposite sex registered unions.

- In addition, there is provision in section 28 of the Family Law (Scotland) Act 2006 on financial provision where cohabitation ends otherwise than by death. Legal cases here can attract legal aid. If opposite sex cohabitants move to civil partnership any eventual legal aid cases might just become dissolution cases rather than financial provision on the end of cohabitation.
- Couples are likely to dissolve their partnerships at different times. Therefore, the estimated additional costs will occur at different times.
- There is no certainty on what future dissolution rates will be.
- Scotland has a marriage and civil partnership tourism business. Therefore, if opposite sex civil partnership were introduced, a number of the opposite sex civil partners may not remain in Scotland and will not access legal aid.

### **Enforcement, sanctions and monitoring**

If option 1 (repeal) were selected, there would be no change to current arrangements.

If option 2 (extension) was selected, there would be some changes to the work carried out by registrars (although overall procedures would remain the same) and some changes to the national IT system used by registrars. The Government would discuss these changes with National Records of Scotland (NRS) and local authority registrars. The Government would also discuss the need for additional guidance with NRS and local authority registrars.

There would also be an impact on religious and belief bodies taking part in the registration of civil partnership and the Government and NRS would discuss issues arising with them.

In line with usual practice, NRS would work closely with registrars and provide central guidance as needed.

### **Implementation and delivery plan**

Option 1 (repeal) would require a Bill in the Scottish Parliament, remedial order or a Westminster Bill. To ensure that no disruption was caused to planned civil partnerships, there would be a lead-in period between the legislation passing and coming into force, potentially two years.

There would also be a need to revoke or amend regulations on the registration of civil partnerships in Scotland, as these would no longer be needed. The provisions that govern the rights and responsibilities of civil

partnerships and dissolutions would be left in place as they will continue to govern civil partnerships created before the lead-in period ends.

Option 2 (extension). This option would require primary legislation in the Scottish Parliament, a remedial order, or a Westminster Bill. Extension would also affect reserved legislation, requiring section 104 order to amend this legislation as needed. Existing references to civil partnerships in existing legislation would require review in order to ensure that the provisions would operate effectively for opposite sex civil partnerships. Where that would not be the case, amending legislation would be needed.

### Post-implementation review

The Government would monitor the impact of any new legislation, in line with usual practice.

### Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Puts same sex and opposite sex couples on same footing.	Savings of up to £100,000 in total
2	Allows opposite sex couples to enter a civil partnership if they wish.	<p>Costs could be:</p> <p>One off cost of £200,000 for NRS for IT systems and forms.</p> <p>One off cost of £200,000 to local authorities for familiarisation and training.</p> <p>Longer-term costs depend on take-up and on whether the introduction of opposite sex civil partnership would lead to an increase in the number of registered opposite sex relationships.</p> <p>If there were no increase in the number of registered opposite sex relationships, there would be no costs in relation to rights and responsibilities.</p> <p>If there were a 1% increase in</p>

		<p>survivor benefits, there could be a cost to the devolved public sector pension schemes of around £1.75 million a year.</p> <p>If there were a 10% increase in survivor benefits, there could be a cost to the devolved public sector pension schemes of around £17.5 million a year.</p> <p>If there were a 1% increase in the number of registered opposite sex relationships, there could be a cost to the legal aid budget of around £222,000 a year.</p> <p>If there were a 10% increase in the number of registered opposite sex relationships, there could be a cost to the legal aid budget of around £2,196,000 a year.</p>
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## Annex I

### DRAFT EQUALITY IMPACT ASSESSMENT (EQIA)

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>Consultation on the future of civil partnership</b>	
<b>Cabinet Secretary</b>	<b>Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People</b>	
<b>Lead official</b>	<b>Simon Stockwell</b>	
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
	<b>Sarah Meanley Simon Stockwell</b>	<b>Family Law Family Law</b>
<b>Directorate: Division: Team</b>	<b>Justice: Civil Law and Legal System, Family Law</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>Revision to an existing policy</b>	

