

# Civil Partnership Registration

A LEGAL STATUS FOR COMMITTED SAME-SEX  
COUPLES IN SCOTLAND



SCOTTISH EXECUTIVE

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COUPLES IN SCOTLAND

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## MINISTERIAL FOREWORD

On 30 June, the UK Government published a consultation paper on civil partnership registration for same-sex couples in England and Wales. We have carefully considered the implications for Scotland of the UK Government's proposals should they proceed with legislation.

On 10 September I announced that:

- same-sex couples should be able to register their partnership in Scotland in order to access a comprehensive package of rights and responsibilities in both reserved and devolved areas.
- to ensure this package of rights and responsibilities takes account of the reserved and devolved elements of this new status, we believe that the Scottish Parliament should be invited to agree that Scottish provisions are included in any future UK Civil Partnership Registration Bill.

Civil partnership registration is a complex and sensitive issue and we have very carefully considered the most appropriate way forward before reaching a decision.

In reaching a view on this issue for Scotland, our key considerations have been:

- the intertwining of devolved and reserved policy strands inherent in civil partnership registration,
- our desire to avoid a complex web of differing rights emerging between Scotland, and England and Wales, and
- the advantages which parity offers in relation to cross-border issues.

We have also been mindful of our commitment to equality. The Scotland Act definition of equal opportunities includes sexual orientation and the Executive is committed to looking at lesbian, gay, bisexual and transgender issues as part of its wider work on mainstreaming equality and promoting equal opportunities.

This consultation paper provides fuller details of the background to civil partnership registration and the reasoning underpinning our preference for a UK legislative approach.

**I welcome your views on these proposals.** The consultation responses will be carefully considered as we move forward.

A handwritten signature in black ink, reading 'Cathy Jamieson'.

**Cathy Jamieson, MSP**  
Minister for Justice



## EXECUTIVE SUMMARY

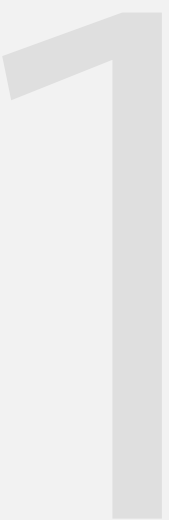
- The UK Government proposes to create a scheme under which same-sex couples in England and Wales will be able to register their partnership. In the event that the UK Government brings forward legislation, Scottish Ministers propose that same-sex couples in Scotland should be able to register their partnership in Scotland.
- In order to avoid discrimination and cross border difficulties, the new status should trigger access to rights and responsibilities in both devolved and reserved areas. This can most sensibly be achieved by including Scottish provisions in any Westminster Bill on civil partnership registration.
- The Scottish Parliament will be invited to agree a Sewel motion to allow legislation to be achieved in this way.
- Scottish provisions included in any Westminster Bill will be based on Scots law.
- Any scheme will be for adult same-sex couples who are not in an existing registered partnership or marriage and are not closely related.
- Couples who register would have a new legal status as “registered civil partners”, and would acquire a comprehensive package of rights and responsibilities.

## Legal Consequences of Registering a Civil Partnership

- Couples who register in Scotland would give notice of their intention to register at a registry office, and could sign the civil partnerships register 15 days later.
- Couples would acquire rights and responsibilities that would reflect the commitment they had made to each other and to help them organise their lives together. These legal consequences would follow from registration.
- Scottish Ministers intend that registered civil partnerships be long-term, stable relationships, so there would be a formal, court-based process for dissolution. The partner applying for the partnership to be dissolved would have to show that it had broken down irretrievably.

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# INTRODUCTION



**1.1** On 30 June the UK Government published their consultation paper on civil partnership registration for same sex couples in England and Wales. On 10 September, having considered the impact of these proposals in Scotland, Scottish Ministers announced that, in the event that the UK Parliament comes forward with legislation, they would seek the agreement of the Scottish Parliament to include Scottish provisions in a UK Civil Partnership Registration Bill.

**1.2** As an Executive our legislative focus should be the priorities as clearly set out in a *Partnership for a Better Scotland*. Our commitment to equality and promoting equal opportunities runs throughout these priorities. Our task is also to find the best way to legislate, and in the case of civil partnerships, this can best be done through the Westminster route since this will achieve the benefits of UK consistency.

**1.3** This paper forms part of the Scottish Executive's consultation on this issue. It provides fuller details of the background to civil partnership registration and the reasoning underpinning the preference for a UK legislative approach. It also highlights the devolved elements of a scheme and how we propose that they be handled.

### *Timing*

**1.4** This consultation paper follows a paper by the UK Government, published on 30 June, on their proposals for a civil partnership registration scheme in England and Wales. Our proposals are similar to those expressed by the UK Government but reflect the detailed differences in Scots law and devolved policy. Our intention is to use any Westminster Civil Partnership Registration Bill to legislate for Scotland. We must therefore be prepared should an UK Bill be announced.

**1.5** We therefore invite comments on this consultation paper by 5 December 2003. A proforma for responses is attached and is available on-line.

**1.6** Our consultation will not be confined to this paper. We will also be meeting with key stakeholders to discuss the proposals and will engage fully with the Scottish Parliament.

### *Structure of the paper*

**1.7** The paper has been divided into manageable sections as detailed below:

- Section 1 “Introduction” introduces the conclusion reached by Scottish Ministers, the purpose of this paper and sets out the structure of the paper.
- Section 2 “Background and Context” provides background on civil partnership registration and places it in the wider context of UK and European reform.
- Section 3 “The Way Ahead” explains within the Scottish context, why Scottish Ministers reached a decision to introduce civil partnership registration for same-sex couples in Scotland in the event that the UK Government legislates for this.
- Section 4 “Getting There” discusses the decision to use Westminster legislation to legislate for civil partnership registration in Scotland.
- Section 5 “Principles” discusses the underlying principles in which a Scottish civil partnership registration scheme would be situated.
- Section 6 “Devolved issues and treatment” looks at the devolved issues attached to a civil partnership registration scheme and highlights our proposals for these areas.
- Section 7 “How to make a response to this paper” provides a summary of the areas in which views would be welcome, as well as providing information about how a response can be made. A proforma is provided in this Section and it would be helpful if it could be used when responding.

