

# Review of civil partnership

Response by the Equality Network to the consultation by the Scottish Government

14<sup>th</sup> December 2015

**Question 1:** Please provide any additional arguments you wish to make in favour of the 'no change' option (page 3 of the consultation paper)

The Equality Network agrees with the Scottish Government that there will continue to be a demand for same-sex civil partnerships, following the introduction of same-sex marriages. In our May 2015 survey through our own network and those of our equality partners, a significant minority, 32%, of 645 LGBTI respondents said that in future they would consider a same-sex civil partnership, with 56% saying they would consider a same-sex marriage.

In the first three quarters of 2015, 50 civil partnerships were registered, compared to 1343 same-sex marriages. We believe that the annual number of same-sex marriages will fall, once pent up demand is satisfied, to perhaps 500 to 600. We expect the annual number of civil partnerships to remain at the current figure (60 to 70), as there is no pent up demand to satisfy. We note that the Glasgow City Council registrar told the Scottish Government (annex H of the consultation paper) that when a couple now ask for a civil partnership, they are very clear that that is what they want, rather than a marriage.

Further arguments for retaining same-sex civil partnership include the following.

Recognition of same-sex civil partnerships registered outwith Scotland: at present, most same-sex civil partnerships (civil unions, registered partnerships, etc) registered outwith Scotland are recognised in Scotland, giving the couple legal protections. This can only continue while civil partnership law remains in place. Closing down civil partnership, even if done over a long legacy period, would presumably lead to an eventual end to this provision of protection (see also our response to question 4).

Some members of religious groups believe that marriage should only be for mixed-sex couples, but do not object to civil partnership for same-sex couples. The continued provision of civil partnership allows those people to gain legal protection for their relationship without needing to marry.

**Question 2:** Please provide any additional arguments you wish to make against the ‘no change’ option (page 4 of the consultation paper)

As the Scottish Government acknowledge, the ‘no change’ option means that the law would remain different for same-sex couples, who would have a choice of marriage or civil partnership, and for mixed-sex couples, who would only be able to choose marriage. The consultation paper calls this an “imbalance”. We think it is better described as an inequality, and direct discrimination at the core of Scotland’s family law. Please see our answer to question 5 for examples of why this matters to people in mixed-sex relationships.

An additional effect of the inequality perpetuated by the ‘no change’ option is the failure of Scotland to recognise mixed-sex civil partnerships registered outwith Scotland. A mixed-sex couple with a civil partnership registered in another country have no legal protection as a civil partnered couple under Scots law, while a same-sex couple with a civil partnership registered in the same country have strong legal protection.

We think that the inherent inequality in the current arrangements means that the “no change” option is unsustainable in the longer term – it will very widely be seen as simply unfair. We note that the majority of jurisdictions around the world that have introduced equal marriage, open to same-sex and mixed-sex couples, either have civil partnership open to same-sex and mixed-sex couples also, as an alternative option, or they do not have civil partnership at all. The exceptions are England and Wales, and some US states. We would expect the issue to be considered again in England and Wales within a decade at most, because the UK Government were clear that the ‘no change’ option was their policy for the time being only, and we would expect the situation in the US to continue to develop.

In our May 2015 survey of LGBTI and non-LGBTI people, when asked their preference between the three options presented in the consultation paper, only 1% of 705 LGBTI respondents, and 2% of 566 non-LGBTI respondents chose the “no change” option.

**Question 3:** Please provide any additional arguments you wish to make in favour of the option of no new civil partnerships being entered into from a date in the future (page 7 of the consultation paper)

The sole advantage of this option, in our view, is that it potentially provides for equality of treatment between same-sex and mixed-sex couples, in that only marriage would be available, for any couple. However, as we understand it from paragraph 3.13 of the consultation paper, it is proposed by the Scottish Government that same-sex civil partnerships registered outwith Scotland would continue to be recognised in Scotland indefinitely, with full legal protection. If so, this option does not remove the current inequality and discrimination in the law, because that recognition and protection would continue to be denied to mixed-sex couples in civil partnerships registered in the same countries.

We question the Scottish Government's argument that this option would reduce complexity. Complexity would be reduced somewhat only for the Scottish registration system, which however seems to have coped perfectly well for the past ten years with running both civil partnership and marriage registrations (which of course form only part of the wider responsibilities of National Records for Scotland and local authority registrars).