### Screening

#### *Policy Aim*

1. The UK Supreme Court has held that the Civil Partnership Act 2004 is not compatible with the European Convention on Human Rights given that civil partnerships are only open to same sex couples.
2. The Scottish Ministers must act in a way that does not contravene Convention rights. Consequently, there is an obligation to remove the discrimination inherent to the current law on civil partnership.
3. There are two options for amendment of the law that would effectively remove this discrimination. The public consultation will seek to obtain views on these options, which are:

- no new civil partnerships to be created from a date in the future, with existing civil partnerships to remain in place (the repeal option or option 1); or
- extension of civil partnerships to opposite sex couples (the extension option, or option 2).

4. The information gathered in response to the consultation, along with other available evidence, will be used to inform the Government's approach to removal of the unlawful discrimination in the current legislation.

5. This EQIA will assess the two options for the future of civil partnership in Scotland, for the purposes of understanding the impact of the two options on people, and the promotion of equality.

6. The consultation will contribute to the following National Outcome:

- We respect, protect and fulfil human rights and live free from discrimination

### ***Who will it affect?***

7. The options would affect couples who wish to enter a legally recognised relationship.

8. The options would affect those across society who interact with couples.

9. The options would affect religious or belief bodies, and civil registrars.



## Stage 1: Framing

### *Results of framing exercise*

The framing exercise raised a number of points:

- Survivor benefits in pensions can be lower for a surviving same sex spouse or same sex civil partner. This could potentially extend to the surviving partner of an opposite sex civil partnership.
- There could be significant opposition from some religious bodies to opposite sex civil partnership, who may see it as undermining marriage. However, there would be other groups that would support opposite sex civil partnership.
- Establishing opposite sex civil partnerships could be beneficial to transgender people in a civil partnership: they could obtain an interim gender recognition certificate and stay in their civil partnership, if they wished.
- Opening up civil partnerships to opposite sex couples would prevent civil partners being effectively outed based on information about their civil status.
- Option 1 may create a perception of civil partnerships as being “legacy relationships”. This could make them appear undesirable and inadvertently create pressure to change these relationships to marriage, notwithstanding the absence of legislation or policy to that effect.
- In the context of option 1, if such civil partnerships from other parts of the UK and equivalents from overseas were treated as civil partnerships, this would provide for parity of treatment with civil partnerships registered in Scotland prior to any cut-off date. However, recognition in this way will mean that civil partnerships could exist in Scotland in perpetuity despite the option no longer being available to Scottish couples who wish to formalise their relationship here.
- Other UK and overseas civil partnerships (or equivalents) could be treated as marriages. Such treatment could lead to tension between relationships treated this way and existing Scottish civil partnerships which will continue to be treated as civil partnerships, although this would largely be a matter of perception rather than of practical difference.

- Some religious bodies could perceive the recognition of civil partnerships (or equivalents) from other jurisdictions as marriage to be a disproportionate “upgrading” which is not appropriate to or consistent with the nature of either marriage or the underlying relationship itself.
- In relation to option 2 (extension), the Scottish Government will not be able to guarantee whether opposite sex civil partnerships would be recognised outside Scotland. Opposite sex civil partnership may in principle be less accepted in some cultures.
- Option 1 would have an impact on single people who anticipate entering into a civil partnership at some point in the future, whether in relation to a current partner or otherwise. People in this situation would be able to marry, but their perception of this form of union could influence their willingness to be involved in it.
- More guidance may be needed on entering into a marriage or civil partnership, including easy to read guidance. Were option 1 be to introduced, guidance for existing civil partners on the impact of the change would also be required.
- Option 2 (extension) could lead to more opposite sex couples entering into a registered relationship (i.e. the total number of opposite sex marriages and opposite sex civil partnerships would be greater than the total number of opposite sex marriages now). If so, there would be more people with statutory rights responsibilities and rights towards each other, such as the duty to aliment (financially maintain) one another. However, it is not clear that option 2 would have the effect of increasing the total number of opposite sex registered relationships in Scotland.
- For married couples, irretrievable breakdown of a marriage can be established through adultery. Under option 2, the Scottish Government does not intend for this to be extended to opposite sex civil partners. This approach is aligned to existing civil partnership and same sex marriage law, but could be criticised for minimising the impact of infidelity in an opposite sex civil partnership and for failing to appropriately extrapolate from *MacLennan v MacLennan*, which could not have envisaged civil partnership.
- Under option 2, various family law provisions would need to be amended to ensure that men in an opposite sex civil partnership would be afforded the same rights as men who are married to women, including the presumption on fatherhood, and parental responsibilities and rights. This will also provide women in opposite