## BACKGROUND AND CONTEXT

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**2.1** This section explains the background to the decision to introduce civil partnership registration for same-sex couples in Scotland, in the event that the UK Government introduces such legislation. It explains the context in which the decision has been taken.

**2.2** Civil partnership registration is a complicated issue around which there is significant sensitivity. It is something that will directly affect only a minority of Scots but for those concerned it is hugely important.

### *Equality*

**2.3** At present same-sex couples can face significant difficulties in their lives. They cannot gain legal recognition for their relationship and do not have access to many of the rights and responsibilities necessary for a stable family life. This can cause problems in the event of the death of one partner or at the end of a relationship. For example, a same-sex partner might not be recognised as their partner's next of kin and might be prevented from making decisions in connection with their partner's treatment. Following the death of one partner, the surviving member of a same-sex couple might not have any rights to the property they may have shared with their partner for a significant length of time.

### *Civil Partnership Registration*

**2.4** Civil partnership registration is the creation of a new legal status for same-sex couples through which they can gain legal recognition of their relationship and access most of the comprehensive package of rights and responsibilities currently denied to them. A same-sex couple who chose to register their partnership would become known as 'civil registered partners' and the long-term commitment they had made to one another would be recognised. In practical terms this means that civil registered partners would be able to receive a survivor pension in the event of a partner's death, would have an obligation to mutually support one another financially and make provision for fair arrangements of property division in the event a partnership is dissolved.

### *European and International Context*

**2.5** Civil partnership registration is not a new idea. Other countries, including a number of EU Member States as well as areas in the US and Canada, have introduced civil partnership registration schemes.

### *UK Government approach*

**2.6** The UK Government published a consultation paper on civil partnership registration for same-sex couples in England and Wales on 30 June 2003<sup>1</sup>. The UK Government's proposals are driven by the difficulties that are experienced by same-sex couples who do not have legal recognition for their relationship.

**2.7** The EU Employment Directive (2000/78/EC) which effectively bans discrimination in employment and training on grounds including sexual orientation gives further impetus for the need for reform. At present same-sex couples cannot access some employment benefits (like survivor pensions) which are only available to married couples. Under the Employment Directive this could be perceived as discrimination against same-sex couples who cannot marry to gain access to these benefits, on the basis of their sexual orientation. The introduction of a civil partnership registration scheme in the UK, which allows same-sex couples to register their partnership, in order to trigger access to employment-related rights and responsibilities, should prevent such discrimination.

**2.8** With both of these factors driving reform in the UK Government, we expect that the UK Government will legislate for their proposals. We therefore need to be prepared in Scotland to respond.

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<sup>1</sup> The document is entitled "Shared Lives: A framework for the legal recognition of same-sex couples" and a copy can be obtained from the website of the Women and Equality Unit at the DTI, who are leading on this work for England and Wales: [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk). The closing date for responses is 30 September 2003.

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THE WAY AHEAD

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### *Scottish context*

**3.1** The introduction of civil partnership registration in England and Wales will create considerable disparity in the rights and responsibilities of same-sex couples in England and Wales as compared to Scotland.

**3.2** Under the UK Government's proposals, same-sex couples living in Scotland could register their partnership in England and Wales. In order to register their partnership in England and Wales, couples would need to travel to England and Wales and meet eligibility criteria including residence in England and Wales for 7 days and a 15 day notice period prior to registration in England or Wales.

**3.3** By registering their partnership, Scottish couples would, on their return to Scotland, be able to access to reserved rights and responsibilities associated with registration i.e. survivor pensions, joint treatment for income-related benefits and recognition as 'civil registered partners' for taxation purposes.

**3.4** If Scotland does not legislate, at minimum, couples in Scotland would have to expend significantly more effort and expense than couples in other parts of Great Britain. This raises issues about inclusion since those on low income, living further from the border, or with disabilities may not be able to travel to England or Wales in order to fulfil the eligibility criteria and register their partnership in England or Wales.

**3.5** Furthermore, Scottish same-sex couples who register their partnership in England or Wales will not be able to access the rights and responsibilities that fall in devolved areas in Scotland. This would cause significant practical difficulties whereby such partners would not be able to dissolve their partnership in Scotland.

**3.6** Without Scottish legislation to allow same-sex couples to register their partnership in Scotland, there would be difficulties associated with the differences in treatment of committed same-sex couples north and south of the border. The situation that would arise is one whereby a registered same sex couple in England and Wales will be afforded a comprehensive package of rights and responsibilities. However, a same sex couple in Scotland would have no means of accessing those rights, which are within the devolved competence of the Scottish Parliament, flowing from a civil partnership. And, they could only access reserved rights by travelling to England or Wales, assuming residence for several weeks (or one week and two trips) and registering there. This could be seen as discriminatory.

