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Dear Convener,

### **CIVIL PARTNERSHIP (SCOTLAND) BILL: STAGE ONE REPORT**

Thank you for your Committee's careful consideration of this Bill and your Stage 1 Report. I welcome the recommendation that the Scottish Parliament approve the principles of the Bill.

Please find attached a response from the Scottish Government to the points and recommendations made in the Stage 1 Report.

Yours sincerely,

**SHIRLEY-ANNE SOMERVILLE**



## **CIVIL PARTNERSHIP (SCOTLAND) BILL RESPONSE BY THE SCOTTISH GOVERNMENT TO THE STAGE 1 REPORT BY THE EQUALITIES AND HUMAN RIGHTS COMMITTEE**

1. The Scottish Government welcomes the scrutiny given by the Committee to the Civil Partnership (Scotland) Bill and is pleased that the Committee has recommended to Parliament that it support the general principles of the Bill.
2. In the remainder of this response, the Scottish Government is responding to particular points or recommendations made by the Committee. The Committee's comments are shown in bold, along with the paragraph number in the Stage 1 report, and the Scottish Government's response is given underneath. This response uses headings in the Stage 1 report.

### Symbolic differences between marriage and civil partnership

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

3. The Scottish Government agrees with these comments by the Committee.

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

4. The Scottish Government, working with National Records of Scotland, will prepare and publish guidance outlining the relatively few differences between marriage and civil partnership.
5. Clearly, it is for couples themselves to decide whether to marry or enter a civil partnership and individual circumstances will vary. However, the Scottish Government agrees that general guidance may be helpful to couples.
6. One particular point is that there is recognition of mixed sex marriage across the world whereas recognition of mixed sex civil partnership internationally is more limited. Working with the UK Government, the Scottish Government will encourage authorities overseas to recognise mixed sex (and same sex) civil partnerships. However, decisions on the recognition of civil partnerships are a matter for the

overseas authorities and the Scottish Government cannot guarantee that a mixed sex civil partnership entered into in Scotland will be recognised overseas. Therefore, the guidance on marriage and civil partnership will note that there could be differences in overseas recognition.

#### Interim recognition of different sex civil partnerships as marriage

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

7. The Scottish Government is grateful for this support from the Committee.

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

8. The Scottish Government is happy to consider suggestions from Committee members on any proposed changes to the wording of section 3.

9. The Scottish Government has considered potential changes, including the possibility of adding provision to section 3 to make it clear that recognising mixed sex civil partnerships from outwith Scotland as marriages in Scotland has no effect on the status of the relationship in the country in which it was originally registered, or in any other country. However, the Scottish Government has concluded that this would not be appropriate as it would in effect involve an attempt to make provision in the law of another jurisdiction.

10. In practical terms, the Scottish Government would expect couples in a mixed sex civil partnership from elsewhere to refer to themselves as being in a civil partnership. The Scottish Government will make it clear in public facing guidance that couples in a mixed sex civil partnership from elsewhere will be free to call themselves what they wish and that the interim period, when they will be treated legally as if married, will be of short duration and has the aim of ensuring couples can exercise rights and responsibilities if required.

11. The Scottish Government would intend to use existing powers in the Bill (at section 3(4)) to make contrary provision so that mixed sex civil partners from elsewhere are treated as civil partners during the interim period for the purpose of

dissolving their relationship in Scotland. The intention is to make things easier for couples if and when they return to their home jurisdiction. If their relationship had to be ended by a divorce in Scotland, rather than a dissolution, there would be a risk that the divorce would not be recognised in the couple's home jurisdiction as having ended the relationship.

12. Provision was made previously in UK legislation for same sex marriages from England and Wales to be treated as civil partnerships in Scotland for an interim period until same sex marriage was introduced in Scotland<sup>1</sup>. When this was done, provision was also made so that any dissolution of the relationship in Scotland (or Northern Ireland) ended the relationship across the UK<sup>2</sup>. Clearly, the Civil Partnership (Scotland) Bill cannot make provision in respect of the law in England and Wales and Northern Ireland. The Order planned under section 104 of the Scotland Act 1998 can do so but any provision there might be too late: in theory, couples could start to dissolve their relationship shortly after moving to Scotland<sup>3</sup>.

13. On implementation of the Bill so that mixed sex civil partnerships can start in Scotland, the Scottish Government remains committed to doing this as quickly as possible.