It might be said that complexity would be reduced for couples wanting to register their relationship in Scotland. However, we think this is more accurately described as a reduction in choice for those couples. People are faced with complex choices all the time, and we would suggest that choices such as whether to buy a particular house, or whether to legally register a relationship at all, are each at least as complex as the choice between marriage and civil partnership.

Complexity would not be reduced for any other part of Scotland's legal or administrative systems, because they would need to continue to provide for civil partnerships registered outwith Scotland (as well as continuing to provide for legacy civil partnerships registered in Scotland, for more than another 50 years).

While we agree with the Scottish Government that there are now more jurisdictions around the world that would recognise a Scottish same-sex marriage than would recognise a Scottish civil partnership, we do not think that this is a valid reason to deny couples the choice of civil

partnership. It should be for couples themselves to consider the pros and cons of marriage or civil partnership, when they decide to register. Most other countries do not recognise same-sex marriages, and indeed a same-sex marriage or civil partnership could be a significant liability if moving to a country which still has laws criminalising same-sex relationships. A couple who choose to register a civil partnership will continue to have the option of changing it to a marriage if their circumstances change and they wish to move to a country that recognises same-sex marriage but not Scottish same-sex civil partnership.

**Question 4:** Please provide any additional arguments you wish to make against the option of no new civil partnerships being entered into from a date in the future (page 8 of the consultation paper)

We agree with the Scottish Government that this option would remove a choice for which there continues to be a demand. As we noted above under question 1, our consultation with LGBTI people indicates that the demand for same-sex civil partnerships will continue, although at a lower level than that for same-sex marriage.

We agree with the Scottish Government that this option would remove altogether the possibility of legal recognition of their relationship from those same-sex couples who for religious or other reasons do not agree with same-sex marriage. This would have major consequences for future such couples, removing the legal protection that currently is available.

Paragraph 3.13 of the consultation paper indicates that same-sex civil partnerships registered outwith Scotland will continue to be recognised in Scotland, and given full legal protection. As noted in our answer to question 3, that means that, under the option of no new civil partnerships, there will continue to be sexual orientation discrimination in the law, between the legal recognition of non-Scottish same-sex civil partnerships (recognised) and non-Scottish mixed-sex civil partnerships (not recognised).

We also note that if same-sex civil partnerships registered in England and Wales continue to be recognised in Scotland, as is proposed, then because registration of those civil partnerships continues to be available in England and Wales, the core legal effect of this option would be to export civil partnership registration across the border. Scottish same-sex couples who wish to register a civil partnership will simply need to go to

Berwick or Carlisle to do that. That is an inconvenience for those couples, while the only saving to Scotland is a small reduction in the complexity of the work of National Records of Scotland and registrars.

In our May 2015 survey, when asked their preference between the three options presented in the consultation paper, 17% of 705 LGBTI respondents, and 15% of 566 non-LGBTI respondents, chose the option of no new civil partnerships from a date in the future.

**Question 5:** Do you have any comments on the Government's view that there are insufficient reasons for introducing opposite sex civil partnership in Scotland? (page 9 of the consultation paper)

The Equality Network disagrees with the Scottish Government's view. We believe that the opening up of civil partnership to couples regardless of gender is the only way to remove sexual orientation discrimination from the law on marriage and civil partnership, without removing important choices that are currently available to same-sex couples.

We consider that the reasons given by the Scottish Government for their view are not strong, and are not well supported by the evidence. We expand on this in the following paragraphs.

The Scottish Government considers that the demand for opposite sex civil partnership would be low. Our May 2015 survey, through our network and those of our partner equality organisations, indicates otherwise. 80% of 705 LGBTI respondents, and 80% of 566 non-LGBTI respondents, asked their preference between the three options presented in the consultation paper, preferred the option of retaining civil partnership and opening it up to mixed-sex couples. 17% of 645 LGBTI respondents, and 41% of 509 non-LGBTI respondents, said that if this option were adopted, they would consider a mixed-sex civil partnership in future.