**3.7** The Scottish Executive is committed to equality – not only in terms of tackling discrimination but also promoting equal opportunities. The Scotland Act includes a definition of equal opportunities and the Scottish Parliament has already made significant moves to ensure that new legislation recognises same-sex partnerships. The substantive legislation is noted below:

- Adults with Incapacity (Scotland) Act 2000, s 87(2)
- Housing (Scotland) Act 2001, schedule 3 (2)
- Mortgage Rights (Scotland) Act 2001, s 1(2)(c)
- Protection from Abuse (Scotland) Act 2001
- Civil Legal Aid (Scotland) Amendment Regulations 2003, regulation 4
- Agricultural Holdings (Scotland) Act 2003, s 71
- Mental Health (Care and Treatment) (Scotland) Act 2003

**3.8** Additionally, the courts have begun addressing this issue, mainly in the area of housing and tenancy succession. However, this does not provide a clear opportunity for those same-sex couples wishing to make a long term commitment to one another to have their relationship legally recognised nor does it provide comprehensive protection for same-sex couples who are in enduring family relationships. Civil partnership registration would provide this.

### *A Scottish Civil Partnership Registration Scheme*

**3.9** The issue we need to address is less about whether a civil partnership registration scheme is likely to be available in Scotland since some of it will be if Westminster passes its own legislation. The issue is more about how we provide sensible, pragmatic UK consistency in the law that avoids a ‘postcode lottery’ of rights developing.

**3.10** The facts are these:

- The creation of a civil partnership registration scheme to provide same-sex couples with the opportunity to register their partnership and trigger access to some employment benefits is the approach taken by the UK Government to ensure the UK’s compliance with the EU Employment Directive (2000/78/EC).
- Civil partnership registration spans devolved and reserved policy issues. In the absence of Scottish provisions, a complex web of differing rights will emerge with Scottish couples travelling down south to get some of the rights of their English counterparts.
- There will be difficult cross border issues to contend with if parity is not maintained across Great Britain on the legal rights that are available to same-sex couples.

- There could be a legal challenge by a Scottish same-sex couple on grounds that they are discriminated against as compared to similar couples in England and Wales.
- In order to avoid discrimination and cross border difficulties, the new status should trigger access to rights and responsibilities in both devolved and reserved areas.

**3.11** Given these considerations, we propose that Scottish same-sex couples should be able to register their partnership in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas. **We invite comments on this proposal.**

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GETTING THERE

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**4.1** We propose inviting the Scottish Parliament to agree to Westminster legislating for Scotland on this issue. This would take the form of a ‘Sewel motion’ which MSPs would debate in the Scottish Parliament. This section discusses this proposal and the other legislative options that were considered.

### *Scottish or Westminster legislation?*

**4.2** We have considered carefully whether legislation should be presented through Westminster or through the Scottish Parliament. There are difficulties in terms of the package of rights that could be achieved through Scottish primary legislation. The Scottish Parliament can only legislate for the devolved aspects of civil partnership registration. In doing so it would need to produce a scheme which was sufficiently comparable to that emerging from Westminster legislation, to trigger access to the reserved benefits.

**4.3** For example, the Scottish Parliament could legislate for a scheme that is also open to mixed sex couples and perhaps household companions. It would be for the UK Government to consider whether registration through such a scheme could trigger access to reserved benefits. Since this would go much further than the UK Government’s proposals, this could prove problematic. Therefore the civil partnership scheme that could emerge from Scottish legislation may not be recognised by Westminster for the reserved benefits.

**4.4** If Westminster legislates for Scotland this would ensure that sensible consistent law is produced that avoids the problems of a complex web of rights and responsibilities which would flow from different legislation at different times north and south of the border. While Scotland would then be included in a Westminster Bill, the provisions in that Bill relating to Scotland would be drafted in Scotland and based on existing Scots Law. This is the only way in which consistency across Great Britain can be assured on such a complex issue.

**4.5** In order for Westminster to legislate for Scotland on devolved matters, the Scottish Parliament will be invited to agree to this. The Scottish Executive will present a ‘Sewel motion’ to the Parliament once Westminster has introduced a Bill. The ‘Sewel motion’ will invite the Scottish Parliament to agree that Scottish provisions be included in a Westminster Bill so that a Civil Partnership Registration scheme extends to Scotland. The motion would be debated by the Scottish Parliament and voted on by MSPs.

**4.6** We believe it makes sense for Westminster to legislate for Scotland on this issue. Therefore, if we are to introduce civil partnership registration for same-sex couples, we propose asking the Scottish Parliament to agree to a Sewel motion so that Scottish provisions can be included in any Westminster Bill. This approach would achieve a comprehensive and timely package of rights and responsibilities across devolved and reserved policy areas for same-sex couples and ensure recognition of a Scottish scheme for reserved purposes.

**4.7 We invite comments on our proposal for Scottish provisions to be included in any UK Bill on Civil Partnership Registration.**

# PRINCIPLES

# 5C

- 5.1** The creation of a Scottish civil partnership registration scheme for same-sex couples needs to be grounded in firm principles to ensure that such a scheme is understood in a broader Scottish context. These principles have been outlined below. **Your comments on these principles are invited.**
- **We believe that Scottish same-sex couples should be able to register their partnership in Scotland rather than having to travel to England or Wales.**
- 5.2** This would avoid any discrimination that could be encountered by some same-sex couples living in Scotland who do not have the means to fulfil the waiting and notice periods in England and Wales. For example, those on a low income, with a disability or living geographically further from the border are likely to experience more difficulty in registering their relationship in England or Wales, or might even be prevented from doing so.
- **We believe that the UK Government should recognise partnerships registered by same-sex couples in Scotland for reserved purposes.**
- 5.3** In other words, same-sex couples who register their partnership in Scotland should still be eligible to the same rights and responsibilities that fall in reserved areas as couples who registered their relationship in England or Wales. This includes access to survivor pensions, recognition for immigration purposes, and joint treatment for income-related benefits.
- **We believe that partnerships registered by same-sex couples in Scotland should trigger access to a comprehensive package of rights and responsibilities in devolved areas that largely mirrors those available to civil registered partners in England and Wales.**
- 5.4** This would ensure that ‘civil registered partners’ are not treated with significant difference in Scotland to those residing in England or Wales. Along with recognition in reserved areas, it ensures that civil partnership registration operates with parity across Great Britain thereby avoiding the difficult and complex cross border issues that might otherwise be faced by same-sex couples in the most difficult times.
- **We believe that devolved aspects of civil partnership registration should be based on Scots law.**
- 5.5** This ensures that we do not import English law into what is a uniquely Scottish system of law, but rather that we carry forward Scots law into the development of civil partnership registration in Scotland.

