

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: SCOTTISH EXECUTIVE CONSULTATION: CIVIL PARTNERSHIP REGISTRATION
From: DIRECTOR OF ADMINISTRATION		
Date: 23 October 2003	Ref: JAF/IL	

1. **Purpose of Report**

- 1.1 The report advises of a consultation exercise being undertaken by the Scottish Executive on civil partnership registration for same sex couples and proposes a response.

2. **Background**

- 2.1 In June of this year the United Kingdom Government published a consultation paper on civil partnership registration for same sex couples in England and Wales. Having regard to that consultation, the Scottish Executive have now published a consultation document seeking views on the possibility of the Scottish Parliament agreeing a Sewel motion to allow Scottish provisions to be included in any Westminster Bill on civil partnership registration in order to achieve as closely as possible similar rights north and south of the border. A copy of the Scottish Executive consultation paper has been deposited and may be inspected in the Members' Library. Responses to the consultation require to be submitted by 5 December 2003.

3. **Proposals**

- 3.1 Having regard to the Scottish Executive's commitment to equality and the invidious situation which would obtain were the registration of civil partnership to be available in England and Wales but not in Scotland, the Scottish Executive propose that any United Kingdom legislation should include equivalent provisions, based on Scots Law, for civil partnership registration in Scotland. This would have the advantage of importing rights to both reserved and devolved matters.
- 3.2 The consultation document – in paragraph 5.8 – expressly states that it is not the intention to open up marriage to same sex couples: instead it is the intention to create a new legal status of civil registered partner. Additionally, the consultation document does not propose to extend civil partnership registration to opposite sex co-habiting couples. Instead the nature of legal rights for opposite sex co-habiting couples will be considered in the context of a review of family law for all Scotland's people.
- 3.3 It is proposed that a civil partnership can be registered only through a formal process and the consultation document suggests that Registrars are best placed to discharge this function. Given the rights and responsibilities which will flow from civil registration – which include the ability to receive survivor state pensions and injury benefits, recognition under the Criminal Injuries Compensation Scheme, bereavement benefits, tax credits, the obligation to financially support each other, inheritance and intestacy rights, joint and several liability for Council Tax, rights currently restricted to spouses with regard to elections and rights in respect of hospital and prison visiting and medical treatment – the consultation document proposes that civil registration be a matter of public record. To that end it is proposed that

- notice will require to be given to the Registrar of the intention to register a partnership
- the Registrar will check compliance with the formal requirements and, after a period of fifteen days during which the notice is available for inspection in the Registration Office or on the Registrar's notice board, the registration can take place
- the registration will be performed by the Registrar in the presence of the parties and two witnesses all of whom will sign the civil partnership schedule.

3.4 The consultation document proposes that the Registrar General have power to reduce the waiting period due to exceptional circumstances such as an urgent military posting or the serious illness of one of the parties.

3.5 The consultation document further proposes that the civil registration can be conducted either at the Registrar's Office or at an approved place.

3.6 Having regard to exclusivity of partnerships, the proposals provide that a person should be able to enter into only one registered partnership arrangement at any one time: thus a person would not be able to enter a registered partnership if he or she is already in a marriage or in a registered partnership – only on the dissolution of the previous marriage or partnership will it be possible to enter into a further partnership.

3.7 The consultation document proposes, also, that the forbidden degrees provided in Section 2 of Schedule 1 to the Marriage (Scotland) Act 1977 would similarly preclude the registration of civil partnership.

3.8 Finally, the consultation document proposes that, having regard to the intention that civil partnerships be long-term stable relationships, an appropriate degree of formality should be required to bring a registered civil partnership to an end and that arrangements for dissolution of a civil partnership should be broadly similar to those required to bring a marriage to an end, requiring a court decree on it being shown that the partnership has broken down irretrievably on the basis of unreasonable behaviour or separation for a period of either two years (with the consent of the other party) or five years (without such consent).

4. **Proposed Response**

4.1 Having regard to the legislative proposals for England and Wales and the unsatisfactory situation which would obtain were similar proposals not enacted in Scotland, it is recommended that the Council support the main thrust of the proposals.

4.2 It is proposed that the Council note, in particular, the statement in the consultation document that the Scottish Executive recognise the role that marriage has for many in Scottish society and do not seek to undermine marriage by extending civil partnership registration to co-habiting couples or to open up marriage to same sex couples. From that it should follow that there should be no room for confusion between the procedure for registering a civil partnership and the performance by a Registrar of a marriage ceremony and it is suggested that any legislation make this explicit. In particular it is suggested that the proposals for carrying out a civil partnership registration at an approved place are not appropriate and that, in relation to registration, there should be avoided any term which carried connotation of the performance of a ceremony rather than the discharge of an administrative function.

4.3 Against that background it is suggested that the registration of civil partnerships is a function appropriate to Registrars to be conducted in Registration Offices.

5. **Recommendation**

- 5.1 It is recommended that the Committee note the civil partnership registration consultation being undertaken by the Scottish Executive and authorise a response in terms of this report.


Director of Administration

Members seeking further information on the contents of this report are asked to contact John Fleming, Head of Central Services on Extension 2228.