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**Equalities and Human Rights Committee**  
**Comataidh Co-ionannachd agus Còraichean Daonna**

**Civil Partnership (Scotland) Bill Stage 1  
Report**



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# Equalities and Human Rights Committee

To consider and report on matters relating to equal opportunities and upon the observance of equal opportunities within the Parliament (and any additional matter added under Rule 6.1.5A). In these Rules, “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions. Human rights, including Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.



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# Introduction

## Parliamentary scrutiny of the Bill

1. The [Civil Partnership \(Scotland\) Bill](#) (“the Bill”) was introduced by the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville, on 30 September 2019 and was referred to the Equalities and Human Rights Committee (“the Committee”) as lead Committee at Stage 1. We are required to report to the Scottish Parliament on the general principles of the Bill.
2. The Bill was accompanied by -
  - [a Policy Memorandum](#)
  - [Explanatory Notes](#)
  - [a Financial Memorandum](#)
  - [Statements on Legislative Competence](#), and
  - [a Delegated Powers Memorandum](#).

## Committee consideration of the Bill

3. In order to inform scrutiny of the Bill, the Committee issued a [call for evidence](#) on 8 November 2019, which closed on 31 January 2020. A total of 40 responses were received. These are available [on our website](#) along with a [summary of written evidence](#).
4. The Committee decided to carry out engagement online. A platform called ‘Your Priorities’ was used to capture views on the Bill through text, audio and video comments. The platform was shared widely on social media by the Parliament and several stakeholder groups, including the Equality Network, Engender and Interfaith Scotland. Promoted advertising on Facebook was also used to reach those who would not normally engage with the Scottish Parliament. The platform was live for three weeks between 13 and 31 January 2020. There was a total of 45 comments and a summary of responses is available [online](#).
5. The Committee took oral evidence from key stakeholders in February and March 2020. Links to official reports of those meetings are available at Annexe A.
6. The Committee values and appreciates all those who took the time to provide written and oral evidence and those who submitted their views on our online platform.

## **Membership changes**

7. During the Committee's consideration of the Bill, the membership of the Committee changed. Oliver Mundell and Annie Wells were replaced by Maurice Golden and Alison Harris on 25 February 2020.

# Background to the Bill

## Purpose of the Bill

8. The Bill changes the law to allow different sex couples to enter a civil partnership. It does this by amending the [Civil Partnership Act 2004](#) (“the 2004 Act”) to remove the same sex requirement.
9. The Bill follows the UK Supreme Court’s ruling in ‘Steinfeld’. <sup>1</sup> The court found that sections 1 and 3 of the 2004 Act are incompatible with the European Convention on Human Rights (ECHR), to the extent they prevent different sex couples from entering into a civil partnership, while same sex couples have the choice of either marriage or civil partnership.
10. By removing the same sex requirement, the Policy Memorandum states that the Bill aims to uphold human rights and provide equality of opportunity for couples who decide they wish to enter a legally recognised relationship. <sup>2</sup>
11. The Scottish Parliament Information Centre has prepared a [briefing for the Bill](#). This contains further information on the Bill’s provisions and statistics on marriage and civil partnership.

## Timeline of civil partnership in Scotland

12. The background to the Bill and a timeline of developments can be summarised as follows:
  - Civil partnerships were introduced in the UK by the 2004 Act, as a way for same sex couples to obtain similar legal rights and responsibilities as marriage.
  - Same sex marriage was later introduced in Scotland by the [Marriage and Civil Partnership \(Scotland\) Act 2014](#) (“the 2014 Act”).
  - This resulted in same sex couples having a choice between civil partnership or marriage, whilst different sex couples could only choose marriage.
  - The Scottish Government reviewed the law on civil partnerships in late 2015 and ran a [consultation](#). They concluded further evidence was required before determining next steps.
  - In June 2018, the UK Supreme Court ruled in Steinfeld, that the difference in treatment between same sex couples and different sex couples is incompatible with the ECHR.
  - Whilst the judgment did not relate to Scotland specifically, the facts and circumstances are very similar. The Scottish Government ran a second [consultation](#) on the future of civil partnerships, which closed in December 2018.

- The consultation set out two options that would remove the incompatibility. Either close civil partnerships to new relationships from a date in the future or extend them to different sex couples. An [analysis of consultation responses](#) is available.
- The Scottish Government subsequently decided to make civil partnerships available to different sex couples and introduced the Civil Partnership (Scotland) Bill.

## Scottish marriage, civil partnership and cohabitation

13. Civil partnerships are, in essence, modelled on marriage and generally have the same legal consequences from entering them. There are very few legal differences between civil partnership and marriage. The main differences relate to some pension schemes that offer lower benefits for some surviving civil partners when compared to some surviving spouses, and adultery as a ground for irretrievable breakdown of a marriage but not a civil partnership.
14. Irretrievable breakdown can also be shown by: the parties not cohabiting for one year with both parties' consent to divorce; the parties not cohabiting for two years, regardless of consent from one or both parties; one party behaving in such a way that the other party cannot reasonably be expected to cohabit with them ('unreasonable behaviour').
15. Cohabitation, where two people live together as if a married couple, has significantly fewer and less clear rights than civil partnership and marriage.
16. The main similarities and differences between marriage, civil partnership and cohabitation in Scotland are set out in Table 1 below

**Table 1: Similarities and differences between marriage, civil partnership and cohabitation in Scotland**

|                                     | Marriage   | Civil Partnership   | Cohabitation  |
|-------------------------------------|--|---|---|
| <b>Available to</b>                 | Different and same sex couples   | Only same sex couples   | Different and same sex couples  |
| <b>Creation of the relationship</b> | A marriage ceremony can be religious or belief or civil. Solemnised by saying a prescribed form of words and signing the marriage schedule.  | A civil partnership ceremony can be religious or belief or civil. Registered by signing the civil partnership document.   | A couple live together as if married  |
| <b>Rights and responsibilities</b>  | Includes - <ul style="list-style-type: none"> <li>• pension benefits</li> <li>• succession rights</li> <li>• Aliment obligations</li> <li>• Financial provision on divorce. Etc</li> </ul> | Same as married partners. Except that some pension schemes have offered lower benefits for some surviving civil partners when compared to surviving spouses. <sup>i</sup>   | Fewer rights. Some rights on the end of a relationship as set out in the <a href="#">Family Law (Scotland) Act 2006</a> . Including equal share of goods and right to request a court order for financial assistance. |
| <b>Ending the relationship</b>      | Divorce on grounds of - <ul style="list-style-type: none"> <li>• Irretrievable breakdown</li> <li>• An interim Gender Recognition Certificate has been obtained</li> </ul>                 | Dissolution on same grounds as marriage. Except -Adultery <sup>ii</sup> cannot establish irretrievable breakdown in a civil partnership. (However, infidelity could be used to establish 'unreasonable behaviour'). | Separate informally   |
| <b>Conversion</b>                   | None   | Can convert civil partnership into a marriage   |   |

## The international context

17. Other countries have developed legal unions for couples as an alternative to marriage. The terms used for these legal unions include 'civil union', 'domestic partnership' or 'registered partnership'. These unions have been a way to provide a legal relationship for same sex couples and ensure cohabiting different sex couples have rights. For convenience, this report uses 'civil partnership' as a term for registered relationships from outside the United Kingdom which are not marriage.
18. Denmark, Sweden, Norway and Iceland were among the first countries to introduce an alternative to marriage, exclusively for same sex couples. With the introduction of same sex marriage across the world, these countries, as well as Finland, Germany and Ireland, closed their civil partnerships so that no new partnerships could be made.<sup>3</sup>
19. In contrast, there are many countries where civil partnerships were retained with the introduction of same sex marriage, and both are available to different and same sex couples. They include: Belgium; Brazil; France; Isle of Man; Luxembourg; The Netherlands; New Zealand, and South Africa.<sup>4</sup>

<sup>i</sup> The Scottish Government has said that survivor benefits in devolved public pension schemes for different sex civil partners would be aligned with the rules for survivor benefits for same sex civil partners and spouses when different sex civil partnerships are introduced.