- **We believe that in order to achieve a comprehensive package of rights and responsibilities in reserved and devolved areas, and to avoid difficult cross border issues, that Westminster is best placed to legislate for civil partnership registration in Scotland through a UK Civil Partnership Registration Bill.**
- 5.6 The Scottish Parliament does not have competence to legislate in reserved areas. However, in order to achieve a comprehensive package of rights and responsibilities, avoid difficult cross border issues and ensure recognition of Scottish civil registered partners for reserved purposes, it would make sense for one Bill to take forward legislation for the whole of Great Britain. That could only be achieved through a Westminster Bill and with the Scottish Parliament agreeing to a Sewel motion for Scottish provisions to be included in a Westminster Bill.
- **We recognise the role that marriage has for many in Scottish society and do not seek to undermine marriage by extending civil partnership registration to cohabiting couples.**
- 5.7 A high number of cohabittees and the population more generally believe in the myth of common law marriage – that a cohabiting couple is the same as a married couple in the eyes of the law. This is not true. The Scottish Executive is committed to reforming family law for all Scotland's people and the extent and nature of legal rights for cohabiting couples will be considered in that context. This winter, we will issue a consultation paper that will set out our plans for reform and invite views from a wide range of stakeholders, organisations and individuals.
- **We do not seek to open up marriage to same-sex couples. Instead we are creating a new legal status of civil registered partner for same-sex couples.**
- 5.8 Marriage is recognised in Scotland as a status that can only be shared between a man and a woman. The new legal status of civil registered partner will be accessible to committed same-sex couples who wish to make a long-term commitment to one another. This status would trigger access to rights and responsibilities in reserved and devolved areas which flow from the registration of a partnership.

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## DEVOLVED ISSUES AND TREATMENT

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**6.1** Civil partnership registration has both reserved and devolved consequences. The reserved components primarily relate to pensions, benefit and taxation consequentials flowing from registration, and immigration and fertility treatment issues. The devolved aspects are eligibility, the registration arrangements, the family law consequentials in relation to children, and arrangements on dissolution or the death of one partner, and issues such as prison visiting and medical treatment.

**6.2** This section sets out more clearly the substantive policy issues associated with civil partnership registration for same-sex couples, and where these are devolved, indicates how these will apply to 'civil registered partners'.

**6.3** Table 1 below highlights the policy aspects of civil partnership registration and explains whether these fall into reserved or devolved policy areas.

### *Reserved proposals*

**6.4** The UK Government, through the Department of Trade and Industry, has already published their consultation paper in Scotland for comment on the reserved proposals<sup>2</sup>. Their intention is to recognise the long term commitment couples who register their partnership have made and for their new legal status to trigger access to rights and responsibilities that are appropriate to long term partners. The detail of the proposals in reserved areas can be found in the UK Government's consultation paper.

### *Devolved proposals*

**6.5** The devolved proposals cannot be read without the context of the reserved proposals. Civil partnership registration would provide for the legal recognition of same-sex partners and give legitimacy to those in, or wishing to enter into, interdependent, same-sex couple relationships that are intended to be permanent. Registration would provide a framework whereby same-sex couples could acknowledge their mutual responsibilities, manage their financial arrangements and achieve recognition as each other's partner. Registered partners would gain rights and responsibilities, which would reflect the significance of the roles they play in each other's lives. This in turn would encourage more stable relationships and family life. Such a legal status can only be credibly achieved with the inclusion of the reserved rights and responsibilities as well as those in devolved areas.

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<sup>2</sup> The document is entitled "Shared Lives: A framework for the legal recognition of same-sex couples" and a copy can be obtained from the website of the Women and Equality Unit at the DTI, who are leading on this work for England and Wales: [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk).

**Table 1: Reserved and devolved aspects of civil partnership registration**

<b>Policy aspects</b>	<b>Devolved or Reserved</b>
Formal Requirements: Creation of the new legal status; eligibility for participation	Devolved
Process: Registration and Dissolution	Devolved
Family Law Consequences: Parental Responsibility, Children – residence and contact, aliment, intestacy, inheritance, damages; adoption; Property Division on Dissolution of a Civil Partnership; Registering the death of a partner	Devolved
Recognising the relationship (consequential): Council tax; Local Government Elections; Hospital Visiting and Medical Treatment; Giving evidence in court; Prison visiting; Fatal Accident Inquiry, Burial and Post Mortems, Organ Retention; Tenancy Succession; Public Funding for Dissolution (Legal Aid)	Devolved
Survivor Pensions – Public Service Pension Schemes and Injury Benefits	Devolved
Recognition for immigration purposes	Reserved
Income-related benefits; Dependency Increases	Reserved
Life Insurance	Reserved
Tax credits	Reserved
Fertility Treatment	Reserved
Child support	Reserved
Voting in National and European Elections	Reserved
Bereavement benefits	Reserved
Survivor Pensions – State Pension Schemes and Injury Benefits	Reserved
War Pensions	Reserved
Private and Occupational Pension Schemes	Reserved
Criminal Injuries Compensation Scheme	Reserved

## Formal Requirements

**6.6** Same-sex couples registering their relationship as a civil partnership would be entering a legal status intended to be permanent. This will have the advantage of providing stability and clarity for the couple and will help them achieve a stable family life. The commitment should not be entered into lightly. We believe that the basis for the new status should be in existing Scots law.

