Review of civil partnership

A consultation by the Scottish Government

September 2015
Ministerial foreword

During the Parliamentary passage of the Marriage and Civil Partnership (Scotland) Act 2014, the Scottish Government said that we would carry out a review of civil partnership in Scotland.

This consultation is part of that review and enables civic society across Scotland to contribute to the discussion.

The three options are no change, so that civil partnership would remain available for same sex couples only; stopping new civil partnerships being registered at some date in the future; or introducing opposite sex civil partnership in Scotland.

As outlined in this consultation, the Government has considered opposite sex civil partnership. The Government is not persuaded that opposite sex civil partnership should be introduced in Scotland, although this consultation invites views on this position. As the consultation indicates, the Government is of the view that demand would be low; there would be costs; and opposite sex couples seeking to enter into a registered relationship have the option of marrying.

The Government does not have a view at this stage on which of the other two options should be followed.

The Government has already made it clear that those in existing civil partnerships will be able to remain in their civil partnerships if they wish and that these will continue to be recognised by the Scottish Government. There is no obligation on couples to change their civil partnerships to marriage if they do not wish to do so. That remains the position.

This consultation is not a referendum nor a quantitative exercise. The Government wishes to obtain factual information to help inform future policy in this area.

Due to legislative timescales, any Bill in the Scottish Parliament would be for the next Session of Parliament.

MARCO BIAGI
Minister for Local Government and Community Empowerment
September 2015
Responding to the Consultation

Closing date

The Government welcomes responses to this consultation document by 5pm on Tuesday 15 December 2015.

How to respond

Responses can either be sent through the Scottish Government’s Citizen Space consultation platform or can be sent hard copy (by sending a paper copy through the post). More details on replying through Citizen Space are outlined below.

All responses must either be through Citizen Space or by hard copy.

Replying through Citizen Space

You can respond to this consultation on-line through Citizen Space. Details are available in the Consultation Hub on the consultation section of the Scottish Government’s website: https://consult.scotland.gov.uk/

Citizen Space contains some mandatory fields asking for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published.

Replying by hard copy

Hard copy responses must include the Government’s Respondent Information Form at Annex G. This asks for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published. Please send hard copy responses to:

The Review of Civil Partnership
Room GW.15
The Scottish Government
St Andrew’s House
Regent Road
EDINBURGH
EH1 3DG

No obligation to respond to all questions

We welcome responses to some or all of the questions.
Purpose of this consultation

This consultation is part of the Scottish Government’s review of civil partnership. Its purpose is to help identify any arguments for or against each of the different options that we have not identified in this consultation paper. The consultation is not an opinion poll and the Government does not intend to analyse or report on the numbers supporting each option.

Scottish Government consultations

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at http://www.gov.scot/Consultations/.

The Scottish Government has an email alert system for consultations called SEconsult: http://www.gov.scot/Consultations/seConsult. This system allows individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

Handling your response

Where you give permission for your response to be made public, we may publish it. We will not publish any potentially defamatory or offensive material.

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.

The Government will publish an analysis of the consultation responses.

Comments, queries and complaints

If you have any comments, queries or complaints about how this consultation exercise has been conducted, please send them to:

The Review of Civil Partnership  
Family and Property Law Team  
Scottish Government  
GW.15  
St Andrew’s House  
Edinburgh  
EH1 3DG

Or e-mail: cpreview@gov.scot  
Telephone: 0131 244 3322
GLOSSARY OF TERMS USED IN THIS CONSULTATION

“The 2004 Act” is a reference to the Civil Partnership Act 2004, which established civil partnership in Scotland (and the rest of the UK).

“The 2014 Act” is a reference to the Marriage and Civil Partnership (Scotland) Act 2014. This introduced same sex marriage and the religious and belief registration of civil partnership; made other changes to marriage and civil partnership law and removed the requirement on transgender people to divorce before obtaining their full Gender Recognition Certificate.

“BRIA” is the Business and Regulatory Impact Assessment.

“CRWIA” is the Child Rights and Wellbeing Impact Assessment. For this consultation, the Government has produced an initial screening report for a CRWIA.

“EQIA” is the Equality Impact Assessment.

“NRS” is the abbreviation for National Records of Scotland. (NRS is responsible for the registration of life events such as marriage, civil partnership, births and deaths).
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CHAPTER 1: INTRODUCTION

The Civil Partnership Act 2004

1.01 The Civil Partnership Act 2004 (“the 2004 Act”), which extends across the United Kingdom, came into force in December 2005, allowing same sex couples to form a civil partnership and enjoy similar rights and responsibilities to that of a married couple. Annex B to this consultation provides more detail on civil partnership in Scotland.

1.02 Issues in relation to civil status are a devolved matter. Therefore, the Scottish Parliament can determine who can enter a civil partnership; the process for registering a civil partnership; and the rules on dissolution. Similarly, the Scottish Parliament could make changes to the status of civil partnership in Scotland.

1.03 The Marriage and Civil Partnership (Scotland) Act (“the 2014 Act”) has now been passed and is largely in force. The 2014 Act introduced same sex marriage and the religious and belief registration of civil partnerships and made 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.¹

1.04 During the Parliamentary passage of the 2014 Act, the Government indicated that it would carry out a review of civil partnership, including a consultation. The remit for this review has been published.²

No obligation to change

1.05 As the Minister indicates in his foreword, the Government has already made it clear that there is no obligation on existing civil partners to change their relationship to marriage. The Government has a number of reasons for taking this view:

- It is wrong to require people to change their civil status when they do not wish to do so. Decisions of this nature are for the couple alone.
- It is unclear what would happen if a couple just refused to change their civil status if they did not wish to do so.
- It is also unclear what rights and responsibilities a couple who refused to change their civil partnership to marriage would have.

¹ In addition, a civil partnership can stay in place when both partners obtain gender recognition on the same day.
**Civil partnership in other jurisdictions**

1.06 This consultation usually uses the term “civil partnership”. That is the term used in the 2004 Act. However, jurisdictions elsewhere use different terms such as “civil union”, “domestic partnership” and “registered partnership”.

1.07 The rights and responsibilities provided to civil partners in overseas jurisdictions vary: more details are in Annex D.
CHAPTER 2: THE NO CHANGE OPTION

Introduction

2.01 Under this option, same sex couples (only) could continue to enter into civil partnership, if they wished. Making no changes would be in line with the approach taken in England and Wales following the introduction of same sex marriage south of the border.3

Legislation required

2.02 None. Civil partnership registrations would continue in the same way as now.

Costs/savings

2.03 This option does not give rise to any costs or savings.

Arguments in favour of this option

2.04 Arguments in favour of this option are:

- It may be preferable to wait for five years from the implementation of the 2014 Act before making any further significant changes to civil partnership and marriage law. After five years, for example, reliable evidence will be available, through the data published by National Records of Scotland (NRS), of the numbers of same sex couples who continue to choose to enter into civil partnership after the option of marriage became available to them.
- Initial signs are that there continues to be a modest demand for same sex civil partnerships in 2015 even though same sex couples can now marry.4
- This option is simple and straightforward.

Question 1. Please provide any additional arguments you wish to make in favour of the no change option.

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4 Provisional figures from National Records of Scotland for the first quarter of 2015 show that following the introduction of same sex marriage there were 20 civil partnerships (12 male and 8 female), 57 fewer than during the first quarter of 2014: http://www.nrscotland.gov.uk/news/2015/births-deaths-and-other-vital-events-first-quarter-2015. Provisional figures for the second quarter of 2015 show that there were 8 civil partnerships (5 male and 3 female), 121 fewer than during the second quarter of 2014: http://www.nrscotland.gov.uk/news/2015/births-deaths-and-other-vital-events-second-quarter-2015.
Arguments against this option

2.05 Arguments against this option are:

- There would continue to be an imbalance. Same sex couples seeking to enter a registered relationship would continue to have the option of marrying or entering into a civil partnership whereas opposite sex couples would only have the option of marriage.
- There would continue to be a separate and distinct status for same sex couples. It can be argued that this goes against the general approach of treating same sex couples in the same way as opposite sex couples.

Question 2. Please provide any additional arguments you wish to make against the no change option.
CHAPTER 3: THE OPTION OF NO NEW CIVIL PARTNERSHIPS BEING ENTERED INTO IN SCOTLAND FROM A DATE IN THE FUTURE

Introduction

3.01 The Scottish Government has already indicated that existing civil partners can stay in their civil partnership if they so wish, and that these civil partnerships would continue to be recognised by the Scottish Government. There is no obligation on existing civil partners to change their relationship into marriage. Therefore, this option does not represent the abolition of civil partnership.

3.02 Instead, the option would consist of making provision so that no more new civil partnerships could be entered into in Scotland from a given date in the future. Such a date might, for example, be two years after any Bill is granted Royal Assent.\(^5\) Having a long lead-in time of this nature would ensure widespread awareness of what was proposed and would avoid disrupting or otherwise affecting any civil partnership ceremonies that were already planned.

3.03 Under this option, opposite sex and same sex couples would continue to be able to get married, if they wished. From the date in the future, there would be no option of entering into a civil partnership in Scotland.

3.04 A number of countries (examples are given below) have decided following the introduction of same sex marriage to make provision so that no new civil partnerships are formed once same sex marriage is available.

3.05 Denmark introduced civil partnership in 1989. When Denmark introduced same sex marriage in 2012, its law on civil partnerships was repealed although there was no obligation on existing civil partners to change their relationship into marriage.

3.06 Sweden introduced registered partnerships in 1995. It introduced same sex marriage in 2009. Again, no new civil partnerships can now be formed although there was no obligation on existing civil partners to change their relationship into marriage.

3.07 Following the constitutional referendum in the Republic of Ireland on 22 May 2015, the Irish Government is preparing legislation to introduce same sex marriage. The intention in Ireland is that there will be no new civil partnerships after the legislation comes into effect. Existing civil partners will continue to retain that status and the rights, privileges, obligations and liabilities associated with it, unless they choose to marry. Existing civil partners will be able to marry each other with their civil partnership being dissolved if they do so.

