

Business and Regulatory Impact Assessment (BRIA)

Civil Partnership (Scotland) Bill

October 2019

Title of Bill

Civil Partnership (Scotland) Bill

Purpose and intended effect

- **Background**

The UK Supreme Court issued a judgment in June 2018 on civil partnership in England and Wales¹. Following this judgment, the Scottish Government consulted on the future of civil partnership in Scotland². This consultation put forward two options: extending civil partnership to mixed sex couples or legislating to end the registration of civil partnership in Scotland. Following this consultation, the Scottish Government decided to extend civil partnership to mixed sex couples.

- **Objective**

The objective is to establish a comprehensive scheme of mixed sex civil partnership.

- **Rationale for Government intervention**

Legislation is needed to extend civil partnership to mixed sex couples.

Consultation

- **Within Government**

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

- **Public Consultation**

As indicated above, the Scottish Government consulted on the future of civil partnership from 28 September to 21 December 2018.

¹ The UK Supreme Court judgment is at <https://www.supremecourt.uk/cases/uksc-2017-0060.html>

² The Scottish Government consultation in 2019 is at <https://www2.gov.scot/Topics/Justice/law/17867/civil-partnership-in-scotland>

- **Business**

The Scottish Government carried out three face to face interviews for a partial Business and Regulatory Impact Assessment (BRIA) when we consulted on the review of civil partnership in 2015³.

Options

This BRIA outlines the implications of the extension of civil partnership to mixed sex couples.

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
- Pension providers

Benefits

This will give mixed sex couples and same sex couples the same options for legally recognised unions: marriage or a civil partnership.

Costs

The extension of civil partnership involves two general types of costs: those relating to registration processes, and those relating to rights and responsibilities.

Registration process costs

These will be one-off costs as they relate to required changes to IT systems and forms, and to training and familiarisation. They will be kept down as the registration of mixed 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. The Scottish Government will also work with NRS, within these resources, to provide information for couples on eligibility criteria for entering mixed sex civil partnership and on the

³ Details of these interviews can be found at <https://www.webarchive.org.uk/wayback/archive/20170706153125/http://www.gov.scot/Publications/2015/09/4223/16>

implications of entering a mixed sex civil partnership. The Scottish Government is not planning a publicity campaign on mixed sex civil partnership but, instead, would place appropriate information on websites which could be referred to by couples and by registrars.

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

Mixed sex couples are to be charged fees for entering a civil partnership to cover the cost of registration. These fees would be set at the same level as fees for entering into a same sex civil partnership⁴.

Rights and responsibilities costs

Methodology

On-going costs in relation to the introduction of mixed sex civil partnerships will be driven by any net increase in the number of registered relationships.

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

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 mixed sex civil partnership. Therefore, the Scottish Government has considered international experience and work carried out by the United Kingdom Government⁵.

The Scottish Government considers that figures from New Zealand provide a reasonable guide to potential take up of mixed sex civil partnership in Scotland.

In New Zealand, marriage and civil union (the New Zealand equivalent of civil partnership) are both available to mixed sex and same sex couples. Stats New Zealand publishes statistics on the number of marriages and registered partnerships which took place in New Zealand in 2018⁶.

The table below shows the number of marriages and civil unions which took place in 2018.

⁴ The current fees for entering a civil partnership are at <https://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf>.

⁵ The UK Government is currently working on legislation to introduce mixed sex civil partnership in England and Wales.

⁶ The New Zealand statistics are at <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2018> (Please see tables 6 and 7 at the second link).

Civil Unions and marriages registered in New Zealand in 2018 (source: Stats NZ)

Civil unions		
Same sex	Mixed sex	All
Couples	Couples	Total
30	48	75 ⁷
Marriage		
Same sex	Mixed sex	All
Couples	Couples	Total
867	23,124	23,991

It can be seen from this that civil unions have not had a significant take-up in New Zealand, although proportionately they are more popular amongst same sex couples.

There were 897 registered same sex relationships in New Zealand in 2018: 30 (3.3%) were civil unions and 867 (96.7%) were marriages.

There were 23,172 registered mixed sex relationships in New Zealand in 2018: 48 (0.2%) were civil unions and 23,124 (99.8%) were marriages.

The New Zealand figures also show that, as in Scotland, the number of civil unions entered into by same sex couples declined markedly when same sex marriage was introduced. New Zealand introduced same sex marriage on 19 August 2013. In 2012, there were 321 same sex civil unions; 159 in 2013 and 27 in 2014. The number of mixed sex civil unions also declined following the introduction of same sex marriage although the trend here is less marked. There were 69 in 2012; 75 in 2013 and 36 in 2014.

