

SEWEL MOTION FOR THE CIVIL PARTNERSHIP BILL

That the Parliament endorses the principle of giving same-sex couples in Scotland the opportunity to form a civil partnership and agrees that the provisions in the Civil Partnership Bill that relate to devolved matters should be based on Scots law and considered by the UK Parliament.

Scottish Executive

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* parts 2, 4 and 7 of the Bill do not affect Scotland

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Motion

1. The Motion to be put to the Parliament is:

Civil Partnership Bill: That the Parliament endorses the principle of giving same-sex couples in Scotland the opportunity to form a civil partnership and agrees that the provisions in the Civil Partnership Bill that relate to devolved matters should be based on Scots law and considered by the UK Parliament.

Background

2. Same-sex couples face significant difficulties in their lives. They cannot gain full legal recognition for their relationship and do not have access to many of the rights and responsibilities necessary for a stable family life and appropriate to a long term relationship. This can cause problems in the event of the death or serious illness of one partner or at the end of the relationship.

3. The Civil Partnership Bill will create a new legal status for same-sex couples. Couples who register will be able to access a package of rights and responsibilities appropriate to committed long term same-sex relationships.

Consultation

4. The UK Government published a consultation paper in June 2003¹ on proposals for civil partnership registration in England and Wales. Scottish Ministers considered the consequences for Scotland of the introduction of such a scheme and concluded that:

- Same-sex couples should be able to form their partnership in Scotland in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas
- To ensure a comprehensive package of rights and responsibilities that takes account of the reserved and devolved elements of this new status, the Scottish Parliament should be asked to agree a Sewel motion so that Scottish provisions are included in a UK Bill.

¹ The DTI's consultation document – "Civil Partnership: a framework for the legal recognition of same-sex couples" is available from www.womenandequalityunit.gov.uk

5. The Scottish Executive published a consultation paper in September 2003². Officials also met with key faith groups and LGBT³ stakeholders. The results were analysed by an external contractor. The key points from consultation are:

- 323 responses were received, including 222 from individuals and 101 from organizations, including LGBT organisations, religious organisations, local authorities, registrars, legal sector, NHS bodies and others.
- 279 respondents (86% of all responses) agreed in principle with the proposed introduction of civil partnerships which it was considered would promote equality through addressing disadvantage experienced by same-sex couples and support and promote long-term, stable relationships.
- 74% of responses agreed with the proposal to include Scottish provisions in a UK Bill and to ask the Parliament to agree a Sewel motion. Respondents' support for this approach was based on pragmatism and speed of legislation, while those opposing it emphasised the need for detailed scrutiny and debate of the proposed legislation in the Scottish Parliament.

6. In February 2004, Scottish Ministers published an analysis of the responses and announced their intention to seek the agreement of the Scottish Parliament to the inclusion of Scottish provisions in a UK Civil Partnership Bill⁴.

7. The Civil Partnership Bill was introduced in the House of Lords on 30 March 2004 and published on 31 March 2004⁵.

Purpose of the Civil Partnership Bill

8. The purpose of the Civil Partnership Bill is to enable same-sex couples to obtain legal recognition of their relationship by registering as civil partners, provided:

- They are of the same sex;
- They are not already in an existing civil partnership or lawfully married;
- They are not within the prohibited degrees of relationships
- They are both aged sixteen years or over in Scotland. (In England, Wales and Northern Ireland, they both must be over the age of eighteen or over sixteen and have consent of the appropriate people or bodies).

9. Registering a civil partnership will have legal consequences. The civil partners will assume legal rights and responsibilities with regard to each other and to third parties, including the State. Currently same-sex couples have no means of obtaining legal recognition.

² The Scottish Executive's consultation document – "Civil Partnership Registration: A legal status for committed same-sex couples in Scotland" is available from www.scotland.gov.uk/consultations/justice/cprs-00.asp

³ LGBT means Lesbian, Gay, Bisexual or Transgender

⁴ Analysis of consultation responses – "The consultation on Civil Partnership Registration: analysis of responses" is available from www.scotland.gov.uk/library5/social/cprar-00.asp and the news release announcing the Scottish Executive's intention is available from www.scotland.gov.uk/pages/news/2004/02/SEjd408.apx

⁵ The Civil Partnership Bill is located at www.publications.parliament.uk/pa/pabills.htm.

Why a UK approach

10. The Scottish Executive believes that a UK approach offers a pragmatic and timely way forward for a number of reasons. First and foremost, the creation of this new legal status combines reserved and devolved policy areas as detailed in the table below. In order to develop a coherent package of rights and responsibilities and to avoid difficult cross border issues, parity across the UK is essential. This can only be guaranteed through an integrated, comprehensive UK Bill.

Devolved Policy Areas	Reserved Policy Areas
Creation of the new status and eligibility Registration law and process Family law: occupancy rights, tenancies, interdicts, dissolution Recognition in Scotland of civil partnerships formed in England, Wales and Northern Ireland Recognition in Scotland of overseas relationships Various consequential amendments	Pensions Benefits Immigration Taxation (these provisions will be taken forward in the next available Finance Bill) Recognition elsewhere in the UK of civil partnerships formed in Scotland Recognition elsewhere in the UK of overseas relationships Various consequential amendments

11. The Scottish Parliament could of course, legislate for the devolved policy aspects. However, if the Scottish civil partnership scheme materially differed from that developed by the UK Government, for example, by the inclusion of opposite sex couples, then this could create significant cross border difficulties. For example, would the UK government recognise a Scottish Civil Partnership for reserved purposes or would a couple also need to register in England and Wales? It could cause confusion in the minds of the public, including those most affected by the provisions, if the Scottish and UK Parliaments were to be legislating for the reserved and devolved dimensions of civil partnerships at different times.