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\(^5\) The monarch must give consent for a Bill to become law. Further information about Royal Assent is at [http://www.scottish.parliament.uk/help/66524.aspx](http://www.scottish.parliament.uk/help/66524.aspx).
On-going demand for same sex civil partnerships in Scotland

3.08 In relation to the potential future demand for same sex civil partnerships in Scotland:

- Evidence from other countries suggests that when same sex marriage and civil partnership are both available to same sex couples, most, but not all, same sex couples choose marriage rather than civil partnership. Annex D provides some statistics. They show, for example, a significant demand for same sex civil partnerships in the Netherlands but much less of a demand in New Zealand, where the vast majority of couples choose marriage rather than civil partnership. In Hawaii, the number of civil partnerships has declined following the introduction of same sex marriage in 2013.
- It is too early for significant statistics on the number of civil partnerships in Scotland following the introduction of same sex marriage but information so far suggests there continues to be a modest demand for civil partnership.
- Whilst a number of couples are choosing to change their civil partnership into marriage, others are choosing to remain in their civil partnership.

3.09 The Government’s initial conclusion therefore is that when same sex couples decide to enter in future into a legally recognised relationship, most will choose marriage but some will choose civil partnership.

Legislation required

3.10 The Civil Partnership Act 2004 makes provision about the formation of a civil partnership. If no new civil partnerships could be entered into after a specified future date, provision would need to be made in primary legislation (through a Bill in the Scottish Parliament) to this effect. Secondary legislation (in the form of regulations) would also be required. This is because there would no longer be any need for forms relating to civil partnership such as the form on giving notice of intention to enter into a civil partnership and the civil partnership schedule.

3.11 However, provisions on the responsibilities and rights enjoyed by civil partners would remain in place for the foreseeable future, given that there would continue to be civil partners who choose not to change their relationship into marriage. In addition, provisions on dissolving a civil partnership would remain in place.

3.12 The 2004 Act extends across the United Kingdom. Under this option, civil partnerships formed in England and Wales and Northern Ireland would continue to be treated as civil partnerships in Scotland.

3.13 In addition, same sex relationships other than marriages registered overseas would continue to be treated as civil partnerships in Scotland, provided certain criteria are met. The Scottish Government has laid an Order before Parliament so that couples in a same sex relationship registered outwith Scotland which is treated as a civil partnership in Scotland can, if they wish, change their civil partnership to marriage through having a marriage ceremony in Scotland. This is subject to Parliamentary approval of the Order.
3.14 In time, there would be a need to review references to civil partnerships in legislation generally, given that no new civil partnerships would be formed in Scotland after a specified date.

3.15 However, this review would be some way off given that existing civil partnerships from Scotland and from other jurisdictions would remain.

**Costs/savings**

3.16 There would not be significant costs or savings to this option. In time, there might be some modest savings as some forms (e.g. the form giving notice of intention to enter into a civil partnership) would be abolished. However, the Government considers that total savings from this option would be unlikely to exceed £100,000 in total.

**Arguments in favour of this option**

3.17 Arguments in favour of this option are:

- It reduces complexity in that the option for couples in the future – whether opposite sex or same sex – would be to get married.
- It removes a separate status for same sex couples. However, as indicated above, the status would remain for the foreseeable future, given that existing civil partners can remain in their civil partnership, if they wish, and people aged 16 or over have, since 2005, been able to enter into a civil partnership. In addition, civil partnerships from outwith Scotland will continue to be recognised.
- It is more likely that a couple would have their marriage recognised in foreign countries as opposed to their civil partnership as the recognition of marriage is well-established worldwide, and the rights and responsibilities across the world more consistent.

Question 3. Please provide any additional arguments you wish to make in favour of the option of no new civil partnerships being entered into from a date in the future.
**Arguments against this option**

3.18 Arguments against this option are:

- It would remove an option currently available to same sex couples. As indicated above, the Government expects that there will be a continuing, though modest, demand for same sex civil partnerships. Most same sex couples seeking to enter a legally recognised relationship will choose to marry.
- Civil partnership allows same sex couples who believe marriage to be a union meant for opposite sex couples to gain rights and recognition of their relationship without getting married.
- Although there would be no obligation on existing civil partners to change their relationship into marriage, they might perhaps feel some pressure to do so as civil partnership would increasingly become a legacy status.
- The Government’s consultation on the registration of civil partnership and same sex marriage showed support for retaining civil partnership.\(^6\)

| Question 4. Please provide any additional arguments you wish to make against the option of no new civil partnerships being entered into from a date in the future. |

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\(^6\) See the analysis of the responses to this question. Paragraphs 7.30 to 7.35 refer. [http://www.gov.scot/Publications/2012/07/5671/9#table21](http://www.gov.scot/Publications/2012/07/5671/9#table21)
CHAPTER 4: OPPOSITE SEX CIVIL PARTNERSHIP

4.01 The Scottish Government has also carefully considered the possible introduction of opposite sex civil partnership in Scotland. For these purposes, the Government assumed that opposite sex civil partnership would be along the same lines as same sex civil partnership, with similar formal arrangements for entering the relationship and for dissolving it and with similar rights and responsibilities.

4.02 Following this consideration, the Government is not persuaded that opposite sex civil partnership should be introduced in Scotland. The Government has a number of reasons for this decision, as outlined below:

- The Government considers that demand for opposite sex civil partnership in Scotland would be low. Evidence from other countries is that when the rights and responsibilities of opposite sex married couples and opposite sex civil partners are on the same lines, the vast majority of opposite sex couples seeking to enter into a registered relationship get married.
- The recognition of opposite sex civil partnership elsewhere in the UK and overseas would be limited.
- Society’s understanding of opposite sex civil partnership might be limited.
- If couples do not wish to marry, Scots law provides some rights already for cohabitants.
- Some of the arguments for opposite sex civil partnership seem to be based on perceptions that, for example, marriage is a religious or patriarchal institution. However, it is perfectly possible to have a civil (or belief) marriage ceremony, if the couple so wish. And it is for the couple themselves to determine the nature of their own marriage.
- Opposite sex civil partnership would increase complexity.
- There would be disproportionate costs to opposite sex civil partnership.

4.03 In reaching this conclusion, the Scottish Government considered some of the issues which might arise in relation to opposite sex civil partnerships. For completeness, these issues are outlined in Annex C.

Question 5. Do you have any comments on the Government’s view that there are insufficient reasons for introducing opposite sex civil partnership in Scotland? If yes, please outline these comments.
CHAPTER 5: CONCLUSION

5.01 In line with usual practice, partial Impact Assessments have been prepared. A partial Business and Regulatory Impact Assessment or BRIA is attached at Annex H and a partial Equality Impact Assessment or EQIA is attached at Annex I. The Government would produce a full BRIA and EQIA for any Bill it introduced into Parliament.

5.02 In addition, the Government has introduced a new Impact Assessment, the Child Rights and Wellbeing Impact Assessment (CRWIA). A screening report for a CRWIA is at Annex J. The Government would intend to produce a full CRWIA for any Bill it introduced into Parliament.

5.03 The Government does not consider that the following Impact Assessments are required:

- Strategic Environmental Assessment (SEA)
- Privacy Impact Assessment (PIA)

Question 6. Please provide any comments you have on the partial Business and Regulatory Impact Assessment (BRIA), on the partial Equality Impact Assessment (EQIA) and on the screening report for the Child Rights and Wellbeing Impact Assessment (CRWIA).

5.04 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

5.05 The Government would also prepare a Delegated Powers Memorandum.

Family and Property Law
Justice Directorate
Scottish Government

September 2015
ANNEX A: LIST OF CONSULTEES

LIST OF ORGANISATIONS WHO HAVE BEEN SENT THIS PAPER

Action of Churches Together Scotland
Affirmation Scotland
Al-Jannah
Apostolic Church
Assemblies of God
Associated Presbyterian Churches of Scotland
Association of Pension Lawyers
Association of Registrars of Scotland
Baha’i Council for Scotland
Baptist Union of Scotland
Barnardo’s
BiScotland
Centre for Research on Families and Relationships
Children 1st
Children in Scotland
Church of Christ
Church of Jesus Christ of Latter-Day Saints (Mormon Church)
Church of Scotland
Church of the Nazarene
Christian Brethren
Christian Institute
Confederation of British Industry Scotland
Congregational Federation
Convention of Scottish Local Authorities
Edinburgh Inter Faith Association
Elim Pentecostal Church
Equality and Human Rights Commission Scotland
Equality Network
Evangelical Alliance
Faculty of Advocates
Families Need Fathers
Family Law Association
Federation of Small Businesses in Scotland
Fife Buddhist Group
Forum of Private Business
Free Church of Scotland
Free Church of Scotland (Continuing)
Free Presbyterian Church of Scotland
Galva 108
Gay and Lesbian Humanist Association
Glasgow Jewish Educational Forum
Hindu Temple of Scotland
Humanist Fellowship of Scotland
Humanist Society Scotland
Imaan
Institute of Directors Scotland
Jehovah’s Witnesses
Jewish Gay and Lesbian Group
Law Society of Scotland
Lesbian and Gay Christian Movement
LGBT National Youth Council
LGBT Network
LGBT Youth Scotland
All Local Authority Chief Executives in Scotland
Members of the European Parliament representing Scotland
Methodist Church in Scotland
Metropolitan Community Church
Muslim Council of Scotland
National Records of Scotland
NUS Scotland
OneKirk
One Spirit Interfaith Seminary
Open Episcopal Church in Scotland
Pagan Federation of Scotland
The Pensions Advisory Service
The Pensions Regulator
Plymouth Brethren
Quaker Lesbian and Gay Fellowship
Reformed Presbyterian Church of Scotland
Relationships Scotland
Religious Society of Friends (Quakers)
River of Life Church
Roman Catholic Church
Salvation Army
Scotland for Marriage
Scotland’s Commissioner for Children and Young People
Scottish Chambers of Commerce
Scottish Christian Party
Scottish Churches Parliamentary Office
Scottish Conservative and Unionist Party
Scottish Council of Jewish Communities
Scottish Council for Voluntary Organisations
Scottish Courts and Tribunals Service
Scottish Episcopal Church
Scottish Green Party
Scottish Human Rights Commission
Scottish Inter Faith Council
Scottish Labour Party
Scottish Law Commission
Scottish Legal Aid Board
Scottish Liberal Democrats
Scottish Local Government Partnership
Scottish National Party
Scottish Trades Union Congress
Scottish Transgender Alliance
Scottish Unitarian Association
Scottish Women’s Aid
Scottish Youth Parliament
Seventh-Day Adventists
Sheriffs’ Association
Sikhs in Scotland
The Spark
Spiritualists’ National Union
Stonewall Scotland
United Free Church of Scotland
United Reformed Church
The Venerable Rewatha (Scotland’s Buddhist Vihara)
Visit Scotland
ANNEX B: CIVIL PARTNERSHIP IN SCOTLAND: BACKGROUND

Background

1. 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.