The New Zealand position does show a number of similarities with the position in Scotland. Marriage and civil union in New Zealand offer broadly similar rights; visitors to New Zealand can marry or enter a civil partnership there⁸; there is a wide range of celebrants⁹ and the number of civil unions declined markedly following the introduction of same sex marriage. In addition, a recent article by Stats New Zealand notes the decline in marriage rates since 1971¹⁰. There has been a similar decline in Scotland¹¹.

⁷ This figure of 75 does not quite tally with the figures of 30 and 48. Stats NZ indicate that the data on civil unions “has been randomly rounded to protect confidentiality. Individual figures may not add up to totals and values for the same data may vary in different tables”

⁸ <https://www.govt.nz/browse/family-and-whanau/getting-married/get-a-marriage-licence/>

⁹ <https://www.govt.nz/browse/family-and-whanau/getting-married/celebrants/>

¹⁰ <https://www.stats.govt.nz/news/marriage-and-divorce-continue-downward-trend>

It appears to the Scottish Government, therefore, that the New Zealand statistics provide a reasonable benchmark to assess the likely take-up of mixed sex civil partnerships in Scotland. However, the Scottish Government notes that the take-up of same sex civil partnerships is lower in New Zealand than in Scotland. As indicated above, 6.8% of registered same sex relationships in Scotland are civil partnerships whereas 3.3% of registered same sex relationships in New Zealand are civil unions.

This suggests, therefore, that (same sex) civil partnership is more popular in Scotland than (same sex) civil unions in New Zealand. Without further evidence on drivers for mixed sex unions, it seems reasonable to assume that the same pattern would be true for mixed sex relationships. Comparing the two percentages in the previous paragraph produces a factor of 2.06. Applying this factor to the 0.2% of mixed sex relationships in New Zealand that are civil unions produces a figure of 0.412%. Applying this percentage of 0.412% to the figure of 26,546 mixed sex marriages in Scotland in 2018 suggests that **there would be 109 mixed sex civil partnerships in Scotland per year.**

Obviously there will be margins of error around these figure. But based on these calculations, the Scottish Government's estimate is that the number of mixed sex civil partnerships registered in Scotland will be between 100 and 150 a year. The Scottish Government uses the figure of 109 in this BRIA when considering the costs of extending civil partnerships to mixed sex couples. Given the varied experience internationally, this figure is subject to a high degree of uncertainty and will be kept under review during the course of Parliamentary scrutiny and as the legislation is implemented.

There is also the question of how many mixed sex civil partnerships are additional (i.e. involving couples who would not just have married anyway). An Impact Assessment prepared by the UK Government considers this issue¹². This Impact Assessment takes account of a survey carried out by the UK Government and says on page 8 that "the proportion of those that are 'unlikely to marry' and 'very interested' in forming an OSCP¹³ 'within the next year' (averaged over 'next year', and 'between 1-2 years from now') is 57% of total estimated demand for OSCPs. This proportion is carried forward in our 'additional' OSCPs take-up calculations".

Taking this percentage of 57% and applying it to the figure of 109 mixed sex civil partnerships above, gives **a figure for "additional" mixed sex civil partnerships in Scotland of 62.**

¹¹<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages> Please see table 7.01b

¹² The UK Government's Impact Assessment is at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815743/Civil_Partnerships_Impact_Assessment.pdf

¹³ "OSCP" is an abbreviation used by the UK Government. It stands for "opposite sex civil partnership"

Pensions: costs

Occupational pensions policy is a reserved matter for the UK Government, although there are some executively devolved public service pension schemes in Scotland¹⁴.

Following the UK Supreme Court decision in 2017 in *Walker v Innospec*¹⁵, changes are being introduced to public service pension schemes. These changes will align pensions paid for survivors of same sex marriages and civil partnerships with those paid to widows (i.e. female survivors of mixed sex marriages): in these cases, the member's full service is used to determine entitlement. The existing restriction of only using service from 1988 onwards for widowers (i.e. male survivors of mixed sex marriages) continues to apply. The UK Government has announced that it intends to align survivor benefits for mixed sex civil partners with those that are available for survivors of mixed sex marriages¹⁶.

Total survivor benefits in the five devolved public sector schemes are around £190 million a year. This is based on the following estimates of survivor benefits:

NHS:	£56 million (in 2013/14)
Local Government:	£52 million (in 2013/14)
Teachers:	£44 million (in 2013/14)
Police:	£29 million a year
Fire:	£6 million a year

This gives a total of £190 million (rounded up).

As indicated above, the Scottish Government estimates that there will be an "additional" 62 mixed sex civil partnerships a year ("additional" in this context refers to couples who would not otherwise have married). There were 27,590 marriages and civil partnerships in 2018 (27,525 marriages and 65 civil partnerships)¹⁷. An additional 62 registered relationships would be an additional 0.22%. This suggests that, in due course, the devolved public sector pension schemes could face additional costs in relation to survivor benefits of £418,000 a year [£0.4 million]. [£190 million x 0.22% gives £418,000]. Clearly, costs could be higher if take up of mixed sex civil partnership should be higher.