sex civil partnerships with the same clarity that currently exists for women in opposite sex marriages on the effect of their registered relationship in the context of parenting matters.

- Under option 1, non-Scottish civil partnerships could be recognised as marriage. However, the existing law already allows couples in non-Scottish civil partnerships to change to marriage.

### ***Extent/Level of EQIA required***

A full EQIA would be required when the bill or remedial order is introduced to (or laid at) the Scottish Parliament, or a bill is introduced at Westminster.

That will take into account information provided in response to the consultation where it relates to the equality duty to eliminate discrimination, promote equality of opportunity and foster good relations.

**Stage 2: Data and evidence gathering, involvement and consultation**

**Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.**

Characteristic <sup>80</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>1. Age at marriage or entrance into civil partnership</p> <p>NRS have published data on these ages.</p> <p>In the event of civil partnership being extended to opposite sex couples, this same age criteria (that the parties must be at least 16) would apply as currently exists for marriage and civil partnership.</p> <p>2. Composition of households in Scotland</p> <p>Census Scotland have published data on composition.</p> <p>3. Impact on children</p> <p>Research from 2012 showed that the most important factors in determining children’s wellbeing and outcomes are family process (such as the quality of parenting and family relationships) rather than family structures (such as the nature of the parents’ relationship).</p>	<p>1. <a href="#">NRS data</a></p> <p>2. <a href="#">Census 2011 data</a></p> <p>3. <a href="#">The Good Childhood Report (summary)</a> (2012); p18</p>	None

<sup>80</sup> Refer to Definitions of Protected Characteristics document for information on the characteristics

	<p>Family structure has been found to be less important than stability for a child’s wellbeing, regardless of the nature of the family structure: “<i>Stability is more important than family structure for children’s well-being.</i>”</p> <p>The 2014 Growing Up in Scotland report found that family structure “<i>did not seem clearly associated with social and emotional well-being, after allowing for other influences</i>”.</p>	<p><a href="#">Mountney, K. (2011) Together and apart: supporting families through change</a>, p1 and p11</p> <p><a href="#">Sweeting, H. and Wight, D. (2014) Growing Up in Scotland: Family and school influences on children's social and emotional well-being</a>, para. 4.9</p>	
<b>DISABILITY</b>	<p>There is no obvious impact on the protected characteristic of disability.</p> <p>However, as noted above guidance may be required that explains the change made to the law and its implications; this will include easy-to-read guidance.</p>	<p>The Framing Exercise for this EQIA noted the need for more guidance on the implications of the option followed.</p>	None
<b>SEX</b>	<p>In Scotland, more female same sex couples than male enter into marriages.</p>	<p><a href="#">NRS data on marriages and civil partnerships</a></p>	There is little data on demand for civil partnerships from opposite sex couples.
<b>PREGNANCY AND MATERNITY</b>	<p>Neither options 1 nor 2 have an obvious impact on this protected characteristic. Services in relation to pregnancy are not linked to marital status.</p> <p>NRS produce statistics on the marital status of the parents of children whose births have been registered in Scotland.</p>	<p><a href="#">NRS data on births</a></p>	None

