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# Review of Civil Partnership in Scotland - Analysis of Consultation Responses



EQUALITY, POVERTY AND SOCIAL SECURITY



# **Review of Civil Partnership in Scotland**

## **Analysis of Consultation Responses**

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# EXECUTIVE SUMMARY

## Introduction

This summary provides an overview of the analysis of the responses received to the Scottish Government's Review of Civil Partnership consultation. The Scottish Government made a commitment to carry out a review of civil partnership during the Parliamentary passage of the Marriage and Civil Partnership (Scotland) Act 2014. This consultation forms part of that review.

The consultation paper outlined three possible options going forward. These were:

- No change, so that civil partnerships would remain available for same sex couples only.
- No more new civil partnerships to be entered into in Scotland from a date in the future. People already in a civil partnership could stay in them, if they wish.
- The introduction of opposite sex civil partnership.

The consultation ran from 22 September 2015 to 15 December 2015, with a total of 411 responses received. The very significant majority of responses (93%) were submitted by individual members of the public. The remaining 7% of responses were submitted by groups or organisations.

## The no change option

Under the no change option only same sex couples would continue to have the option of entering into a civil partnership.

### The case for no change

The consultation paper set out three arguments in favour of the no change option: that 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; that 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; and that this option is simple and straightforward.

A number of those commenting re-stated or noted agreement with one or more of the three arguments in favour of the no change option. Connected points made included that inadequate consideration has been given to the implications of making further changes at this stage, that a period of no change would allow for information on demand for both same and opposite sex civil partnership to be gathered and that there is evidence to suggest likely future demand for same sex civil partnerships.

Additional arguments made included that same sex civil partnerships offer a legal arrangement for couples who do not agree with marriage on cultural, sociological or

religious grounds and allow for same sex unions to be recognised and affirmed whilst preserving room for religious conscience.

### **The case against no change**

The consultation paper set out the following arguments against the no change option: that there would continue to be an imbalance between same sex and opposite sex couples; and that there would continue to be a separate and distinct status for same sex couples. Again a number of respondents re-stated or noted agreement with one or both of the arguments presented in the consultation paper.

Connected or supporting points made included that rather than the imbalance suggested in the consultation paper this option is discriminatory. It was also noted that the majority of jurisdictions that have same sex marriage either offer civil partnership to both opposite and same sex couples or to neither.

Additional arguments made against the no change option included that the general public may be more likely to support an option that includes the introduction of opposite sex civil partnership. Another perspective was that just because the no change option is simpler does not make it right. The impact of no change on bisexuals and transgender people was also raised, including that if no changes are made, bisexual and trans people may have limited options depending on the gender identity of their partner, and that transgender people in civil partnerships would have to continue to convert those civil partnerships into marriage prior to obtaining gender recognition.

### **No new civil partnerships**

Under this option no new civil partnerships could be entered into in Scotland from a given date in the future. Existing civil partners could stay in their civil partnership if they so wished, and these civil partnerships would continue to be recognised in Scotland.

### **The case for no new civil partnerships**

The consultation paper set out the following arguments in favour of the no new civil partnerships option: it reduces complexity; it removes a separate status for same sex couples; and it is more likely that a couple would have their marriage recognised in foreign countries as opposed to their civil partnership.

Those who agreed with there being no new civil partnerships generally appeared to come from one of two broad standpoints. One perspective was that civil partnerships became obsolete with the introduction of same sex marriage and a line should have been drawn under them at that point. Respondents taking this view made a number of supporting arguments, including that civil partnerships were introduced at a time when same sex couples could not get married and are rooted in inequality, and that current levels of demand suggest that marriage is the preferred option amongst same sex couples.

The alternative perspective was that there should never have been, and still should not be, the type of legal recognition of same sex relationships offered by civil partnerships. Respondents taking this view tended to see civil partnerships as having been the first step down a dangerous road, which would lead to the institution of marriage being undermined.

### **The case against no new civil partnerships**

The consultation paper set out four arguments against the no new same sex civil partnerships option. These were that: it would remove an option for which the Scottish Government expects that there will be a continuing, though modest, demand; that it 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; that those in civil partnerships might feel some pressure to convert them to marriages; and that the Government's consultation on the registration of civil partnership and same sex marriage showed support for retaining civil partnership.

Points raised by respondents who did not agree with there being no new civil partnerships included that they have played, and continue to play, a very important role for some people and that the introduction of a 'sunset clause' would be premature. It was also suggested that some people may prefer civil partnership not because they believe marriage to be a union meant for opposite sex couples, but because they object to the institution of marriage on other points of principle.

Other issues highlighted by respondents included that it is incumbent upon the Scottish Government to take forward an option which upholds the principles of equality, and that civil partnerships can play an important role for LGBTI people of faith whose religious institutions do not recognise same sex marriage. It was also suggested that, in the long term, abolishing civil partnerships would involve substantial changes to both primary and secondary legislation, thereby consuming valuable resources and parliamentary time with no discernible benefit.