Regardless of take-up, the devolved public service schemes often already provide benefits for mixed sex cohabitants conditional on meeting certain conditions such as

¹⁴ More details are on the Scottish Public Pension Agency website:

<https://pensions.gov.scot/>

¹⁵ The UK Supreme Court decision in *Walker v Innospec* is at

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

¹⁶ Please see paragraph 78 of the UK Government's "Next Steps" document on civil partnerships: <https://www.gov.uk/government/consultations/civil-partnerships-next-steps-and-consultation-on-conversion>

¹⁷ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

financial interdependency, cohabiting and being free to marry although the last condition has been subject to a recent Court of Appeal decision¹⁸. In short, cohabitants who would enter into a mixed sex civil partnership may, in some circumstances, already be entitled to pension benefits under the scheme rules, as unmarried partners.

Therefore, some people who would be likely to receive benefits as mixed sex civil partners would also be likely to receive the benefits as unmarried partners even if mixed 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.

Not all the costs will occur at the same time. People marry or enter a civil partnership, 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.

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 mixed sex civil partnership would not have a material impact on either the costs of the scheme or contribution rates.

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 main impact on business from extending civil partnership to mixed sex couples relates to a reserved matter – survivor benefits in private sector occupational pension schemes. The UK Government Impact Assessment¹⁹ considers the issue in some depth.

Page 12 of the UK Government Impact Assessment says:

“The primary identified additional costs to business arise from the expansion of survivor benefits for private sector DB [Defined Benefit] pension schemes to previously unmarried couples, where these couples would not have got married but would form an OSCP [opposite sex civil partnership]. In this event, the surviving civil partner will be entitled to survivor benefits from their partner’s DB pension scheme. Defined Contribution (DC) schemes are out of scope of this impact assessment, as the vast majority of DC schemes allow for the nomination of any individual to receive the pension’s benefits in the event of the pension holder’s death. Unlike DB pensions – where a specified amount of income in retirement is guaranteed by an employer, and any shortfall in funding is met by the employer – DC pensions transfer this ‘investment risk’ to individuals, where a pot of money is built up over a working life,

¹⁸ <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1271.html>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815743/Civil_Partnerships_Impact_Assessment.pdf

and any shortfall in funding falls to the individual. As such, no additional liability will be placed on employers from the creation of 'additional' OSCPs where individuals are members of DC pension schemes. The second cost to business covers familiarisation with the new requirements placed on them in legislation.”

The UK Government has estimated that there is a one-off familiarisation cost to business arising from the introduction of mixed sex civil partnership. This is a familiarisation cost for the chairs of Defined Benefit private sector pension funds' board of trustees.

The UK Government have estimated this one-off cost as £400,000 (£0.4 million) (page 12 of the Impact Assessment) which, assuming 10% for Scotland, would equate to £40,000 (£0.04 million) for Scotland²⁰.

The UK Government Impact Assessment has also calculated estimates for the provision of survivor benefits for mixed sex civil partners in private sector defined benefit pension schemes.

Table 14 in the UK Government Impact Assessment, on page 20, gives low, best and high estimates for the additional cost of providing these survivor benefits.

Taking the best estimates, the average per year is £1,000,000 (£1 million). That suggests around £100,000 for Scotland (£0.1 million). This figure may be on the high side as the Scottish Government's calculations on estimated numbers of mixed sex civil partnerships produce lower numbers than the UK Government's calculations.

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

No new business forms are expected.

Legal Aid Impact Test

Scottish Courts and Tribunals Service

There could be costs to the Scottish Courts and Tribunals Service (SCTS) and, as indicated below, to the legal aid budget in relation to an increase in the number of dissolutions of civil partnerships as a result of the introduction of mixed sex civil partnership.

There were 27,525 marriages in 2018 in Scotland and there were around 9,500

²⁰ The methodology for the UK Government's calculations is on page 14 of the UK Government Impact Assessment.

divorce cases in the courts in 2017/18.²¹ Therefore, around one in three marriages end in divorce in Scotland. We assume the dissolution rate for mixed sex civil partnerships would be about the same.

The vast majority (over 99%) of divorces and dissolutions are dealt with in the local Sheriff Court²². Typically, around 60% of these are handled through the simplified procedure²³, which can be used where there are no children under 16 and no financial issues to be sorted out between the spouses or civil partners.²⁴

As indicated above, the Scottish Government estimates that there will be 62 “additional” civil partnerships a year (i.e. couples entering a mixed sex civil partnership who would not have married). Applying the assumption outlined above that 1 in 3 of these civil partnerships will dissolve, that suggests there will be an additional 21 dissolutions a year in the courts, from around 2023 onwards. Of these, around 13 would be simplified and 8 would be ordinary. It is likely that all of them would be in the Sheriff Court.