14. As the Cabinet Secretary for Social Security and Older People indicated when she gave oral evidence to Committee on the Bill, there are a number of tasks that need to be carried out including the Order under section 104 of the Scotland Act 1998 at Westminster; a number of Scottish Statutory Instruments; and changes to forms and guidance, information technology and registrar training. The implementation of this Bill, if passed, will need to be reviewed in light of the impact of the Covid-19 pandemic. For example, registration services generally have been significantly affected by the pandemic, under which death and still-birth registrations have been prioritised, and weddings and civil partnerships are not currently going ahead except in emergency situations (eg where one party is critically ill).

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

15. The Cabinet Secretary confirmed when she gave oral evidence that she was happy to meet with Alex Cole-Hamilton MSP to discuss potential drafting changes to section 3 of the Bill, on interim recognition in Scotland of mixed sex civil partnerships from elsewhere. A date for this meeting was agreed but it had to be postponed as a consequence of Covid-19. The Cabinet Secretary subsequently wrote to Mr Cole-Hamilton to indicate that she was happy to consider detailed points in writing. The

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<sup>1</sup> Paragraph 1 of Schedule 2 of the Marriage (Same Sex Couples) Act 2013:  
[www.legislation.gov.uk/ukpga/2013/30/schedule/2/enacted](http://www.legislation.gov.uk/ukpga/2013/30/schedule/2/enacted)

<sup>2</sup> Paragraph 4 of Schedule 2 of the Marriage (Same Sex Couples) Act 2013.

<sup>3</sup> Although, in practice, the Scottish Government would expect the number of dissolutions of mixed sex civil partnerships in Scotland during the interim period to be very low. Same sex marriage was introduced in Scotland at the end of 2014 and data on divorces of same sex marriage is now available at <https://www.gov.scot/publications/civil-justice-statistics-scotland-2018-19/pages/16/>

Cabinet Secretary is also happy to consider detailed points either in writing or by teleconference from other members of the Committee.

### Adultery

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

16. The Scottish Government agrees that any wider reform of divorce and dissolution law is not for this Bill but would be for separate consideration.

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

17. The Scottish Government has no current plans to review divorce and dissolution law in Scotland. The Scottish Government does plan, as a consequence of Brexit, to review when the Scottish courts should have jurisdiction to hear divorce and dissolution cases<sup>4</sup>. The Scottish Government also intends to consult on extending simplified divorce and dissolution procedures to cases where there are children under 16 and no dispute about their welfare<sup>5</sup>. However, neither of these areas would change the substance of divorce and dissolution law.

18. Any reform to divorce and dissolution law would require a full consultation beforehand and the Scottish Government has no current plans to carry out such a consultation.

### Gender recognition

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

19. The Scottish Government agrees with these comments by the Committee.

**97. The Committee welcomes the provision in Schedule 2, paragraph 5 of the Bill to the extent that it benefits transgender people who wish to remain in the formalised relationships they entered into prior to transition. The Committee acknowledges that the current legislation replicated in the Bill on interim Gender Recognition Certificates is complex. However, on balance, the**

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<sup>4</sup> More details can be found in the Policy Note for The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/104): <https://www.legislation.gov.uk/ssi/2019/104/contents/made>

<sup>5</sup> More information on the simplified procedure for obtaining a divorce or dissolution is at <https://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership/simplified-do-it-yourself-procedure>

**Committee agrees that the place for the necessary amendments will be through the forthcoming Gender Recognition Reform (Scotland) Bill.**

20. The Scottish Government welcomes the Committee's support for the provisions in paragraph 5 of Schedule 2 of the Bill.

21. The UK Government has made regulations for England and Wales<sup>6</sup> and Northern Ireland<sup>7</sup> to introduce mixed sex civil partnership. These regulations include amendments to the Gender Recognition Act 2004, which extends across the UK. The Scottish Government is considering if any amendments may be needed to the Civil Partnership (Scotland) Bill to reflect these regulations.

22. In particular, these regulations made provision for the continuity of English and Welsh and Northern Irish and overseas civil partnerships where one party to the relationship obtains a full Gender Recognition Certificate (GRC). The relevant provisions do not extend to Scotland, so amendments may be needed to provide for the continuity of these civil partnerships in Scotland.

23. Scottish Government's intention is simply to align the system by which a person in a civil partnership obtains a GRC with the existing system for married applicants. As the Committee indicates, any wider changes to the system for obtaining legal gender recognition are not for this Bill.

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

24. The Scottish Government will take account of the evidence given to the Committee in this area. As the Committee will be aware, the Minister for Parliamentary Business and Veterans has made a Parliamentary statement on the impact of Covid-19 on the Scottish Government's legislative programme<sup>8</sup>. The Minister announced that work on a number of Bills, including on the Gender Recognition Reform (Scotland) Bill, is being halted for now, as a consequence of the Covid-19 pandemic.