### **Opposite sex civil partnership**

The consultation paper noted that the Scottish Government has carefully considered the possible introduction of opposite sex civil partnership but is not persuaded that it should be introduced in Scotland. The main reasons given for this decision were: that the Government considers that demand would be low; that its recognition elsewhere in the UK and overseas would be limited; that society's understanding of it might be limited; that Scots law provides some rights already for cohabitants; that it is already possible to have a civil (or belief) marriage ceremony; that it would increase complexity; and that the costs would be disproportionate.

Most but not all of those commenting made their support for, or opposition to, the introduction of opposite sex civil partnership clear. Those who did not express a clear view tended to comment on the complexity of the issue and/or consider the various arguments for and against.

## **Opposition to opposite sex civil partnership**

The concern raised most frequently by those who agreed with the Government's overall position was that the introduction of opposite sex civil partnership would undermine the institution of marriage. Under this broader concern, the most frequently raised issues included that marriage is the established, long-standing arrangement through which opposite sex couples make a lifelong commitment to each other and that there is no need for an alternative. Other concerns included that opposite sex civil partnership would not require an equivalent level of commitment to marriage and would be less likely to result in long-standing, stable unions, to the particular detriment of children.

It was also suggested that there is no evidence of real demand for opposite sex civil partnership and that creating an additional set of arrangements would be difficult and/or costly and resources could be better deployed elsewhere.

A representative body for professionals highlighted a number of issues of law that would arise with the introduction of opposite sex civil partnerships, including noting that the potential change would need to be looked at within a much broader context than simply considering the impact on the couples themselves.

Whilst the majority of those opposing the introduction of opposite sex civil partnership focused on defending the institution of opposite sex marriage, a small number felt that the introduction of same sex marriage has removed the need for any form of civil partnership going forward. This group disagreed with opposite sex civil partnership being introduced and also thought that same sex civil partnership is no longer required.

## **Support for opposite sex civil partnership**

Those who supported the introduction of opposite sex civil partnerships commented most frequently that it would offer equality, with all couples having the same options available to them. Further, it was suggested that opening up of civil partnership to opposite sex couples is the only way to remove sexual orientation discrimination from the law on marriage and civil partnership without removing the important and valued choice of civil partnership from same sex couples.

Other comments questioned the Scottish Government's assertion that demand for opposite sex civil partnership may be low, including individual respondents reporting that they wished to enter into an opposite sex civil partnership. Reasons given for wanting to enter into a civil partnership included wanting greater legal and financial protections, not being able to remarry on religious or ethical grounds, having been in an unhappy or abusive marriage and considering marriage to be a patriarchal institution.

Other possible advantages which respondents highlighted as to be derived from the introduction of opposite sex marriage included that if someone in a civil partnership undergoes gender reassignment, the couple's civil partnership would continue to be legally recognised upon receiving gender recognition.

## **BRIA, EQIA & CRWIA**

The Scottish Government has prepared a partial Business and Regulatory Impact Assessment (BRIA), a partial Equality Impact Assessment (EQIA) and a screening report for the Child Rights and Wellbeing Impact Assessment (CRWIA). Each of these was appended to the consultation paper.

Comments made about the Partial EQIA or other equalities impact-related issues included that the no change option would continue a situation in which opposite and same sex couples are treated differently, and that introducing opposite sex civil partnership would benefit trans people in civil partnerships since it would allow them to access gender recognition without first being forced to dissolve their civil partnership or convert it to a marriage.

Comments made about the Partial BRIA or other business or regulatory-related issues included that the BRIA does not support arguments made elsewhere in the consultation paper that there would be disproportionate costs associated with introducing opposite sex civil partnerships. It was also suggested that any increased workload for Registrar Services is not a valid reason for not introducing opposite sex civil partnership.

Comments made about the CRWIA Screening Report or other child-related issues included that the Screening Report is a welcome addition and that the impact on children of any changes to the civil partnership framework must be examined with care and rigour.

# INTRODUCTION

The Scottish Government published a consultation paper ‘Review of Civil Partnership - A consultation by the Scottish Government’ on 22 September 2015. The consultation ran until 15 December 2015. The consultation paper can be accessed at: <http://www.gov.scot/Publications/2015/09/4223>. This report presents an analysis of the consultation responses received.

The report uses the term “opposite sex” – as in “opposite sex” civil partnership – reflecting the language used in the consultation paper. An alternative term sometimes used is “mixed sex”. The report also refers to “converting” civil partnerships to marriage. The term “converting” is often used, including by those responding to the consultation, and is the official term used in England and Wales. It should be noted, however, that in Scotland the official term is “changing” a civil partnership into marriage.

## Background to the consultation

The Civil Partnership Act 2004 came into force across the UK in December 2005 and allows same sex couples to form a civil partnership and enjoy similar rights and responsibilities to that of a married couple.

Issues relating to civil status are a devolved matter, meaning that 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.

The Marriage and Civil Partnership (Scotland) Act 2014 is now largely in force and has introduced same sex marriage and the religious and belief registration of civil partnerships to Scotland. It has also made other changes to marriage and civil partnership law, including amending the Gender Recognition Act 2004 so that a married person seeking gender recognition does not have to divorce.

During the Parliamentary passage of the Marriage and Civil Partnership (Scotland) Act 2014, the Scottish Government said it would carry out a review of civil partnership in Scotland<sup>1</sup>. This consultation is part of that review and is designed to enable civic society across Scotland to contribute to the discussion.

