

Equality Impact Assessment (EQIA) Record

Civil Partnership (Scotland) Bill

October 2019



Scottish Government
Riaghaltas na h-Alba
gov.scot

EQUALITY IMPACT ASSESSMENT (EQIA) RECORD

Title of policy/ practice/ strategy/ legislation etc.	Civil Partnership (Scotland) Bill	
Cabinet Secretary	Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People	
Lead official	Sarah Meanley, Family Law	
Officials involved in the EQIA	Name	Team
	Simon Stockwell Sarah Meanley	Family Law Family Law
Directorate: Division: Team	Justice: Civil Law and Legal System, Family Law	
Is this new policy or revision to an existing policy?	Revision to an existing policy	

Screening

Policy Aim

1. The Civil Partnership (Scotland) Bill will make civil partnership available to mixed sex couples.
2. The outcome of the Bill will be the introduction of a comprehensive scheme of mixed sex civil partnership, largely modelled on the existing scheme of same sex civil partnership.
3. The extension of civil partnership to mixed sex couples will contribute to the following National Outcome:
 - We respect, protect and fulfil human rights and live free from discrimination
4. This EQIA will assess the extension of civil partnership to mixed sex couples for the purposes of understanding the impact on people, and on the promotion of equality.

Who will it affect?

5. The Bill will affect:

- **Couples who wish to enter a mixed sex civil partnership**
The Bill should have a positive effect on couples in that it will give them the ability to enter into their preferred type of relationship, including the opportunity to do so through a registration ceremony conducted in accordance with their faith; it will also provide these couples with access to the rights and responsibilities that flow from entering into a legally recognised relationship.
- **Religious or belief bodies/religious or belief celebrants**
Some religious or belief bodies, or individual religious or belief celebrants may not support the extension of civil partnership. In that sense the Bill may have a negative effect on these bodies or individuals. However, the Bill provides there is no legislative duty to register this type of relationship.

Where a religious or belief body supports the extension of civil partnership to mixed sex couples, the Bill will have a positive effect in that it will permit these bodies to conduct mixed sex civil partnership registrations as part of the practice of their religion or belief.

- **Transgender people in civil partnerships, and who wish to enter one**
Transgender people currently have to end their civil partnership if they legally change their gender, reflecting the current same sex nature of the relationship. The Bill will have a positive effect on these people as it will allow them to stay in their relationship after they legally acquire a change of gender.

At present, a transgender person in a same sex relationship cannot enter into a civil partnership unless they legally change their gender. For example, a trans woman who has not acquired legal recognition of their change of gender will be treated in law as a man. This means that, should their preferred type of relationship be a civil partnership, they would not currently be able to be in a civil partnership with a woman. This is because the couple would be treated in law

as being in a mixed sex relationship. Mixed sex civil partnership will make civil partnership open to these couples.

- **Couples in legally recognised mixed sex relationships that are similar to civil partnership (but which are not marriage) from other jurisdictions**

At present, there is no recognition of these relationships in Scotland, reflecting the current absence of mixed sex civil partnership. The Bill will have a positive effect on these people, as it includes provisions on the recognition of their relationships in Scotland.

- **Couples currently in civil partnerships**

These will be same sex relationships. The Bill should have a positive indirect effect on these couples in that their choice of relationship will no longer effectively involve a declaration of their sexual orientation.

- **People at risk of being forced into a mixed sex civil partnership**

The Scottish Government is aware that women and girls are predominantly the victims of forced marriage, although there are male victims too. The Bill creates the offence of forced civil partnership. This should have a positive effect on this group of people by providing a deterrent.

- **People across society who will interact with couples in mixed sex civil partnerships**

The effects of this could be positive or negative depending on the views of specific individuals on mixed sex civil partnership.

Stage 1: Framing

Results of framing exercise

A framing exercise is carried out by the Scottish Government to consider issues that might arise from a policy.

In this case, 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.
- There could be opposition from some religious bodies to mixed sex civil partnership, who may see it as undermining marriage.
- However, there would be other groups (e.g. equality and human rights organisations) that support mixed sex civil partnership.
- Mixed sex civil partnerships could benefit transgender people in civil partnerships: they will be able to stay in their relationship on obtaining legal recognition of their change of gender if that is what they and their civil partner want.
- A transgender person without a Gender Recognition Certificate who wishes to enter into a civil partnership with someone of the same sex would also benefit from being able to access that type of relationship.
- Opening up civil partnerships to mixed sex couples could prevent civil partners being effectively outed based on information about the type of relationship they are in.
- Some religious bodies could perceive the interim recognition of mixed sex civil partnerships (or equivalents) from other jurisdictions as marriage to be inappropriate
- The Scottish Government intends to recognise mixed sex civil partnerships from other jurisdictions as marriages on an interim basis, followed by recognition as a mixed sex civil partnership when the main provisions of the Bill commence. That could be confusing for people in this type of relationship from other jurisdictions. However, these people will benefit from their relationship being recognised as a marriage as this will ensure that there is a legal framework in place relating to

their relationship and its associated rights and responsibilities that can be applied.

