



## SCOTTISH GOVERNMENT CONSULTATION ON CIVIL PARTNERSHIP ENGENDER RESPONSE, DECEMBER 2015

### 1. INTRODUCTION

Engender supports the retention and extension of civil partnerships in Scotland. Fundamentally this is an equality issue, for which there is clear demand from non-LGBTI and LGBTI people alike. Equality before the law, irrespective of sex, gender or sexual orientation is a vital baseline against which further progress towards LGBTI and gender equality can be made. As such, equal civil partnership is a matter of concern for Engender and our membership. We work towards equality for all women and men in Scotland and we take an intersectional approach to our advocacy for gender equality.

We therefore call on the Scottish Government to end the current segregation within family law, by extending civil partnership to mixed-sex couples. Accordingly, we focus our comments under question 2 (arguments against the 'no change' option) and question 5 (on civil partnerships for opposite-sex couples). We also endorse the detailed positions set out by the Equality Network and the Equality and Human Rights Commission (EHRC).<sup>1</sup>

### 2. CONSULTATION QUESTIONS

#### **Question 2: Please provide any additional arguments you wish to make against the 'no change' option**

Engender believes that the retention of current arrangements would perpetuate nuanced inequality for women and men in same-sex relationships in Scotland, whilst denying mixed-sex couples an option for which there is established demand.<sup>2</sup> Even in the case that overall demand is ultimately low, we believe that the need for legal and symbolic equality should take precedence.

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<sup>1</sup> Equality Network (2015) *Consultation response to the Scottish Government review of Civil Partnerships*; EHRC Scotland (2015) *Equal Access to marriage*; EHRC (2012) *Equal civil marriage: EHRC position paper*

<sup>2</sup> Equality Network surveys 2009 and 2015; EHRC Scotland (2011) *Equal access to marriage*

Whilst we recognise that the ‘no change’ option would be “simple and straightforward”, we do not hold that this is a valid argument for retaining an unequal system.

We also point to the Equality Network’s argument that a legal framework is necessary in order for civil partnerships that are registered elsewhere to be recognised in Scotland, and that abolishing this in Scots law might therefore be problematic.

**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?**

We are disappointed that this consultation pre-emptively concludes that there are insufficient reasons for introducing mixed-sex civil partnership in Scotland. Indeed, reasons for retaining the current system appear to be lacking. It is vital that progress towards cultural equality for all women in Scotland is underpinned by legal equality. Differential treatment within our institutions on the basis of sexual orientation has no place in 21<sup>st</sup> century Scotland.

**Discrimination under the Equality Act 2010**

EHRC analysis of the current system’s alignment with equality and human rights law is that “*there is unlikely to be justification for not making civil partnerships available to opposite sex couples, if there is a demand for it.*”<sup>3</sup> This is supported by evidence gathered by the Equality Network, showing that 80% of over 1200 people surveyed in 2015 support equal civil partnership and that “*41% of 509 non-LGBTI respondents said that [...] they would consider a mixed-sex civil partnership in future.*”<sup>4</sup>

Meanwhile, 70% of participants at EHRC Scotland’s Equal Marriage Symposium favoured both marriage and civil partnership being available for all.<sup>5</sup> As above, however, we ultimately believe that creating equality within family law should take precedence over levels of demand.

**Insufficient arguments *against* introducing mixed-sex partnership in Scotland**

A number of the arguments against extending civil partnerships presented in this consultation paper seem unpersuasive.

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<sup>3</sup> EHRC (2012) *Equal civil partnership: EHRC position paper*

<sup>4</sup> Equality Network (2015) *Consultation response to the Scottish Government review of Civil Partnerships*

<sup>5</sup> EHRC Scotland (2011) *Equal access to marriage*

- In terms of demand, the Equality Network estimates that at least 560 civil partnerships would be registered per annum if made open to all. This would manifestly not represent an insignificant level of demand.
- In terms of legal recognition outside Scotland, we support the view that couples should be able to weigh up any related risks for themselves.
- In our view, the argument that “[s]ociety’s understanding of opposite sex civil partnership might be limited” does not reflect experience to date with regard to same-sex civil partnerships and underestimates the degree to which Scottish society continually adapts to and evolves alongside legal and cultural change.
- In our view, the argument that co-habiting couples already have some protection in Scots law is not directly relevant to the question under discussion. There are people in Scotland who wish both to have enhanced legal rights, but not to enter into the institution of marriage.
- In terms of related costs, we do not believe that equality should be premised on a cost-benefits analysis. In addition, Annex B of the consultation paper appears to suggest that any costs would primarily be incurred in the short-term.
- Just as we do not accept that straightforwardness is a reason to retain the current system, we believe that increased complexity is not a valid argument against progressive change. We are also unclear as to how equal civil partnership would be complex.
- Finally, despite the assertion that arguments relating to marriage as a patriarchal and religious institution are invalid, many people in Scotland choose not to marry for associated reasons. We offer some brief additional thoughts on this below.

### Co-habiting couples

Given that some couples would like to enter into civil partnership rather than marriage, the gendered implications of relationship breakdown between cohabiting couples are also worth further consideration. Women are likely to be affected in particular ways by a lack of legal rights as a result of economic gender inequality. Women have less access to resources, assets and income, due to systemic issues that include unpaid caring roles, the gender pay gap, violence against women and unequal representation. The additional option of entering into civil partnership

would strengthen certain women's rights and security. In turn, this would have a positive impact on child poverty.<sup>6</sup>

### Strength in diversity

The institution of marriage is still associated with patriarchal norms and outdated notions. This is not irrelevant to this debate: as indicated by the high numbers of people polled by the Equality Network who would consider a civil partnership over marriage, many see civil partnership as an alternative modern institution. Whilst marriage has evolved profoundly over recent decades, certain anachronistic, sexist and heteronormative provisions remain in place. For instance:

1. Marriage certificates include the names of only the fathers of the parties, whilst civil partnership certificates include the names of both parents of the parties.
2. In the case of marriage, dissolution is allowed where adultery has been committed and where adultery is defined as "*sexual intercourse with someone of the opposite sex outside of marriage*". This is not a fact which could be relied on for ending a civil partnership.<sup>7</sup>

Retaining and extending civil partnership would offer diversity of options for couples who remain uncomfortable with the legacy of marriage as a patriarchal institution. So too, would it provide an alternative for those uncomfortable with the solemnisation required to form a marriage, and religious or outdated associations. This would be a positive step forward in a modern Scotland, which is diverse, pluralistic and democratic.

### **FOR FURTHER INFORMATION**

Contact: Jill Wood, Policy Manager, Engender

Email: [jill.wood@engender.org.uk](mailto:jill.wood@engender.org.uk)

Mobile: 07889 805787

### **ABOUT ENGENDER**

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. We are a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.

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<sup>6</sup> Insert WBG link

<sup>7</sup> UK Government (2013) [Comparison of Civil Partnerships and marriage for same sex couples](#)