<sup>ii</sup> The definition of adultery in common law is voluntary heterosexual intercourse outside of marriage.

20. Popularity of these civil partnerships vary. In New Zealand, there is generally a preference for marriage across same sex and different sex couples.<sup>5</sup> In France, demand for different sex Pacte civil de solidarite (“Pacs”) has increased. However, the nature of the Pacs relationship is fundamentally and deliberately different, in that the rights and responsibilities are lower than a Scottish civil partnership and it is easier to dissolve.<sup>6</sup>

## Rest of the UK

21. Scotland (and until recently England and Wales), is the only country in the world where same sex couples can choose between marriage or civil partnership, while different sex couples only have the option of marriage.
22. Following the UK Supreme Court judgement in *Steinfeld*, England and Wales introduced different sex civil partnerships via regulations.<sup>7</sup> The first different sex civil partnerships took place on 31 December 2019.<sup>8</sup>
23. In Northern Ireland, regulations introducing different sex civil partnerships also came into force on 13 January 2020.<sup>9</sup>

## What does the Bill do?

24. The aim of the Bill is to allow for different sex couples to form civil partnerships, with similar rights and responsibilities to marriage. To do this the Bill makes several consequential changes to existing legislation, which largely reflect existing provisions for same sex civil partnerships and marriage.
25. The Bill contains 15 sections and 2 schedules -
- **Sections 1 and 4** create civil partnerships for different sex couples by amending the 2004 Act to remove the ‘same sex’ requirement
  - **Section 2** allows overseas registered partnerships to be recognised as civil partnerships in Scotland
  - **Section 3** creates an interim recognition period. Allowing different sex civil partnerships, formed outwith Scotland, to be treated as marriage until different sex civil partnerships come into force
  - **Sections 5 - 7** set out the persons who are eligible to register civil partnerships between different sex couples
  - **Section 8** provides for the second registration of a civil partnership where parties are unable to evidence it
  - **Section 9** allows for the postponement of a decree of dissolution where religious impediment to marriage exists

- **Section 10** makes provision for different sex couples in a civil partnership to change their relationship to marriage and clarifies there is no duty on celebrants to solemnise a marriage between civil partners
- **Section 11** extends provision of forced marriage to civil partnership
- **Section 12** introduces Schedule 2
- **Sections 13 - 15** contain final provisions around regulations, commencement, and the short title
- **Schedule 1** lists the recognition of overseas different sex relationships
- **Schedule 2** modifies various enactments, including -
  - Scottish family law, to accommodate different sex civil partnerships and the consequential possibility of reproduction between parties. Including presumption of parentage and parental rights and responsibilities.
  - Legislation concerning gender recognition, ending the requirement for a person who obtains a Gender Recognition Certificate to end their civil partnership, as long as their partner consents to the civil partnership continuing.

## What the Bill does not do

26. The Bill does not extend adultery as a ground to establish the irremediable breakdown of a civil partnership, although it remains available in both same sex and different sex marriage.
27. The Bill also does not create provision to allow a marriage to be changed into a civil partnership. The UK Government ran a [consultation](#) on this possibility that ended on 20 August 2019.<sup>10</sup> Their current proposal “is to allow opposite sex-married couples the opportunity to convert to a civil partnership”.<sup>11</sup> This would be time-limited whereupon all conversion rights would end. However, the UK Government has not stated its final position on the consultation.
28. On 20 January 2020, the UK Government also launched a [consultation](#) on conversion provisions for Northern Ireland, now that same sex marriage and different sex civil partnership have been introduced.<sup>12</sup> The consultation ran until 23 February 2020 and no final position has been stated.

## Future considerations

29. There are a number of consequences that flow from the Bill which are reserved to the UK Parliament. A section 104 Order would be needed to make changes to reserved legislation to reflect the changes in Scotland.<sup>iii</sup> These include:

- Amendments to the Equality Act 2010 – to protect religious or belief celebrants who may not wish to register different sex civil partnerships.
- Amendments to legislation to treat male civil partners of women in the same way as husbands of women.
- Changes to reserved public service, state and private sector pension schemes.

## **Report remit and terminology**

30. This report covers the sections of the Bill which have provoked discussion during our consideration of the Bill. This report makes no comment on sections of the Bill where the Committee received no views or where the Committee has no particular comment it wishes to make.
31. This report uses the term 'different sex' couples, instead of 'opposite sex' or 'mixed sex'. This is in line with the terminology in the Bill. However, 'opposite sex' or 'mixed sex' may be used when quoting from UK or Scottish Government documents or written and oral evidence.

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iii A section 104 order is used to make consequential changes to reserved law, in consequence of legislation passed by the Scottish Parliament. Section 104 orders are voted on in Westminster.

# Key issues

## Extension of civil partnerships to different sex couples

32. The main aim of the Bill is to allow different sex couples to form civil partnerships. To do this, sections 1 and 4 of the Bill remove the same sex requirement in sections 1(1) and 86(1)(a) of the 2004 Act. The policy of the Bill is aimed at upholding human rights and providing equality of opportunity to different sex couples.<sup>13</sup>
33. The Bill was introduced following the Supreme Court ruling in *Steinfeld* that said the current situation is discriminatory and incompatible with the ECHR. However, the judgment ruled that the inequality could be eliminated by either extending civil partnerships to different sex couples or abolishing them by closing civil partnerships to new couples.
34. The Committee explored the Bill's approach to achieving equality by extending rather than abolishing civil partnerships.

## Strengthening equality

35. There was widespread general support for the extension of civil partnership to different sex couples in both written submissions and oral evidence. One of the main reasons for support expressed by those who provided evidence, was the recognition that this approach would strengthen equality and advance human rights in Scotland, thereby bringing Scotland in line with the rest of the UK.
36. For example, the Equality and Human Rights Commission (EHRC) welcomed the Bill stating that they had been calling for civil partnerships to be extended to different sex couples since 2011. They considered the Bill was "progress towards greater equality in Scottish society".<sup>14</sup>
37. The Equality Network emphasised the Bill's approach was better than the alternative, stating the solution to an inequality "should be to 'level up', providing more extensive rights and choices", not down.<sup>15</sup> Engender agreed with this approach arguing "human rights should be an ever-advancing phenomenon, and we would not support rolling back the rights of one group ... in order to 'equalise' treatment".<sup>16</sup>
38. No organisation or individual who provided written or oral evidence to the Committee expressed a view against the main provision in the Bill and its general principle.