- The Scottish Government will not be able to guarantee whether mixed sex civil partnerships would be recognised outside Scotland. Civil partnership (mixed or same sex) is less widely available than marriage and may therefore be less widely recognised.
- More guidance may be needed on entering into a civil partnership or marriage, including easy-to-read guidance. This should make clear the implications of each relationship, including possible differences in cross-border recognition
- If uptake of mixed sex civil partnership is from couples that would not otherwise have married, there will be more people with statutory rights and responsibilities towards each other, such as the duty to alimenter (financially maintain) one another. The Scottish Government's view is that uptake of mixed sex civil partnership could be around 110 each year.
- Religious and belief bodies and celebrants that do not wish to register mixed sex CPs will be protected by the provisions in the Bill that make it clear there is no legislative obligation to register these relationships.

Existing evidence

In creating this EQIA, the Scottish Government has reviewed the evidence gathered in response to two separate consultations on civil partnership in Scotland.

2018 consultation

The Scottish Government consulted¹ in 2018 on the future of civil partnership following the UK Supreme Court decision on civil partnership in England and Wales. A draft EQIA² was produced to accompany this consultation.

The consultation set out two options for change: closure of civil partnership to new relationships from a future date, or extension to mixed sex couples. The purposes of the consultation was to seek fresh insight into the known pros and cons for the two options.

¹ <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/>

² <https://www.gov.scot/publications/future-civil-partnership-scotland/pages/16/>

An analysis of consultation responses has been published³. A number of respondents cited equality-related reasons as the grounds for their support of the extension option.

2015 consultation

The Scottish Government also consulted⁴ in 2015 on a review of civil partnership. That consultation set out three options for change: closure of civil partnership to new relationships from a date in the future, extension to mixed sex couples, or taking no action.

Consultation respondents raised a number of equality-related points, including in relation to the Partial EQIA⁵ produced to accompany the consultation. A number of these comments relate to the closure and no action options, and are not relevant to the current Bill.

Extent/Level of EQIA required

A full EQIA is required

³ <https://www.gov.scot/publications/future-civil-partnership-scotland-analysis-consultation-responses/>

⁴ <https://www.webarchive.org.uk/wayback/archive/20170701074158/www.gov.scot/Publications/2015/09/4223>

⁵ <https://www.webarchive.org.uk/wayback/archive/20170706153127/http://www.gov.scot/Publications/2015/09/4223/17>

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	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 NRS have published data on these ages. In the event of civil partnership being extended to mixed 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 Census Scotland have published data on composition.</p> <p>3. Impact on children 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</p>	<p>1. NRS data</p> <p>2. Census 2011 data</p> <p>3. The Good Childhood Report (summary) (2012); p18 Mountney, K. (2011) Together and apart:</p>	None

	<p>(such as the nature of the parents' relationship).</p> <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><u>supporting families through change,</u> p1 and p11</p> <p>Sweeting, H. and Wight, D. (2014) <u>Growing Up in Scotland: Family and school influences on children's social and emotional well-being</u>, para. 4.9</p>	
DISABILITY	<p>The forced civil partnership offence will provide protection for people who are not able to legally consent to a civil partnership due to mental incapacity.</p> <p>The Framing Exercise for this EQIA noted the need for more guidance on the implications of the option followed, including easy-to-read guidance.</p>		
SEX	<p>In Scotland, more female same sex couples than male enter into marriages.</p>	<p><u>NRS data on civil partnerships and marriages</u></p>	<p>The Scottish Government is not aware of evidence on the risk of forced civil</p>

	Statistics suggest that women and girls are at greater risk of being the victim of a forced marriage.	<u>Forced Marriage Unit statistics</u> (page 9)	partnerships occurring generally, including risks based on sex.
PREGNANCY AND MATERNITY	The extension of civil partnership does not have an obvious impact on this protected characteristic. Services in relation to pregnancy are not linked to marital status. NRS produce statistics on the marital status of the parents of children whose births have been registered in Scotland.	<u>NRS data on births</u>	None
GENDER REASSIGNMENT	The extension of civil partnership to mixed sex couples means that a person in a civil partnership who obtains an interim GRC will no longer have to end their relationship by dissolving it or changing to marriage. The number of birth certificates that are updated due to a person acquiring a legal change of gender is fewer than 50 per year. There are very few dissolutions of a civil partnership each year due to a party to the relationship changing their gender: fewer than 10 per year.	NRS	

SEXUAL ORIENTATION	<p>Extension of civil partnership to mixed sex couples will allow them to enter into civil partnerships in Scotland if they wish.</p> <p>This also means that mixed sex couples in civil partnerships or equivalents from other parts of the UK and overseas will be able to have their relationships recognised in Scotland.</p> <p>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, the extent of 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>	NRS data on civil partnerships in Scotland Information from other countries France Netherlands New Zealand	There is little evidence of demand from mixed sex couples in Scotland for civil partnership.
RACE	The extension of civil partnership to mixed sex couples is not generally expected to impact on race.	-	None
RELIGION OR BELIEF	Some religious bodies have expressed concerns about the extension of civil partnership to mixed sex couples, in that this would undermine marriage.	2015 consultation analysis	None

	<p>In response to the EQIA produced for the 2015 consultation on the review of civil partnership, there were concerns that Christian belief and practices would be discriminated against.</p> <p>One response⁶ to the 2018 consultation set out varying views on the introduction of mixed sex civil partnership within a single religious body.</p> <p>Humanist Society Scotland have expressed strong support for mixed sex civil partnership.</p>		
MARRIAGE AND CIVIL PARTNERSHIP (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	<p>Marriage will remain available to mixed and same sex couples.</p> <p>Civil partnership would be made available to mixed sex couples. The rights and responsibilities of mixed 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 mixed sex civil partnership in Scotland.