12. Scotland could of course choose to do nothing at all with respect to civil partnerships neither including Scottish provisions in a UK Bill nor separately legislating for the devolved aspects in the Scottish Parliament. This would mean that while a registered same-sex couple in England and Wales would access a comprehensive package of rights and responsibilities, a same-sex couple in Scotland would have no means of accessing those rights and responsibilities which are within the devolved competence of the Scottish Parliament and 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 especially difficult for couples living in remote areas, or with a low income or a disability. It would discriminate against same-sex couples in Scotland.

13. The Scottish Executive believes that a UK Bill is the only sensible way forward on civil partnerships and will ensure a consistent UK approach and avoid discrimination against same-sex couples in Scotland and unduly complex legislation and cross border difficulties.

Scottish Provisions in the Civil Partnership Bill

14. The Scottish provisions contained within the Civil Partnership Bill are based on Scots law. This ensures that while the scheme that is proposed is consistent across the UK, it does not import English law into devolved Scottish areas. This means that there are some differences in the Bill, for example the age at which a civil partnership can be entered into. Across the UK a person must be at least sixteen years of age in order to enter a civil partnership. However, in England, Wales and Northern Ireland any sixteen or seventeen year old must also have the consent of the appropriate person or bodies. This requirement does not exist in Scotland because at sixteen an individual is assumed to have legal capacity and thus can enter a civil partnership.

15. The Bill is in 8 parts as follows:

- Part 1 introduces civil partnership
- Part 2 sets out the arrangements for civil partnerships in England and Wales
- Part 3 sets out the arrangements for civil partnerships in Scotland
- Part 4 makes provision for civil partnerships in Northern Ireland
- Part 5 deals with civil partnerships formed or dissolved abroad
- Part 6 deals with relationships arising through civil partnership
- Part 7 contains miscellaneous provisions
- Part 8 contains supplementary material such as consequential amendments and repeals.

16. Provisions dealing with matters that are devolved to the Scottish Parliament are contained within Parts 1, 3, 5, 6 and 8 and these are explained in detail below.

17. In broad terms, the Bill establishes arrangements for the registration of same-sex couples and confers upon such couples registered in Scotland a coherent set of legal rights and responsibilities in relation to the dissolution of such partnerships, the handling of succession, property and financial arrangements, occupation of the family home and tenancy matters, exclusion from the family home, and matters relating to the recognition of partnerships established in other jurisdictions. Such couples will also benefit from the Bill's provisions on reserved matters such as pensions, social security, child support and tax credits: these, together with the rights in devolved areas, form an integrated package

18. In relation to parental responsibilities and rights, the Children (Scotland) Act 1995 already enables the court, where it judges it in the child's interest, to confer these on adults other than the child's natural parents. No changes are proposed to these arrangements or to the other safeguards in that Act for the interests of children.

Part 1 – Introduction

Clause 1: Civil Partnership

19. This clause establishes civil partnership as a legal relationship between two people of the same sex. *Subsection (1)* provides for a civil partnership to be formed in either of two ways. The first is when two people register as civil partners of each other, either in the United Kingdom (under the relevant Part of the Bill) or under an Order in Council made under clause 150 or 151 (which allow for registration overseas at British consulates or by armed forces personnel). The second is where the couple register an “overseas relationship” which is treated as a civil partnership under Chapter 2 of Part 5. *Subsection (3)* provides that a civil partnership only ends on death, dissolution or annulment. The criteria for what constitutes an “overseas relationship” are set out in clauses 152 to 154.

Part 3 - Civil Partnerships: Scotland

20. The clauses in this part (Part 3) of the Civil Partnership Bill extend only to Scotland (see clause 194(2)).

Chapter 1 - Constitution and Eligibility

Clause 81: Formation of civil partnership by registration

21. This clause provides that a civil partnership is formed when both persons sign the completed Civil Partnership Schedule before two witnesses aged 16 years or over and an authorised registrar (all being present). Registering as civil partners of each other creates the legal relationship between the two persons, but registration cannot take place unless both persons are eligible to be registered.

Clause 82: Eligibility

22. This clause provides that a couple are not eligible to register as civil partners if they are not of the same sex, or if either one of them is already in a subsisting civil partnership or marriage, or either of them is under 16 or is incapable of understanding the nature of civil partnership. Provision is made that a couple are not eligible to register as civil partners if they are connected within the prohibited degrees of relationship as set out in Schedule 10 to the Bill, with certain exceptions depending on the degree of relationship by affinity and the requirements specified in *subsections (3) and (4)* being met. *Subsections (5) to (7)* apply the provisions of this section and Schedule 10, with appropriate modifications, to the case of a person wishing to form a civil partnership in his acquired gender under the Gender Recognition Bill.

Chapter 2 - Registration

23. The UK has three Registrars General covering Scotland, Northern Ireland and England and Wales. The law concerning registration in Scotland is devolved to the Scottish Parliament. There is separate legislation covering the functions of the Registrar General for Scotland. Consequently, the provisions on Civil Partnerships reflect (and are internally consistent with) the legislation and procedures that apply in Scotland.

Clause 83: Appointment of authorised registrars

24. This clause empowers the Registrar General for Scotland, for the purpose of affording reasonable facilities throughout Scotland for registration as civil partners, to appoint such number of district registrars as he thinks necessary, and for any district, one or more assistant registrars, as persons who may carry out such registration.

Clause 84: Notice of proposed civil partnership

25. This clause provides procedures for the completion, by each party, of the notice of proposed civil partnership and for the submission, with the prescribed fee, of the notice to the district registrar. The content of the notice may be prescribed by regulations made by the Registrar General for Scotland with the approval of the Scottish Ministers.

Clause 85: Civil partnership notice book

26. This clause requires the district registrar to enter into “the civil partnership book” such particulars from the notice of proposed civil partnership or the civil partnership certificate as may be prescribed by the Registrar General for Scotland. The Registrar General is to prescribe the form and content of the book.

Clause 86: Publicisation

27. This clause concerns making public the intention to form a civil partnership. The public have a right to know of and be able to object to a proposed civil partnership. The clause provides that the district registrar and the Registrar General must publicise the relevant information (names of intended civil partners and date of intended registration) as soon as practicable. The manner in which the information is to be publicised will be prescribed by the Registrar General. Subject to clause 87, the date on which it is intended to sign the civil partnership document should be a date more than 14 days after publicisation by the district registrar.