## Increased choice and access to rights and financial protections

39. Other key reasons given by witnesses for support of the Bill, included that it increases choice, helps people access rights and financial protections, and offers

greater family security. Several organisations explained the Bill’s benefits in relation to specific groups.

40. For example, Stonewall Scotland stated the Bill would positively impact LGBT and non-binary people by ensuring that—

” “civil partnerships remain an option for LGBT people in same sex relationships and widen the options available to people in different sex relationships, including those who are LGBT.”<sup>17</sup>

41. The Equality Network highlighted that the Bill would benefit transgender people, who would no longer need to end their civil partnership to obtain a Gender Recognition Certificate.<sup>18</sup> They also said that the Bill would benefit young people who had expressed concern about being ‘outed’ as lesbian, gay or bisexual if they revealed they were in a civil partnership.<sup>19</sup>

42. Children in Scotland commented that opening up civil partnerships would have a positive impact on the lives of young people by providing more choice for those aged 16 and 17 to formally recognise their relationships. They also highlighted “the recognition of both parents through civil partnership helps to ensure that children’s rights have greater protections”.<sup>20</sup>

43. The EHRC stated the Bill would have a positive impact on the inequalities faced by women in Scotland. They explained, “the impact of the lack of legal rights in the breakdown of a cohabiting relationship is gendered” due to systematic issues which lead women to have less access to recourses, assets and income. In their view therefore, the Bill would provide those who do not wish to marry with an option of access to greater legal rights and financial protection.<sup>21</sup>

44. The Young Women’s Movement and Engender also strongly supported the Bill on this basis and emphasised that whilst marriage has evolved, “it can still be seen as being rooted in patriarchal and outdated ideals and closely bound to religious processes”.<sup>22</sup> Elena Soper of the Young Women’s Movement stated, civil partnership would provide “an alternative [to marriage] that can be seen as a more equal commitment and less encumbered by traditional societal expectations of women in their role of wife”.<sup>23</sup> This was also the strongest theme that came out through the Committee’s engagement. An example of a comment in this respect was as follows—

” “I don’t want to be a wife, but I wouldn’t mind being a civil partner. I most definitely want the option to be available to me. I may one day want to have my committed relationship legally recognised in a modern non-patriarchal non-religious way.”<sup>24</sup>

45. Martin Loat of the Equal Civil Partnerships Campaign also highlighted support of the Bill from divorcees and widows in an older age group who, whilst not wanting to remarry, did want their relationship legally recognised and to access legal protection.<sup>25</sup> The reasons for not wanting to marry were expanded on by others. Engender explained that some “women with experience of domestic abuse within marriage, may be more comfortable with entering a different type of commitment”.<sup>26</sup> Fiona Blair, President of the Association of Registrars for Scotland, highlighted

that some people see marriage as a one-time thing, some do not want to have the ceremony and others think remarriage would be dishonouring their first husband or wife.<sup>27</sup>

## Symbolic differences between marriage and civil partnership

46. Throughout our Stage 1 scrutiny, the Committee heard evidence that there were a small number of ‘insignificant’ legal differences between marriage and civil partnership and, on the whole, marriage and civil partnership were legally equivalent.
47. Professor Kenneth Norrie stated that while he supported the Bill as “far better than the current situation”, he would have preferred the closure option because, “from a legal perspective [...] it is inefficient law to have two institutions do the job of one”.<sup>28</sup> He also argued that—
- ” “the exclusion of opposite-sex couples was an accident of history, not a deep-rooted and malign act of discrimination. The symbolism of removing an exclusionary rule, hugely important for marriage, is of minimal importance with civil partnership.”<sup>29</sup>
48. However, Dr Kelly Kollman highlighted that whilst “the legal differences between the two are not huge ... the symbolism matters a great deal”.<sup>30</sup> She argued that the symbolism of the marriage institution “matter(s) both ways”, commenting that —
- ” “The symbolism of marriage obviously meant a lot for the legitimacy of same sex couples but, on the other hand, it comes with a history that still has consequences for behaviour today. Some people embrace that history, but others do not. The choice is therefore an important one.”<sup>31</sup>
49. Other witnesses agreed that the “symbolic values cannot just be side-lined but are quite significant for couples”.<sup>32</sup> For example, Tim Hopkins of the Equality Network said—
- ” “The important thing is not legal differences but cultural difference and social meanings...the differences are not about the law – they are wider than that. That is why the Bill is so welcome.”<sup>33</sup>
50. Fraser Sutherland, of the Humanist Society Scotland, summarised the issue as a matter of choice and allowing couples to decide what is right for them. He said—
- ” “A couple might have a myriad of reasons for making their choice, but it is important that we recognise that choice when they form their relationship in a legal context.”<sup>34</sup>
51. Dr Kelly Kollman noted that by offering more choice, the extension option fulfilled a second policy goal of “pluralising, diversifying and modernising family policy”.<sup>35</sup>

52. On a practical note, Fiona Blair highlighted that the differences between marriage and civil partnership are “confusing for the public, and it would be good to have clear guidance”.<sup>36</sup>
53. In oral evidence to the Committee, the Cabinet Secretary reiterated her opinion that the Bill would have a positive impact on several equality groups and stressed the levelling up of rights as an important aim of the Bill. She also emphasised the importance of giving people choice, acknowledging that throughout evidence people had spoken passionately about why marriage wasn’t right for them. She stated—
- ” “the Government is obliged to consider what can be done to ensure that those people can be in a legally recognised relationship and have the benefits that flow from that while having an arrangement that fits their personal beliefs and how they want to live their lives. Although the financial implications are important, we should not underestimate the importance of allowing a couple to be able to be in the type of relationship that they want to be in and have that legally recognised.”<sup>37</sup>
54. The Cabinet Secretary said she would consider further whether guidance on the differences between the respective rights of marriage and civil partnership should be provided to the public.<sup>38</sup>

**55. The Committee supports the Scottish Government’s aim of upholding human rights and equality through the opening of opportunities and provision of greater choice. The Committee strongly welcomes the legal, financial and other benefits that the Bill will bring to different sex couples and several equality groups. The Committee notes that some people do not wish to marry for symbolic, cultural or emotional reasons and consider these important enough to merit the extension of civil partnership. The Committee recognises the importance of offering choice for couples to formalise their relationship and benefit from the rights and protections that flow from that, in a way that they see fit.**

**56. The Committee acknowledges that there are relatively few legal differences between civil partnership and marriage but consider an understanding of the differences would assist couples in deciding which form of relationship is right for them. Therefore, the Committee welcomes the Cabinet Secretary’s commitment to consider whether there is a need to issue clear guidance for the general public, outlining the relatively few differences between marriage and civil partnership.**