The three options outlined in the consultation paper are:

- No change, so that civil partnerships would remain available for same sex couples only.
- No more new civil partnerships to be entered into in Scotland, from a date in the future. People already in a civil partnership could stay in them, if they wish.

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<sup>1</sup> Further information on the remit and organisation of the review can be found at: <http://www.gov.scot/Resource/0043/00434010.pdf>

- The introduction of opposite sex civil partnership.

## Profile of respondents

In total, 411 responses were received: 405 were submitted through the Scottish Government's Citizen Space consultation page, and the remaining 6 respondents submitted hard copy responses.

Individual members of the public submitted the very significant majority of responses (93%). Groups or organisations submitted the remaining 7% of responses. A list of the groups that submitted a response is provided at Annex A to this report.

A breakdown of respondents by respondent type is set out in the table below.

### Number of respondents by type

Respondent Type	
Community organisation	1
Local government	4
Public body	2
Religious or belief body or organisation	9
Representative body for professionals	2
Third sector or equality organisation	11
<i>Groups (Total)</i>	29
Individuals	382
<b>TOTAL</b>	<b>411</b>

Of the 411 respondents, 387 gave permission for their response to be published.

## Analysis and reporting

This report presents a question-by-question analysis of comments received. Reflecting the nature of the questions asked, the analysis is qualitative and focuses on setting out the range of issues raised by respondents.

Responses were varied in length and complexity. All comments have been taken into account. However, to avoid duplication, they have been considered under the question to which they were most directly relevant. This applies particularly to comments on opposite sex civil partnership. These formed the bulk of the comments submitted and have been reported under Question 5.

# THE NO CHANGE OPTION

Under the no change option, only same sex couples would continue to have the option of entering into a civil partnership, and this would mean that the approach in Scotland would be in line with that now taken in England and Wales. No legislative changes would be required and the consultation paper noted that this approach would not give rise to any costs or savings.

The consultation asked two questions specifically about the no change option.

## The case for no change

The consultation paper set out the following arguments in favour of the no change option:

- 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.
- This option is simple and straightforward.

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

A total of 136 respondents made a comment<sup>2</sup> at Question 1.

## Practical case for no change

In line with the arguments set out in the consultation paper, a number of those commenting at Question 1 focused on practical or pragmatic reasons for not making any changes at this time. With specific reference to the arguments made in the consultation paper, connected or supporting further points made included:

- Inadequate consideration has been given to the implications of making further changes at this stage, particularly given that the Marriage and Civil Partnership (Scotland) Act 2014 has only recently come into force.
- A period of no change would allow for information on demand for, and attitudes towards, both same and opposite sex civil partnership to be gathered.

Additional arguments made in favour of the no change option were:

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<sup>2</sup> This figure excludes responses of 'No comment' or 'None' etc.

- It would keep the provision in Scotland the same as that offered in England and Wales.
- Making changes would be expensive and for no discernible benefit.

### **Support for same sex civil partnership**

Specific reasons given for the continuation of same sex civil partnerships, albeit not necessarily within the context of no other changes, included that they recognise loving and committed relationships between same sex couples, and have brought happiness to thousands of couples since their introduction. It was also suggested that there is evidence to suggest likely future demand for same sex civil partnerships, with a 2015 survey carried out by a third sector/equality organisation finding that 32% of LGBTI respondents would consider a same sex civil partnership.

Other comments made in support of same sex civil partnership included:

- They offer a legal arrangement for same sex couples who do not agree with marriage on cultural, sociological or religious grounds. In particular, they allow a relationship to be affirmed whilst preserving room for religious conscience.
- To require existing civil partnerships to be converted into marriages could diminish relationships that couples have chosen to enter into freely and in good faith<sup>3</sup>.
- They allow for recognition of same sex civil partnerships registered outwith Scotland. This could only continue while civil partnership law remains in place.
- They have the advantage of not requiring a ceremony for those who do not wish to have one. They also offer a simpler and cheaper option to have a union legally recognised.<sup>4</sup>

### **Opposite sex civil partnership**

Other respondents focused on support for, or opposition to, the introduction of opposite sex civil partnerships. These issues are covered in greater detail under Question 5, but in summary comments tended to be broadly in line with one or other of the following stances:

- Disagreement with the concept of civil partnership and of it being made available to opposite sex couples in particular. Most of those raising this issue at Question 1 saw marriage as the better or only legitimate option for opposite sex couples. Some also noted that they disagreed with legal recognition being given to same sex relationships, whether through civil partnership or marriage.
- Support for equal and equivalent provision for both same and opposite sex couples, including through the introduction of opposite sex civil partnerships.

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<sup>3</sup> It should be noted that none of the options set out in the Scottish Government's consultation paper involve requiring existing civil partnerships to be converted into marriages.

<sup>4</sup> The statutory fees in relation to marriage and civil partnership ceremonies are the same. Details are available on the NRS website: <http://www.nrscotland.gov.uk/files//registration/rm1b-leaflet.pdf>; <http://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf>

## The case against no change

The consultation paper set out the following arguments against the no change option:

- 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.**

A total of 213 respondents made a comment<sup>5</sup>. Following a similar pattern to Question 1, a number of respondents re-stated or noted agreement with one or both of the two arguments against the no change option presented in the consultation paper.