	<p>However, opposite sex civil partnership will have implications in respect of parentage and in respect of family law.</p>																				
<b>GENDER REASSIGNMENT</b>	<p>Option 1 will not impact on this characteristic for couples who are in existing civil partnerships before the cut-off date in the context of the continued requirement to dissolve the relationship or change to marriage if one party obtains an interim Gender Recognition Certificate (GRC).</p> <p>However, if civil partnerships from elsewhere in the UK and equivalent from other jurisdictions should be recognised as marriages in Scotland in the future, there could be an impact as such couples could remain in the marriage.</p> <p>Option 2 would mean that people in a civil partnership who obtain an interim GRC will no longer have to end their relationship by dissolving it or changing to marriage.</p> <p>Below are the available numbers of updated Scottish birth certificates issued following gender recognition.</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Number</th> </tr> </thead> <tbody> <tr> <td>2005</td> <td>47</td> </tr> <tr> <td>2006</td> <td>44</td> </tr> <tr> <td>2007</td> <td>30</td> </tr> <tr> <td>2008</td> <td>16</td> </tr> <tr> <td>2009</td> <td>18</td> </tr> <tr> <td>2010</td> <td>18</td> </tr> <tr> <td>2011</td> <td>24</td> </tr> <tr> <td>2012</td> <td>13</td> </tr> </tbody> </table>	Year	Number	2005	47	2006	44	2007	30	2008	16	2009	18	2010	18	2011	24	2012	13	NRS	None
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2013	16											
2014	16											
2015	25											
2016	20											
<b>SEXUAL ORIENTATION</b>	<p>Option 1 would mean that same sex couples would no longer be able to choose between marriage and civil partnership: only the latter would be available. NRS data shows that more same sex couples in Scotland marry than enter into civil partnerships.</p> <p>Option 1 would also mean that opposite sex couples would not have the option to enter into a civil partnership.</p> <p>Option 2 would permit opposite sex couples to enter into civil partnerships in Scotland if they wished.</p> <p>Option 2 would also mean that opposite sex couples in civil partnerships or equivalents from other parts of the UK and overseas would be able to have their relationships recognised in Scotland.</p> <p>As the consultation paper suggests, evidence from other countries indicates that there can be demand for legally recognised relationships other than marriage where both types of relationship are available.</p> <p>However, that demand can be linked to the relationship not being directly equivalent to marriage in terms of rights and responsibilities. Demand is generally lower when the two types of relationship are on the same general footing.</p>	<p>Option 1 scenario:</p> <p><a href="#">NRS data</a></p> <p>Option 2 scenario: information from other countries</p> <p><a href="#">France</a></p> <p><a href="#">Netherlands</a></p> <p><a href="#">New Zealand</a></p>	<p>There is little evidence on demand from opposite sex couples in Scotland for civil partnership.</p>									

<b>RACE</b>	Neither option is thought to have an impact on this protected characteristic.	-	None
<b>RELIGION OR BELIEF</b>	<p>Certain religious bodies have expressed concerns about option 2, based on a perception that this would undermine marriage.</p> <p>In response to the EQIA produced for the 2015 consultation on the review of civil partnership, there were also concerns that Christian belief and practices would be discriminated against.</p> <p>It is likely that views will vary from religious or belief body to body.</p> <p>Humanist Society Scotland have expressed strong support for opposite sex civil partnership.</p>	<a href="#">Consultation analysis</a>	None
<b>MARRIAGE AND CIVIL PARTNERSHIP</b> (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	<p>Marriage will remain available to opposite and same sex couples.</p> <p>In the case of option 1, no new civil partnerships would be created after the cut-off date, although existing civil partnerships would remain in place if the couple wished.</p> <p>In the case of option 2, civil partnership would be made available to opposite sex couples. The rights and responsibilities of opposite sex civil partners would be the same as those of same sex civil partners, which are in turn generally aligned to those of married couples.</p>	As linked above, NRS have published data on marriages and civil partnerships in Scotland.	There is no clear evidence of likely demand for opposite sex civil partnership in Scotland.



### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			✓	No real impact on this Protected Characteristic.
Advancing equality of opportunity			✓	No real impact on this Protected Characteristic.
Promoting good relations among and between different age groups			✓	No real impact on this Protected Characteristic.

#### Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination,			✓	No real impact on this Protected Characteristic.

harassment and victimisation				
Advancing equality of opportunity			✓	No real impact on this Protected Characteristic.
Promoting good relations among and between disabled and non-disabled people			✓	No real impact on this Protected Characteristic.

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No evidence of unlawful discrimination.
Advancing equality of opportunity			✓	<p>More men than women enter into civil partnerships in Scotland. Therefore, a larger number of men than women might be affected if no new civil partnerships could be created.</p> <p>However, the policy will impact on men and women in the same way in terms of the legally recognised relationships that they will be able to enter into.</p>

				The Scottish Government is aware, and has reflected in the consultation, of arguments that some people may wish to enter into an opposite sex civil partnership because of a perception that marriage is patriarchal, or a religious institution, or that marriage ceremonies (and the reception) give prominent roles to men rather than women. However, these arguments relate to perception rather than to the law in this area.
Promoting good relations between men and women			✓	Neither option seems to impact on the promotion of good relations.

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No real impact on this Protected Characteristic.
Advancing equality of opportunity			✓	No real impact on this Protected Characteristic.
Promoting good relations			✓	No real impact on this Protected Characteristic.

**Do you think your policy impacts on transsexual people?**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No evidence of unlawful discrimination.
Advancing equality of opportunity	✓			Option 2 would mean that a civil partnership could continue if one of the parties obtained a Gender Recognition Certificate.  Under Option 1, if same sex civil partnerships from outwith Scotland should be recognised as marriages in future, a person in such a relationship seeking gender recognition would be able to stay in it.
Promoting good relations			✓	Neither option seems to impact on the promotion of good relations.

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	✓			Either option will remove unlawful discrimination from the current law.
Advancing equality of opportunity	✓			Either option will provide equality of opportunity in terms of legally recognised relationships regardless of sexual orientation.

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Promoting good relations			✓	Neither option seems to impact on the promotion of good relations.

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No real impact on this Protected Characteristic.
Advancing equality of opportunity			✓	No real impact on this Protected Characteristic.
Promoting good race relations			✓	No real impact on this Protected Characteristic.

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No evidence of unlawful discrimination.
Advancing equality of opportunity			✓	Option 2 would make opposite sex civil partnership available to those who wish to have it registered by a religious or belief celebrant.

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Promoting good relations			✓	Some religious bodies may be strongly against opposite sex civil partnership, seeing it as undermining marriage. However, marriage would continue to be available and there would be no obligation on religious or belief bodies to take part in the registration of civil partnership.

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>81</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			✓	No evidence of unlawful discrimination.

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<sup>81</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes the Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

## Annex J: Draft Child Rights and Wellbeing Impact Assessment

CRWIA front sheet	
<b>Policy/measure</b>  <b>A general description of the policy/measure</b>	Consultation on the future of civil partnership
<b>Project initiation document</b>  <b>Add link to the document</b>	N/A
<b>Initiating department</b>  <b>The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility</b>	Family Law, Justice Directorate, Scottish Government.
<b>Policy aims</b>  <b>What the policy or measure is trying to achieve; what are the expected outcomes</b>	The consultation will seek to identify views on options for the removal of the current discrimination that exists in the Civil Partnership Act 2004 in that it does not allow opposite sex couples to enter into civil partnerships.
<b>Timetable</b>  <b>What is the time frame for a policy announcement/consultation/implementation?</b>	The consultation will run from 28 September 2018 to 21 December 2018.
<b>Date</b>	
<b>Signature</b>	

**CRWIA Stage 1  
Screening - key questions**

**1. What aspects of the policy/measure will affect children and young people up to the age of 18?**

The consultation asks about options for civil partnership in the future. This is currently an option for same sex couples from the age of 16. A decision on the option that will be followed has not been taken.