## Interim recognition of different sex civil partnerships as marriage

57. Section 3 of the Bill provides for different sex civil partnerships formed in England, Wales and Northern Ireland (as well as other jurisdictions) to be temporarily “treated as if in a marriage” until different sex civil partnerships are registrable in Scotland.
58. The Scottish Government developed this policy for interim recognition because civil partnerships for different sex couples are now available in the rest of the UK.<sup>39</sup> Therefore, section 3 of the Bill will allow civil partners who move to Scotland to access the rights and responsibilities that would come from a marriage, until different sex civil partnerships come into force.
59. A number of written submissions expressed some disappointment with this provision. For example, while agreeing with the general proposal in section 3 to give civil partners some form of legal recognition, the Equality Network stated— “We think it is unsatisfactory to treat non–Scottish civil partnerships as marriages, because the partners specifically chose not to marry.”<sup>40</sup>
60. Martin Loat also expressed displeasure that his own civil partnership would be treated as a marriage in the interim period, stating he had a “huge problem in principle” with the provision.<sup>41</sup> He urged the Committee to either reconsider the provision or have the Bill enacted quickly so that the interim period was minimal or a non-existent theoretical issue.<sup>42</sup>
61. The Committee explored these concerns further with other witnesses. Elena Soper expressed apprehension that the provision impinges on people’s “inherently personal choice”. She said that—
- ” “if someone has decided, for whatever reason - whether it be religious, moral, ethical or even financial to go into a civil partnership, they have already rejected the ideal of marriage. For them to then come to Scotland and be told, ‘Actually, you are married here’ feels ethically wrong.”<sup>43</sup>
62. However, Kenny Stewart of the EHRC recognised that whilst the provision might be uncomfortable for some couples, the Scottish Government had chosen this as a “pragmatic interim solution”.<sup>44</sup>
63. Nevertheless, the Committee investigated whether there was an alternative approach that could be taken, including whether the wording of section 3(2)(a) could be changed to say, ‘treated as being in a civil partnership’ rather than ‘in a marriage’.
64. Ephraim Borowski of the Scottish Council of Jewish Communities said that, in his view, this could be theoretically possible because, “there is a difference between being married and being treated as being married”. In the same vein, he suggested that “treating two people as if they were in a civil partnership would not actually create a civil partnership”.<sup>45</sup>
65. However, Rod Burns of the National Records of Scotland (NRS), cautioned against this approach. He stated that, in practical terms, if the Bill was to treat two different

sex people as if they were in a civil partnership before the whole Bill was fully commenced, then there would be a lack of legal protection.<sup>46</sup>

66. Tim Hopkins agreed, explaining that the problem with this approach was that civil partnership law is not complete because “it misses out some of the things that are needed for mixed-sex couples”.<sup>47</sup> This includes things that are added by Schedule 2 of the Bill such as presumption of parentage and parental rights and responsibilities. He encouraged the Committee to ask the Cabinet Secretary whether it was feasible to commence the necessary provisions in schedule 2 at the same time as the interim recognition provisions, in order to give the practical protections the law would need to provide and accommodate a terminology change.  
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67. Nevertheless, Tim Hopkins’s preference was that the Bill should be commenced as quickly as possible to try and keep the interim period as short as possible. He questioned the Scottish Government’s anticipated timescale of Spring 2021 saying “we see no reason why it should not be fully commenced by the end of the year [2020]”.<sup>49</sup>

68. In oral evidence, the Cabinet Secretary reiterated that whilst she appreciated the strong concerns heard throughout evidence, the interim recognition provisions were about ensuring access to rights. She reassured the Committee that if a couple came to Scotland, they could still say they were in a civil partnership.

69. The Cabinet Secretary also addressed the suggested change of terminology from ‘marriage’ to ‘civil partnership’, stating she “did not see how that could work in reality”. She explained —

” “Unless we have all the secondary legislation that goes alongside the primary legislation, we would not have a comprehensive body of law that would allow us to say that such people had the rights of a civil partnership. There would therefore be a risk that people would miss out on rights.”<sup>50</sup>

70. However, the Cabinet Secretary did agree to meet with Committee members to discuss possible drafting changes to section 3 of the Bill to potentially soften the language in this section.<sup>51</sup>

71. The Committee also pressed the Cabinet Secretary on the anticipated timetable of the Bill’s commencement and whether the implementation of the provisions in the Bill could be sped up or shortened. The Cabinet Secretary confirmed different sex civil partnerships were not expected to take place until “early 2021”, explaining —

” “if the bill is passed by Parliament and becomes an act, there are other areas that we will need to look into. For example, an order under section 104 of the Scotland Act 1998 will need to be laid at Westminster, and we will need a number of Scottish statutory instruments to go through this Parliament. We will need to make changes to forms and guidance, information technology, training and so on.”<sup>52</sup>

72. However, she stated, “we are determined to move as fast as we can within our gift”.  
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73. Finally, the Committee asked the Cabinet Secretary, as a point of interest, why the Scottish Government had opted to use primary legislation to extend different sex civil partnerships, rather than secondary legislation as in England and Wales. The Cabinet Secretary clarified that because Westminster had initially dealt with the issue through primary legislation, it gave the UK Government the power to move forward through regulations. Scotland was not covered by that bill and so it was impossible to do so.<sup>54</sup>

**74. The Committee recognises that the issue of how a different sex civil partnership is recognised during any interim period is important to those who do not wish to be seen or treated as being in the institution of marriage. The Committee acknowledges that, to some people, this provision impinges on their personal choice and touches on their personal identity. However, the Committee is nonetheless persuaded that because of the current legal landscape, there is no immediate alternative to the current approach. It is important that different sex civil partners from other jurisdictions can access their full rights in Scotland during any interim period. The Committee consider that the Scottish Government has chosen the most pragmatic approach with which to do this.**

75. Nevertheless, the Committee welcomes the commitment from the Cabinet Secretary to work with Committee members to explore whether the language in section 3 of the Bill could be improved. The Committee also welcomes the Scottish Government's commitment to look at what could be done to speed up the process of enacting the various provisions in the Bill to shorten the interim period.

76. The Committee recommends that the Cabinet Secretary meets with Committee members on this issue if the Bill passes Stage 1, with a view to the consideration of any amendments at Stage 2.

## Dissolution of a civil partnership

77. As set out in Table 1, there are currently two grounds for the dissolution of a civil partnership in Scotland. The first is an irretrievable breakdown and the second is if either party obtains an interim Gender Recognition Certificate. In either case, an application to the court is required.
78. Whilst the Bill replicates the irretrievable breakdown ground for the dissolution of a different sex civil partnership, it ends the interim gender recognition ground for both same sex and different sex civil partnerships. This is because civil partnerships would be open to both same and different sex couples.