As annex D of the consultation paper reports, the figures for mixed-sex civil partnership vary from country to country where marriage and civil partnership are both available with similar legal rights and responsibilities. In the Netherlands, around 12% of mixed-sex couples (and around 25% of same-sex couples) choose registered partnership rather than marriage. In New Zealand well under 1% of mixed-sex couples (and 3% of same-sex couples) choose civil union in preference to marriage.

In Scotland, 50 same-sex couples registered civil partnerships in the first three quarters of 2015, compared to 565 new same-sex marriages (that were not conversions from civil partnerships). It is likely that the number of same-sex marriages includes some pent up demand from couples who had been waiting some time for same-sex marriage to become available. We would therefore expect the number of new same-sex marriages per year to settle down to around 500. We would expect the rate of same-sex civil partnership to continue to run at around 60 to 70 per year, or around 13% the rate of same-sex marriages.

The rate of 13% is around half the comparable rate in the Netherlands. If the same multiplier applied to the Netherlands rates of mixed-sex civil partnerships, around 6% as many mixed-sex couples in Scotland might be expected to choose civil partnership if it was available, compared to those choosing marriage. That would be over 1500 mixed-sex civil partnerships per year. Even if the proportion of mixed-sex couples choosing civil partnership was as low as 2% of those choosing marriage, that would still result in 500 mixed-sex civil partnerships per year. That is similar to the annual number of same-sex civil partnerships for the past ten years, and there has been no suggestion that that number was too small to justify the provision of the civil partnership system.

In short, we consider that a demand of 500 mixed-sex civil partnerships per year would easily justify the opening up of civil partnership equally to couples regardless of gender, and we would anticipate that the demand will be rather higher than that.

The Scottish Government argues that the recognition of Scottish mixed-sex civil partnership outwith Scotland would be low, and we agree. However, the majority of jurisdictions outwith the UK, which have civil partnership or similar, open their civil partnership to both mixed-sex and same-sex civil partnerships. This means that the recognition of Scottish mixed-sex civil partnership in countries outwith the UK will not be significantly more limited than the recognition of same-sex civil partnerships.

Therefore, while this lack of recognition might be said to be an argument for closing down civil partnership altogether, it is not an argument for refusing to open civil partnership to mixed-sex couples. As noted in our answer to question 3, we think it should be for couples themselves to decide whether the disadvantage of limited international recognition for

civil partnership means they would rather marry than enter a civil partnership.

The Scottish Government suggests that society's understanding of mixed-sex civil partnership might be limited. Society has coped very well for the past ten years with same-sex civil partnership. It has coped well this year with same-sex civil partnership existing alongside same-sex marriage (and no doubt will continue to do so while same-sex civil partnerships continue to be legally recognised, that is, for at least the next 50 years). Research indicates that people's understanding of the legal implications of marriage is relatively low, as is people's understanding of the more limited legal framework for cohabitation. Abolishing civil partnership, or refusing to open it to mixed-sex couples, will not improve understanding – what is needed for that is further provision of information about family law generally, in schools and elsewhere.

The Scottish Government note that the law already provides some rights for cohabitants who choose not to marry. However, it is very important to recognise that those rights are much more limited than those that apply to married couples and civil partners, in particular in the area of financial provision on separation or bereavement. Our consultation with both LGBTI and non-LGBTI people indicates that there are certainly cohabiting couples who have chosen not to marry, but who would wish to access the stronger legal protections that are available with civil partnership.

While it is true, as the Scottish Government note, that civil or humanist marriage are options that are available to non-religious couples, our consultation indicates that there is a significant number of mixed-sex couples who would prefer the different status of civil partnership. The Scottish Government may perceive no significant difference between civil marriage and civil partnership, but some couples do. Indeed, the fact that marriage and civil partnership have different perceived and societal status was a key argument, accepted by the Scottish Government, for opening up marriage to same-sex couples. It is important to recognise that the difference in the status of marriage and civil partnership is understood differently by different couples. Some couples perceive civil partnership as second class; others perceive it as preferable to marriage. In neither case would they perceive it as the same as civil or humanist marriage.

We are not persuaded by the argument that “the Government knows what’s best for you and so we’re restricting your choices”. Civil partnership exists now and is available, albeit currently only for same-sex couples – if those couples are free to choose, why should mixed-sex couples not be also?