Clause 87: Early registration

28. This clause enables an authorised registrar, provided he is authorised to do so by the Registrar General, on receipt of a written request from one or both of the intended civil partners to fix the date for registering as civil partners at a date earlier than 14 days after the publicisation of the intended date of signing the civil partnership register. It is anticipated that this power will be exercised in similar circumstances to its equivalent under the Marriage (Scotland) Act 1977, typically where one of the proposed civil partners is seriously ill and not expected to recover.

Clause 88: Objections to registration

29. This clause provides procedures for any person to make an objection in writing to the district registrar to the issue of a civil partnership schedule to prevent the registration as civil partners. The objection must relate to a lawful impediment.

Clause 89: Place of registration

30. This clause provides that a civil partnership document may be signed at a registration office or at any place which the intended civil partners and the local registration authority agree. However, the place must not be one where people meet for public worship or be known or regarded by persons of a religious faith as a place of reverence.

Clause 90: The Civil Partnership Schedule

31. This clause provides for the completion by the district registrar of the Civil Partnership Schedule. This may be done providing the relevant district registrar has no concerns over the capacity of the couple to enter into the civil partnership, that there are no outstanding objections and that the required period of publicisation has expired.

Clause 91: Further provision as to registration

32. This clause requires the persons who intend to form a civil partnership to confirm that (to the best of their knowledge) the particulars set out in the Civil Partnership Schedule are correct.

33. This clause also requires the authorised registrar, as soon as practicable after the Schedule has been signed, to cause the particulars to be entered into the “civil partnership register”. The form and content of the register will be prescribed by the Registrar General for Scotland. A prescribed fee will also be paid by the intended civil partners for the registration of their relationship.

Clause 92: Civil partnership with former spouse

34. This clause provides for the signing of a civil partnership schedule to take place quickly, where the couple were previously married to each other, one of them has changed gender under the provisions of the Gender Recognition Bill and the marriage has subsequently ended, and the couple wish to recreate their legal status with each other by entering into a civil partnership. The aim is to minimise, as much as possible, the time between the end of the marriage, a pre-requisite for securing full legal recognition in the acquired gender, and the creation of the civil partnership.

35. The clause sets out the procedure for effecting the signature of the civil partnership document in the circumstances described above. The signing of the civil partnership schedule can take place on the same day that both notices of proposed civil partnerships are given, or if they are given on different days, on the day the second notice is given.

Clause 93: Certificates of no impediment for Part 2 purposes

36. This clause applies where 2 people intend to register as civil partners of each other and one (“A”) resides in Scotland and the other (“B”) resides in England or Wales. The clause would allow “A” to submit notice in Scotland under the clause 84 provisions. If the district registrar is satisfied that there is no impediment to “A” registering as “B’s” civil partner, the district registrar must issue a certificate that there is not known to be any impediment. The certificate is not to be issued earlier than 14 days after receipt of the notice, except in circumstances relating to clause 92(1) and “A” elects for the certificate to be issued as soon as possible. The form of the certificate is to be prescribed by the Registrar General. The clause also allows for objection to be made to the district registrar in writing by any person before a certificate is issued. The district registrar is obliged to take into account any objection when he is deciding whether he is satisfied that there is no legal impediment to the registration as civil partners.

Clause 94: Application of certain sections of 1965 Act to civil partnership register

37. This clause provides that certain provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 apply to the civil partnership register as they apply in relation to registers of births, deaths and marriages. These provisions enable the examination of the civil partnership register by district examiners, the searching of indexes kept by registrars or the Registrar General for Scotland and the application to the register of the process of correction provided by section 44 of the 1965 Act (Register of Corrections etc.).

Clause 95: Correction of errors in civil partnership register

38. This clause provides that no alteration may be made to the civil partnership register except as authorised by or under an Act (including an Act of the Scottish Parliament). It enables the district registrar to correct a clerical error or an error of a kind prescribed by the Registrar General for Scotland. The Registrar General may also authorise district examiners to correct any specified errors which they discover during an examination under section 34 of the 1965 Act.

Clause 96: Offences

39. This clause provides for certain offences in relation to civil partnerships. *Subsections (1) and (2)* set out the offences a person, if they act knowingly, may possibly commit under civil partnership proceedings. *Subsection (3)* sets out the maximum penalties that may be imposed on a person found guilty under *Subsection (1) or (2)*. *Subsection (4)* confirms the time limit during which a prosecution may commence.

Chapter 3 – Occupancy Rights and Tenancies

Clause 97: Occupancy Rights

40. This clause sets out the rights that civil partners have to occupy the family home of the civil partnership. The clause applies where one of the civil partners is either entitled to occupy the family home, or permitted to do so by a third party, and the other civil partner has no such entitlement or permission. An example of this would be where the family home is owned or leased in the name of one civil partner only. The civil partner who is entitled to occupancy or permitted occupancy by a third party is called the “entitled partner”. The civil partner who is not entitled to occupancy or permitted occupancy by a third party is called the “non-entitled partner”.

41. *Subsection (1)* sets out that non-entitled partners have the right to continue to occupy the family home (if they are already doing so), or have the right to enter and occupy the family home (if they are not already doing so). If the entitled partner has occupancy rights by virtue of permission of a third party, the non-entitled partner does not require the permission of the third party to exercise the rights conferred by *Subsection (1)*.

42. *Subsection (2)* means that this right also extends to any child of the family.

43. *Subsection (3)* covers a situation whereby the entitled partner shares a right of occupancy with another person who is not the civil partner. In this situation, the rights explained in *Subsection (1)* only apply if that other person waives their right to occupy the family home in favour of the entitled partner.

44. *Subsection (4)* provides recourse to the court, if the entitled partner refuses to let their civil partner enter the home. The latter can apply to the court for an order, as explained in clause 99.