## Adultery

79. Whilst adultery can be used to establish the irretrievable breakdown of both a different and same sex marriage, it cannot be used to establish the irretrievable breakdown of a civil partnership.
80. This will remain one of the differences between marriage and civil partnership as the Policy Memorandum sets out that the Scottish Government does not intend to extend adultery to the law of dissolution. It states that, if a civil partner wishes to raise a dissolution action based on sexual infidelity of his or her partner, then they can raise an action on the basis of ‘unreasonable behaviour’. Namely, “one of the parties behaving in such a way that the other party cannot reasonably be expected to cohabit with him or her”.<sup>55</sup>
81. The Faculty of Advocates questioned the intention behind the Scottish Government’s decision not to extend adultery. They advised further clarification should be sought, given the intention of civil partnerships to be an alternative to marriage.<sup>56</sup> The Law Society of Scotland also suggested it may be beneficial to consider whether to harmonise the grounds for dissolution of both marriage and civil partnership.<sup>57</sup>
82. In oral evidence, the Committee explored whether there was a need for adultery to be a ground for dissolution of a civil partnership, in order to have equality across institutions.
83. Professor Kenneth Norrie stated that the reverse was true. He argued that both civil partnership and marriage legislation should stay silent on the matter of adultery as it was not for the state to get involved in the sex lives of individuals.<sup>58</sup> Similar views were held by other witnesses including Martin Loat, Fraser Sutherland and Dr Andy Hayward who also suggested adultery could be removed from the law altogether as part of a wider overhaul of divorce law in Scotland.<sup>59</sup>
84. Dr Andy Hayward also highlighted the Divorce, Dissolution and Separation Bill that is currently going through the House of Lords. He explained that the bill would remove the issue of fault completely from divorce law in England and Wales and contended this would be a much more “progressive, modern approach”.<sup>60</sup>
85. When asked about the potential for reform the Cabinet Secretary stated —
- ” “I appreciate why people would say that that aspect is outdated, and it is reasonable to note that the ground is not widely used at all, but that matter would be for consideration in a different bill.”<sup>61</sup>

- 86. The Committee is satisfied that adultery as a ground of irretrievable breakdown does not need to be extended to civil partnership. The Committee has sympathy with the view that certain aspects of divorce and dissolution law are outdated and untidy. The Committee is of the view however, that these issues are for consideration during a wider reform of divorce law and are outside the provisions in this Bill.**

87. **The Committee recommends that the Scottish Government sets out any plans it may have for any review of divorce law in Scotland.**

## Gender recognition

88. If a person in a civil partnership is seeking to obtain a gender recognition certificate (“GRC”) under the Gender Recognition Act 2004 (“the GR Act 2004”), they would be required to end that civil partnership. This is because two people of different sexes cannot currently enter a civil partnership. They would need to either dissolve their relationship or change it to a marriage, unless both partners are obtaining legal gender recognition on the same day.<sup>62</sup>
89. By introducing different sex civil partnerships, civil partnership would become open to both same sex and different sex couples. The Bill would therefore end the requirement for a person in a civil partnership who obtains a GRC to end their relationship. Schedule 2, paragraph 5 of the Bill mirrors the current provision in marriage law. This allows a full GRC to be issued to a civil partner, so long as their partner consents to the civil partnership continuing. If the partner does not consent to the civil partnership continuing, then the Gender Recognition Panel is required to issue an interim GRC.
90. Several organisations welcomed this provision in the Bill including the Equality Network, Stonewall Scotland, Children in Scotland and Engender, stating that the Bill benefits transgender people who wish to remain in the formalised relationships they entered into prior to transition.<sup>63</sup>
91. However, whilst Professor Kenneth Norrie welcomed the provision, he contended it was “unnecessarily complex” because it replicated the sensitivities that were created in the GR Act 2004. He explained—
- ” “We are trying to replicate the complex provisions of interim gender recognition certificates while people are in a relationship in order to protect the other party and so on. We do not need all that. If a person in a relationship changes gender and the other person cannot accept or accommodate that and no longer wishes to be in that relationship, the divorce courts can deal with it.”<sup>64</sup>
92. Both Martin Loat and Dr Kelly Kollman broadly agreed with this view. Nevertheless, Professor Kenneth Norrie acknowledged that the “clean and sensible” place to deal with this was in the forthcoming Gender Recognition Reform (Scotland) Bill.<sup>65</sup>
93. Tim Hopkins agreed with this approach but highlighted that the current proposals for gender recognition reform “do not touch very much on the issue of interim gender recognition certificates”.<sup>66</sup> He outlined, in the Equality Network’s view, some of the changes that would be beneficial —

” “In our view, if interim gender recognition certificates were to be done away with—which, arguably, could be done—the effect would be to remove eight sections from the Gender Recognition Act 2004, as amended by the draft Gender Recognition Reform (Scotland) Bill, which would simplify the legislation considerably.”<sup>67</sup>

94. In her evidence to the Committee, the Cabinet Secretary stressed that she was “keen to keep the two areas separate” and explained that by replicating the current arrangements in marriage law they were keeping the process as simple as possible.<sup>68</sup> She reiterated —

” “Any changes to interim gender recognition certificates would be part of the on-going consultation on gender recognition and would be taken forward in the draft gender recognition reform (Scotland) bill.”<sup>69</sup>

95. The Cabinet Secretary confirmed that any future change on the processes surrounding interim GRCs would in turn affect this Bill.

**96. The Committee recognises the complexities and sensitivities of this issue and the importance of having clear legislative provisions in either this or the forthcoming Gender Recognition Reform (Scotland) Bill.**

**97. The Committee welcomes the provision in Schedule 2, paragraph 5 of the Bill to the extent that it benefits transgender people who wish to remain in the formalised relationships they entered into prior to transition. The Committee acknowledges that the current legislation replicated in the Bill on interim Gender Recognition Certificates is complex. However, on balance, the Committee agrees that the place for the necessary amendments will be through the forthcoming Gender Recognition Reform (Scotland) Bill.**

**98. The Committee asks the Scottish Government to consider the evidence we have heard on simplifying the process for interim gender recognition and use this to inform their decisions following the consultation on the Gender Recognition Reform (Scotland) Bill.**

## Religious divorce

99. Section 9 of the Bill gives courts the power to postpone granting a decree of divorce where there is a religious impediment to one of the parties remarrying and the other party can act to remove the impediment. This replicates Section 3A of the Divorce (Scotland) Act 1976 in marriage law.

100. The Scottish Council of Jewish Communities strongly welcomed section 9. Their written submission detailed how Section 3A of the 1976 Act has been beneficial in

acting as a deterrent and has led to the number of enquiries for help on the matter declining since its implementation in 2007.<sup>70</sup>

## Religious or belief registration

101. When civil partnerships were first introduced, they could only be registered by civil registrars. This was later amended by the Marriage and Civil Partnership (Scotland) Act 2014 which provided several ways for a religious or belief celebrant to be authorised to register civil partnerships. The Bill, at sections 5, 6 and 7, replicates these arrangements, allowing for religious or belief registration of different sex civil partnerships.
102. The Bill also replicates provisions in the Civil Partnership Act 2004 to ensure there is no duty on a religious or belief body to register different sex civil partners.
103. If the Bill is passed, the Scottish Government intends to request a section 104 Order of the UK Government in order to make consequential changes to the Equality Act 2010 (“the 2010 Act”).<sup>71</sup> These changes would replicate existing provision in the 2010 Act that protects religious and belief bodies, to reflect that some do not wish to register different sex civil partnerships.
104. Tim Hopkins highlighted the Scottish Government’s intention to amend the 2010 Act in order to protect religious and belief bodies from claims of discrimination in the situation where they say that they will register same sex civil partnerships but not different sex civil partnerships.<sup>72</sup>
105. With the exception of the Scottish Council of Jewish Communities and the Scottish Unitarian Association, no religious bodies submitted written evidence to the Committee on the Bill. The Committee contacted the Scottish Churches Parliamentary Office (SCPO) - an umbrella organisation representing several Christian churches across Scotland - to ask whether any churches had views on the Bill as drafted. Churches seemed content with the intention of the Bill as the SCPO stated—  