2. The 2004 Act provides:
   - Civil partnership in Scotland is available to same sex couples only.
   - Like marriage, neither party may already be party to a civil partnership or marriage.
   - Both parties must be over 16.
   - The couple must not be related in the forbidden degrees of relationship. Forbidden degrees of relationship are close relatives through consanguinity (e.g. two sisters, father and son, aunt and niece) or affinity.

3. The responsibilities and rights of civil partners are very similar to those of married couples.

4. National Records of Scotland produce statistics on the number of civil partnerships entered into each year in Scotland. In broad terms:
   - After the initial demand following the establishment of the status, there were around 500 civil partnerships a year in Scotland.
   - In more recent years, more women than men have entered into civil partnerships.

5. Following the introduction of same sex marriage, the Government expects that most same sex couples will choose to marry, rather than enter a civil partnership.

6. The 2004 Act makes provision on same sex overseas relationships other than marriage being treated as civil partnerships in the United Kingdom, including Scotland. To be treated as a civil partnership, an overseas relationship must be:
   - Either a specified relationship or a relationship which meets general conditions.
   - Registered by a responsible authority outwith 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.

7. In respect of the first requirement, under the 2004 Act, “a specified relationship” is a relationship listed in Schedule 20 to the Act, as amended. It is also possible for a relationship from outwith the UK to be treated as a civil partnership in Scotland if general conditions are met. The general conditions, contained in section 214 of the 2004 Act, are that under the relevant law (i.e. the law of the country or territory where the relationship is registered):

- 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.

8. Since 16 December 2014, it has been possible for couples in a civil partnership registered in Scotland to change their relationship to a marriage if they so wish. The Scottish Government has laid an Order before Parliament so that couples in a civil partnership registered outwith Scotland will also be able to change their relationship into a marriage in Scotland, if they so wish.

Rights and responsibilities of civil partners

9. Civil partners and married couples have the same rights and responsibilities in a variety of areas, including:

- Succession.
- Recognition for immigration and nationality purposes. (This is reserved to the UK Government).
- Right to obtain civil protection orders to protect against domestic abuse. For example, an order prohibiting someone from approaching a certain person or place.
- Rights in relation to tenancy agreements.
- Obligations of aliment (to financially maintain each other and any children).
- Rights in relation to financial provision on divorce or dissolution.
- Eligibility in certain circumstances for the marriage allowance (which extends to civil partners) in taxation.  
  *(This is reserved to the UK Government).*

10. There are some differences. In particular, survivor benefits in some pension schemes may be lower for some surviving civil partners when compared with some surviving spouses. For this purpose, same sex surviving spouses were generally aligned with civil partners. This is largely a reserved matter for the UK Government although the Scottish Government has some devolved responsibilities for some public sector pension schemes.

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ANNEX C: OPPOSITE SEX CIVIL PARTNERSHIP - MORE DETAIL

Introduction

1. As indicated in Chapter 4 of the consultation, the Government is not persuaded that opposite sex civil partnership should be introduced in Scotland. In considering this issue, the Government examined what form opposite sex civil partnership might take. This annex outlines this examination by the Government.

The nature of civil partnerships for opposite sex couples

2. The Scottish Government assumed that opposite sex civil partnership would be established along similar lines to same sex civil partnership. Civil partnerships generally would be formed and dissolved in the same way and would attract similar rights and responsibilities.

3. Any recognition of opposite sex civil partnership in Scotland would not extend to England and Wales and Northern Ireland. The UK Government and the Northern Ireland Executive would need to consider whether and how these relationships would be recognised. In the absence of any specific legislation, recognition would normally be for the courts to decide.

4. It appears to the Scottish Government that it is unlikely that there would be much recognition of opposite sex civil partnerships outwith Scotland.

Assessing demand

5. Evidence from other jurisdictions is helpful. The figures from the Netherlands (Annex D refers), where they have had marriage and civil partnerships for a number of years, show that:

- In absolute terms, more opposite sex couples than same sex couples enter into a civil partnership.
- However, most opposite sex couples choose to marry rather than enter into a civil partnership. In 2013, 87.5% of opposite sex couples chose marriage and 12.5% chose civil partnership.
- Same sex couples are more likely than opposite sex couples to choose a civil partnership. In 2013, 75% of same sex couples forming a union chose marriage and 25% civil partnership.

6. In New Zealand, very few couples have chosen civil partnership. The vast majority have chosen marriage. Annex D provides information on this.

7. In France, their equivalent of civil partnership, the Pacte Civil de Solidarité (PACS) is very popular for opposite sex couples, as the figures in Annex D show.
8. It appears that in countries (such as the Netherlands and New Zealand) where civil partnership and marriage provide very similar rights and responsibilities, couples generally choose to get married. This appears to contrast with the position where a legally recognised relationship with lesser rights and responsibilities is available, such as the PACS: the take-up of these relationships seems higher. In Scotland, cohabitants already have some limited rights and responsibilities, and the rights and responsibilities afforded through civil partnership would be more akin to those of the Netherlands and New Zealand.

9. The Government’s conclusion on likely demand for opposite sex civil partnership in Scotland is:

- Most opposite sex couples seeking to enter into a legally recognised relationship would continue to get married.
- There would be, in absolute terms, more opposite sex civil partnerships than same sex civil partnerships.
- There would be a demand for opposite sex civil partnerships but evidence from comparable jurisdictions, such as the Netherlands and New Zealand, suggests that demand might be relatively modest.

Cohabitants’ rights

10. When considering the potential introduction of opposite sex civil partnership in Scotland, the Government has taken account of the fact that cohabitants (both opposite sex and same sex) already have some rights in Scots law.

11. The Family Law (Scotland) Act 2006 extended the rights for cohabitants, in particular with regards to when cohabitation ends. Provision in the 2006 Act includes:

- A presumption of equal shares of 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 to ask the court to make an order for financial provision when a former cohabitant has been financially disadvantaged;
- 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.

12. For more information, please see the Scottish Government leaflet ‘Family Matters Living Together In Scotland’.¹⁰

¹⁰ http://www.gov.scot/Publications/2006/04/27135238/0
13. The Scottish Government does not plan to make any changes to cohabitants’ rights, although the Government has, following reports by the Scottish Law Commission, consulted on the law of succession. This may impact on provisions for cohabitants when their partner dies without leaving a will.\(^\text{11}\)

14. Annex F to this consultation provides more information on the number of cohabitants in Scotland.

**Legislation that would be required to introduce opposite sex civil partnership**

**Entering an opposite sex civil partnership**

15. The Government assumed that entering into an opposite sex civil partnership would be along the same lines as entering into a same sex civil partnership. Therefore, a couple could have a religious or belief or civil ceremony,\(^\text{12}\) provided that the religious or belief body had decided to opt into the registration of civil partnerships. The usual notice period (now a minimum of 28 clear days) and fees for entering a civil partnership would apply.

16. Following the 2014 Act, the UK Equality Act was amended to respect the rights of religious and belief celebrants who do not wish to take part in the solemnisation of same sex marriage or the religious or belief registration of civil partnership. Any proposed introduction of opposite sex civil partnership would require the Scottish Government to consider, with religious and belief bodies and the UK Government, if any legislative provision would be needed to respect the rights of religious and belief celebrants who would not wish to take part in the religious or belief registration of opposite sex civil partnership.

17. The Government assumed that eligibility criteria for entering an opposite sex civil partnership would reflect the criteria for entering a same sex civil partnership, which in turn reflect the criteria for marriage. Therefore:

- They are not related to each other in a way which would prevent them from entering into a civil partnership. (Both marriage and civil partnership legislation make provision known as the “forbidden degrees” with people related in 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 understanding the nature of civil partnership and validly consenting to its formation.

\(^{11}\) Chapter 4 of the Government’s consultation on the law of succession discusses the position in relation to cohabitants: [http://www.gov.scot/Publications/2015/06/7518/6](http://www.gov.scot/Publications/2015/06/7518/6).

\(^{12}\) The 2014 Act introduced religious and belief ceremonies to register same sex civil partnerships.
18. 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. Any proposed introduction of opposite sex civil partnership would require the Scottish Government to consider with the UK Government if any similar service would be provided, in some cases, to couples seeking to enter an opposite sex civil partnership.

Dissolving a civil partnership

19. The Scottish Government assumed that the provisions on dissolving an opposite sex civil partnership would reflect the provisions on dissolving a same sex civil partnership. This would lead to two grounds for dissolving an opposite sex 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.

20. The irretrievable breakdown of a civil partnership may be established by:

- Unreasonable behaviour
- The couple not living together for one year, where they both consent to the dissolution
- The couple not living together for two years.