Religious or belief registration

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

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<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2019/1458/contents/made>

<sup>7</sup> <http://www.legislation.gov.uk/ukxi/2019/1514/contents/made>

<sup>8</sup> The Parliamentary statement on the legislative programme is at <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12602&mode=pdf> (columns 42 to 52).

**Scottish Council of Jewish Communities could prevent a problematic situation.**

25. The Scottish Government agrees with these comments by the Committee. As the Cabinet Secretary indicated when she gave oral evidence, the section 104 Order may include amendments to the Equality Act 2010 in order to provide protection for religious and belief bodies that do not wish to be involved in the registration of mixed-sex civil partnerships.

Changing a marriage to a civil partnership

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

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

26. This is a complex issue and the Scottish Government has considered it further, taking account of the options identified in the consultations for England and Wales<sup>9</sup> and Northern Ireland<sup>10</sup>. The Scottish Government has also written to a number of religious and belief bodies to obtain their views. The Scottish Government will consider the issues further before deciding whether or not to lodge amendments to allow marriages to change to civil partnerships at Stage 2. One potential option on changing marriages to civil partnerships might be to amend the Bill so that regulations could be made in this area. Given the complexities that are inherent to this area, regulations, rather than primary legislation, could be a more appropriate vehicle for provisions on changing marriages to civil partnerships.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/815741/Civil\\_Partnerships\\_-\\_Next\\_Steps\\_and\\_Consultation\\_on\\_Conversion.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815741/Civil_Partnerships_-_Next_Steps_and_Consultation_on_Conversion.pdf)

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/858960/Marriage\\_and\\_Civil\\_Partnership\\_-\\_Conversion\\_entitlements\\_consultation\\_document\\_1\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858960/Marriage_and_Civil_Partnership_-_Conversion_entitlements_consultation_document_1_1_.pdf)

27. There are a number of differences between the approach in this area in Scotland and the approach in the rest of the UK.

28. First of all, in Scotland a couple in a same sex civil partnership registered in Scotland can change their relationship to marriage either by using an administrative route undertaken by registrars in a local registration office or by having a marriage ceremony. Under the Bill, this will be extended to couples in a mixed sex civil partnership whereas that is not what is proposed in England and Wales and Northern Ireland.

29. The rationale for the Scottish Government approach was outlined in the Policy Memorandum for the Bill<sup>11</sup>. Paragraph 139 of the Policy Memorandum said:

“ the Scottish Government could see no reasonable justification for treating mixed sex civil partners differently to same sex civil partners. While there are reasons for wishing to change a civil partnership into a marriage that might be specific to same sex couples, there are other reasons that might apply equally to same sex and mixed sex couples, such as a wish to ensure full recognition of their relationship overseas.”

30. Secondly, in Scotland a couple in a civil partnership registered outwith Scotland can change their relationship to marriage by having a marriage ceremony. The Bill will extend this to mixed sex civil partners. This facility is not available in England and Wales and it is not proposed for Northern Ireland.

31. Thirdly, the proposals in England and Wales and Northern are that all changes of relationship from one type to another would end after a period of time. The Scottish Government does not propose to introduce a time limit on changing civil partnerships to marriages. Paragraph 140 of the Policy Memorandum said:

“ Another alternative would be to allow changes of same sex and mixed sex civil partnerships to marriage for a limited period, similar to UK Government proposals for England and Wales. This option was rejected as the factors that might cause a couple to change their civil partnership into a marriage are not time-limited. For example, a couple might wish to change their relationship to a marriage so as to access greater recognition overseas, or a couple might acquire religious faith and wish to be married.”

32. The consultations for England and Wales and Northern Ireland outline some of the issues which need to be considered when deciding whether or not provision should be made to change marriages to civil partnerships. In particular:

- Paragraph 27 of the consultation for England and Wales notes that “There may be some instances in which conversion from opposite-sex marriage to an opposite-sex civil partnership will result in less favourable inheritable state pension rights where a subsequent bereavement takes place. For those who are considering conversion, we will ensure that guidance is available to

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<sup>11</sup> The Policy Memorandum for the Bill is at [https://www.parliament.scot/S5\\_Bills/Civil%20Partnership%20Scotland%20Bill/SPBill57PMS052019.pdf](https://www.parliament.scot/S5_Bills/Civil%20Partnership%20Scotland%20Bill/SPBill57PMS052019.pdf)



couples about the effect of conversion on their State Pension entitlements so that they can make an informed choice about whether conversion is right for them.” The State Pension is a reserved matter and the point raised here would apply to Scotland too. If provision is made so that marriages could change to civil partnerships in Scotland, the Scottish Government would work with the UK Government to ensure suitable guidance on State Pension entitlements is available.