” “On this occasion, the churches did not wish to make any comment or submit evidence, as this was an issue they did not desire to take a position on.”<sup>73</sup>
106. However, the Scottish Council of Jewish Communities raised some concerns about the proposed procedure for both nomination and temporary authorisation of celebrants under sections 5 and 7 of the Bill. They suggested the wording at section 5 could allow clergy to be nominated by a different branch of the same religion. They explained that this could be problematic because the different branches of Judaism have not yet come to a view on different sex civil partnerships. Therefore, it is conceivable that if “an individual rabbi or member of the clergy is prepared to carry out ceremonies but belongs to a branch that has turned its face against them” they would “act contrary to the strong beliefs and ethos of their employer”.<sup>74</sup>
107. They also raised concern that the wording in section 7 could potentially prohibit celebrants who are not ‘members’ of a branch of Judaism in Scotland, from officiating different sex civil partnerships. Therefore, preventing couples from having

the celebrant of their choice. They proposed amendments to the wording of the Bill that could help avoid these situations.<sup>75</sup>

108. The Committee explored these concerns further in oral evidence. However, Ephraim Borowski explained that the problem is “purely practical”. He said the suggested amendments would create an additional check of the policy that a branch of Judaism had on conducting different sex civil partnerships. This would ensure not only that the rabbi was happy to conduct the ceremony but that the branch of Judaism they are affiliated to does not have a policy that would prevent one of its members from carrying out a ceremony. He clarified that in practice, it would be the Scottish Council of Jewish Communities that would undertake these additional checks and feed the information to the NRS who would then register the celebrant.<sup>76</sup>
109. The Cabinet Secretary reassured the Committee that her officials had held additional meetings to ensure the Bill is right for everyone and looked carefully at whether any drafting changes were required. As such she stated that she did not think drafting changes were necessary and warned against the Government’s interference with the inner workings of religious bodies.<sup>77</sup>

**110. The Committee is content that the Bill provides adequate protection for religious and belief bodies who do not wish to register different sex civil partnerships. Whilst the Committee acknowledges that the Scottish Council of Jewish Communities had some concerns with the drafting of certain provisions (sections 5 and 7), the Committee agrees with the view that the Scottish Government should not interfere with the inner workings of a religious body and are assured that the practical steps suggested by the Scottish Council of Jewish Communities could prevent a problematic situation.**

# Wider issues beyond the specific provisions of this Bill

## Changing a marriage to a civil partnership

111. Currently a same sex civil partnership in Scotland can be changed to a marriage. The Policy Memorandum explains the reason for this is linked to achieving the key aim of the same sex marriage legislation. Namely, to validate same sex relationships as “fully deserving of equal societal recognition and the same respect as mixed sex relationships”.<sup>78</sup> The Bill extends this provision to different sex partners to align it with same sex civil partnership.
112. However, there are no plans to allow couples to change their marriage to a civil partnership. The Policy Memorandum states the Scottish Government’s view is that the considerations which justify providing for civil partnerships to be changed into marriages “do not apply when it comes to changing marriages to civil partnerships”.<sup>79</sup>
113. Throughout our Stage 1 scrutiny a number of people raised this issue as a concern. The Faculty of Advocates and the Law Society of Scotland both stated in their written submissions that the lack of provision for changing a marriage to a civil partnership should be considered further “to avoid any potential discrimination issues” between different sex and same sex couples.<sup>80</sup>
114. ‘Mr B and Miss L’ – a couple who had married in 2011 only in order to protect their financial position with advancing age – also echoed these concerns. They argued—
- ” “In our view, the Bill as introduced would create inequality of opportunity among would be civil partners, between those who have not married and those who, for whatever reason, have. This seems to conflict with the SG’s [Scottish Government’s] laudable aim of societal equality and respect in Scotland.”<sup>81</sup>
115. The Committee explored this issue further in evidence sessions. Almost all the witnesses were in support of conversion of a marriage to a civil partnership on the basis of equality, reiterating the many symbolic, emotional and cultural reasons people have for not wanting to be married. For example, Elena Soper highlighted there could be a demand for conversion from people that might have married simply because, “one partner was in ill health or they had children and wanted to ensure that they received the full legal protections given by the institution of marriage, without necessarily buying into the traditions and ideals of marriage”.<sup>82</sup>
116. Tim Hopkins also challenged the Scottish Government’s stated reason for not extending civil partnership. He suggested that by saying the argument for people to change a marriage to civil partnership is weaker, the Scottish Government implies that having a civil partnership as the only option available “is somehow a bigger injustice than the other way around”.<sup>83</sup> He argued -

” “if you are one of the majority of people who think that marriage is the gold standard, it seems obvious that the big injustice is not being able to marry. However, if you are one of the minority who do not want to marry for all the reasons mentioned by Elena Soper and by lots of others... the injustice is the other way around. [...] I strongly believe that on the grounds of equality, people should be able to change a marriage into a civil partnership.”<sup>84</sup>

117. The Committee also heard evidence from Martin Loat to suggest that there should be no time limit on any conversion rights if they were introduced in Scotland. He gave a couple of reasons for this including, that couples living abroad could move back to Scotland outwith the time period for conversion, and the potential growth of popularity of civil partnerships over time.<sup>85</sup> Dr Kelly Kollman agreed with this point on popularity, highlighting the recent growth in popularity of civil partnerships in other European Countries such as France and the Netherlands.<sup>86</sup> Tim Hopkins explained a reason for the growth in popularity could be that cultural meanings change over time. Meaning people may want to change their relationship to align with their newly held views.<sup>87</sup>

118. Furthermore, Professor Kenneth Norrie argued the first year of conversion from marriage to civil partnership should be able to take place without any charge. He noted that on the introduction of conversion from civil partnership to marriage all fees were waived and stated—

” “if the whole point of the exercise is to do for opposite sex civil couples what has previously been done for same-sex couples we should do it all.”<sup>88</sup>

119. The Committee highlighted to the Cabinet Secretary that the recent consultations on conversion from marriage to civil partnership in other parts of the UK, could mean that if they came into force, married couples in Scotland could have less choice than elsewhere. The Committee questioned the Cabinet Secretary on why the Bill had made no provision for marriage to civil partnership conversion.

120. The Cabinet Secretary explained that the Bill had been developed in such a way as to “link different-sex civil partnerships with the rights available to those in same sex civil partnerships”.<sup>89</sup> Therefore, as there is currently no right for a same sex marriage to be changed to a same sex civil partnership, it cannot be extended to different sex couples in this Bill.

121. Nonetheless, the Cabinet Secretary expressed an interest in the evidence that had been brought before Committee and indicated she was happy to reconsider her position.