### *Age*

**6.7** Both parties to a civil partnership registration would have to be 16 years of age or above.

### *Exclusivity of Partnerships*

**6.8** A person should only be able to enter into one registered partnership arrangement at any time. In practice this means that a person would not be able to enter a registered partnership if they were already in a marriage or a registered partnership. Once the previous marriage or partnership had been legally dissolved, they would be able to enter into a subsequent marriage or registered partnership. In order to protect people from unwarily entering into relationships that are not exclusive, the couple would be asked to declare that they were not entering into a civil registered partnership before an existing partnership had been terminated, or entering into a civil registered partnership while married.

### *Prohibited Degrees of Relationship*

**6.9** We propose that the Forbidden Degrees provided in Section 2 of Schedule 1 to the Marriage (Scotland) Act 1977 would be what is required for Scotland. These differ in some respects to what applies in England and Wales, but achieve internal consistency with Scots law.

**6.10 We would like to know whether you support our proposals on the formal requirements of a civil partnership registration scheme.**

## Registration

**6.11** A process to register a civil partnership will be necessary to ensure that the formal requirements are met. Registration is a matter fully devolved to the Scottish Parliament and the process of registration should be situated in Scots law.

### *Delivery of Civil Partnership Registration*

**6.12** We believe that registrars are best placed to deliver civil partnership registration. This would help to emphasise the stability and permanence of the partnership arrangement. In addition, the local registration service is ideally placed to act as a focal point for information on services associated with key life events.

### *Giving Notice of Registration*

**6.13** We believe that there should be no residence requirement in Scotland as this sits best with Scots law. Both parties would be required to give notice in prescribed written form. There is no need for them to do so in person (e.g. they could do so by post). Details could be entered in the “notice book” and posted on the registrar's notice board, both of which could be inspected by the public in case of objection. Anyone who knows, for example of a legal impediment to a forthcoming civil partnership registration should have the same opportunity to raise an objection as he or she would have in relation to other formal changes of legal status.

### *Civil Partnership Registration Schedule*

**6.14** We believe that a civil partnership registration schedule should be devised and that this should be the legal document to be signed by the couple, 2 witnesses and the registrar.

### *Waiting Period*

**6.15** We propose a minimum 15-day waiting period between giving notice and registration in order to give time to check compliance with the formal requirements.

### *Exceptions to the Waiting Period*

**6.16** We propose that provision be made for the Registrar General to reduce the waiting period where, due to the exceptional circumstances of the case, he considers it appropriate to do so. Such circumstances might include an urgent military posting, or circumstances where one of the parties was seriously ill and not expected to recover. We believe the Registrar General should be given discretion to consider such cases as they arise.

### *Location*

**6.17** We believe that registrars should be enabled to carry out a civil partnership registration at an approved place, other than the registrar's office.

### *Registration for those who are Housebound or Detained*

**6.18** We believe that a registrar should be able to attend other places in case of serious illness and there is good reason why the registration may not be postponed until the parties are able to attend the registration office.

### *Cost*

**6.19** We believe there should be a statutory fee for the provision of services and that this should be based on existing fees for similar services.

### *Procedure*

**6.20** We propose that the following steps should be taken to register a civil partnership:

- Step 1: the couple gives notice to the registrar of their intention to register their partnership (this could be done by post);**
- Step 2: the registrar checks compliance with the formal requirements during which time the couple wait for 15 days;**
- Step 3: a date is set for the partnership registration in consultation with the registrar;**
- Step 4: the notice period lasts 3 months and the registration may take place during that period (though if a couple simply want to check availability of a registrar or book a place for the registration they may do so at any time);**
- Step 5: the civil partnership schedule would be issued no earlier than 7 days before the date of the intended civil partnership registration;**
- Step 6: on the day of registration, a registration will be performed by the registrar in the presence of the couple and 2 witnesses;**
- Step 7: on the day of registration, the couple, the registrar and 2 witnesses sign the civil partnership schedule;**
- Step 8: the registrar will subsequently complete the register using the details given in the schedule, then the registrar will sign the register;**
- Step 9: the couple would receive a certificate of evidence of the registration of their partnership**

### *Privacy Issues*

**6.21** We recognise that some same-sex couples may want the fact of their registration to remain private. The new legal status of registered partner would bring with it rights and responsibilities. It would not be desirable to operate a private register where registration confers rights and responsibilities that flow between the couple and the state and between the couple and third parties such as employers. The Executive believes that civil partnership registration represents so significant a commitment that it should be a matter of public record. Other formal arrangements for changes of legal status are a matter of public record.

**6.22** Registration information is currently available to anyone, in the form of an extract or certificate, on payment of the appropriate fee. If civil partnership registration were delivered by the local registration service, the public record of such events would be subject to the same arrangements.

### **Dissolution**

**6.23** We intend registered civil partnerships to be long-term, stable relationships and believe, therefore, that an appropriate degree of formality should be required to bring a registered civil partnership to an end. Registered partnerships should balance the rights of the legal partners and their responsibilities; towards each other, towards their children and towards those they treat as children of the partnership.

**6.24** We propose that the arrangements for dissolution of a civil partnership should be broadly similar to those required to bring a marriage to an end by a decree of divorce. Such arrangements should be situated within Scots law.

**6.25** We believe that the procedure for dissolution of a civil partnership should be court based and that partners should have to make a formal application to the court to commence proceedings. The partner applying for dissolution of the partnership should be required to show that it has broken down irretrievably before the court will make an order for dissolution of the partnership.