- Paragraph 29 of the consultation for England and Wales notes that “Some of those married couples who may now wish to convert to a civil partnership will have married long before civil partnerships existed in England and Wales.” The same point is raised in the Northern Ireland consultation too. It would be true for Scotland as well and there is more discussion of this issue below.

33. The first civil partnerships were registered in Scotland on 5 December 2005 and civil partnerships from elsewhere are recognised from their date of registration or 5 December 2005, whichever is the later<sup>12</sup>. When civil partnerships are changed to marriages, the resultant marriage is treated as having started from when the civil partnership was entered into, with the Scottish Ministers having the power to make contrary provision by SSI<sup>13</sup>. This works generally as the existence of marriage as a relationship pre-dates the existence of civil partnership as a relationship. However, as the UK Government have noted in their consultations, couples may have married before civil partnership became established in Scotland.

34. Paragraph 149 of the Policy Memorandum for the Bill noted that:

“ There may be a particular issue in Scotland on financial provision on dissolution of a civil partnership. In Scotland, when a couple divorce their joint assets are regarded as “matrimonial property”, with “matrimonial property” being property bought for or during the marriage. The same regime is in place when civil partners dissolve – the property is known as “civil partnership property”.”

35. As there is currently no recognition in Scotland of civil partnerships for the period before 5 December 2005, any provision which seeks to allow married couples to change their relationship to civil partnership needs to consider how the new relationship would be treated for any period before 5 December 2005. The Scottish Government’s view is that:

- Any period before 5 December 2005 would have to be treated as a marriage.
- A civil partnership which is changed from a marriage would, in line with the approach taken for a marriage which is changed from a civil partnership, be treated as having started from when the marriage was entered into or from 5 December 2005 (whichever is the later), with the Scottish Ministers having the power to make contrary provision by SSI.
- Provision would be needed so that if the couple should end their relationship and dissolve their civil partnership, the civil partnership property regime used

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<sup>12</sup> Section 215 of the Civil Partnership Act 2004 refers:  
<http://www.legislation.gov.uk/ukpga/2004/33/section/215>

<sup>13</sup> Section 11 of the Marriage and Civil Partnership (Scotland) Act 2014 refers:  
<http://www.legislation.gov.uk/asp/2014/5/section/11/enacted>

for the financial provision on dissolution legislation extends to the period when they were married.

36. Another issue which needs to be considered is whether there should be any limits on how often a couple can change their relationship. This question does not arise with the Bill as it stands as it is only possible to change one way: from civil partnership to marriage. If the Bill should be amended to allow marriages to change from civil partnership, couples could change from one relationship to another and back again. This could give rise to complications.

37. Changing marriages to civil partnerships seems rare internationally. The Scottish Government is aware of just two jurisdictions where this happens at the moment. These are New Zealand<sup>14</sup> and Austria.

38. As indicated above, the Scottish Government has written to a number of religious and belief bodies to seek their views on changing marriages to civil partnerships.

39. Finally, the Scottish Government will consider if amendments are needed to the Bill at Stage 2 to make it clear that Scotland will recognise mixed sex civil partnerships from England and Wales and Northern Ireland formed as a result of changing marriages to civil partnerships. Generally, there is mutual recognition of civil partnerships across the UK as the Civil Partnership Act 2004 extends across the UK. However, amendments may be needed at Stage 2 to put beyond doubt that Scotland will recognise mixed sex civil partnerships from England and Wales and Northern Ireland formed as a result of changing marriages to civil partnerships.

### Cohabitation

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

40. The Scottish Government has noted these comments by the Committee.

### Costs and demand

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

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<sup>14</sup> New Zealand legislation is at <http://www.legislation.govt.nz/act/public/2004/0102/latest/DLM323429.html>

**prove to be greatly inaccurate, they will be able to accommodate an increase in numbers.**

41. The Scottish Government agrees that it is hard to estimate the number of different sex civil partnerships that might be registered in Scotland each year.

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

42. The Scottish Government will monitor the uptake of mixed sex civil partnerships and will continue to work closely with NRS. If demand for mixed sex civil partnerships should be markedly higher than expected, the Scottish Government would consider workload and other implications with NRS and local registrars.

Recommendation on the general principles of the Bill

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

43. The Scottish Government welcomes this recommendation.

**Scottish Government  
April 2020**