### Support for opposite sex civil partnership

A set of connected or supporting points came from a standpoint of supporting the introduction of opposite sex civil partnership. These included that:

- What the consultation paper refers to as an imbalance would be more appropriately described as an inequality or as discriminatory.
- The majority of jurisdictions around the world that have same sex marriage either offer civil partnership to both opposite and same sex couples or to neither.
- England and Wales is one of the exceptions, but the UK Government has been clear that their policy of no change is for the time being only.

Additional arguments made against the no change option included that there may be very limited support for this approach amongst the general public. It was reported that in a 2015 survey carried out by a third sector equality organisation, only 1% of LGBTI respondents and 2% of non-LGBTI respondents supported the no change option. Other arguments included:

- Being simple and straightforward is not a valid argument against making a change, particularly if not making that change perpetuates inequality.
- An opposite sex couple with a civil partnership registered in another country has no civil partnership-related protections under Scots law, whilst same sex civil partners do.

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<sup>5</sup> This figure excludes responses of 'No comment' or 'None' etc.

- Under the current arrangements, someone is effectively 'outing' themselves by indicating they are in a civil partnership. This would not be the case if civil partnership was open to all.

Other points highlighted the impact of the no change option on bisexuals and transgender people. The particular issues noted included that, if no changes are made, bisexual and trans people may have limited options depending on the gender identity of their partner. More specifically it was suggested that:

- Bisexuals in same sex relationships may choose between marriage and civil partnership, while those in opposite sex relationships only have access to marriage.
- Transgender people in civil partnerships must convert those civil partnerships into marriage prior to obtaining gender recognition.
- Transgender people who have non-binary gender identities are effectively barred from civil partnership if the gender recorded on their birth certificate 'indicates' that they are in an opposite sex relationship, thus negating their gender identity.
- More generally, the current options reinforce binary gender options by forcing people to identify as either male or female, to determine whether or not they can enter into a civil partnership.

### **Opposition to any new civil partnerships**

Other respondents opposed the no change option because they did not wish to see any new civil partnerships, whether same or opposite sex. This perspective is outlined further below, but in summary the issues raised under Question 2 included:

- With the introduction of same sex marriage, the concept of civil partnership is now redundant.
- With the introduction of same sex marriage, civil partnerships are now confusing for the general public. It would be better to have a single partnership arrangement which was common to all couples and which would be easy to understand as a consequence.
- Having an additional type of legal partnership to marriage creates extra work for registrars at a time of budget constraints.

# NO NEW CIVIL PARTNERSHIPS

Under this option, no new civil partnerships could be entered into in Scotland, from a given date in the future. Existing civil partners could stay in their civil partnership if they so wished, and these civil partnerships would continue to be recognised in law. Civil partnerships formed in England and Wales and Northern Ireland would continue to be treated as civil partnerships in Scotland and same sex relationships other than marriages registered overseas would continue to be treated as civil partnerships in Scotland, provided certain criteria are met. Opposite sex and same sex couples would continue to be able to get married, if they wished.

If this option were taken forward, provision would need to be made in both primary legislation (a Bill in the Scottish Parliament) and secondary legislation (in the form of regulations).

The consultation asked two questions about the option that would result in no new civil partnerships in Scotland.

## The case for no new civil partnerships

The consultation paper set out the following arguments in favour of the no new civil partnerships option:

- 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, although the status would remain for the foreseeable future, since existing civil partners could remain in their civil partnership and civil partnerships from outwith Scotland would 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.**

A total of 109 respondents made a comment<sup>6</sup>, a number of which focused primarily on agreement or disagreement with there being no new civil partnerships. Issues raised by those who disagreed with this option are set out under Question 4 below.

Those who agreed with there being no new civil partnerships generally appeared to come from one of two broad standpoints. One perspective was that civil partnerships became obsolete with the introduction of same sex marriage and a

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<sup>6</sup> This figure excludes responses of 'No comment' or 'None' etc.

line should have been drawn under them at that point. The alternative perspective was that there should never have been, and still should not be, the type of legal recognition of same sex relationships offered by civil partnerships.

Further comments made by those coming from the former perspective included that:

- Civil partnerships were introduced at a time when same sex couples could not get married. Although they may have represented considerable progress at the time - and particularly at a point when same sex marriage was not widely seen as a real possibility - society has moved on. They now represent little more than memory of the path Scotland has taken to marriage equality but since they are rooted in, and to a certain extent symbolic of, inequality, their time has passed and they are redundant.
- Although not necessarily a preferred option, there was also a view that if opposite sex civil partnerships are not introduced, then drawing a line under same sex civil partnerships may minimise the unequal treatment of opposite and same sex couples. However, it was noted that the Scottish Government has intimated that same sex civil partnerships registered outwith Scotland would continue to be recognised and that this would mean that a degree of inequality would remain built in to the Scottish system.
- Retaining civil partnership, including if opening it up to opposite sex couples, assumes that a genuine choice is on offer. However, when the law offers a choice it should have consequence, but in this case there is little or no difference between the rights provided by marriage and the rights provided by civil partnership. Without choice of substance, it becomes a choice merely of terminology.
- Current levels of demand suggest that marriage is the preferred option amongst same sex couples. Given low levels of demand, there may be a case for simplifying the system by removing an option for which there is limited take up.
- Nevertheless, and in line with the option as proposed, it would be critical for those currently in civil partnerships and wishing to remain in them to be entitled to do so.