45. *Subsection (5)* allows the non-entitled partner to renounce their rights under this clause in writing in certain circumstances. *Subsection (6)* provides that such a statement must be made before a notary public and made without coercion.

46. *Subsection (7)* provides definitions of “child of the family” and “family” and *Subsection (8)* defines what a notary public is.

Clause 98: Occupancy: subsidiary and consequential rights

47. This clause sets out the rights ancillary to the occupancy rights of a non-entitled partner in relation to the family home. *Subsection (1)(a) to (f)* list the duties that a non-entitled partner can undertake without the permission of the entitled partner. *Subsection (2)* details the circumstances in which if an obligation has been performed or enforced by a non-entitled partner, it will be treated in the same way as if it had been made by the entitled partner.

48. *Subsection (3)* provides that, where there is an entitled and non-entitled partner, the court may make an order apportioning costs incurred or to be incurred by either civil partner if they carry out any of the duties in *Subsection (1)(a) to (d)* without the consent of the other civil partner, or perform any other activity in respect of the family home with the consent of the other civil partner.

49. *Subsection (4)* sets out the situation as it applies to civil partners where both are entitled or permitted by a third party to occupy a family home. This *Subsection* sets out what each civil partner can do and the restrictions on the court in making an order.

50. *Subsection (5)* covers the situation where one civil partner owns or hires goods such as furniture in a family home. This *Subsection* sets out what the other civil partner may do in connection with these goods. It also sets out how the court can treat such goods if making an order to apportion expenditure in respect of these goods.

51. *Subsections (6) to (9)* specify additional criteria relevant to previous *Subsections* of this clause.

Clause 99: Regulation by court of rights of occupancy of family home

52. This clause sets out the regulation by the court of rights of occupancy of the family home. *Subsections (1) and (2)* detail the type of order a civil partner may apply for from the court in connection with occupancy of the family or possession or use of goods owned or hired by one of the civil partners.

53. *Subsection (3)* sets out the factors that the court will consider in determining an application for an order. *Subsection (4)* gives the court power to make an interim order under certain circumstances. *Subsection (5)* prevents the court from making an order, if the effect of that order would be to exclude the non-applicant civil partner from the family home.

54. *Subsection (6)* allows the court, on the granting of an order under *Subsections (3) or (4)*, to grant a warrant allowing a messenger-at-arms or sheriff officer to enter the family home or other premises to search for and take possession of the item required to be delivered and to deliver the item in accordance with the order that is granted. *Subsection (7)* provides that such a warrant be executed only after the end of a period specified in the order for delivery.

55. *Subsection (8)* provides that the court can order one civil partner to pay compensation to the other if it appears to the court that the latter has suffered a loss of occupancy rights, impaired occupation of the family home or impaired use of the items in the civil partner's possession as a consequence of any act or default on the part of the other civil partner.

56. *Subsection (9)* provides for a civil partner to renounce rights to apply under *Subsection (2)* for the possession or use of any item as detailed in that *Subsection*.

Clause 100: Exclusion orders

57. This clause provides that either civil partner in the family home can apply to the court for an order which suspends the occupancy rights of the other civil partner in a family home. *Subsection (2)* sets out that the court is to make an exclusion order if it appears necessary to protect the applicant or any child of the family from the conduct of the other civil partner. This is subject to *Subsection (3)* which sets out where it would appear unjustified or unreasonable to make an exclusion order.

58. *Subsection (4)* sets out the types of exclusion order that the court can grant, where this is necessary. *Subsection (5)* sets out further directions that the court may attach when making an exclusion order. *Subsection (6)* gives the court power to make an interim order and sets out that *Subsections (4)* and *(5)* will apply in the same way to an interim order as to an exclusion order. *Subsection (7)* sets out that an interim order can only be made if the non-applicant partner has been given an opportunity to be heard or represented before the court.

59. If both civil partners are permitted by a third party to occupy the family home, *Subsection (8)* makes it incompetent for one civil partner to bring an action to eject the other from the family home. This is without prejudice to *Subsections (1)* and *(6)*.

Clause 101: Duration of orders under sections 99 and 100

60. This clause sets out the duration of orders made under clauses 99 and 100. *Subsection (1)* gives the court the power to vary or cancel an order made under these clauses, at the request of one of the civil partners. *Subsection (2)* sets out the circumstances where such an order (unless varied or cancelled) will cease to have effect. In addition, *Subsection (3)* provides that where an order has been granted under clause 99(3) or (4), which grants possession of use or items, that this will cease if a third party revokes permission for these possessions to be retained in the family home.

Clause 102: Continued exercise of occupancy rights after dealing

61. This clause sets out the occupancy rights in relation to dealings with third parties. *Subsection (1)* provides protection for the non-entitled partner with occupancy rights in relation to the entitled partner's dealings with third parties. *Subsection (2)* provides a definition of dealing for the purposes of *Subsection (1)*. *Subsection (2)* also provides that a civil partner is not an entitled partner where they are only entitled to occupy the family home by virtue of permission from a third party, or they share entitlement to occupy along with a person who is not the other civil partner, irrespective of whether that person has waived their rights. *Subsections (3)* and *(4)* deal with the circumstances in which this clause does not apply.

Clause 103: Dispensation with civil partner's consent to dealing

62. This clause allows the court to dispense with the non-entitled partner's consent to a dealing which has taken place or is proposed in certain circumstances. *Subsection (1)* sets out the circumstances under which this can occur. *Subsection (2)* defines when a non-entitled partner is to be regarded as having unreasonably withheld consent. *Subsection (3)* places an onus on the court to consider all the circumstances of the case in considering whether to make an order. *Subsection (4)* provides that where the entitled partner makes an application to the court for an order under this clause and the non-entitled partner has brought proceedings in court for enforcement of occupancy rights, the non-entitled partner's proceedings will not be decided until the conclusion of the application by the entitled partner.