21. In relation to the divorce of a marriage, the irretrievable breakdown of a marriage can be established by adultery. Adultery is defined through case-law as sexual intercourse with a person of the opposite sex outwith the marriage. Other forms of sexual infidelity outwith the relationship can be treated as unreasonable behaviour. Any proposed introduction of opposite sex civil partnership would require the Scottish Government to consider whether adultery would be one of the ways of establishing the irretrievable breakdown of an opposite sex civil partnership.

Changing an opposite sex civil partnership into marriage

22. The 2014 Act contains provision so that couples in a same sex civil partnership can change their relationship into marriage if they wish through having a marriage ceremony or through an administrative route. Any proposed introduction of opposite sex civil partnership would require similar provision so that opposite sex civil partners could change their civil partnership into marriage, if they so wished.

Gender recognition

23. Currently, a person in a civil partnership seeking gender recognition and wishing to stay in a legally recognised relationship has to change the civil partnership into marriage, unless both parties in the civil partnership change gender on the same day. This is because we do not recognise opposite sex civil partnership. Any proposed introduction of opposite sex civil partnership would allow the person applying for gender recognition to remain in their civil partnership.
Responsibilities and rights

General

24. The Government assumed that opposite sex civil partners would have the same rights and responsibilities as same sex civil partners. However, there is further discussion below on recognition outwith Scotland.

25. In addition, any proposed introduction of opposite sex civil partnership means that some provision which currently applies to spouses in opposite sex marriages might also apply to partners in opposite sex civil partnerships. More details are outlined below.

Parentage

26. Section 5 of the Law Reform (Parent and Child) (Scotland) Act 1986 provides that a man shall be presumed to be the father of a child if he was married to the mother at any time in the period beginning with the conception and ending with the birth of the child. This presumption is rebuttable on a balance of probabilities. Our starting position was that any proposed introduction of opposite sex civil partnership would provide that the mother’s male civil partner would be treated in the same way as the mother’s husband. Therefore, a man in a civil partnership with the mother would be treated as the father of her child.

27. Section 35 of the Human Fertilisation and Embryology Act 2008 makes provision so that a man married to a woman undergoing fertility treatment is treated as the father of her child provided he consented to the treatment. Any proposed introduction of opposite sex civil partnership would provide that the mother’s male civil partner would be treated in the same way as a married man in relation to section 35. Therefore, a man in a civil partnership with the mother would be treated as the father of her child. There are reserved implications in relation to the 2008 Act and the Scottish Government would need to consider the approach outlined in this paragraph with the United Kingdom Government.

Parental responsibilities and rights (PRRs)

28. The law sets out responsibilities which parents have when bringing up their children and the rights they have so they can fulfil their responsibilities. Together, these are called “parental responsibilities and rights” (PRRs). In legislation relating to children, the paramount consideration is the welfare and wellbeing of the child. The mother of the child automatically receives PRRs. The father receives PRRs if:

- He is married to the mother at the time of conception or subsequently.
- He jointly registers the birth with the mother.
- He and the mother jointly register a Parental Responsibilities and Parental Rights Agreement in the Books of Council and Session.
- He is given them by the court.
29. Any proposed introduction of opposite sex civil partnership would mean that men in such a civil partnership would be treated in the same way as married men in relation to PRRs. Therefore, a man in a civil partnership with the mother at the time of conception or subsequently would receive PRRs.

Peerages, honours and dignities

30. This is a reserved area. Hereditary peerages are usually inherited by children born to opposite sex parents who are married to each other. It seems unlikely this would be changed to extend to children born to parents who are in a civil partnership with 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. It seems unlikely this would be extended to the female civil partner of a knight.

Pension schemes

31. This issue is discussed further under the costs section, below.

Recognition elsewhere in the UK and overseas

32. As indicated elsewhere, the UK Government, following its Civil Partnership Review, decided to make no change to the arrangements in England and Wales. As a consequence, individuals south of the border cannot enter into an opposite sex civil partnership and there are currently no plans to change this. Similarly, opposite sex civil partnerships from outwith England and Wales are not recognised within that jurisdiction. There are also no opposite sex civil partnerships in Northern Ireland. Therefore, following any proposed introduction of opposite sex civil partnership in Scotland, recognition of these elsewhere in the United Kingdom would be limited.

33. Overseas, only a relatively small number of jurisdictions have established opposite sex civil partnerships: Annex D discusses this further. Therefore, following any proposed introduction of opposite sex civil partnership recognition overseas of opposite sex civil partnerships formed in Scotland would be limited. (Dissolution overseas of an opposite sex civil partnership may also be difficult, given this limited recognition). This contrasts with opposite sex marriage which has a wide recognition around the world.

34. Following any proposed introduction of opposite sex civil partnership in Scotland, overseas opposite sex civil partnerships registered with a responsible authority and which satisfied certain conditions would be recognised in Scotland. However, at the moment, there is no such recognition and a person in an overseas opposite sex civil partnership is, under Scots law, free to marry or enter into a same sex civil partnership here because the overseas opposite sex civil partnership would not be recognised in Scotland. (It may also be possible for such a person to marry or enter a same sex civil partnership in a third jurisdiction which does not recognise opposite sex civil partnership). Therefore, an opposite sex civil partnership from outwith Scotland would only be recognised in Scotland provided that neither of the couple had subsequently married or had a same sex civil partnership.
Costs/savings

35. Longer-term costs in relation to opposite sex civil partnership are not easy to estimate. However, any proposed introduction of opposite sex civil partnership in Scotland would lead to additional costs in some areas. In particular, there would be:

- One off set-up costs for National Records of Scotland and local authorities in relation to changes to registration systems.
- Longer-term costs for bodies such as pension providers and the Scottish Legal Aid Board.

36. In some cases, longer-term costs might be displaced existing costs rather than new additional costs. This reflects that couples obtain rights and responsibilities when they marry and that cohabitants have some legal rights as well. There is further discussion in the Business and Regulatory Impact Assessment (BRIA), at Annex H.

National Records of Scotland

37. 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. Based on the recent experience with same sex marriage, we estimate these one-off costs at around £200,000 in total.

Local authorities

38. Any proposed introduction of opposite sex civil partnership in Scotland could lead to costs for local authorities. Local authority registrars would need to become familiar with opposite sex civil partnership. Expenditure here would be modest given that opposite sex civil partnership would be along the same lines as same sex civil partnership. Given this, we estimate total one-off costs at around £200,000 in total. There are registration fees for marrying or entering a civil partnership and these would apply to opposite sex civil partnership too.

The legal aid budget

39. 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. Not all of these costs would necessarily be new as there can already be legal aid costs in relation to any disputes when cohabitation comes to an end.

40. 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.

41. If the total number of registered opposite sex relationships increased by 10%, the costs to the legal aid budget might be around £2.3 million a year.
Pension schemes

Devolved public sector schemes

42. 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).

43. We 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.

44. 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.

45. If the total number of registered opposite sex relationships increases by 10%, the costs to the devolved public sector pensions could be up to £17.5 million a year.

46. However, in practice, costs could be lower. More details are contained in the BRIA at Annex H. In brief, 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 may, in some circumstances, already be entitled to pension benefits.

Reserved public sector pension schemes

47. 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.

Private sector occupational pension schemes

48. It is uncertain whether there would be any recognition of opposite sex civil partners in private sector occupational pension schemes. The regulation of such schemes is a reserved matter for the UK Government.

The state pension scheme

49. The state pension is a reserved matter for the United Kingdom Government. In the current state pension scheme (applicable to anyone reaching state pension age before 6 April 2016) there are different rules for married men and married women in opposite sex marriages in respect of certain benefits payable by reference to a spouse’s National Insurance contributions. Civil partners and married same sex couples are treated as married men for state pension purposes (some exceptions apply in relation to the wives and widows of persons who changed gender from male to female during the marriage).
50. It is uncertain whether there would be any recognition of opposite sex civil partners in the state pension scheme.

Costs of equalising survivor benefits in pension schemes

51. The UK Government has recently carried out a review of the costs of equalising survivor benefits.\textsuperscript{13}

\textsuperscript{13} This UK review of survivor benefits in pension schemes is at https://www.gov.uk/government/publications/occupational-pension-schemes-review-of-survivor-benefits.
ANNEX D: CIVIL PARTNERSHIP IN OVERSEAS 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”. For convenience, the term “civil partnership” is generally used in this annex. However, as outlined below, the issues go beyond just the terminology used.

2. The rights and responsibilities given to civil partners vary from jurisdiction to jurisdiction. In Scotland, and the United Kingdom as a whole, same sex civil partners enjoy broadly the same rights and responsibilities as married couples. The Netherlands has taken a similar approach in relation to both same sex and opposite sex civil partners. However, the French PACS (Pacte Civil de Solidarité) provides fewer rights than marriage.

3. In the United States, some states have established civil unions and some states have established domestic partnerships. In broad terms, civil unions tend to provide more rights and responsibilities than domestic partnerships.

4. In some cases, provision for opposite sex civil partnerships has not been made at a national level in a jurisdiction but has been made at a state or regional or local level.

5. Some jurisdictions (including Scotland) have made provision so that cohabitants obtain rights and responsibilities, generally lesser than the rights available to spouses or civil partners, without the need to register the cohabitation formally.

6. Some jurisdictions have introduced a form of “registered cohabitation”.

7. The jurisdictions across the world which have established rights for unmarried opposite sex couples have not taken a consistent approach. In addition, the position in the various countries across the world may change at any given moment.