**2. What likely impact - direct or indirect - will the policy/measure have on children and young people?**

The two options discussed in the consultation will directly affect the ability of young people to enter into civil partnership.

Other impacts will arise from either option in the context of family law matters such as parental responsibilities and rights.

Neither option is likely to have an impact on children or young people in the context of the implications for their wellbeing based on the family structure they grow up in.

Recent research indicates that “*Stability is more important than family structure for children’s well-being*” ([Mountney, K. \(2011\) Together and apart: supporting families through change, p1 and p11](#)) and that family structure “*did not seem clearly associated with social and emotional well-being, after allowing for other influences*” (Sweeting, H. and Wight, D. (2014) [Growing Up in Scotland: Family and school influences on children’s social and emotional well-being](#), para. 4.9)

**3. Are there particular groups of children and young people who are more likely to be affected than others?**

Marriage and civil partnership are possible from 16 years old. Regardless of the option pursued, young people aged 16 and 17 years old will be affected.

If it is decided that no new civil partnerships are to be created from a certain date, young people within this age group who are gay or bisexual will be affected as the option to enter into this type of relationship rather than marry will no longer be available.

If it is decided that civil partnership is to be made available to opposite sex couples, young people within this age group who are heterosexual will be affected in that they will have the choice to marry or enter into a civil partnership.

The number of 16 and 17 year olds who marry or enter into a civil partnership is low. Statistics from NRS are shown below:



**Marriages of under 18s - 2010 to 2016, Scotland**

	Party 1	Party 2	Total	
2010	8	37	45	
2011	5	52	57	
2012	4	53	57	
2013	8	45	53	
2014	8	45	53	
2015	5	28	33	
2016	5	17	22	

Note. Prior to 2014 all party 1s would have been male and party 2s female. After 2014, they can be of either sex

**Civil partnerships of under 18s - 2005 to 2016, Scotland**

	Party 1	Party 2	Total	
2005	0	0	0	
2006	0	0	0	
2007	1	0	1	
2008	0	0	0	
2009	0	0	0	
2010	0	0	0	
2011	0	0	0	
2012	1	0	1	
2013	0	0	0	
2014	1	0	1	
2015	0	0	0	
2016	0	0	0	

**4. Who else have you involved in your deliberations?**

The Scottish Government's Equality Unit has been involved.

**5. Will this require a CRWIA?**

Yes. The Scottish Government intends to produce and publish a CRWIA for any legislation it introduces into Parliament.

## Scoping - key questions

### 1. What children's rights are likely to be affected by the policy/measure?

List all relevant Articles of the UNCRC and Optional Protocols (see Annex 1). All UNCRC rights are underpinned by the four general principles: non-discrimination; the best interests of the child; the right to life; survival and development; and the right to have children's views given due weight.

Article 2.1.

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

This article refers to "other status" of a child and his or her parents. This may be relevant as "other status" would include sexual orientation.

Article 18.1.

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

This may be relevant in the context of existing presumptions about parentage and existing provisions on parental responsibilities and rights that may apply based on the relationship of the parents of a child. This relates to children and parents who fall into the category of children in the context of the UNCRC because they are under 18 years old.

### 2. How will the policy/measure affect children's wellbeing as defined by the wellbeing indicators?

There seems to be no significant impact on children's wellbeing from either option, given that:

- the evidence that stability is more important than family structure when children grow up;
- the number of 16 and 17 year olds in Scotland who marry or enter a civil partnership is low.