Clause 104: Interests of heritable creditors

63. This clause explains the rights that a heritable creditor has where there is an interest in the family home. *Subsection (1)* provides the grounds under which a creditor, who has an interest in the family home, can seek an order from the court for the non-entitled partner to make a payment, where such a payment is due. *Subsections (2) to (4)* attach conditions and exceptions to this situation.

Clause 105: Provisions where both civil partners have title

64. This clause covers the situation where both civil partners have title of the property and are entitled to occupy the family home.

Clause 106: Rights of occupancy in relation to division and sale

65. This clause explains the circumstances that the court must take into account where a civil partner brings an action for the division and sale of a family home owned jointly with the other civil partner. The clause allows the court to refuse to grant a decree, to postpone granting a decree or granting a decree with certain conditions applied.

Clause 107: Adjudication

66. This clause protects the interests and rights of a civil partner where a decree of adjudication has been pronounced by the court on property or furnishings belonging to the other civil partner, which the former uses.

Clause 108: Transfer of tenancy

67. This clause allows the court to make an order to transfer the tenancy of a family home to the non-entitled partner and provides for the non-entitled partner to make an appropriate payment to the entitled partner in compensation. *Subsections* within the clause set out the circumstances under which this can apply and the consideration that the court should give.

Chapter 4 - Interdicts

Clause 109: Civil partners: competency of interdict

68. This clause means that the Court of Session or the sheriff court can grant a relevant interdict in respect of a couple living together in a civil partnership. A relevant interdict for these purposes and for the purposes of clause 108, is an interdict which is designed to prevent any inappropriate conduct on the part of one civil partner towards the other or a child of the family, or to prevent a civil partner from returning to the family home or its vicinity.

Clause 110: Attachment of powers of arrest to relevant interdicts

69. This clause allows the court to attach a power of arrest to any relevant interdict on the application of a civil partner. The *Subsections* within the clause set out the conditions which apply to this power.

Clause 111: Police powers after arrest

70. This clause sets out the action that the police may take where a non-applicant civil partner has been arrested as set out in *Subsection (4)* of clause 110. It also provides that the facts and circumstances that gave rise to the arrest will be reported to the procurator fiscal who will determine whether criminal proceedings should follow.

Clause 112: Procedure after arrest

71. This clause covers the procedure that arises where the non-applicant civil partner is not released after arrest, but where the procurator fiscal decides that no criminal proceedings should follow.

Chapter 5 – Dissolution, Separation and Nullity

Clause 113: Dissolution

72. This clause provides that an action for the dissolution of a civil partnership can be brought in the Court of Session or in the sheriff court. It sets out the terms under which a court may grant a decree, and when the irretrievable breakdown of a civil partnership is taken to be established.

Clause 114: Encouragement of reconciliation

73. This clause provides that if it seems to the court that it is likely that the civil partners could reconcile, the court must continue the action for as long as it thinks is necessary to enable the couple to attempt reconciliation. It also provides at *Subsection (2)* that where a couple still wish to dissolve their civil partnership after a period of living together again (during the court action), that that period will not be taken into account for the purposes of the action.

Clause 115: Effect of resumption of cohabitation in certain actions

74. This clause, at *Subsection (1)* provides that the irretrievable breakdown of a civil partnership on grounds of desertion for a continuous two year period will not be taken to be established if, at the end of that two year period, the parties start living together again and do so at any time after the end of the three months which begin from the date the parties resumed living together. *Subsection (2)* applies clause 114(2) to *Subsection (1)*.

75. *Subsection (3)* makes provision that where dissolution of a civil partnership is sought on the basis of desertion or non-cohabitation for periods of time as provided for in clause 113(3)(b) to (d), the court should not take account of any resumption of cohabitation within the periods provided for in clause 113(3)(b) to (d) so long as that resumption amounts in total to less than six months. The resumption of cohabitation can be for one period of up to six months, or more than one period totalling up to six months. But any such resumption of cohabitation within the periods provided for in clause 113(3)(b) to (d) will be excluded from calculation of the periods of non-cohabitation for the purposes of clause 113(3).

Clause 116: Separation

76. This clause provides that the civil partners in a civil partnership may apply to the Court of Session or the sheriff court for a decree of separation. The court may grant such a decree if satisfied that there are grounds justifying such separation.

Clause 117 - Dissolution following on decree of separation

77. If a couple that has a decree of separation subsequently decide to dissolve their civil partnership, this clause provides that they may apply to the court giving the same evidence upon which a decree of separation was based. The court can treat a decree of separation as proof of the facts under which the decree was granted. However, this does not entitle a court to grant a decree of dissolution of a civil partnership without receiving evidence from the civil partner seeking the dissolution.

Clause 118: Registration of dissolution of civil partnership

78. This clause requires the Registrar General for Scotland to maintain a register of decrees of dissolution of civil partnership (Register of Dissolutions of Civil Partnership). The Registrar General is also required to make and keep an alphabetical index of entries to this register. The form of the register is to be prescribed. On payment of the prescribed fee to the Registrar General, the index to the register may be searched and an extract of any entry provided. An extract of an entry in the register is sufficient evidence of the decree of dissolution to which it relates. The Registrar General may also delete, amend or substitute an entry in the register.

Clause 119: Nullity

79. This clause sets out that if a couple register as civil partners in Scotland despite not meeting the eligibility criteria detail in clause 82, the civil partnership will be void, meaning that it will be treated as never having taken place. Either of the couple or another interested person may bring an action in the Court of Session to have the civil partnership declared void.

Clause 120: Validity of civil partnerships registered outside Scotland

80. This clause determines the rules to be applied when determining whether, under the law of Scotland, a civil partnership which was not formed in Scotland is void or voidable. If the civil partnership is void or voidable, a court in Scotland which has jurisdiction under clauses 159 to 164 may make a declarator of nullity in respect of the civil partnership under the inherent declaratory power held by the Court of Session.

81. *Subsection (1)* ensures that a civil partnership which was registered in England and Wales is void or voidable for the purposes of the law of Scotland if that is the effect of the English provisions in clauses 48 and 49 of the Bill.