### *Grounds for Dissolution*

**6.26** In order to show that the partnership has broken down irretrievably it would be necessary to produce evidence of unreasonable behaviour, that is behaviour of such a kind that the applicant could not reasonably be expected to continue living with their partner, or the fact that the parties had been separated for a period of either two years (with the consent of the other party) or five years (without such consent).

**6.27** If at any stage it appears that the partners may be able to be reconciled, the court will be able to adjourn the proceedings for such period as it thinks fit to allow them to try to attempt reconciliation.

**6.28** It would be necessary to produce evidence of one or more of these grounds for dissolution, and the court would be required to inquire as far as is possible into the facts alleged by the partner applying for dissolution and into any facts alleged by the other partner. If the court were satisfied on the evidence that the partnership has broken down, a provisional order for dissolution of the partnership would be granted. After a period of six weeks an application can be made to make the order substantive.

**6.29** In accordance with our intention of supporting stable relationships, no application for an order for dissolution of a partnership would be accepted until at least one year had passed since the partnership was originally registered, although a subsequent application for an order for dissolution might rely on evidence from that period.

### *Void and Voidable Partnerships*

**6.30** We propose that a partnership should be void (having never been valid) under the following circumstances:

- (a) It is not a valid partnership because:
  - (i) The parties are within prohibited degrees of relationship;
  - (ii) Either party is under the age of 16;
  - (iii) The parties have disregarded the requirements for registration of the partnership;
- (b) That at the time of registration either party was already lawfully married or was a party to another civil partnership.

**6.31** The effect of an order that a partnership has never been valid, will be to make the partnership void.

**6.32** We do not propose any grounds for a partnership being voidable (able to be declared invalid on the application of one of the parties).

#### *Order for Separation*

**6.33** Where parties have fulfilled the requirements for an order for dissolution of a partnership, they could apply for an order for separation. This order would recognise the separation of the couple but would not allow the parties to register a new civil partnership or to marry. A party could subsequently use the evidence used to support an application for an order for separation to apply for an order for dissolution of the partnership.

#### *Public Funding for Legal Advice*

**6.34** We propose that where appropriate, legal aid should be available for dissolution in accordance with the general eligibility requirements.

**6.35** We would like to know whether you support our proposals on how to register and dissolve a civil partnership.

## Family Law Consequences of Registering a Partnership

**6.36** We believe that the new legal status of ‘civil registered partner’ should be recognised in Scots family law. We believe that such a couple should be considered as having made a commitment to one another which is intended to be permanent. As such, we believe that a registered partner should be included within legislation as a family member and be recognised as “next of kin”.

### *Parental Responsibility*

**6.37** Parents do not always have parental responsibility and people who are not parents can acquire parental responsibility. If an individual marries or registers a partnership with someone who has children, they may well play a significant role in the children’s upbringing. At present, those playing a significant role in a child’s upbringing can apply to the court to gain parental responsibility for the child in question. We would expect that a court would take account of the commitment between registered partners. We therefore believe that registered partners should, like other step-parents, be able to apply to the court to gain parental responsibility for their partner’s children.

### *Children – Residence and Contact*

**6.38** In the event of the dissolution of a partnership, we believe that the interests of the child should continue to be paramount. A registered partner could have played a significant and lengthy role in the upbringing of their partner’s child. We believe that there should be the prospect for the child to have continued access with the registered partner following the dissolution of the partnership, if it is in the best interests of the child.

### *Aliment, property division on dissolution, intestacy, inheritance and damages*

**6.39** We believe that registered partners should be recognised as having made a significant commitment to share their lives together and support one another permanently. On dissolution or on death, we believe that that commitment should be recognised in Scots law to protect the vulnerable party at this time. Financial provision on dissolution should therefore be based on a presumption of equal shares. If two people registered a partnership, that relationship would have a legal status and should be recognised under the intestacy provisions.

### *Adoption and Fostering*

**6.40** In England and Wales same-sex couples can already foster children and under recent legislation will be able to apply to adopt jointly. This is not the case in Scotland. We have recently launched the second phase of the Adoption Policy Review. This will examine the legal framework for fostering and adoption, including who is eligible to adopt or foster children. We plan to wait for the review’s findings before considering how the law on adoption and fostering might be amended to reflect the new status of civil registered partners.

### *Registering the Death of a Partner*

**6.41** There are certain categories of people who can inform the registrar about a death. We propose that a bereaved civil partner is included in the list of those people who can inform on a death and have his/her designation on the register.

**6.42 We would welcome your comments on the family law consequences of civil partnership registration.**

## Recognising the relationship in Scots Law

### *Council Tax*

**6.43** We believe that civil registered partners are in a financially mutually supportive relationship and should be jointly and severally liable for one another's council tax, in the same way that spouses are.

### *Local Government Elections*

**6.44** There are numerous rights and responsibilities relating to the procedures for voting in elections that are specifically restricted to spouses, because they have a legally recognised relationship to each other. These range through the whole electoral process and include such areas as maintaining the electoral register, issues relating to voting by proxy, assisting certain votes to cast their vote and the rights of a candidate's spouse to attend certain electoral activities. We believe that where electoral legislation refers specifically to the conduct of Scottish local government elections, it should be amended to include registered civil partners.

### *Family and Nearest Relative*

**6.45** We propose that, where appropriate, changes are made to existing legislation so that the new legal status of 'civil registered partner' is understood in the context of definitions of 'family' or 'nearest relative'.

### *Hospital Visiting and Medical Treatment*

**6.46** There is no legal definition of "next of kin" in this context. It is a term used by hospitals on admission forms to identify the person to contact in an emergency. There is nothing to prevent same-sex partners acting as "next of kin". There is no law governing who can visit a patient in hospital – it is for the medical staff, following NHS guidance, to make the appropriate decision in each individual case.