### 3. How many children and young people are likely to be affected by the policy or measure?

List potential sources of official and other data, or note the need to locate this

information. Are there different levels of impact for different groups of children?

Number of young people

NRS has published statistics on population in Scotland by age group at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2017>. This shows that in 2017 there were 112,613 people aged 16 and 17 years old in Scotland.

As indicated above, the number of 16 and 17 year olds in Scotland who marry or enter a civil partnership is low.

**4. What research evidence is available?**

Preliminary identification of the research base for this policy/measure

As outlined elsewhere in this draft CRWIA.

**5. Has there been any public or stakeholder consultations on the policy/measure?**

Stakeholders include children and young people, parents/carers, children's workforce, NGOs

This draft CRWIA will be published as part of a public consultation on the future of civil partnership in Scotland.

**6. Has there been any estimate of the resource implications of the policy/measure?**

Capital costs, expenditure, recruitment and training costs for the workforce etc.

For the two options set out in the consultation, the follow costs have been estimated:

Option 1 (closure)

- There are no significant costs or savings to this option, although in time there may be modest savings that would probably not be more than £100,000.

Option 2 (extension)

- There would be one-off costs for NRS in relation to systems, new administrative requirements, and training of around £200,000.
- There would be one-off training and familiarisation costs for local authorities of around £200,000.
- There may be costs in relation to rights and responsibilities but this would largely depend on take up and whether opposite sex civil partners would have rights not available to cohabitants.

**Data Collection, Evidence Gathering, Involvement of/Consultation with Stakeholder Groups - key questions**

**1. What does the evidence tell you?**

The evidence base may include demographic information, academic research, service monitoring/inspection reports, service evaluation reports, user surveys etc. Identify any gaps in the evidence base. In particular, look at what the evidence tells you about children and young people's views and experiences of the relevant service(s); and/or what it tells you about children and young people's views of the policy proposal.

There is little impact on children and young people which is different to the impact on people generally.

**2. What further data or evidence is required?**

Is the evidence up to date, robust and reliable, sufficiently relevant to what is being proposed, or do you need to commission new research?

There is no need for further research.

**3. Has there been any consultation on the development of the proposal(s)?**

Public or targeted consultation with children and young people, their parents/carers, the children's workforce - is there enough information on the views of the children and young people who will be affected by the policy/measure?

This draft CRWIA will form part of a public consultation.

**4. Should children and young people be further involved in the development of this policy? Are there particular groups of children and young people whose views should be sought?**

Specify how - outline the purpose, format, timetable and the questions you want to ask

There does not seem to be specific needs in this area.

**5. Should other stakeholders and experts be further involved in the development of this policy?**

Specify how - outline the purpose, format, timetable and the questions you want to ask

This draft CRWIA will form part of a public consultation

**CRWIA Stage 4**  
**Assessing the Impact and Presenting Options - key questions**

**1. What likely impact will the policy have on children's rights?**

Negative/positive/neutral. For those assessed as having a negative impact, list options for modification or mitigation of the policy/measure, or suggested alternatives to the policy/measure

Neutral

**2 How will the policy/measure contribute to the wellbeing of children and young people?**

Provide any additional assessment using the wellbeing indicators framework.

No obvious impact

**3. Are some children and young people more likely to be affected than others?**

Which groups of children and young people will be affected by the policy/measure? Are there competing interests between different groups of children and young people, or between children and other groups? List options for modification or mitigation of the proposal.

Young people aged 16 or 17 who wish to enter into a civil partnership could be affected. However, the number of people aged 16 or 17 who marry or enter a civil partnership in Scotland is low.

**4. Resource implications of policy modification or mitigation**

If recommending any changes to the policy/measure, include estimates of cost implications

Not applicable.

**5. How does the policy/measure promote or impede the implementation of the UNCRC and other relevant human rights standards?**

This will inform Scottish Ministers' duty to report to Parliament on children's rights under the Children and Young People (Scotland) Act 2014.

No impact.



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