⁶ https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/view_respondent?show_all_questions=0&sort=excerpt&order=ascending&q_text=episcopal&uuld=860792732

to Definitions of
Protected
Characteristics
document for details)

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.
Advancing equality of opportunity			✓	No real impact on this.
Promoting good relations among and between different age groups			✓	No real impact on this.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	✓			The forced civil partnership offence should help protect people who are unable to validly consent to a civil partnership due to mental incapacity.
Advancing equality of opportunity	✓			The introduction of mixed sex civil partnership may create a loophole in the law. The creation of the offence and the civil measure should close this loophole.
Promoting good relations among and between disabled and non-disabled people			✓	No real impact on this.

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

Sex	Positive	Negative	None	Reasons for your decision
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> <p>However, extension of civil partnership to mixed sex couples may advance equality of opportunity for women who do not wish to marry and who, but for the introduction of mixed sex civil partnership, would cohabit. Cohabitation attracts fewer rights and responsibilities than civil partnership. Women may be more likely to be affected by</p>

Sex	Positive	Negative	None	Reasons for your decision
				<p>the absence of rights than men due to economic gender inequality.</p> <p>The forced civil partnership offence could advance equality of opportunity for women and girls, who are more likely to be the victim of a forced marriage. The offence could act as a deterrent.</p> <p>The provisions on postponing a decree of dissolution of a civil partnership where there is a religious impediment to dissolution could advance equality of opportunity for women, who may be more likely to be placed at a disadvantage by through consent to a dissolution being withheld.</p> <p>The Scottish Government is aware of, and has reflected in the consultation, arguments that some people may wish to enter into a mixed sex civil partnership because of a perception that marriage is patriarchal, or a religious institution, or that marriage ceremonies (and the reception) give</p>

Sex	Positive	Negative	None	Reasons for your decision
				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			✓	The extension of civil partnership to mixed sex couples does not seem to impact on the promotion of good relations.

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

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
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 transgender people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	No impact on this.
Advancing equality of opportunity	✓			Mixed sex civil partnership means that a civil partnership could continue if one of the parties obtains a Gender Recognition Certificate.
Promoting good relations	✓			<p>The extension of civil partnership to mixed sex couples could improve relations between transgender people who are married and transgender people who are in civil partnerships: they will be placed on the same footing in terms of the implications of a legal change of gender on their legally recognised relationship.</p> <p>It could also promote good relations between transgender people and people in civil partnerships generally: transgender people may currently see the relationship as less accessible given (i) the need to end a civil partnership should one party to it</p>

Gender reassignment	Positive	Negative	None	Reasons for your decision
				acquire a legal change of gender or (ii) the fact that the relationship is not currently open to them if they are in a same sex relationship and they do not have a gender recognition certificate.

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

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	✓			In 2018, the UK Supreme Court found that difference in treatment in England and Wales to be incompatible with the European Convention on Human Rights. The Bill will remove that difference in treatment in Scotland by giving mixed sex couples the choice to marry or enter into a civil partnership too.
Advancing equality of opportunity	✓			The extension of civil partnership to mixed sex couples will provide equality of opportunity in terms of legally recognised relationships regardless of sexual orientation.

Sexual orientation	Positive	Negative	None	Reasons for your decision
Promoting good relations	✓			The availability of civil partnership could promote good relations between mixed sex and same sex couples generally.

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

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

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

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>Some religious or belief bodies may not wish to register mixed sex civil partnerships.</p> <p>The Civil Partnership Act 2004 currently provides that a religious or belief body can only be prescribed for the purposes of registering same sex civil partnerships if the body requests them to do so. The 2004 Act also provides that there is no duty on a religious or belief body to make such a request. Similarly, there is no duty on a religious or belief body to nominate any member as empowered to register same sex civil partnerships; neither is there a duty on any person to apply for temporary authorisation to register these relationships.</p> <p>These provisions will be replicated for mixed sex civil partnership.</p>
Advancing equality of opportunity	✓			The ability to enter into a religious or belief mixed sex civil partnership will give people the opportunity enter into the relationship in

Religion or belief	Positive	Negative	None	Reasons for your decision
				accordance with their faith or belief, in the same way as couples who wish to marry can.
Promoting good relations			✓	No impact on this.

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

Marriage and Civil Partnership⁷	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	-	-	-	(See footnote below)

⁷ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes 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.



© Crown copyright 2019



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83960-205-4 (web only)

Published by The Scottish Government, October 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS636322 (10/19)

w w w . g o v . s c o t