The Scottish Government argues that introducing mixed-sex civil partnership would increase complexity. While the legislation to make the change would, like most legislation, involve some complexity, it will be less complex to develop than the Marriage and Civil Partnership (Scotland) Act 2014 was, and much less complex than the Civil Partnership Act 2004, while directly benefiting at least as many couples as those acts did.

Once the legislation is passed, we cannot see that a system that provides marriage and civil partnership to all couples is significantly more complex than a system that provides marriage to all and civil partnership only to same-sex couples.

Finally, the Scottish Government argues that there would be disproportionate costs to mixed-sex civil partnership, but the case for this has not been made. In fact, in our view, the Government’s own evidence on costs, in annex H of the consultation paper, contradicts this argument, and we strongly disagree with it.

There are two potential kinds of cost involved: one-off start-up costs, and “per civil partnership” long-term costs. We agree that there will be one-off costs to National Records of Scotland and to local authority registration systems, to introduce mixed-sex civil partnership. These costs will certainly be no greater than the one-off costs of the introduction of same-sex marriage. That cost was not considered disproportionate to the benefit to the 500 or so couples likely to register same-sex marriages per year. We cannot see how similar costs could be considered disproportionate to the benefit to the likely similar, or larger, number of couples likely to register mixed-sex civil partnerships per year.

The “per civil partnership” costs identified are made up of public sector pension costs, and potential legal aid costs for dissolutions of civil partnerships. The summary costs table at the end of annex H gives estimates for the cases where the introduction of mixed-sex civil partnership results in either a 1% or a 10% increase in the total number of mixed-sex marriages/civil partnerships. We think these are

reasonable lower and upper bounds for the likely number of mixed-sex civil partnerships.

However, the summary table omits, for the estimates given for pension costs, the vital qualifying sentences in the main text of annex H (page 48 of the consultation document), which state “the Scottish Government is of the view that the introduction of opposite sex civil partnership would be unlikely to lead to the costs to the devolved public sector schemes which are shown above. It would appear that most costs which could arise would be displaced existing costs rather than new additional costs.” (the “costs shown above” are exactly the ones quoted in the summary table). This is explained on page 47 as being because many couples who register a mixed-sex civil partnership are likely to cohabit if civil partnership remains unavailable to them, and so many of the public sector pension liabilities will arise anyway. The summary table also omits the qualifier “in the longer term” (page 46, explained on page 47) – pension costs mostly do not arise until decades after the marriage / civil partnership is registered.

Thus in the summary table, the Scottish Government have summarised annex H by listing costs that the main text of the annex concludes are unlikely to occur, and without stating that those costs mostly do not begin to arise until a long time into the future. The main text of annex H suggests that “most” of the £1.75m to £17.5m estimated annual cost will not be additional cost at all, and that most of the small part remaining that is new annual cost will not begin for several decades after the introduction of mixed-sex civil partnership.

For the (much lower) legal aid costs, the main text of annex H (page 50) notes that there are uncertainties in the estimates, for example because cohabitants who separate may pursue financial provision and require legal aid. In fact financial provision cases for cohabitants may be more expensive than civil partnership dissolutions, because the law on cohabitation is less well established (this point was made to the Scottish Government by their law firm consultee for the partial Business and Regulatory Impact Assessment for this consultation, and is noted on page 40 of the consultation paper). For mixed-sex cohabiting couples to register a civil partnership may therefore reduce, not increase, potential legal aid costs if they separate in future. The legal aid costs quoted in annex H are therefore likely to be ceilings for the 1% and 10% scenarios, rather than the most likely costs.

The consultation paper states that the Scottish Government considers these costs to be “disproportionate” to the benefit to couples of having access to mixed-sex civil partnership. However, these costs only arise at all because it is assumed that the introduction of mixed-sex civil partnership will result in an increase of between 1% and 10% in the number of mixed-sex couples registering either a marriage or civil partnership. Exactly the same per partnership cost arises for any marriage or civil partnership. Is it really the Scottish Government’s position that the costs of marriages and civil partnerships to public sector pensions, and to the legal aid budget for possible divorce or dissolution actions, are disproportionate to the benefit to couples of marriage and civil partnership where they choose it? If that really is the Government’s position, it would follow that the Government should discourage people from marriage, in order to reduce the overall number of marriages and save these “disproportionate” costs. That of course would be ridiculous, and it seems quite clear to us, and accepted by the Government in other contexts, that the benefits of the availability of marriage and civil partnership, to couples who choose it, far outweigh these relatively small costs to the Government.