122. However, she did raise concerns that there were legal challenges to how conversion would work in practice. For example, questions around legacy such as how to treat a civil partnership when it comes to an end if the original marriage predates the existence of civil partnership law in Scotland and inheritable state pension rights. She also suggested there may need to be further conversation with religious bodies on any such provision.<sup>90</sup> She cautioned —

” “There are challenges—it is not just about whether or not the proposal would be a good thing to do. It would have to be very much looked at in law with regard to how we would deal with those challenges.”<sup>91</sup>

123. Nevertheless, when pressed, the Cabinet Secretary acknowledged these issues are “not insurmountable” and could be overcome with careful legal drafting. She also recognised they would have to be considered if the proposals for conversion in England and Wales were agreed.<sup>92</sup>

124. In oral evidence Tim Hopkins also stated these legal challenges were “not an insurmountable problem”. He outlined that the UK Government had suggested three options for dealing with the issue of legacy in their recent consultations on conversion from marriage to civil partnership. He suggested the option that makes the most sense is to “treat the couple as having been in a Civil Partnership since 5 December 2005, and as having been in a marriage prior to that”.<sup>93</sup>

125. **The Committee recognises that whilst rates of conversion from marriage to civil partnership might be small, the ability for couples to have their relationship recognised in a way they see fit is important. The Committee also acknowledges that if provisions to allow conversion from marriage to civil partnership are introduced in England and Wales, then Scotland could fall behind on matters of equality. Whilst there are undoubtedly legal challenges in this area, we consider these could be overcome with careful legal drafting. We note the Cabinet Secretary’s view that these challenges are not insurmountable. Therefore, on balance, we support the principle that, for those that wish, it should be possible to convert from a marriage to a civil partnership in Scotland.**

126. **The Committee invites the Cabinet Secretary to explore what more would need to be done to overcome some of these legal challenges. The Committee recommends that the Scottish Government should consider the options identified in both the UK and Northern Ireland consultations on conversion. This will help both the Scottish Government and the Committee to consider whether they want to bring forward amendments introducing conversion rights at Stage 2.**

## Cohabitation

127. As set out in Table 1, the Family Law (Scotland) Act 2006 (“the 2006 Act”) defines cohabitants as a couple (same sex or different sex) who live together as if married. It also provides cohabitants with certain rights such as an equal share of household goods and the right to ask the court to make an order for financial provision.

128. Whilst the 2006 Act gives Scottish cohabitants more rights than they would have in England, cohabitation was raised throughout Stage 1 scrutiny as having

significantly weaker and less certain rights and financial protections than civil partnership.

129. For example, Dr Kelly Kollman explained that the provisions set out in the 2006 Act only apply upon relationship breakdown and are dependent on the nature of the relationship and any financial arrangements.<sup>94</sup> Kenny Stewart also emphasised that women are particularly negatively affected by this as “the lack of legal rights for unmarried cohabiting couples is deeply gendered”.<sup>95</sup> Elena Soper explained this further stating, “women have less access to resources, assets and income due to systemic issues ...The lesser protections that are provided by cohabitation are more likely to negatively impacts women’s rights and security”.<sup>96</sup>
130. Nevertheless, in their written submission, the Law Society of Scotland recognised that whilst the Bill may encourage some different sex couples to register a civil partnership, “many will remain in cohabitation outside any formal relationship structures”. They recommended “taking forward cohabitation reform as a policy priority following this legislation”.<sup>97</sup> Dr Kelly Kollman also referred to the growth of cohabiting couples throughout Scotland and the long-term trend towards increased diversity in family types. She suggested that the Parliament should consider further future reform that would create additional ways to “further diversify how families are defined, recognised and supported in Scottish Law”.<sup>98</sup>
131. However, Tim Hopkins cautioned that “people might feel that, because a person makes a positive choice to opt into marriage or civil partnership, the protections for them should be stronger, especially for finances, than they are for a person who has made a choice not to sign up to those things”.<sup>99</sup> He acknowledged different viewpoints could be explored fully in the review that the Scottish Law Commission is currently undertaking on cohabitation.
132. It should be noted that the Scottish Law Commission published a Discussion Paper on Cohabitation on 26 February and is currently reviewing the cohabitation provisions under the 2006 Act.

**133. The Committee acknowledges that whilst the Bill will benefit couples who choose to enter a civil partnership, there will be couples who choose not to legally formalise their relationship for various reasons. The Committee recognises that cohabitees have weaker and less certain rights than those in a civil partnership or marriage and that this is particularly gendered towards women. The Committee also recognises the long-term trend toward cohabitation and diversifying family types. Therefore, the Committee welcomes the Scottish Law Commission’s review of the law on cohabitation.**

## Costs and demand

134. The documents that accompany the Scottish Government’s Bill estimate that there could be 109 different sex civil partnerships registered in Scotland each year. The Scottish Government has used this figure to estimate one-off costs of £440,000 and

annual running costs of £528,000.<sup>100</sup> This includes initial set up costs for NRS and training for registrars as well as annual legal aid for dissolution and costs in relation to public and private sector survivor benefits.

135. However, the Equality Network highlighted in their written submission that according to the UK Government's estimates there could be between 2,000 to 8,000 different sex civil partnerships a year. Nevertheless, they believed the figure to be closer to 500.<sup>101</sup>

136. The Committee explored the issue of the likely demand for different sex civil partnerships and associated costs further in oral evidence. Tim Hopkins explained to the Committee that the discrepancy in figures is based on the choice of country used as a comparator against which estimates have been calculated. He stated—

” “Down south, since 31 December 2019, several hundred couples have already registered a mixed sex civil partnership or submitted notice to register one. That gives me confidence that the figure might be closer to the 500 that we have suggested than to the 100 to 150 that the Scottish Government has suggested.”<sup>102</sup>

137. Some witnesses including Martin Loat, Fraser Sutherland and Dr Kelly Kollman also suggested that the popularity and number of civil partnerships could increase over time.<sup>103</sup>

138. The Committee questioned the Cabinet Secretary on the disparity between these figures and whether the estimate in the Financial Memorandum was robust. The Cabinet Secretary confirmed the calculation is based on figures from New Zealand, stating this was the best comparator due to its similar legal framework for civil partnerships. Whilst she acknowledged that estimating demand was “exceptionally difficult” she said—

” “I do not think that the take-up will reach the extent of some of the numbers that have been referred to in committee. Only time will tell, but I hold to the fact that the numbers that we have produced in the financial memorandum are a reasonable estimate of the initial demand that we will see.”<sup>104</sup>

139. The Committee also sought assurances from the Cabinet Secretary that, in the event the estimations are a lot higher than the Scottish Government had considered, the cost implications and IT systems would be able to cope.

140. The Cabinet Secretary assured the Committee that Scotland has a robust system which meant any such increase in demand could be catered for. She also suggested that an increase in the number of civil partnerships could be explained by “a change in the type of legally recognised relationship that people enter into rather than an overall increase in demand”.<sup>105</sup>

141. Rod Burns of National Records of Scotland echoed this sentiment stating that, either way, his organisation would be able to cope with this as “business as usual”. He said—

” “A figure of 8,000 is unlikely but, even if we did see figures at the highest end, additional resources may be drawn down by registrars and by the NRS with regard to its oversight of the registration service. We would adopt the process into our normal business as usual.”<sup>106</sup>

142. **The Committee notes the variation in the estimates of the possible number of different sex civil partnerships that might be taken forward in Scotland each year. The Committee accepts these figures are difficult to estimate with any great accuracy. The Committee welcomes the comments from the National Records of Scotland (NRS) that, unless these estimates prove to be greatly inaccurate, they will be able to accommodate an increase in numbers.**

143. **Nevertheless, the Committee recommends that the Scottish Government and the NRS keep the numbers and associated costs under review and that the former makes any necessary budget adjustments for NRS so that the remainder of their work is not impacted if the numbers of different sex civil partnerships increases dramatically.**

# Consideration by other Committees

## Delegated powers

144. The Bill confers powers on Scottish Ministers to create subordinate legislation. This ranges from specifying which overseas relationships can be recognised in Scotland to postponing a decree of dissolution where a religious impediment to marriage exists.
145. The Faculty of Advocates highlighted the significant scope the Bill allows for Ministers to make additional provisions by regulations, stating—
- ” “This has possible drawbacks of uncertainty, but in this case, may allow any unforeseen consequences of a complex set of provisions to be addressed.”<sup>107</sup>
146. The Delegated Powers and Law Reform Committee (DPLR) considered the Bill on 14 January 2020. The Committee [reported](#) that it is content with the delegated powers provisions contained in the Bill.