82. *Subsection (2)* ensures that a civil partnership which was registered in Northern Ireland is void or voidable for the purposes of the law of Scotland if that is the effect of the provisions applicable in Northern Ireland.

83. *Subsection (4)* deals with the formation of civil partnerships outside the United Kingdom under an Order in Council made under clause 150 or 151. Orders in Council made under those clauses will include provision for determining the relevant part of the United Kingdom for certain purposes. Paragraphs (a)(i) and (b) of *subsection (4)* ensure that questions of nullity are then dealt with in exactly the same way as would apply under Scottish law if the civil partnership had actually been formed in that part of the United Kingdom.

84. In addition the civil partnership will be void if the condition in clause 150(2)(a) or 151(2)(a) (whichever is relevant) was not met. For a partnership formed at a British consulate etc., the condition is that one party must be a United Kingdom national as defined in clause 180. For a partnership formed in the armed services, the condition is that one of the proposed civil partners is a member of the armed forces serving in the country or territory where the partnership is formed, or falls within certain other related categories as set out in clause 151(2)(a).

85. Finally the civil partnership will also be void if there is a breach of a requirement of the Order in Council which is prescribed for this purpose by the Order itself (this power will be used to define in the Order those requirements which are mandatory in order to ensure the validity of the civil partnership).

86. *Subsection (8)* sets out the rules to be applied in relation to an apparent or alleged overseas relationship. An overseas relationship can be treated as a civil partnership under Chapter 2 of Part 5. But the civil partnership will be void if it transpires that the relationship is in fact not an overseas relationship as defined in clauses 152 to 154, or if one of the requirements for the overseas relationship to be treated as a civil partnership under clauses 155 to 158 is not met. For example the civil partnership will be void if, under the law of the country where the overseas relationship was registered, the formalities necessary to enter into the overseas relationship were not fulfilled or there was no capacity to enter into the overseas relationship (see clause 155(1)). It is also voidable if that is the effect of the law of the country where the registration took place (see the definition of “the relevant law” in *subsection (9)*).

Clause 121: Financial provision after overseas dissolution, annulment or separation

87. This clause introduces Schedule 11, which relates to applications for financial provision in Scotland after a civil partnership has been dissolved or annulled, or civil partners have been legally separated, in a country outside the British Islands. “British Islands” is defined in the Interpretation Act 1978 (c. 30) as comprising the United Kingdom, the Channel Islands and the Isle of Man.

Chapter 6 – Miscellaneous and Interpretation

Clause 122: Regulations

88. This clause provides that, in Chapters 2 and 5 of the Act, “prescribed” means prescribed in regulations made by the Registrar General for Scotland with the approval of the Scottish Ministers. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament. This conforms to the process which is provided in other legislation pertaining to registration, such as the 1965 Act.

Clause 123: Attachment

89. This clause protects the interests and rights of a civil partner where an attachment has been made on property or furnishing belonging to the other civil partner, which the former uses.

Clause 124 - Promise of agreement to enter into a civil partnership

90. This clause sets out that if a couple make an agreement to register their civil partnership, it will not confer any rights or obligations under Scots law. If the promise or agreement to form a civil partnership is broken, no action can be brought in a court in Scotland and this is irrespective of the law applicable to the promise of agreement.

Clause 125: Lord Advocate as party to action for nullity or dissolution of civil partnership

91. This clause makes provision for intimation on the Lord Advocate of proceedings for either declarator of nullity or dissolution of a civil partnership. *Subsection (1)* provides that the Lord Advocate can become a party to either of these kinds of proceedings, and conduct his case in such manner as he considers appropriate. *Subsection (2)* allows the court to intimate these proceedings on the Lord Advocate if the court thinks it necessary to assist in the determination of the proceedings. *Subsection (3)* provides that, in any case where the Lord Advocate does become a party to the proceedings, no expenses can be claimed against him.

Clause 126: Civil partner of accused a competent witness

92. This clause provides that the civil partner of an accused person may be called as a witness by the accused, a co-accused, or the prosecutor. If a civil partner of an accused is called as a witness, they cannot be forced to give evidence by the co-accused or the prosecutor, and cannot be forced to reveal communications between the civil partners while the civil partnership continues. If a civil partner of an accused person does not give evidence, neither the defence nor the prosecutor can take advantage of this in any submissions to the court.

Clause 127: Assurance policies: Scotland

93. This clause ensures that civil partners are recognised in terms of assurance policies in the same way that spouses are at present.

Clause 128: General provisions as to fees

94. This clause enables a district registrar to refuse to comply with any application made under Part 3 until the appropriate fee has been paid to him. For example, this reflects section 19(2) of the 1977 Act which provides that an authorised registrar should not solemnise a marriage unless the prescribed fee has been paid. The clause also enables the Registrar General to remit fees in cases of hardship. That provision follows what is provided in section 54 of the 1965 Act.

Clause 129: Interpretation of this Part

95. This clause defines certain expressions used in Part 3 Civil Partnerships: Scotland.

Clause 130: The expression “relative” in the 1965 Act

96. This clause provides that the definition of “relative” in section 56(1) of the 1965 Act should include “a civil partner and anyone related to the civil partner of the person”. In practical terms, this would (for instance) enable a civil partner or a relative of a civil partner to act as the informant for the registration of a death under section 23 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

Part 5 – Civil partnerships formed or dissolved abroad etc.

Introduction

97. The clauses in this part (Part 5) of the Civil Partnership Bill extend to the whole of the United Kingdom, with the exception of clauses 160 to 164 which extend only to England and Wales, and clauses 165 to 167 which extend only to Scotland (see clause 194(4)). Clauses 160 to 164 are excluded from this Sewel Memorandum.

Chapter 1 – Registration outside UK under Order in Council

Clause 150: Registration at British consulates etc.