Jurisdictions overseas which have established a form of opposite sex civil partnership

8. The Scottish Government understands that the jurisdictions in the table below have introduced a form of opposite sex civil partnership. As indicated above, the rights and responsibilities of persons in these civil partnerships will vary from country to country.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Name of relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andorra</td>
<td>Union estable de parella (Stable union of partnership)</td>
</tr>
<tr>
<td>Belgium</td>
<td>Cohabitation légale (Legal cohabitation)</td>
</tr>
<tr>
<td>Chile</td>
<td>Acuerdo de unión civil (Union of civil agreement)</td>
</tr>
<tr>
<td>Colombia</td>
<td>Unión de hecho (Cohabiting union)</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Unión de hecho (Cohabiting union)</td>
</tr>
<tr>
<td>Estonia</td>
<td>Civil union</td>
</tr>
<tr>
<td>France</td>
<td>Pacte Civil de Solidarité or PACS (Civil Pact of Solidarity).</td>
</tr>
<tr>
<td>Greece</td>
<td>Civil union</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Partenariat (PACS)</td>
</tr>
<tr>
<td>Malta</td>
<td>Civil union</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Registered partnership</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Civil union</td>
</tr>
<tr>
<td>South Africa</td>
<td>Civil partnership</td>
</tr>
<tr>
<td>United States</td>
<td>evolves varies only</td>
</tr>
<tr>
<td>Uruguay</td>
<td>Unión concubinaria (cohabiting union)</td>
</tr>
</tbody>
</table>

The legislation in Chile and in Estonia is not yet in force.

Civil unions in Greece are open to opposite sex couples only. There has been a case in the European Court of Human Rights on this.\(^{14}\)

**Information on jurisdictions**

**Netherlands**

9. In the Netherlands marriage and civil partnership are open to both same and opposite sex couples.\(^{15}\) Key statistics from 2013 are:

<table>
<thead>
<tr>
<th>Status</th>
<th>Total</th>
<th>Opposite sex</th>
<th>Same sex</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>64,549</td>
<td>63,327</td>
<td>1,222</td>
</tr>
<tr>
<td>Partnership</td>
<td>9,445</td>
<td>9,038</td>
<td>407</td>
</tr>
<tr>
<td>Total</td>
<td>73,994</td>
<td>72,365</td>
<td>1,629</td>
</tr>
</tbody>
</table>

\(^{14}\) The ECHR judgment on civil unions in Greece is at [http://hudoc.echr.coe.int/eng#?l=ENG&d=001-128294].\(^{15}\) Information on numbers from Statistics Netherlands is at [http://statline.cbs.nl/StatWeb/publication/?DM=SLEN&PA=37772eng&D1=0-47&D2=0.10,20,30,40,50,(l-1)-&LA=EN&VW=T].
The table below provides a greater breakdown on same sex relationships.

<table>
<thead>
<tr>
<th>Status</th>
<th>Same sex</th>
<th>Between men</th>
<th>Between women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>1,222</td>
<td>522</td>
<td>700</td>
</tr>
<tr>
<td>Partnership</td>
<td>407</td>
<td>208</td>
<td>199</td>
</tr>
<tr>
<td>Total</td>
<td>1,629</td>
<td>730</td>
<td>899</td>
</tr>
</tbody>
</table>

10. Another option in the Netherlands is to enter into a cohabitation agreement. In these cases a notary may draw up an official contract between parties. The cohabitation is not required to be notarised. However, a notarised cohabitation agreement may be necessary to gain access to certain rights, such as a partnership pension scheme and fringe benefits.16

**New Zealand**

11. Civil unions were introduced in New Zealand in 2005 and are available to both same sex and opposite couples. They provide comparable rights and responsibilities to marriage.

12. Statistics New Zealand publish figures on marriages and civil unions.17 Key statistics from 2014 on marriages and civil unions registered in New Zealand are:

<table>
<thead>
<tr>
<th>Status</th>
<th>Total</th>
<th>Opposite sex</th>
<th>Same sex</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>23,023</td>
<td>22,146</td>
<td>877</td>
</tr>
<tr>
<td>Civil union</td>
<td>63</td>
<td>35</td>
<td>28</td>
</tr>
<tr>
<td>Total</td>
<td>23,086</td>
<td>22,181</td>
<td>905</td>
</tr>
</tbody>
</table>

The table below provides a greater breakdown on same sex relationships.

<table>
<thead>
<tr>
<th>Status</th>
<th>Same sex</th>
<th>Between men</th>
<th>Between women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>877</td>
<td>373</td>
<td>504</td>
</tr>
<tr>
<td>Civil union</td>
<td>28</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>905</td>
<td>381</td>
<td>524</td>
</tr>
</tbody>
</table>

The figures above include 150 transfers of civil unions (both opposite sex and same sex) to marriage and may include a small number of transfers of marriages to civil unions.

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France

13. The French status of PACS (Pacte Civil de Solidarité) provides fewer rights and responsibilities than marriage. The PACS was introduced on 15 November 1999, for same and opposite sex couples. The process establishes rights and responsibilities between the participants, allowing couples to sign a contract formalising their relationship. As a result, couples in a PACS receive some benefits formerly only available to married couples in areas such as inheritance, housing, social welfare and taxation.

14. A PACS can be dissolved by a request made by one or both signatories to the civil court. The relationship is also automatically dissolved by marriage or death of one or either signatory.

15. Same sex marriage was introduced in France in May 2013. Statistics on marriage and PACS in France in 2013 are:

<table>
<thead>
<tr>
<th>Total marriage:</th>
<th>238,592</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opposite sex marriage:</td>
<td>231,225</td>
</tr>
<tr>
<td>Same sex marriage:</td>
<td>7,367</td>
</tr>
<tr>
<td>Total PACS:</td>
<td>168,126</td>
</tr>
<tr>
<td>Total opposite sex PACS:</td>
<td>162,072</td>
</tr>
<tr>
<td>Total same sex PACS:</td>
<td>6,054</td>
</tr>
</tbody>
</table>

Hawaii

16. Civil unions were introduced with effect from 1 January 2012. The legislation allows individuals in a civil union to enjoy all the same rights and responsibilities of a married couple. (Hawaii also has a status known as reciprocal beneficiary relationship).

17. The State of Hawaii publishes statistics on marriages and civil unions.

18. In 2012, there were 730 civil unions and 23,723 marriages.

19. In 2013, there were 388 civil unions and 22,813 marriages.

20. In 2014, there were 32 civil unions and 25,130 marriages.

21. Same sex marriage in Hawaii was introduced in December 2013.

22. Between December 2013 and June 2015 there were a total of 38,254 marriages in Hawaii of which 4,028 were same sex marriages.

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ANNEX E: APPROACHES TAKEN TO CIVIL PARTNERSHIP WHEN INTRODUCING SAME SEX MARRIAGE