In short, in our view the argument that “there would be disproportionate costs to opposite sex civil partnership” is unjustifiable.

In the paragraphs above, we have commented on the reasons that the consultation paper gives for not opening civil partnership to mixed-sex couples. We are very disappointed that, because the Scottish Government have already taken a view that mixed-sex civil partnership should not be introduced, the consultation paper fails to discuss the potential benefits of doing so.

The most obvious benefit is that the current system directly discriminates, at the core of Scotland’s family law, on grounds of sexual orientation. The Scottish Government should be taking all possible steps to eliminate any such discrimination in any area of law.

We have noted above that our consultation with LGBTI and non-LGBTI people indicates that there would be a significant demand for mixed-sex civil partnership. Even if the demand was considerably lower than our consultation indicates, it would still fall comfortably within the 1% to 10% of current mixed-sex marriage rates, estimated by the Government in annex H of the consultation paper. A demand of 2% of current mixed-sex marriage rates would be more than 500 couples a year. That is

larger than the demand for same-sex civil partnership since it was introduced ten years ago, and larger than the demand for same-sex marriage. Presumably it is therefore accepted by the Government that a demand of that level is sufficient to justify primary legislation, especially where that legislation removes discrimination.

The introduction of mixed-sex civil partnership is widely supported. In our May 2015 survey through our own network and those of our equality partners, when asked their preference between the three options presented in the consultation paper, 80% of 705 LGBTI respondents, and 80% of 566 non-LGBTI respondents, chose the option of opening up civil partnership to mixed-sex couples. Support for this option was 88% amongst the 179 bisexual respondents, and also 88% amongst the 69 trans respondents. For bisexual people of course, the idea that the legal options available to them should depend solely on the gender of their future chosen partner seems particularly ridiculous.

Looking at the detailed reasons given by our survey respondents for this preference, it is clear that the main reasons are the equality principle, the importance of choice and respect for diversity, and because some couples specifically do not wish to marry but would register a civil partnership. Here is just a small selection of reasons given, from almost 1000 individual written responses given by respondents to our survey:

“Marriage comes with many traditions, teachings and connotations that I heavily disagree with. Not wanting to be part of that system means that I will not get married. However, that will mean that I don't have the same rights as a married person even if everything else about our lives is exactly the same. A civil partnership would allow me to live a better, fairer life without compromising my beliefs and values. It allows me the option of making a formal partnership with my significant other and it being seen as a true partnership.”

“Marriage is appropriate for those who choose it but not for all. The historical connotations of marriage - chattels, property, paternalism are a thing of the past and we need a new definition for the 21st century.”

“Couples can choose their preferred legal relationship and couples from other countries can be recognised within UK law whatever their legal relationship”

“It is all about equality and fairness. Why should myself and my partner who have been in a relationship for over 16 years and have 2 children, be treated any less than those who are married or are homosexuals. Why should we lose out where it comes to pensions and dealing with each other’s matters (i.e. picking up ordered shopping from some stores - "Oh if you're not married or in a civil partnership then you can't. The person ordering has to come in"). Similar discrimination will apply when one of us dies. We're fed up being discriminated against just because we don't want to get married and are heterosexual!”

“Every person should have the choice of what relationship they want to be in with another person”

“Equality for everyone regardless of sexual orientation”

“Marriage is outdated and steeped in too many outmoded traditions. Civil partnership represents a modern take on a relationship and offers choice for those who wish commitment and legal recognition within contemporary society.”

“People should have the freedom to choose the option which suits them best. The way a couple view their relationship is up to them, restricting their options is not conducive to equal rights.”

“The legal framework is already in place for both options. It makes sense to keep it and extend the choice to all couples.”

“Civil partnerships already exist and is a preference for some so why take it away?”

“I think that all couples should have access to the same legal status and personally don’t want to be married, but see the benefit of civil partnership as a legal status, which is currently not available to me.”