98. This clause confers power to make subordinate legislation by Order in Council to make provision for two people to register as civil partners of each other in countries or territories outside the United Kingdom in the presence of an officer of Her Majesty’s Diplomatic Service. The officers in whose presence the parties may register as civil partners, and the countries or territories where this may take place, will be set out in the Order in Council (see the definition of “prescribed” in clause 179(5)). This power will be used to make provisions for civil partnership corresponding to the provisions of the Foreign Marriage Act 1892 (c.23). Under that Act it is possible for UK nationals to marry in accordance with UK law at a diplomatic post overseas in certain circumstances, so this power will enable civil partnerships likewise to be registered at diplomatic posts overseas.

99. *Subsection (2)* sets out the four conditions which the Diplomatic Service officer must be satisfied are met. These are that at least one of the proposed civil partners is a United Kingdom national, that the civil partners would have been eligible to register in the relevant part of the United Kingdom as determined according to the provisions of the Order in Council, that the authorities in the country or territory in question will not object to the registration, and that there are insufficient facilities for them to enter into an overseas relationship under that country’s law. In addition, by *subsection (3)*, the officer is not required to allow the couple to register as civil partners if in his opinion to do so would be inconsistent with international law or the comity of nations, although the Order may include provision for an appeal against any such refusal. “United Kingdom national” is defined in clause 180. The criteria for what constitutes an “overseas relationship” are set out in clauses 152 to 154.

Clause 151: Registration by armed forces personnel

100. This clause enables provision to be made by Order in Council for two people to register as civil partners of each other in countries or territories outside the United Kingdom where one of them is a member of Her Majesty's forces serving in the country or territory in question or falls within certain connected categories set out in *subsection (2)*. The countries or territories where such persons may register will be set out in the Order in Council (see the definition of "prescribed" in clause 179(5)). "Her Majesty's forces" is defined in clause 180(2).

101. This power will be used to make provisions for civil partnership corresponding to section 22 of the Foreign Marriage Act 1892 (c.23). Under that section, members of the armed forces and certain civilians accompanying them can be married outside the UK by a forces chaplain or an officer authorised by the commanding officer. This clause allows similar provision to be made by Order in Council for civil partnership registration outside the UK, in the presence of one of the officers responsible for the recording of births, deaths and marriages (and, in future, civil partnerships) among the Service community.

Chapter 2 – Overseas relationships treated as civil partnerships

Clause 152: Meaning of "overseas relationship"

102. This clause defines the overseas relationships which are capable of being treated as civil partnerships if the other requirements of this Chapter are met. An overseas relationship must be either a "specified relationship" (see clause 153 and Schedule 14) or must meet the "general conditions" (see clause 154). In addition the relationship must have been registered in a country or territory outside the UK by two people who are of the same sex under the relevant law, and (as a matter of relevant law within the UK) are not already in a civil partnership or lawfully married. (They are also required to be of the same sex as a matter of relevant law within the UK – see clause 156). The overseas relationship may have been registered before the enactment or commencement of the Civil Partnership Bill (but, in such cases, clause 155 ensures that the couple will be treated as having formed a civil partnership only at the time when this Chapter of the Bill comes into force). "The relevant law" is defined in *subsection (2)* as the law of the country or territory where the overseas relationship is registered, including its rules of private international law.

Clause 153: Specified relationships

103. This clause introduces Schedule 14, which lists the relationships which are "specified relationships" for the purposes of clause 152. The Schedule lists various types of relationship which exist in other countries, such as civil union in Vermont in the United States of America, registered partnership in Denmark, and so on. It also includes marriage in Belgium and the Netherlands (both countries where marriage is available to same-sex partners). Relationships falling within the descriptions in Schedule 14 can be treated as civil partnerships as set out in clauses 155 to 158, if the other requirements of those clauses and clause 152 are met. For example, a marriage in Belgium or the Netherlands could be treated as a civil partnership only if it is between two people of the same sex, and who are not already in a civil partnership or lawfully married.

104. *Subsections (2) to (6)* enable the Schedule to be amended by order made by the Secretary of State. This is subject to the affirmative resolution procedure if the amendments have the effect of removing a description of a relationship from Schedule 14, or amending such a description, but to the negative resolution procedure if the amendments add additional relationships to the list. No order may be made without the consent of the Scottish Ministers or the Department of Finance and Personnel in Northern Ireland.

Clause 154: The general conditions

105. If a relationship is not a “specified relationship” listed in Schedule 14, it is nonetheless an “overseas relationship” if it meets the general conditions set out in this clause, provided the other requirements of clause 152 are also met.

106. The general conditions relate to the following issues:

- exclusivity – it must be a requirement of the relevant law that the relationship cannot be entered into if either of the parties is already in a relationship of that kind or is lawfully married;
- duration – it must be a requirement of the relevant law that the relationship is indeterminate in duration (this would exclude an arrangement whereby the parties agreed to live together for a fixed period of time);
- effect – the effect of entering into the relationship must be that the parties are either treated as a couple under the relevant law, or are treated as married;
- registration – the relationship must be registered with a responsible authority in the relevant country or territory.

Clause 155: Overseas relationships: the general rule

107. *Subsection (1)* provides that two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if under the relevant law they had capacity to enter into the relationship, and met all requirements necessary for formal validity under that law. “The relevant law” is defined in clause 152 as the law of the country or territory where the overseas relationship is registered, including its rules of private international law. Clause 155 is subject to clauses 156 to 158.

108. *Subsection (2)* provides that the civil partnership is treated as having been formed at the time when the overseas relationship is registered as having been entered into. However if the relationship was registered before this Chapter of the Bill comes into force, then *subsection (3)* provides that the civil partnership is treated as having been formed only at the date when this Chapter comes into force.

Clause 156: The same-sex requirement

109. *Subsection (1)* provides that both members of the couple must be of the same sex, at the critical time, if the overseas relationship is to be treated as a civil partnership in the UK. “The critical time” is defined in *subsection (5)* to refer back to clause 155(2) or (3) (i.e. depending on whether the relationship was entered into before or after the commencement of the Chapter).