## Finance

147. The Finance and Constitution Committee issued a [call for views](#) on the Financial elements of the Bill. No responses were received.
148. This Committee’s views on the costs associated with this Bill are set out in the preceding section of this report.

## **Policy and financial memoranda**

149. The lead Committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum, which accompanies the Bill.
150. The Committee considers the Policy Memorandum to be helpful in understanding the background and policy objective of the Bill.
151. The same rule requires the lead Committee to report on the Financial Memorandum. The Committee considers the Financial Memorandum accompanying this Bill to be adequate.

# Recommendation on the general principles of the Bill

152. The Committee recommends to the Parliament that it supports the general principles of the Civil Partnership (Scotland) Bill.

# Annexe A: Written and oral evidence and engagement

## 153. Written evidence

The Committee received the following submissions from organisations and individuals -

- [Humanist Society Scotland](#)
- [Faculty of Advocates](#)
- [Scottish Secular Society](#)
- [Stonewall Scotland](#)
- [The Scottish Unitarian Association](#)
- [The Equality and Human Rights Commission](#)
- [Engender](#)
- [Children in Scotland](#)
- [The Equality Network](#)
- [The Law Society of Scotland](#)
- [Scottish Council of Jewish Communities](#)
- [Prof. Kenneth Norrie](#)
- [Prof. Elaine Sutherland](#)
- [Dr Kelly Kollman](#)
- [Francis Roberts](#)
- [Michael Harley](#)
- [Michael Bauer](#)
- [Megan Dunn](#)
- [Joy Charnley](#)
- [Corrina Davies](#)
- [Karen Cameron](#)
- [Catriona Blake](#)
- [Nigel Cliffe](#)

- [David Stewart](#)
- [Frazer Graham](#)
- [Archana Goyal](#)
- [Seonaid Cooke](#)
- [Sue Petrie](#)
- [Mary Campbell](#)
- [Marta Tomaszewska](#)
- [Louise Akroyd](#)
- [Eileen Cook](#)
- [Rebecca Wojturska](#)
- [Suzanne Coyle](#)
- [Beth Dunant and Daniel Forward](#)
- [Joanna Baker and Jan Thorskov](#)
- [Mr B and Miss L](#)
- [Mr B and Miss L supplementary submission](#)
- [Jaclyn Kaye](#)
- [Anonymous](#)
- [Anonymous](#)

154. **Correspondence**

- [Letter from, Scottish Churches Parliamentary Office, 28 January 2020](#)

155. **Official Reports**

- [Official Report of Thursday 20 February](#)
- [Official Report of Thursday 27 February](#)
- [Official Report of Thursday 5 March](#)

156. **Engagement**

- [Summary of engagement and responses](#)

## Annexe B: Minutes of meetings

### 3rd Meeting 2020 (Session 5) Thursday 20 February 2020

2. Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr Andy Hayward, Associate Professor in Family Law, Durham Law School;

Dr Kelly Kollman, Senior Lecturer in Politics, University of Glasgow;

Martin Loat, Chair, Equal Civil Partnerships Campaign;

Prof Kenneth Norrie, Professor of Law, University of Strathclyde.

4. Civil Partnership (Scotland) Bill (in private): The Committee considered the evidence heard at item 2.

### 4th Meeting 2020 (Session 5) Thursday 27 February 2020

2. Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Fiona Blair, President, The Association of Registrars of Scotland;

Fraser Sutherland, Chief Executive, Humanist Society Scotland;

Ephraim Borowski, Director, Scottish Council of Jewish Communities;

Rod Burns, Deputy Registrar General, National Records of Scotland;

and then from—

Tim Hopkins, Director, Equality Network;

Kenny Stewart, Head of Policy, Equality and Human Rights Commission Scotland;

Elena Soper, Programmes Coordinator, YWCA Scotland - The Young Women's Movement.

3. Civil Partnership (Scotland) Bill (in private): The Committee considered the evidence heard at item 2.

### 5th Meeting 2020 (Session 5) Thursday 5 March 2020

1. Civil Partnership (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People,

Sarah Meanley, Family Law Unit, Simon Stockwell, Head of Family Law Unit, and

John Thomson, Solicitor SGLD, Scottish Government.

2. Civil Partnership (Scotland) Bill (in private): The Committee considered the evidence heard at item 1.

- 1 R (Steinfeld and Keidan) v Secretary of State for International Development [2018] UKSC 32
- 2 Civil Partnership (Scotland) Bill. Policy Memorandum (SP Bill 57- PM, Session 5 (2019)), paragraph 22.
- 3 Scottish Government. (2018) Future of civil partnership: consultation. Annex C.
- 4 Scottish Government. (2018) Future of civil partnership: consultation. Annex D
- 5 Civil Partnership (Scotland) Bill. Explanatory Notes (and other accompanying documents) (SP Bill 57- FM, Session 5 (2019)), paragraph 21.
- 6 Civil Partnership (Scotland) Bill. Explanatory Notes (and other accompanying documents) (SP Bill 57- FM, Session 5 (2019)), paragraph 29.
- 7 Civil Partnership (Opposite-sex Couples) Regulations 2019
- 8 UK Government Equalities Office. (2019, December 31). First opposite-sex civil partnerships to take place on New Year's Eve. Retrieved from <https://www.gov.uk/government/news/first-opposite-sex-civil-partnerships-to-take-place-on-new-years-eve> [accessed 20 January 2020]
- 9 Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019.
- 10 Government Equalities Office. Civil Partnerships: Next Steps and Consultation on Conversion.
- 11 Government Equalities Office. Civil Partnerships: Next Steps and Consultation on Conversion. Page 29.
- 12 UK Government. A consultation on same-sex religious marriage and conversion entitlements in Northern Ireland.
- 13 Civil Partnership (Scotland) Bill. Policy Memorandum (SP Bill 57- PM, Session 5 (2019)), paragraph 18.
- 14 Equalities and Human Rights Commission. Written submission, paragraph 5.
- 15 The Equality Network. Written submission, paragraph 2.
- 16 Engender. Written submission, paragraph 3.
- 17 Stonewall Scotland. Written submission, paragraph 8.
- 18 The Equality Network. Written submission, paragraph 16
- 19 Equalities and Human Rights Committee. *Official Report, 27 February 2020*, Col 25.
- 20 Children in Scotland. Written submission, paragraph 12.
- 21 Equalities and Human Rights Commission. Written submission, paragraph, 9.
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