“In a relationship for 30 years we have never felt marriage was a choice we wanted to make. Civil partnership gives us equality with married couples to ensure we have a recognised legal status.”

“I am not keen on marriage but would like to be able to legally have a partnership with my long term partner but due to being heterosexual I am unable to do that. Whereas people who are gay/lesbian now have more options as they can either marry or have a civil partnership which allows them to make a choice which suits their values.”

“I am a heterosexual married female. When I wanted to make a legal commitment to my partner, I only had the choice of marriage. I would have preferred to have a civil partnership. I didn't want to be somebody's wife, I wanted to be an equal partner. Although women's rights are better than they have ever been in the UK, the institution of marriage still has many old fashioned, outdated and sexist connotations. For example, despite that fact that it is 2015, there is a widespread assumption that the woman will change her name after marriage as if she becomes her husband's property. Some people, gay or straight, might want marriage with all its connotations and baggage, and that's fine - they should have that choice. Other couples, gay and straight, may prefer a civil partnership, which I personally view as a more progressive and equal option - they should also have that choice. I see no reason why there should be restrictions on the type of partnership option you can choose based on your sexuality.”

“Purely in terms of equality for everyone. I have been married twice before and both and I and my current partner have no plans to remarry but a civil partnership may be more appealing and will protect our rights within the relationship.”

“Marriage has connotations that are not appropriate for all couples. Every couple, whether same-sex or mixed-sex, should be able to have the choice of civil partnership. Scotland can lead the way in this progressive legislation. I personally know many mixed-sex couples who do not want to marry but would like to enter a civil partnership. To prevent mixed-sex couples having a civil partnership would be discriminatory.”

“I have been in a 23 year relationship. Neither myself or my partner wish to be married due to all the connotations marriage carries. Whilst we support access to marriage for all those who wish it, we want that right available to heterosexual couples who wish to have a civil partnership but are currently denied that right.”

“Civil partnership is preferable to marriage for me, no matter the gender of the person I end up committed to. Also, it makes it easier for trans\* individuals that are transitioning and are already in a civil partnership to continue in that status.”

“People who have a civil partnership and are happy should not have this undermined by it being phased out. For many people marriage isn't an

option that sits comfortably whereas civil partnership offers a union unclouded by marriages past of patriarchal and homophobic norms. I don't ever want to be someone's wife but that doesn't mean I shouldn't have the right to celebrate my relationship in a legal ceremony with my partner and my family regardless of their gender, and also have the legal benefits and protections marriage brings.”

“I believe that civil partnership is an important option for people who do not believe that the historical institution of marriage suits their relationship.”

In June 2012, we commissioned an opinion poll from Ipsos MORI. A representative sample of 1003 people in Scotland were asked whether they agreed or disagreed that “Civil partnerships, which are currently only available to same-sex couples, should also be available to heterosexual couples.” 71% agreed, while 16% disagreed, and the remaining 13% neither agreed nor disagreed. Agreement rates were over 70% for all age groups except those aged 55 and over, where agreement was 65%. Agreement rates were over 70% across all deprivation quintiles except the least deprived, where agreement was 68%.

The introduction of mixed-sex civil partnership will have a specific benefit for trans people in a civil partnership. At present, if such a person wishes to obtain gender recognition, they must dissolve their civil partnership, or convert it to a marriage, first. This is because gender recognition for one civil partner would create a mixed-sex civil partnership, which is currently not allowed. Since couples may not wish to convert their civil partnership to a marriage, nor to dissolve it, this potentially blocks some trans people from access to gender recognition. Introducing mixed-sex civil partnership would mean that the civil partnership could simply continue after gender recognition is granted to one partner, as is already the case with marriage.

The introduction of mixed-sex civil partnership would have the advantage that for the first time there would be legal protection in Scotland for a couple who have registered a mixed-sex civil partnership in another country. Most countries that provide civil partnership make it available to both mixed-sex and same-sex couples. At present, a same-sex couple in such a partnership have legal protections as civil partners under Scots law, but a mixed-sex couple in the same partnership do not.