**6.47** No person has the right to consent to medical treatment on behalf of another adult. If the patient is not in a position to give consent to a medical intervention, a married or unmarried partner, or others in a close relationship with the patient may be asked to advise on the patient's likely best interests, but the decision ultimately rests with the doctors. However, we believe that the creation of the status of "registered partner" will help to bring about a culture change and to remove the difficulties currently faced by some same-sex couples when one partner becomes ill. We will ensure that, within our devolved responsibilities, guidance given to medical staff adequately addresses the situation.

### *Prison Visiting*

**6.48** The Assisted Prison Visits Scheme (APVS) provides assistance with the cost of visiting prisoners to close family members and partners (of either sex) who have a low income. Unmarried partners who apply for assistance under the APVS are required to provide proof of the relationship. We propose that civil registered partnership status should be treated on the same basis as married partners in terms of the information required as proof of relationship. We also propose that all registered partners should be treated as close relatives, irrespective of whether their relationship subsisted prior to imprisonment, particularly in connection with inter-prison visits.

### *Survivor Pensions and Injury Benefits – Public Service Pension Schemes*

**6.49** Although pensions are generally reserved, responsibility for some public sector pension schemes, in areas such as local government, NHS, teachers, police and fire has been executively devolved to the Scottish Ministers (although parity is generally kept with the equivalent schemes in the south).

**6.50** Public service pensions schemes provide occupational pension benefits to members and their eligible survivors. Eligible survivors include any children and the married spouse of the member. Most public service schemes do not provide survivor pensions to unmarried partners, although death lump sum benefits may be provided to unmarried partners in some schemes where members are able to nominate them. We propose that, like the UK Government, the civil registered partners of members of public service schemes will be eligible for survivor pensions on the same basis as married partners.

**6.51** Some public service employment groups – namely the armed forces, the Civil Service, the Fire Service, Local Government, the National Health Service and the police forces - have injury benefit schemes, allowing the payment of benefits to family members following death of an employee. The payment of injury allowances to family members is consequential upon arrangements in pension schemes for surviving spouses and dependants' pensions. The policy on injury benefits therefore follows the policy on public service pensions.

### *Fatal Accident Inquiry, Burial and Post Mortems, Organ Retention*

**6.52** We propose that 'bereaved civil partner' is included in the definition of near relatives and families in this area to ensure that a civil registered partner whose partner has deceased has appropriate rights and responsibilities.

**6.53** **We would welcome your comments on recognising civil partnership registration in other aspects of Scots law.**

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# HOW TO MAKE A RESPONSE TO THIS PAPER



**7.1** We welcome your opinion on any or all of the questions covered by this paper. To help you make a response we have provided a summary of our questions at the end of this paper. It would be helpful if you could complete and return this summary with your comments and views.

**7.2 Comments on the specific proposals set out in this paper should be made by 5 December 2003. Earlier responses would be very welcome.**

**7.3** Please send your comments

By email to       civilpartnershipregistration@scotland.gsi.gov.uk

In writing to       Scottish Executive Justice Department  
Civil Law Division  
2WR  
St Andrew's House  
Edinburgh  
EH1 3DG  
Telephone 0131 244 3581

By fax             0131 244 2195

**7.4** Comments by e-mail would be preferred. An electronic summary of the questions with a field for your comments can be accessed at the website address below and should be emailed to the above email address. Further copies of this consultation can also be downloaded from this website address: [www.scotland.gov.uk](http://www.scotland.gov.uk)

**7.5** If you are responding on behalf of an organisation please make that explicit and specify your position within the organisation.

**7.6** It is also important for you to indicate if you wish your consultation response to be available to the public within the Executive's library at Saughton House – please tick the appropriate response on the consultation response proforma. Responses from those who reply in confidence will only be included within numerical totals and names and text will not appear in the list of respondents or in any published analysis.

**7.7** A summary and analysis of the consultation responses will be produced following their consideration and will be available on the Scottish Executive website: [www.scotland.gov.uk](http://www.scotland.gov.uk).

**7.8** We invite individuals and organisations to submit views and comments by 5 December 2003.

### *The Scottish Executive Consultation Process*

**7.9** Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

**7.10** While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

**7.11** Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

**7.12** The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- Indicate the need for policy development or review
- Inform the development of a particular policy
- Help decisions to be made between alternative policy proposals
- Be used to finalise legislation before it is implemented

**7.13** If you have any comment about how this consultation exercise has been conducted, please send them to the contact details provided above.

## SUMMARY OF CONSULTATION POINTS

The consultation points made in this paper are summarised below. These have been cross referenced back to the paragraph(s) in the text where the point has been discussed. **It would be most helpful if you could complete the proforma attached when responding to this paper.**

1. We propose that Scottish same-sex couples should be able to register their partnership in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas. (paragraphs 3.1 to 3.11)
2. If we are to introduce for civil partnership registration for same-sex couples, we propose asking the Scottish Parliament to agree to a Sewel motion so that Scottish provisions can be included in any Westminster Bill. (paragraphs 4.1 to 4.7)

### *Principles*

We propose seven underlying principles through which a civil partnership registration scheme can be understood. Each of these is described below:

3. We believe that Scottish same-sex couples should be able to register their partnership in Scotland rather than having to travel to England or Wales. (paragraph 5.2)
4. We believe that the UK Government should recognise partnerships registered by same-sex couples in Scotland for reserved purposes. (paragraph 5.3)
5. We believe that partnerships registered by same-sex couples in Scotland should trigger access to a comprehensive package of rights and responsibilities in devolved areas that largely mirrors those available to civil registered partners in England and Wales. (paragraph 5.4)
6. We believe that devolved aspects of civil partnership registration should be based on Scots law. (paragraph 5.5)
7. We believe that in order to achieve a comprehensive package of rights and responsibilities in reserved and devolved areas, and to avoid difficult cross border issues, that Westminster is best placed to legislate for civil partnership registration in Scotland through a UK Civil Partnership Registration Bill. (paragraph 5.6)
8. We recognise the role that marriage has in Scottish society and do not seek to undermine marriage by extending civil partnership registration to cohabiting couples. (paragraph 5.7)

**9.** We do not seek to open up marriage to same-sex couples. Instead we are creating a new legal status of civil registered partner for same-sex couples. (paragraph 5.8)

### *Registering a Partnership*

**10.** We propose that there are set formal requirements to be met by those wishing to register a partnership. These are explained in paragraphs 6.6 to 6.10.

**11.** We propose that there be set processes for the registration and dissolution of a civil partnership. These are explained in paragraphs 6.11 to 6.35.

### *Policy Consequences of registering a partnership*

**12.** We propose that civil registered partners are recognised in Scots family law. This covers parental responsibility, children (residence and contact on dissolution), aliment, property division of dissolution, intestacy, inheritance and damages. Our proposals are explained in paragraphs 6.36 to 6.42.

**13.** We propose that civil registered partners are recognised consequentially in other aspects of Scots Law. This includes council tax, local government elections, hospital visiting and medical treatment, prison visiting, survivor pensions and injury benefits from public service pension schemes, fatal accident inquiries, burial, post mortems and organ retention. Our proposals are explained in paragraphs 6.43 to 6.53.

## CONSULTATION RESPONSE PROFORMA

### CIVIL PARTNERSHIP REGISTRATION: A LEGAL STATUS FOR COMMITTED SAME-SEX COUPLES IN SCOTLAND

Please complete the details below as this will help ensure we handle your response appropriately.

Name:

Address:

Are you responding as:

An individual

On behalf of a group or organisation

For the purpose of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire, please tick as appropriate:

LGBT organisation<sup>3</sup>

Religious Organisation

Local authority

Academic Body

Legal Sector

Advice Sector

UK Government

Political

Other Organisation

Individual

Do you agree to your response being made public (in SE library and/or on SE website)?

Yes

No

Where confidentiality is not requested, we will publish your full response including your name (and address, where provided).

*If you do not wish for these personal details to be published, please tick this box:*

Are you content for the Scottish Executive Civil Law Division to contact you again in the future for consultation purposes?

Yes

No

**CONSULTATION POINTS**

- 1.** We propose that Scottish same-sex couples should be able to register their partnership in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas. (paragraphs 3.1 to 3.11)

Please provide any comments.

- 2.** If we are to introduce civil partnership registration for same-sex couples, we propose asking the Scottish Parliament to agree to a Sewel motion so that Scottish provisions can be included in any Westminster Bill. (paragraphs 4.1 to 4.7)

Please provide any comments.

*Principles*

We propose seven underlying principles through which a civil partnership registration scheme can be understood. Each of these is described below.

**3.** We believe that Scottish same-sex couples should be able to register their partnership in Scotland rather than having to travel to England or Wales. (paragraph 5.2)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

**4.** We believe that the UK Government should recognise partnerships registered by same-sex couples in Scotland for reserved purposes. (paragraph 5.3)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

**5.** We believe that partnerships registered by same-sex couples in Scotland should trigger access to a comprehensive package of rights and responsibilities in devolved areas that largely mirrors those available to civil registered partners in England and Wales. (paragraph 5.4)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

**6.** We believe that devolved aspects of civil partnership registration should be based on Scots law. (paragraph 5.5)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

**7.** We believe that in order to achieve a comprehensive package of rights and responsibilities in reserved and devolved areas, and to avoid difficult cross border issues, that Westminster is best placed to legislate for civil partnership registration in Scotland through a UK Civil Partnership Registration Bill. (paragraph 5.6)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

**8.** We recognise the role that marriage has in Scottish society and do not seek to undermine marriage by extending civil partnership registration to cohabiting couples. (paragraph 5.7)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

9. We do not seek to open up marriage to same-sex couples. Instead we are creating a new legal status of civil registered partner for same-sex couples. (paragraph 5.8)

Do you support this principle?

Yes       No       In part       Don't know

Please provide any additional comments.

*Scottish Civil Partnership Registration Scheme*

10. We propose that there are set formal requirements to be met by those wishing to register a partnership. These are explained in paragraphs 6.6 to 6.10.

Do you support the formal requirements that we propose?

Yes       No       In part       Don't know

Please provide any additional comments.

11. We propose that there be set processes for the registration and dissolution of a civil partnership. These are explained in paragraphs 6.11 to 6.35.

Do you support the process aspects of registration that we propose?

Yes       No       In part       Don't know

Please provide any additional comments.

12. We propose that civil registered partners are recognised in Scots family law. This covers, parental responsibility, children (residence and contact on dissolution), aliment, property division of dissolution, intestacy, inheritance and damages. Our proposals are explained in paragraphs 6.36 to 6.42.

Do you support this proposal?

Yes       No       In par       Don't know

Please provide any additional comments.

13. We propose that civil registered partners are recognised consequentially in other aspects of Scots Law. This includes council tax, local government elections, hospital visiting and medical treatment, prison visiting, survivor pensions and injury benefits from public service pension schemes, fatal accident inquiry, burial, post mortems and organ retention. Our proposals are explained in paragraphs 6.43 to 6.53.

Do you support this proposal?

Yes       No       In part       Don't know

Please provide any additional comments.

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[www.scotland.gov.uk](http://www.scotland.gov.uk)

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