In line with this latter point, it was suggested that, contrary to the consultation paper's assertion, having no new civil partnerships may not reduce overall complexity since other parts of Scotland's legal or administrative systems would need to continue to provide for existing civil partnerships and for civil partnerships registered outwith Scotland. It was also suggested that any benefits to the registration system are likely to be marginal and that it appears to have worked well for the last 10 years.

Other respondents favoured there being no new civil partnerships because they do not and/or never have agreed with offering specific legal recognition to same sex couples. These respondents sometimes connected the introduction of civil partnership with the subsequent introduction of same sex marriage and also made their opposition to that institution clear. Those providing further explanation tended to the view that marriage is between a man and a woman and that any alternative options, including both same sex civil partnership and same sex marriage, are not

in the best interest of society and of children in particular. These views tended to be expressed more fully and are explored in greater depth at Question 5.

## **The case against no new civil partnerships**

The consultation paper set out the following arguments against the no new same sex civil partnerships option:

- It would remove an option currently available to same sex couples and for which the Government expects that there will be a continuing, though modest, demand.
- 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.

**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.**

A total of 162 respondents made a comment<sup>7</sup>, with a number of respondents re-stating or noting agreement with one or more of the four arguments against the no new civil partnerships option presented in the consultation paper.

### **Allowing choice**

Those commenting at Question 4 tended to focus on the issue of choice and, as at other questions, their arguments were sometimes linked to the possible introduction of opposite sex civil partnership. It was suggested that it is incumbent upon the Scottish Government to take forward an option that upholds the principles of equality, dignity, tolerance and respect and allowing people choice within a fair and equal society should be a key consideration when deciding on the preferred option.

Points made in support of allowing same sex couples the continued choice of civil partnership included that same sex civil partnerships have played, and continue to play, a very important role for some people. Some of these respondents were amongst those who suggested there is likely to be a continuing if potentially modest demand for civil partnerships. Others suggested that a 'sunset clause' for civil partnerships would be premature until demand for them has been tested against the backdrop of marriage for all. It was also noted that other countries that introduced civil partnerships before making marriage available to same sex couples have seen a small but continuing demand for civil partnerships.

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<sup>7</sup> This figure excludes responses of 'No comment' or 'None' etc.

Those highlighting these issues included individual respondents who are in civil partnerships, and who have not – and would not – choose to enter into marriage. Respondents identified a number of reasons why same sex couples may prefer civil partnership to marriage. Overall, the issues raised tended to be similar to those made by respondents supporting the introduction of opposite sex civil partnership (and as discussed at Question 5 below). A slightly different perspective was that members of the LGBTI community may believe that religious bodies have actively discriminated against them in the past and/or continue to do so. It was suggested that, if an LGBTI person feels this way, they are unlikely to want to enter into an institution – namely marriage – which is closely connected with, and has been promoted by, those religious bodies.

Other possible reasons given for same sex couples preferring a civil partnership included that:

- They may object to the institution of marriage on other points of principle. For example, they may view marriage as a patriarchal institution.
- They may believe marriage to be a union meant for opposite sex couples, including because of their own religious beliefs.
- Civil partnerships can play an important role for LGBTI people of faith whose religious institutions do not recognise same sex marriage. They may be disproportionately affected by any repeal of civil partnership legislation.

### **Existing civil partnerships**

Many of the other comments made focused on the possible impact of allowing no new civil partnerships on those already in existence. Issues and concerns raised included:

- No new civil partnerships could undermine the legitimacy and status of those that already exist. People may feel their civil partnership is increasingly seen as less important, less accepted, or less understood by service providers and by wider society. There could be particular problems around lack of understanding about pension rights.
- Irrespective of any assurances given by Government, this option could foster a feeling of insecurity amongst those already in civil partnerships, including by making people feel pressured to convert their civil partnerships into marriages.

Other issues highlighted by respondents included:

- From a practical perspective, the continuation of existing civil partnerships would still need to be taken into account. For example, all forms that require disclosure of marital or civil partnered status would need to continue including the civil partnership option. Any opportunities to simplify processes as a result of there being no new civil partnerships would not be realised for some time.
- In the long term, abolishing civil partnerships would involve substantial changes to both primary and secondary legislation, thereby consuming valuable resources and parliamentary time with no discernible benefit.

- If same sex civil partnerships registered in England and Wales continue to be recognised in Scotland, and because registration of civil partnerships continues to be available in England and Wales, the effect would be to export civil partnership registration across the border.

# OPPOSITE SEX CIVIL PARTNERSHIP

The consultation paper noted that the Scottish Government has carefully considered the possible introduction of opposite sex civil partnership, but is not persuaded that it should be introduced in Scotland. The main reasons given for this decision were:

- The Government considers that demand for opposite sex civil partnership in Scotland would be low.
- 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.