## Comments on annex C:

As we have noted above, the financial provisions for cohabitants, introduced by the Family Law (Scotland) Act 2006, (annex C, paragraph 11) are considerably weaker than those available to civil partners or married people. In particular, the basis for financial provision on separation is much more limited than that for civil partnership dissolution or divorce. This is an important practical reason why some mixed-sex cohabiting couples who do not want to marry would benefit from the availability of mixed-sex civil partnership.

We would not recommend that adultery be added as a way of establishing irretrievable breakdown of civil partnership and so allowing dissolution of the partnership (annex C, paragraph 21). Civil partnership law has worked well for ten years without this. It is not required in practice, because sexual infidelity in the same circumstances can constitute “unreasonable behaviour”, which itself establishes irretrievable breakdown. Adultery remains part of marriage law largely because its retention is valued by certain religious groups, and those groups do not have a specific interest in the procedural rules for dissolving civil partnerships.

Uncertainties remain at present about the recognition of Scottish mixed-sex civil partnerships for reserved purposes, including reserved public sector pensions, the state pension, and the regulation of private sector pensions (annex C, paragraphs 47 to 51). These matters will require negotiation with the UK Government, and could then be dealt with in the usual way: by consequential secondary legislation at Westminster made under section 104 of the Scotland Act 1998. We would hope and expect that the UK Government would respect the decision of the Scottish Parliament in the devolved matter of who can register a civil partnership, and would make appropriate consequential adjustments to reserved law.

Overall, in our view, the analysis in annex C demonstrates the practicality of introducing mixed-sex civil partnership, and that to do so raises fewer new issues and complexities than the introduction of same-sex marriage did.

**Question 6:** Please provide any comments you have on the partial BRIA, partial EQIA, and the screening report for the CRWIA (page 10 of the consultation paper)

Partial Business and Regulatory Impact Assessment (BRIA):

We have noted in our answer to question 5 the concerns we have about the costs analysis in the partial BRIA.

Partial Equality Impact Assessment (EQIA):

We agree with the statement in the partial EQIA (page 56) that more guidance, including easy read guidance, is needed on entering into a marriage or civil partnership. This guidance is needed in any case, regardless of the decision eventually taken on the options set out in the consultation paper.

The partial EQIA rightly notes that the introduction of mixed-sex civil partnership would benefit trans people in civil partnerships because it would allow them to access gender recognition without first being forced to dissolve their civil partnership or convert it to a marriage.

In our view, the partial EQIA downplays the sexual orientation equality impact of the various options. To leave the law as it is would perpetuate direct and obvious sexual orientation discrimination in Scotland's family law framework. To close down civil partnership to new entrants in future would eventually remove that discrimination (over a period of well over 50 years), except that, as noted in our response to question 4, if it is proposed to continue indefinitely to grant legal recognition to non-Scottish same-sex civil partnerships, but not mixed-sex ones, the discrimination will continue. To open up civil partnership to mixed-sex couples would remove the discrimination while maximising the choices available to couples, and maximally respecting their diversity.

The partial EQIA notes that some religious bodies are concerned that the introduction of mixed-sex civil partnership would undermine marriage. We believe, based on the feedback we have received to our consultation with LGBTI and non-LGBTI people, that most mixed-sex couples who would register a mixed-sex civil partnership are couples who have chosen not to marry (that is, cohabiting couples). Therefore, the introduction of mixed-sex civil partnership is unlikely to lead to a significant reduction in the number of marriages. Where a couple do choose a civil partnership who might, if that were not available, choose a

marriage instead, it is very likely that the marriage they would choose would be a civil one rather than a religious one. The introduction of mixed-sex civil partnership will therefore not cause a fall in the number of mixed-sex couples seeking a traditional religious marriage, and so will not in any sense undermine religious marriage.

Child Rights and Wellbeing Impact Assessment (CRWIA) screening:

We note that this screening is quite brief. In our view, allowing parents to register a civil partnership, if they wish to do so and do not want to register a marriage, is likely to be of overall benefit to their family. We consider that families are likely to feel more comfortable and valued where they are able to select the choice of legal status that best suits them, rather than being denied that choice. That is particularly the case where the denied choice is available to other families (those headed by same-sex couples) so that the denial of choice is directly discriminatory on grounds of the parents' sexual orientation / relative genders. Discrimination in the law between families is unlikely to promote children's rights and wellbeing.

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