The table below outlines the Scottish Government’s understanding of jurisdictions other than Scotland which have same sex marriage and their approach to civil partnership.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Approach to civil partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>It appears that civil unions for both opposite sex and same sex couples are available in some districts in Argentina.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Same sex marriage was introduced in Belgium in 2003. In 2000, &quot;cohabitation légale&quot; was introduced for both opposite sex and same sex couples. This remains available.</td>
</tr>
<tr>
<td>Brazil</td>
<td>It appears that União Estável (stable union) remains available for both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Canada</td>
<td>Civil partnerships have not generally been established in Canada although some provision has been made in some provinces. This provision seems to be open to both opposite sex and same sex couples and includes Domestic Partnerships in Nova Scotia; Civil Unions in Quebec; Common Law Relationships in Manitoba; and Adult Interdependent Relationships in Alberta.</td>
</tr>
<tr>
<td>Denmark</td>
<td>Denmark introduced registered partnerships for same sex couples in 1989. Denmark introduced same sex marriage in 2012 and registered partnerships are no longer available.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>Following its review, the UK Government has decided to make no changes and so civil partnerships remain available for same sex couples only.</td>
</tr>
<tr>
<td>Finland</td>
<td>Legislation introducing same sex marriage has been passed but is not yet in force. Registered partnerships for same sex couples have been in place since 2002.</td>
</tr>
<tr>
<td>France</td>
<td>The Pacte Civil de Solidarité (civil solidarity pact) or PACS was established in 2000 for both opposite sex and same sex couples and remains in place.</td>
</tr>
<tr>
<td>Iceland</td>
<td>Registered partnerships for same sex couples were introduced in 1996. They are no longer available now that same sex marriage, introduced in 2010, is available.</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Same sex marriage was introduced at the beginning of 2015. Partenariats (PACS) remain available for both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Mexico</td>
<td>Same sex marriage is only available in some parts of Mexico and civil unions are only available in some parts of Mexico.</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>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.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Same sex marriage was introduced in 2013. Civil unions for both opposite sex and same sex couples were introduced in 2005 and remain available.</td>
</tr>
<tr>
<td>Norway</td>
<td>Same sex registered partnerships were introduced in 1993. Following the introduction of same sex marriage in 2009, registered partnerships are no longer available.</td>
</tr>
<tr>
<td>Portugal</td>
<td>There is no system for formally registering civil partnerships in Portugal. (Recognition is given to unregistered de facto unions in Portugal (União de facto) constituted by both opposite sex and same sex couples. These do not qualify as overseas relationships treated as civil partnerships under the 2004 Act).</td>
</tr>
<tr>
<td>South Africa</td>
<td>The Civil Union Act 2006 makes provision in relation to civil unions, which may be called either marriages or civil partnerships and which may be constituted by both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Spain</td>
<td>Same sex marriage was introduced in 2005. There is some local provision for registering a “pareja de hecho” (common law couples). This relates to couples, whether opposite sex or same sex, who live together.</td>
</tr>
<tr>
<td>Sweden</td>
<td>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.</td>
</tr>
<tr>
<td>United States</td>
<td>Discussed state by state, below.</td>
</tr>
<tr>
<td>Uruguay</td>
<td>Uruguay continues to have a Unión Concubinaria [cohabiting union] law in place. This allows couples, both opposite sex and same sex, who have been cohabiting for at least five years to register their relationship.</td>
</tr>
<tr>
<td><strong>US state</strong></td>
<td><strong>Approach to civil partnership</strong></td>
</tr>
<tr>
<td>Alaska</td>
<td>There appear to be limited civil partnership arrangements in Alaska.</td>
</tr>
<tr>
<td>Arizona</td>
<td>There appear to be limited civil partnership arrangements in Arizona.</td>
</tr>
<tr>
<td>California</td>
<td>A Californian domestic partnership is a legal relationship available to same sex couples and to certain opposite sex couples. Since 2012 it has not been available to opposite sex couples where both are younger than 62.</td>
</tr>
<tr>
<td>Colorado</td>
<td>Colorado has designated beneficiary agreements since 2009, and civil unions since 2013. Both remain available to opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Connecticut introduced same sex civil unions in 2005. These were automatically changed into marriages when same sex marriage was introduced in 2010.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Delaware civil unions are no longer available and existing ones were automatically changed into marriages in 2014.</td>
</tr>
<tr>
<td>Florida</td>
<td>There only appear to be limited civil partnership arrangements in Florida.</td>
</tr>
<tr>
<td>State</td>
<td>Details</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Hawaii allows both same sex and opposite sex couples to enter civil unions and reciprocal beneficiary relationships. These remain available.</td>
</tr>
<tr>
<td>Idaho</td>
<td>There do not appear to be civil partnership arrangements in Idaho.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Civil unions remain available for both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Indiana</td>
<td>There only appear to be limited civil partnership arrangements in Indiana.</td>
</tr>
<tr>
<td>Iowa</td>
<td>There do not appear to be civil partnership arrangements in Iowa.</td>
</tr>
<tr>
<td>Maine</td>
<td>Domestic partnerships for both opposite sex and same sex couples remain available.</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Some cities in Minnesota have domestic partnership registries open to both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Domestic partnerships for both opposite sex and same sex couples remain available.</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Same sex marriage was established in 2010 and existing civil unions were automatically changed to marriages in 2011.</td>
</tr>
<tr>
<td>New Jersey</td>
<td>New domestic partnerships are available only to couples in which both partners are 62 and over, whether opposite sex or same sex. Civil unions remain available to same sex couples only.</td>
</tr>
<tr>
<td>New Mexico</td>
<td>There do not appear to be civil partnership arrangements in New Mexico.</td>
</tr>
<tr>
<td>New York</td>
<td>Some places in New York State have domestic partnerships which are open to both opposite sex and same sex couples.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Some cities in the state recognise domestic partnerships and some make that status available to both same sex and opposite sex couples.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>There do not appear to be civil partnership arrangements in Oklahoma.</td>
</tr>
<tr>
<td>Oregon</td>
<td>Oregon has domestic partnerships available for same sex couples.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>There do not appear to be civil partnership arrangements in Pennsylvania.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Civil unions have not been available since 2013, when the bill legalising same sex marriage took effect, but existing civil unions are still recognised.</td>
</tr>
<tr>
<td>South Carolina</td>
<td>There do not appear to be civil partnership arrangements in South Carolina.</td>
</tr>
<tr>
<td>Utah</td>
<td>There only appear to be limited civil partnership arrangements in Utah.</td>
</tr>
<tr>
<td>Vermont</td>
<td>Vermont introduced same sex civil unions in the year 2000. When same sex marriage was introduced in 2009, civil unions ceased to be available.</td>
</tr>
<tr>
<td>Washington state</td>
<td>Washington's registered domestic partnerships changed automatically to marriages in 2014.</td>
</tr>
<tr>
<td>State</td>
<td>Details</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------------------------------------------</td>
</tr>
<tr>
<td>West Virginia</td>
<td>There do not appear to be civil partnership arrangements in West Virginia.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Wisconsin continues to have domestic partnerships for same sex couples.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>There do not appear to be civil partnership arrangements in Wyoming.</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>Domestic partnerships for opposite sex and same sex couples remain available.</td>
</tr>
</tbody>
</table>
ANNEX F: NUMBER OF COHABITANTS IN SCOTLAND

1. This annex provides factual information, taken from Census 2011, on cohabitant numbers in Scotland.

2. Of the 1.5 million families living in Scotland in 2011, 16% of them were unmarried cohabiting couple families (237,000).

3. Of the 614,000 families with dependent children in 2011, 15% (91,000) were cohabiting couple families.

4. In 2011, of the 4.3 million people aged 16 and over who lived in a household, 56 per cent lived as a couple, including 11% as a cohabiting couple.

5. Of the 2.4 million households 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).

6. 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.

7. 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%.

8. 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).

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ANNEX G: RESPONDENT INFORMATION FORM AND QUESTIONS

REVIEW OF CIVIL PARTNERSHIP IN SCOTLAND

RESPONDENT INFORMATION FORM

Please Note. If you are responding by hard copy through the post this form must be returned with your response to ensure that we handle your response appropriately. This form does not need to be completed when replying through Citizen Space as Citizen Space contains mandatory fields asking for details of the person or body responding to the consultation and whether the person or body is happy for their response to be published.

Responses to this consultation must either be on-line through Citizen Space or hard copy.

1. Name/Organisation

Organisation Name

Title  Mr  Ms  Mrs  Miss  Dr
Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode  Phone  Email

3. I am responding from:

Scotland  Rest of United Kingdom  Overseas
4. Permissions - I am responding as...

**Individual / Group/Organisation**

Please tick as appropriate
- [ ] Yes
- [ ] No

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate
- [ ] Yes
- [ ] No

(b) Where confidentiality is not requested, your responses may be made available to the public on the following basis.

Please tick ONE of the following boxes
- [ ] Yes, make my response, name and address all available
- [ ] Yes, make my response available, but not my name and address
- [ ] Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate
- [ ] Yes
- [ ] No

(d) 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?

Please tick as appropriate
- [ ] Yes
- [ ] No
Questions

Question 1. Please provide any additional arguments you wish to make in favour of the no change option.

Question 2. Please provide any additional arguments you wish to make against the no change option.

Question 3. Please provide any additional arguments you wish to make in favour of the option of no new civil partnerships being entered into from a date in the future.

Question 4. Please provide any additional arguments you wish to make against the option of no new civil partnerships being entered into from a date in the future.
Question 5. Do you have any comments on the Government’s view that there are insufficient reasons for introducing opposite sex civil partnership in Scotland? If yes, please outline these comments.

Question 6. Please provide any comments you have on the partial Business and Regulatory Impact Assessment (BRIA), on the partial Equality Impact Assessment (EQIA) and on the screening report for the Child Rights and Wellbeing Impact Assessment (CRWIA).
Annex H

Partial Business and Regulatory Impact Assessment (BRIA)

<table>
<thead>
<tr>
<th>Title of Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of civil partnership</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purpose and intended effect</th>
</tr>
</thead>
</table>

- **Background**
  
  Currently, civil partnership is open to same sex couples.
  
  This BRIA considers three possible options in relation to civil partnership:
  
  - no change (option 1).
  
  - no more new civil partnerships to be entered into from a date in the future (option 2).
  
  - the introduction of opposite sex civil partnership (option 3).

  Following consideration of the issues, the Scottish Government are not persuaded of the case for option 3 (the introduction of opposite sex civil partnership). The reasons are outlined in Chapter 4 of the consultation.

- **Objective**
  
  This review follows the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”), which introduced same sex marriage and made other changes to the law on marriage and civil partnership. The objective is to consider future options for civil partnership following the 2014 Act.

- **Rationale for Government intervention**
  
  Any changes to the status of civil partnership would require a Bill in the Scottish Parliament. Any such Bill is for the next Session of Parliament.
Consultation

- **Within Government**

  In preparing this consultation, the Scottish Government’s Family and Property Law Team have worked closely with the Equality Unit and with Analytical Services. We have also consulted the Scottish Public Pensions Agency and the Scottish Legal Aid Board on the possible impact the introduction of opposite sex civil partnership could have on, respectively, survivor benefits in pensions and on the legal aid budget.

- **Public Consultation**

  There was discussion during the Parliamentary passage of the then Marriage and Civil Partnership (Scotland) Bill.

  In addition, the Scottish Government has met with a small number of organisations – mainly religious and belief bodies and equality bodies – to discuss the review.

  This partial BRIA forms part of a full public consultation.

- **Business**

  The Scottish Government carried out three face to face interviews to help prepare this BRIA.
Luxury Scottish Wedding

The Government interviewed the director of Luxury Scottish Wedding, an on-line wedding directory. The director indicated that none of the options were likely to have an impact on his business or on the business of his members. Marriage (for both opposite sex and same sex couples) would remain available. It was noted at the meeting that any introduction of opposite sex civil partnerships might lead to more opposite sex couples entering into legally recognised relationships and this could increase the number of opposite sex couples seeking marriage venues. However, it was also noted that opposite sex couples seeking a major celebration on the day might be more likely to choose to get married rather than enter an opposite sex civil partnership.

Partner in a law firm

The Government interviewed a partner in a law firm. The partner is accredited by the Law Society of Scotland as a specialist in Family Law and Child Law. The partner noted that none of the options were likely to give rise to costs or savings for the firm. At the moment, the firm provided advice to a large number of clients involved in divorce or the dissolution of a civil partnership. The most difficult issues that arose in relation to divorce and dissolution were disputes relating to the children of the relationship and disputes around financial provision.

It was noted at the meeting that any introduction of opposite sex civil partnerships might lead to more opposite sex couples entering into legally recognised relationships and this could eventually lead to an increased number of dissolutions. Against that, the law on financial provision on divorce and dissolution, contained in the Family Law (Scotland) Act 1985, was well understood and there was now considerable case-law in this area.

The law on financial provision when cohabitants split up, contained in the Family Law (Scotland) Act 2006, was newer and case law was still being developed. As a consequence, there was an argument that cases on financial provision on dissolution of a civil partnership were more straightforward to deal with than cases on financial provision when cohabitation comes to an end.