**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.**

A total of 360 respondents commented at this question<sup>8</sup>, with some of these comments referring back to points made at other questions. As noted earlier, all comments focusing primarily on opposite sex civil partnerships have been included within the analysis at this question.

As at other questions, some respondents commented on the Scottish Government's reasons for not intending to introduce opposite sex civil partnership. Some respondents also raised additional issues. Most but not all of those commenting made their support for, or opposition to, the introduction of opposite sex civil partnership clear. Those who did not express a clear view tended to comment on the complexity of the issue and/or consider the various arguments for and against.

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<sup>8</sup> This figure excludes responses of 'No comment' or 'None' etc.

## **Opposition to opposite sex civil partnership**

The concern raised most frequently by those who agreed with the Government's overall position<sup>9</sup> was that the introduction of opposite sex civil partnership would undermine the institution of marriage. Individual respondents and religious or belief bodies or groups were the type of respondent most likely to voice this concern. Under this broader concern, the most frequently raised issues were:

- Marriage is the established, long-standing arrangement through which opposite sex couples make a lifelong commitment to each other and receive certain legal protections. There is no need for an alternative. A number of those making this point noted their belief that marriage is a divinely instituted union between a man and a woman, and that society neither can nor should choose to make alternative, primarily legal, arrangements.
- Opposite sex civil partnership would not require an equivalent level of commitment to marriage and, in consequence, would be less likely to result in long-standing, stable unions. This would be particularly detrimental to any children of these unions and, by extension, to wider society.
- There is no clear, substantive evidence of real demand for opposite sex civil partnership. Just because some people are calling for it to be available does not mean that many people would actually choose to enter into an opposite sex civil partnership rather than a marriage.
- Creating an additional set of arrangements would be difficult and/or costly and resources could be better deployed elsewhere.
- Objections to marriage based on it being an oppressive and patriarchal regime fail to understand that, if this is the case, this reflects the values or problems of society (past or present) rather than the true nature of marriage itself.
- Scots law already provides some protections for couples who are not and do not wish to be married.

Whilst the majority of those opposing the introduction of opposite sex civil partnership focused on defending the institution of opposite sex marriage, a small number of respondents opposed opposite sex civil partnership for a different reason. These respondents consider the introduction of same sex marriage has removed the need for any form of civil partnership. However, those taking this view sometimes noted that if same sex civil partnership is to be continued then opposite sex civil partnership should be introduced. To this extent their position mirrored that of most of those supporting the introduction of opposite sex civil partnership (discussed further below).

## **Concerns around implementation**

A representative body for professionals highlighted a number of issues of law that would arise with the introduction of opposite sex civil partnerships, meaning that the

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<sup>9</sup> As noted within the introductory chapter to this report, a proportion of these respondents appeared to have misunderstood the Review to be proposing the introduction of opposite sex civil partnership.

potential change would need to be looked at within a much broader context than simply considering the impact on the couples themselves.

More specifically they highlighted three particular areas to consider in an international context which could be complicated by the introduction of opposite sex civil partnership in Scotland. These were succession regulations, matrimonial property/partnership property regimes and the impact on jurisdiction in relation to dissolution, including dissolution of marriage and civil partnership.

They went on to conclude that ongoing developments in these three particular areas of international law, along with the relatively recent implementation of the Marriage and Civil Partnership (Scotland) Act 2014, suggest that now is not the most appropriate point in time to be seeking to make changes. This was applied not only to the introduction of opposite sex civil partnerships but also to any other proposed changes, and was echoed by some other respondents.

## **Support for opposite sex civil partnership**

Individual respondents and third sector or equality organisations were the type of respondent most likely to take issue with the Government's position and to put forward arguments in support of introducing opposite sex civil partnerships in Scotland. Others taking this view included public bodies and religious or belief bodies or groups.

### **Equivalent options for all**

The issue raised most frequently in support of introducing opposite sex civil partnership was that to do so would create equality based on all couples having the same options available to them. It was suggested that opening up of civil partnership to opposite sex couples is the only way to remove sexual orientation discrimination from the law on marriage and civil partnership, without removing the important and valued choice of civil partnership from same sex couples. The Equality and Human Rights Commission noted the importance of parity.

Some respondents suggested that the current arrangements may amount to discrimination, with particular reference made to the Equality Act 2010. There was an associated suggestion that introducing opposite sex civil partnership would help ensure the Scottish Government is meeting its obligations under national and international human rights law. It was noted that a judicial review was underway in England and Wales.<sup>10</sup>

### **Demand for opposite sex civil partnership**

Other comments questioned the Scottish Government's assertion that demand for civil partnership may be low and included:

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<sup>10</sup> This Judicial Review was heard in the High Court. It was not successful. The judgement is at <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/steinfeld-v-secretary-for-education.pdf> The couple have indicated that they will appeal the judgement.

- Reference to a 2015 survey carried out by a third sector equality organisation, which found that 41% of its non-LGBTI respondents would consider entering into an opposite sex civil partnership. It was also noted that many thousands of people have signed a petition calling for equal rights to civil partnership.
- That the current imbalance between the number of same sex civil partnerships and marriages may be explained in part by a pent-up demand for marriage amongst couples who had held off formalising their union until marriage became an option.
- Even if correct, the argument that there may be limited demand for opposite sex partnership does not make the case for the status quo. The decision should be based on what is fair and equitable.