This level of dissolution would have no real impact on SCTS resources. However, there could be a financial impact on the SCTS if the take up of mixed sex civil partnership (and the subsequent number of dissolutions should be higher).

Legal aid

As indicated above, there could be additional 21 dissolutions a year in the courts, from around 2023 onwards. Of these, around 13 would be simplified and 8 would be ordinary. It is likely that all of them would be in the Sheriff Court.

The simplified procedure has few legal aid implications. The simplified procedure is designed to be used without the parties needing to be represented in court. As a result, civil legal aid, which can help pay for legal representation in court, is not available for the simplified procedure.

However, advice and assistance (A&A)²⁵ is available to give general help on the simplified procedures. The Scottish Legal Aid Board (“the Board”) rarely grant increases in funding under A&A for this work so the cost will tend to be no more than the standard limit for A&A of £95.

The Board estimates that around half of cases going to court could involve parties who are **both** in receipt of legal aid. So using the figure of 13, would suggest 20

²¹ <https://www.gov.scot/publications/civil-justice-statistics-scotland-2017-18/> (see table 5)

²² Ibid (See tables 6 and 7)

²³ Ibid (see tables 9 and 10)

²⁴ Guidance on the simplified procedures for divorce and dissolution can be found on the SCTS website: <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>

²⁵ Advice and assistance (A&A) can help with the costs of getting legal advice from a solicitor, like information on rights and options or help with negotiations and paperwork

grants of A&A. In 6 cases only one of the parties would be eligible for legal aid and in the other 7 both parties would be. As a result, costs to the Board from an increase in the number of simplified dissolutions might be $20 \times \text{£}95 = \text{£}1,900$ a year.

The remaining 8 dissolutions a year may have more implications for legal aid.

The Board estimates that the mean (average) cost to the legal aid fund of supporting one party going through a divorce under the ordinary procedure is £1,385. The Scottish Government and the Board would expect the mean (average) cost to the legal aid fund of supporting one party going through a dissolution under the ordinary procedure would also be £1,385.

The Board estimates that around half of cases going to court could involve parties who are **both** in receipt of legal aid. So using the figure of 8, would suggest 12 grants of legal aid. In 4 cases only one of the parties would be eligible for legal aid and in the other 4 both parties would be.

This suggests potential costs to civil legal aid of £17,000 (£0.017 million) a year from 2023 onwards ($12 \times \text{£}1,385$). Adding in the costs of £1,900 a year from an increase in the number of simplified dissolutions gives an estimated cost (rounded up) of £20,000 a year (£0.02 million). Clearly, costs could be higher if take up of mixed sex civil partnership should be higher

Enforcement, sanctions and monitoring

The extension of civil partnership to mixed sex couples means that there will 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 will discuss these changes with National Records of Scotland (NRS) and local authority registrars. The Government will also discuss the need for additional guidance with NRS and local authority registrars.

There will also be an impact on religious and belief bodies taking part in the registration of civil partnership and the Government and NRS will 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

Extending civil partnership to mixed sex couples will be done by primary legislation in the Scottish Parliament.

Extension will also affect legislation reserved to the UK Parliament and so an Order under section 104 of the Scotland Act will be required as well. (Under section 104,

an Order may make necessary or expedient provision following an Act of the Scottish Parliament).

Secondary legislation will also be required in the Scottish Parliament.

Changes will be required to IT, to forms and to guidance.

Post-implementation review

The Government will monitor the impact of the Bill and secondary legislation, in line with usual practice.

Table: summary of costs in £m

Nature of cost	Falling on	One-off (£m) [Year: 2020/21]	Annual (£m) [Years: 2021/22 onwards]
Set-up registration costs	National Records of Scotland	0.2	-
Devolved public sector pension schemes – survivor benefits	Scottish Public Pensions Agency	-	0.4
Familiarisation and training	Local authorities	0.2	-
Dissolution cases in court	Scottish Courts and Tribunals Service	-	Negligible
Legal aid (for dissolutions)	Scottish Legal Aid Board.	-	0.02
Familiarisation cost	Private sector defined benefit pension schemes	0.04	-
Additional survivor benefits	Private sector defined benefit pension schemes	-	0.1
Total		0.44	0.52

**Scottish Government
September 2019**



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The Scottish Government
St Andrew's House
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EH1 3DG

ISBN: 978-1-83960-203-0 (web only)

Published by The Scottish Government, October 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS636262 (10/19)

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