Glasgow City Council Registrar

The Government interviewed the Glasgow City Council Registrar. The interview took place on 23 April 2015.

The Glasgow City Council Registrar provided some statistics on the number of Civil Partnerships and same sex marriages in Glasgow, as at 23 April 2015.
All of the figures below relate to civil ceremonies only.

- Number of civil partnerships in 2014 was 75. So far in 2015 there had been 4 civil partnerships with a further two due to be held by the end of April.
- Number of same sex marriages to date in 2015 is 21. (Excludes couples changing their civil partnerships to marriages).
- Number of changes to marriages from civil partnerships in 2014 is 72. In 2015, the number as at the end of March is 50. The majority of these were through the administrative route that is available rather than the couple having a marriage ceremony.

The peak season for weddings is during the Summer (June – September). As a result, it may be too soon to draw a conclusion from the statistics so far.

Very few enquiries are received now for civil partnership. However, when a couple do ask for one it would appear that they are very clear that that is what they want. Their aim is to keep the ceremony low key or just to ensure that succession arrangements and other financial safeguards are in place.

There are a number of callers who do not fully understand the difference between civil partnership and marriage. As a result, registrars discuss the options with the couple.

No queries are received from cohabitants seeking to register their cohabitation.

There have been no queries from couples seeking to enter an opposite sex civil partnership since the introduction of same sex marriage. However, there were a few queries about opposite sex civil partnerships when civil partnership for same sex couples was introduced. (Civil partnership for same sex couples was introduced in 2005, following the Civil Partnership Act 2004).

There are a number of queries from couples asking for clarity on the differences between the options currently available.

Such queries might relate to the ceremony itself and/or to the legal differences between, for example, a civil partnership and marriage.

A full cost analysis has not been carried out by the local authority for options two or three so the views on costs are based on initial thoughts on what the additional work would be.

Option one (no change) would not bring any additional costs.

Option two (no more new civil partnerships after a date in the future). Potentially same number of notices if people opt for marriage. However, removing an option might reduce complexity.
Removing civil partnership as an option might lead more people to change their civil partnerships into marriage if they felt that their civil partnerships would have no standing in society. This would create extra work for a period of time.

If no more new civil partnerships are entered into then people through time may become unfamiliar with the term. This might lead to some pressure on existing civil partners to change their relationship into marriage.

Option three (establishing opposite sex civil partnership). There would be higher workload in explaining differences between marriage and opposite sex civil partnership and associated rights and benefits. Therefore, there would be additional costs associated with this option.

The registrar also noted:

- more guidance is required on the differences between same sex marriage and civil partnership
- if civil partnership were extended to opposite sex couples then the need for guidance would be greater
- a couple’s choice of civil status is personal to them. Therefore, it can be hard to generalise on what people want and how they might react.
Options

This BRIA outlines three possible options in relation to civil partnership:

- no change (option 1)
- no more new civil partnerships to be entered into (option 2)
- the introduction of opposite sex civil partnership (option 3).

Following consideration of the issues, the Scottish Government are not persuaded of the case for option 3 (the introduction of opposite sex civil partnership). The reasons are outlined in Chapter 4 of the consultation.

Sectors and groups affected

Sectors and groups who would be affected are as follows:

- Couples seeking to enter into a legally recognised relationship.
- Local authority registrars, who register civil partnerships.
- Religious and belief bodies involved in registration of civil partnership.

Benefits

Option 1: no change

This would have the benefit of stability. There would be no need for further legislation. However, there is no guarantee that “no change” would remain the long-term position. Once the 2014 Act has been in place for a number of years, there will be clear evidence on the uptake of same sex civil partnerships following the introduction of same sex marriages. This could prompt calls for another review, depending on what the evidence shows.

Option 2: no more new civil partnerships

This would give opposite sex couples and same sex couples the same option of marriage. However, there would continue to be existing civil partnerships as there would be no obligation on existing civil partners to change and Scotland would continue to recognise civil partnerships from elsewhere in the UK and overseas.

Option 2 would remove the possibility, open to same sex couples now, of entering into a civil partnership.

Option 3: the introduction of opposite sex civil partnerships

This would give opposite sex couples and same sex couples the same options of marriage and civil partnership.
Costs

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

Option 1

Option 1 (no change) would have no costs or savings.

Option 2

Option 2 (no more new civil partnerships) 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 3

General

Option 3 (the introduction of opposite sex civil partnership) would lead to costs.

In broad terms, there would be two types of costs in relation to option 3. The first set of costs would relate to the registration process. These costs would be one-off as they would relate to changes to IT systems and forms and to training and familiarisation. The costs would 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.

The second set of costs would relate to rights and responsibilities.

Registration costs

Based on experience with same sex marriage, the Government estimates 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: £200,000 in total.

If opposite sex civil partnership should 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 partnership31.

31 The current fees for entering a civil partnership are at http://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf
Rights and responsibilities

On-going costs in relation to the introduction of opposite sex civil partnerships would depend on take-up. In addition, costs depend on whether the take-up is by couples who would otherwise have married or by couples who otherwise would not have married.

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 through marrying.

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 (although cohabitants do obtain limited rights and responsibilities in Scotland at the moment).

The Scottish Government is not aware of firm evidence of exactly who would take up opposite sex civil partnerships.

Therefore, the figures below offer three possibilities: A, B, and C.

A. No increase in the number of registered opposite sex relationships.

If the number of registered opposite sex relationships does not increase (in other words, if some couples choose to enter a civil partnership rather than marry), there would be no costs arising from option 3 when it comes to rights and responsibilities. The same number of couples as before would gain rights and responsibilities. This scenario is possible – very few opposite sex couples, for example, choose to enter into an opposite sex civil union in New Zealand.32

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.

There were 29,070 marriages in Scotland in 2014, of which 28,703 were opposite sex.33

If the total number of registered opposite sex unions in Scotland increased by 1% following the introduction of opposite sex marriage, there would be an additional 287.

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.

In the Netherlands, for example, around 12.5% opposite sex couples choose to enter a civil partnership rather than marry.34

As indicated above, there were 28,703 opposite sex marriages in 2014.

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 2,870.

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

Public sector pension schemes

Pension policy is a reserved matter for the UK Government, although there are some executively devolved powers in terms of certain public sector pension schemes in Scotland.35

There are some differences between civil partners and married couples in relation to survivor benefits in 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 (same sex spouses 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).

34 Information on the Netherlands is at http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37772eng&LA=EN
35 More details can be found on the Scottish Public Pensions Agency website: http://www.sppa.gov.uk/
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.

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.

It is possible that the 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 would 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[^36].

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.

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.  

**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.

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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 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 are not carried out for profit or gain.

Test run of business forms

There would be no new forms for business.

If option 2 (no more new civil partnerships) 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 a civil partnership notice form or a civil partnership schedule.

If option 3 (the introduction of opposite sex civil partnership) were chosen, some amendments might be needed to a number of forms used by local authority registrars and couples.

Legal Aid Impact Test

There could be costs to the Scottish Legal Aid Board 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 and dissolutions are dealt with in the local Sheriff Court. 60% are through the simplified divorce procedure. This can be used where there are no children under 16 and no financial issues to be sorted out between spouses. The simplified divorce procedure is straightforward and, therefore, has few legal aid implications. The remaining 40% of divorces and dissolutions can have legal aid implications.

39 Guidance on the simplified procedures for divorce can be found on the Scottish Courts and Tribunals Service website at http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership. We are planning to consult on the possible extension of the simplified procedure to cover cases where there are children under 16 and the parents are agreed on the child’s welfare.
If there is no increase in the number of opposite sex unions, there would be no additional costs to the Board. Instead of divorces of marriages, legal aid might be needed for dissolution of civil partnerships.

With a 1% increase in opposite sex unions, there could be 96 additional dissolutions (one third of 287).

With a 10% increase, there would be 957 (one third of 2,870).

40% could be through ordinary procedures, with legal aid implications, and 60% through simplified procedures.

So with a 1% increase in opposite sex unions, 38 additional dissolutions (40% of 96) might have legal aid implications.

So with a 10% increase in opposite sex unions, 383 additional dissolutions (40% of 957) might have legal aid implications.

The Scottish Legal Aid Board has introduced cost limitations on grants of civil legal aid.40 For divorce/dissolution in the sheriff court, the case cost limit (which can be increased on cause shown) is £6,000.

With a 1% increase in registered opposite sex unions, £6,000 multiplied by 38 produces a figure of £228,000.

With a 10% increase in registered opposite sex unions, £6,000 multiplied by 383 produces a figure of £2,298,000.

There are various uncertainties in these calculations.

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.

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.

Not all the costs will occur at the same time. Couples 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.

**Enforcement, sanctions and monitoring**

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

If option 2 (no more new civil partnerships) or option 3 (the introduction of opposite sex civil partnership) were 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 any more 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 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 (no change) would require no implementation. Civil partnership would continue as now and would remain open to same sex couples only.

Option 2 (no more new civil partnerships after a date in the future) would require a Bill in the Scottish Parliament. Any such Bill would be for after the Scottish elections in May 2016. To ensure that no disruption was caused to planned civil partnerships, there would be a lead-in period between Royal Assent and the legislation coming into force. This lead-in period could perhaps be 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.
Option 3 (the introduction of opposite sex civil partnership). This option would also require primary legislation in the Scottish Parliament. However, following consideration of the issues, the Scottish Government is not persuaded of the case for option 3. The reasons are outlined in Chapter 4 of the consultation.