A number of individual respondents reported that they already wished, or could envisage wishing, to enter into an opposite sex civil partnership. Some of these respondents gave reasons for wanting to enter into a civil partnership or for preferring a civil partnership to marriage. These included:

- Wanting greater legal and financial protections than those currently offered to non-married opposite sex couples in Scotland.
- Having been married in the past and not being able to remarry on religious or ethical grounds.
- Having been in an unhappy or abusive marriage in the past and not being willing or able to risk repeating that experience.
- Considering marriage to be a patriarchal or misogynistic institution and having no interest in supporting such an institution.

Other comments included that a civil marriage ceremony is not necessarily an acceptable alternative for those who do not want a religious marriage ceremony. Another comment was that the existence of civil marriage ceremonies does not make opposite sex civil partnerships unnecessary: a marriage through a civil ceremony is different to a civil partnership. It was suggested that the fact that marriage and civil partnership have different perceived and societal status was a key argument, accepted by the Scottish Government, for opening up marriage to same sex couples. Marriage being associated with patriarchal norms and outdated notions was also referenced as a genuine concern, which should not be glossed over.

### **Recognition and understanding of opposite sex civil partnership**

With reference to the Scottish Government's argument that recognition of opposite sex civil partnership elsewhere in the UK and overseas would be limited and that Society's understanding of opposite sex civil partnership might be limited, comments included:

- That limited recognition of opposite sex civil partnership elsewhere in the UK and overseas should not act as a barrier. It was suggested that there may also be limited recognition of same sex civil partnerships but that this has not been given as an argument for there being no new civil partnerships. If it is not a strong enough argument for there being no new same sex civil partnerships, it is not a strong enough argument to stop opposite sex civil partnership being introduced.

- That society has coped with there being alternative options for same sex couples and there is no reason to think society would not do the same should opposite sex civil partnership be introduced. It was also suggested that people's understanding of the legal implications of marriage and cohabitation may in any case be low and that this general lack of awareness would be made no worse by making another choice available.

### **Complexity, costs and legal rights**

With reference to the Scottish Government's argument that creating an additional set of arrangements would be difficult and/or costly, the following points were raised:

- That any increased complexity would not be significant, particularly in comparison with the changes required to introduce same sex civil partnership and then same sex marriage. As with low demand, it was also suggested that increased complexity is not, in any case, a valid argument against doing what is right.
- That there is no particular reason to think that the costs would be disproportionate. In particular, it was suggested that this assertion contradicts the findings of the Government's own Partial Business and Regulatory Impact Assessment (Annex H to the consultation paper and covered further under Question 6).
- Also on the theme of cost, the consultation paper's suggestion that the pensions and administrative implications of introducing opposite sex civil partnership are not expected to be onerous was highlighted, as was the suggestion of limited, if any, additional overall costs. Further, it was suggested that if civil partnerships would result in more stable relationships and families, there could be corresponding benefits and cost-savings for society.

With regard to Scots law already providing some protections for couples who are not and do not wish to be married, it was suggested that, although the law already provides some rights for non-married cohabitants, those rights are much more limited than those that apply to married couples and civil partners. The arrangements covering financial provision on separation or bereavement were highlighted in particular. It was also suggested that women are likely to be particularly affected, since they may have less access to resources, assets and income. The additional option of entering into civil partnership was seen as strengthening certain women's rights and security, which in turn would have a positive impact on child poverty. Some individual respondents raised very similar concerns about how their current lack of rights could affect their family following their, or their partner's, death.

### **Other possible advantages of opposite sex civil partnership**

Other possible advantages that respondents highlighted as to be derived from the introduction of opposite sex civil partnership included:

- If someone in a civil partnership undergoes gender reassignment, the couple's civil partnership would continue to be legally recognised upon receiving gender recognition. This would bring civil partners in line with the current situation for married couples.

- It would provide an option for couples who are not comfortable with an option that has all of the connotations associated with marriage, including that of sexual intimacy.

## BRIA, EQIA & CRWIA

The Scottish Government has prepared a partial Business and Regulatory Impact Assessment (BRIA), a partial Equality Impact Assessment (EQIA) and a screening report for the Child Rights and Wellbeing Impact Assessment (CRWIA). Each of these was appended to the consultation paper.

**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).**

A total of 58 respondents commented at this question<sup>11</sup>. Some of these comments were brief and/or reiterated comments made at earlier questions. General comments on the assessments included that they can be difficult to understand for the lay person, but also that the current assessments are somewhat limited. It was suggested there should be full assessments if any Bill is to be introduced to the Scottish Parliament, and a Privacy Impact Assessment would be required under either the no change or the no new civil partnerships options.

### Partial EQIA

Comments made about the Partial EQIA or other equalities impact-related issues were:

- Concern about discrimination against Christian belief and practice.
- The influence of religious bodies on legislation in this area has been disproportionate. The number of religious groups consulted compared to the number of secular groups is of concern, and the Scottish Secular Society was not amongst the consultees listed.
- The EQIA minimises the impact on sexual orientation of opening up civil partnership to opposite sex couples, since it does acknowledge the discrimination that exists currently and would persist under either the no change or the no new civil partnerships options.
- The partial EQIA notes that some religious bodies are concerned that the introduction of opposite sex civil partnership would undermine marriage. In reality, however, most opposite sex couples who would register a civil partnership have chosen not to marry, and so opposite sex civil partnership is unlikely to lead to a significant reduction in the number of marriages.
- The assumption of binary gender built in to the same and opposite sex distinctions discriminates against those with non-binary gender. Only removing all stipulations of gender from the requirements of any legal partnership can lead to real equality.
- The EQIA fails to consider the protected characteristic of pregnancy and maternity. Under current legislation, there is protection for civil partners having children using

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<sup>11</sup> This figure excludes responses of 'No comment' or 'None' etc.

donor sperm. If a female couple are in a civil partnership and they have a baby, both partners are automatically entered as legal parents on the birth certificate. If civil partnership were no longer available, couples would have no option but to get married to have this same right and this is clearly discriminatory.

- There would be a concern that if opposite sex civil partnerships became or were seen as a lesser version of marriage, the value of any same sex civil partnerships formed when they were the only option could be undermined. This could lead couples to feel they needed to convert their civil partnerships to marriages; if so, a period when those conversions came at no cost would be required.
- The EQIA correctly notes that introducing opposite sex civil partnership would benefit trans people in civil partnerships, since it would allow them to access gender recognition without first being forced to dissolve their civil partnership or convert it to a marriage.
- The Scottish Government should address the anomaly of adultery reflecting only opposite sex adultery.
- The EQIA is correct in suggesting that more guidance, including easy read guidance, is needed on entering into a marriage or civil partnership.

## **Partial BRIA**

Comments made about the Partial BRIA or other business or regulatory-related issues were:

- The BRIA does not support the arguments made elsewhere in the consultation paper that there would be disproportionate costs associated with introducing opposite sex civil partnerships. There would be one-off costs, but these would be no greater than those resulting from the introduction of same sex marriage, which were considered proportionate.
- It is not surprising that a Registrar is not experiencing enquiries about opposite sex civil partnership, since couples are unlikely to enquire about something they know does not exist. The only way to test demand would be to ask people the question.
- Any suggestion that increased workload for Registrar Services is a reason for not introducing opposite sex civil partnership should be challenged.
- The Summary Costs and Benefits table lists pension-related costs associated with the introduction of opposite sex civil partnership, which the preceding analysis concludes would be unlikely to occur.
- The Partial BRIA notes that there are uncertainties associated with estimating legal aid costs, for example because cohabitants who separate may pursue financial provision and require legal aid. However, financial provision cases for cohabitants may be more expensive than civil partnership dissolutions, because the law on cohabitation is less well established. This could mean legal aid costs would be reduced.
- The corporate body 'Luxury Scottish Wedding' may be wrong in suggesting that demand would not be increased if opposite sex civil partnerships were available.

## **CRWIA Screening Report**

Comments made about the CRWIA Screening Report or other child-related issues were:

- The CRWIA is a welcome addition.
- If any Bill is to be introduced to the Scottish Parliament, the impact on children of any changes to the civil partnership framework must be examined with care and rigour.
- The CRWIA is brief and/or weak, particularly in considering the possible benefits to children if the introduction of opposite sex civil partnership led to more stable family relationships compared to unmarried couples.

# Annex A - Organisational respondents

Argyll and Bute Council  
Association of Registrars of Scotland  
Bi Community News  
Campaign for Equal Civil Partnerships  
CARE for Scotland  
Changing Attitude Scotland  
Christian Concern & Christian Legal Centre  
Engender  
Church of Scotland - Legal Questions Committee  
Equality and Human Rights Commission  
Equality Network  
Faculty of Advocates  
Falkirk Council  
Fife Centre for Equalities  
Free Church of Scotland  
General Synod of the Scottish Episcopal Church (Faith and Order Board)  
Glasgow City Council  
Glasgow Unitarian Church  
Humanism in Scotland  
Humanist Fellowship of Scotland  
LGBT Youth Scotland  
Mothers' Union  
National Records of Scotland  
Salvation Army Scotland  
Scotland for Marriage  
Stirling Baptist Church Social and Ethical Issues Committee  
Stirling Council  
Stonewall Scotland  
United Reformed Church (National Synod of Scotland: Church & Society Committee)



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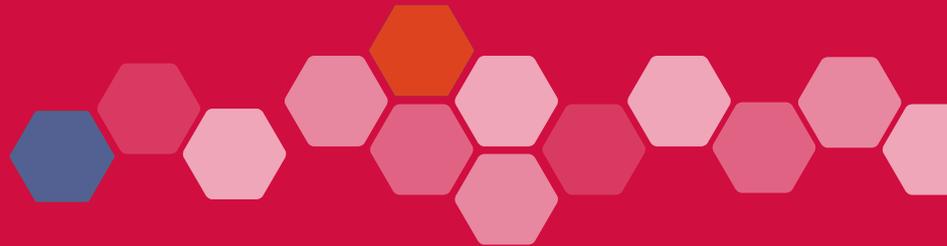
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