**Post-implementation review**

The Government would monitor the impact of any new legislation, in line with usual practice.
## Summary costs and benefits table

<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum: - economic, environmental, social</th>
<th>Total cost per annum: - economic, environmental, social - policy and administrative</th>
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<td>Stability – no need for further legislation.</td>
<td>NIL</td>
</tr>
<tr>
<td>2</td>
<td>Puts same sex and opposite sex couples on same footing.</td>
<td>Savings of up to £100,000 in total</td>
</tr>
<tr>
<td>3</td>
<td>Allows opposite sex couples to enter a civil partnership if they wish.</td>
<td>Costs could be:</td>
</tr>
</tbody>
</table>

- One off cost of £200,000 for NRS for IT systems and forms.
- One off cost of £200,000 to local authorities for familiarisation.
- 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.
- If there were no increase in the number of registered opposite sex relationships, there would be no costs in relation to rights and responsibilities.
- If there were a 1% increase in survivor benefits, there could be a cost to the devolved public sector pension schemes of around £1.75 million a year.
- 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.
- 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 £228,000 a year.
- 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 £2,298,000 a year.
ANNEX I

PARTIAL EQUALITY IMPACT ASSESSMENT (EQIA) RECORD

Title of policy/practice/strategy/legislation etc. | Review of civil partnership, following the Marriage and Civil Partnership (Scotland) Act 2014.
---|---
Minister | Marco Biagi, Minister for Local Government and Community Empowerment.
Lead official | Simon Stockwell
Officials involved in the EQIA | name | team
---|---|---
Karen Grieve | Equality Unit
Liam Rankin | Family Law
Sarah Kerr | Family Law
Simon Stockwell | Family Law
Directorate: Division: Team | Justice: Civil Law and Legal System: Family and Property Law
Is this new policy or revision to an existing policy? | Revision to an existing policy.

Screening

Policy Aim

1. The Scottish Government committed to reviewing civil partnership following the Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”).

2. The introduction of civil partnership allowed same sex couples to obtain rights and legal recognition of their relationship.

3. The 2014 Act introduced same sex marriage in Scotland. This raises questions on the future of civil partnership.
4. This EQIA assesses three options for the future of civil partnership:

- No change, so that civil partnership would remain open to same sex couples only. (Option 1).
- No new civil partnerships to be registered in Scotland from a date in the future. Existing civil partners could remain in their civil partnership if they wish. (Option 2).
- Civil partnership to be opened up to opposite sex couples as well as same sex couples. (Option 3).

5. Following consideration, the Government is not persuaded that opposite sex civil partnerships (option 3) should be introduced in Scotland. The rationale is at Chapter 4 of the consultation.

**Who will it affect?**

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

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

8. The options would also affect religious and belief bodies and civil registrars.
Stage 1: Framing

Results of framing exercise

The framing exercise raised a number of points:

- Survivor benefits in pensions may be lower for a surviving same sex spouse or same sex civil partner and, potentially, for the surviving partner of an opposite sex civil partnership.
- There would be significant opposition from some religious bodies to opposite sex civil partnership, who may see it as undermining marriage. [However, there would be others who would support opposite sex civil partnership].
- Establishing opposite sex civil partnerships could be beneficial to transgender people in a civil partnership as they could obtain a full gender recognition certificate and stay in their civil partnership, if they wish.
- Option 2 (no more new civil partnerships) could put pressure on existing civil partners to change their relationship to marriage (as civil partnership might be perceived as a “legacy” relationship). [However, the Government has made it clear that there is no obligation on people to change their existing civil partnership into marriage, if they do not wish to do so].
- Option 2 (no more new civil partnerships) could raise questions on how civil partnerships from overseas and the rest of the UK should be treated in Scotland. [However, they could just continue to be treated as civil partnerships, especially as there would continue to be existing civil partnerships registered in Scotland].
- In relation to option 3 (the introduction of opposite sex civil partnership), there were no guarantees on whether opposite sex civil partnerships would be recognised outwith Scotland. In addition, opposite sex civil partnership may be less accepted in some cultures.
- Option 2 (no more new civil partnerships) may impact on persons who are currently single but may be expecting to enter into a civil partnership at some point in the future (e.g. when they meet the right person). [However, persons in this situation would be able to marry].
- More guidance may be needed on entering into a marriage or civil partnership, including easy to read guidance.
• Option 3 (the introduction of opposite sex civil partnership) may 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 in future would be greater than the total number of opposite sex marriages now). If so, there would be more people with clear responsibilities and rights towards each other, such as the duty to aliment (financially maintain) each other. However, there was no certainty that option 3 would lead to more opposite sex couples entering into a registered relationship.

• Under option 3, the rules on parenthood following fertility treatment would be extended to opposite sex civil partners.

Extent/Level of EQIA required

A full EQIA would be required if any Bill is introduced into the Scottish Parliament.
### Stage 2: Data and evidence gathering, involvement and consultation

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Evidence gathered and Strength/quality of evidence</th>
<th>Source</th>
<th>Data gaps identified and action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AGE</strong></td>
<td>Ages at which people marry/enter civil partnerships</td>
<td></td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>There is data from National Records of Scotland on the ages at which couples enter into marriages and civil partnerships.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Composition of households in Scotland</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>There is data from Census Scotland on the composition of households in Scotland.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Impact on children</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Research shows that the most important factors in determining children's wellbeing and outcomes are family processes (such as the quality of parenting and of relationships within</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- National Records of Scotland data
- Census 2011 data
the family), rather than family structures (such as the number or cohabitation status of parents).

Stability is more important than family structure for children’s well-being, even if that is in a single parent family.

The Growing Up in Scotland report published in 2014 ‘Family and school influences on children’s social and emotional well-being’ found that family structure (whether couple family or single parent family) is not associated with children’s social or emotional wellbeing, after allowing for other influences.

**DISABILITY**

There is no obvious impact on the protected characteristic of disability.

However, as noted above, more guidance may be needed on entering into a marriage or

**None**
<table>
<thead>
<tr>
<th>SEX</th>
<th>Generally, more women than men have entered into civil partnerships in Scotland.</th>
<th>NRS data (see table 7.10)</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREGNANCY AND MATERNITY</td>
<td>The Scottish Government is not aware of any impact on the protected characteristic of pregnancy and maternity. So far as the Scottish Government is aware, services and benefits in relation to pregnancy do not depend on the marital status of those receiving the services. NRS produce figures on the marital status of those registering births in Scotland.</td>
<td>NRS data on births</td>
<td>None</td>
</tr>
<tr>
<td>GENDER REASSIGNMENT</td>
<td>The introduction of opposite sex civil partnerships would enable persons in a civil partnership, if they wish, to obtain a full Gender</td>
<td>GRP data</td>
<td>None</td>
</tr>
</tbody>
</table>
Recognition Certificate and remain in their civil partnership.

This is not possible at the moment as we do not recognise opposite sex civil partnerships.

Instead, persons in this position have to change their civil partnership to marriage, unless both are obtaining gender recognition on the same day.

The United Kingdom Government produces statistics on applications to the Gender Recognition Panel (GRP), which operates on a UK basis.

| SEXUAL ORIENTATION | The introduction of opposite sex civil partnerships would enable opposite sex couples to enter into a civil partnership in Scotland, if they wished. As recorded in the consultation paper, evidence from other countries tends to suggest that there is Data from some other jurisdictions on take-up is as follows: | None |
a demand for legally recognised opposite sex relationships other than marriage.

However, this demand appears to be higher when the relationship offers fewer rights and responsibilities than marriage. Demand appears to be low when opposite sex civil partnership offers the same rights and responsibilities as marriage.

There is data from other jurisdictions on the take-up of opposite sex civil partnership.

<table>
<thead>
<tr>
<th>RACE</th>
<th>There is no perceived impact on the protected characteristic of race.</th>
<th>-</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>RELIGION OR BELIEF</td>
<td>Some religious bodies have expressed concerns, in meetings and elsewhere, about the possible introduction of opposite sex civil partnership, seeing this as undermining marriage.</td>
<td>-</td>
<td>None</td>
</tr>
</tbody>
</table>
Views can be expected to vary from body to body. The Humanist Society Scotland have expressed strong support for opposite sex civil partnership.

**MARRIAGE AND CIVIL PARTNERSHIP**

Marriage will continue to be available.

If option 2 is followed, there would be no new civil partnerships entered into in Scotland.

However, existing civil partners could remain in their civil partnership if they wished.

The Scottish Government would expect that the rights and responsibilities of civil partners would continue to be along similar lines to the rights and responsibilities of married couples.

The Scottish

| As indicated above, NRS produce data on the number of persons who marry or enter a civil partnership. | None |
Government would also expect that equalities legislation would continue to apply to those persons in a civil partnership. (The Equality Act 2010 is largely a reserved matter for the UK Government).

Next stages

If, following this consultation, the Scottish Government introduces a Bill into Parliament, a full EQIA would be required. This EQIA would include:

- An assessment of how the Equality Impact Analysis has shaped the policy making process.
- An assessment of the impacts of any Bill on the protected characteristics.
- An assessment of the opportunities in any Bill to promote equality.
- The identification of any mitigation action which could be taken if there should be any adverse impacts on the protected characteristics.

Family and Property Law
Scottish Government
September 2015
## ANNEX J

### CHILD RIGHTS AND WELLBEING IMPACT ASSESSMENT (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?**
   
   No decision has been taken on whether option 1 (no change) or option 2 (no new civil partnerships to be registered after a date in the future) should be followed.

   As indicated in the consultation, the Government has considered opposite sex civil partnership but is not persuaded it should be introduced in Scotland.

2. **What likely impact - direct or indirect - will the policy/measure have on children and young people?**
   
   The introduction of opposite sex civil partnership would have an impact on family law in areas such as Parental Responsibilities and Rights. However, as indicated in the consultation, the Government has considered opposite sex civil partnership but is not persuaded they should be introduced in Scotland.

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

   People aged 16 or over may marry or enter a civil partnership in Scotland.

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

   The Family and Property Law Team in the Scottish Government has involved the Equality Unit in the Scottish Government.

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

   If a Bill should be introduced into Parliament, the Government would intend to produce and publish a CRWIA.

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**Family and Property Law**  
**Scottish Government**  
**September 2015**