110. *Subsections (2) to (4)* provide an exception where the couple was regarded as a same-sex couple under the relevant law because one of the parties was regarded as having changed gender under that law. In this situation the relationship will be treated as a civil partnership once the party who has changed gender under the relevant law has also acquired a full gender recognition certificate under the Gender Recognition Bill. But the parties will only be regarded as having formed a civil partnership if no marriage or civil partnership has been entered into in the interim. These provisions are analogous to provisions contained in the Gender Recognition Bill, in relation to overseas marriages.

Clause 157: Person domiciled in a part of the United Kingdom

111. This clause ensures that, where an overseas relationship is registered by a person who is domiciled in England and Wales, Scotland or Northern Ireland, it cannot be treated as a civil partnership unless the couple would have been eligible to register as civil partners of each other in that part of the United Kingdom. Thus the overseas relationship will not be treated as a civil partnership if either party was under 16 at the time of registration, or if the parties are within the prohibited degrees of relationship applicable in the relevant part of the United Kingdom. Where either party was domiciled in Scotland, the overseas relationship will also not be treated as a civil partnership if either party was incapable of understanding the nature of civil partnership. These requirements are additional to the requirements that neither party is already a civil partner or lawfully married and that both parties are of the same sex (see clauses 152 and 156), which apply even where neither party was domiciled in the United Kingdom.

Clause 158: The public policy exception

112. This clause provides that two people cannot be treated as having formed a civil partnership as a result of their overseas relationship if it would be manifestly contrary to public policy to recognise the capacity of either or both of them to enter into the relationship under the relevant law.

Chapter 3 - Dissolution etc.: Jurisdiction and Recognition

Clause 159: Power to make provision corresponding to EC Regulation 2201/2003

113. *Subsections (1), (2) and (3)* provide powers for the Lord Chancellor or Scottish Ministers to make regulations concerning:

- a) the jurisdiction of the courts in England and Wales or Scotland in relation to the dissolution or annulment of civil partnerships or the legal separation of civil partners, where one of them is a resident or national of a member State or is domiciled in a part of the United Kingdom; and
- b) the recognition and enforcement of equivalent judgments from other member States, in cases where the corresponding rules for dissolution, annulment or legal separation in matrimonial matters will be governed by EC Regulation 2201/2003. This Regulation will come into force on 1 March 2005.

114. *Subsection (4)* allows the regulations to define “member State” for the purposes of this Part of the Bill and for the purposes of the regulations.

115. Under *subsection (6)* equivalent regulations for Scotland must be made by statutory instrument under the affirmative resolution procedure in the Scottish Parliament.

Clause 165: Jurisdiction of Scottish Courts

116. Clauses 165 – 167 extend only to Scotland. *Subsections (1) and (2)* of clause 165 provide the rules on the basis of which the Scottish courts will be able to exercise jurisdiction in an action for dissolution of a civil partnership or separation of civil partners. Any Scottish regulations to be made under clause 159 will have primacy. Subject to this, the Scottish courts will have jurisdiction where either civil partner is domiciled in Scotland when proceedings commence. Where an action is raised in the sheriff court then an additional test of 40 days residence in the sheriffdom will require to be satisfied. The Court of Session alone will also have jurisdiction where the parties registered as civil partners in Scotland, no court has jurisdiction under any Scottish regulations made under clause 159 unless the court is satisfied that it is in the interests of justice to assume jurisdiction.

117. Under *subsection (3)*, the Court of Session will have jurisdiction in an action for declarator of nullity of a civil partnership in circumstances largely corresponding to those in *subsection (1)*, but with additional provision where one of the purported civil partners has died. *Subsection (4)* makes provision for proceedings parallel to an action already raised.

Clause 166: Sisting of proceedings

118. This clause permits rules of court to make provision for suspending of proceedings before a Scottish court in respect of a civil partnership where an action in relation to the same civil partnership is ongoing elsewhere, and for information to be supplied to the court about such an action.

Clause 167: Scottish ancillary and collateral orders

119. This clause confers jurisdiction on any Scottish court to deal with an application relating to children, aliment (maintenance), financial provision or expenses which is ancillary or collateral to an action for dissolution, separation or declarator of nullity. The only exception is where such jurisdiction would conflict with regulations made under clause 159. Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c.19) confers power on sheriffs to vary or recall particular types of order made by the Court of Session, provided no party objects. Where clause 167 enables the Court of Session to hear an application for variation or recall of one of its own orders, and the order is one to which section 8 (as amended by this Bill) applies, clause 167(4) ensures that the sheriff will also have power to hear the application under the section 8 procedure.

Clause 168: Effect of dissolution, annulment or separation obtained in the UK

120. *Subsection (1)* provides that no dissolution or annulment of a civil partnership obtained in one part of the United Kingdom can be effective in any part of the United Kingdom unless it has been obtained from a court of civil jurisdiction. The parts of the United Kingdom, for the purposes of clauses 168-173 are England and Wales, Scotland, and Northern Ireland (see clause 172(5)). *Subsection (2)* provides for any dissolution or annulment of a civil partnership or legal separation of civil partners, obtained from a court of civil jurisdiction in one part of the United Kingdom, to be recognised throughout the United Kingdom, subject to *subsections (3) and (4)*.

121. *Subsection (3)* provides that such dissolution or annulment can be refused recognition if the dissolution, annulment or separation was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in the other part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in the other part.

122. *Subsection (4)* provides that, in relation to a dissolution or legal separation, recognition can be refused if the dissolution or separation was obtained at a time when, according to the law of the other part, there was no civil partnership in existence.

Clause 169: Recognition in the UK of overseas dissolution, annulment or separation

123. This clause provides that the validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if it is entitled to recognition either pursuant to regulations made under clause 159 or pursuant to clauses 170 to 172. An overseas dissolution etc is defined as a dissolution etc obtained outside the United Kingdom.

Clause 170: Grounds for recognition

124. *Subsection (1)* provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained by proceedings if:

- (a) it is effective under the law of the country where it was obtained, and
- (b) at the relevant date (which is defined by *subsection (3)*) either civil partner was habitually resident or domiciled there or was a national of that country.

125. *Subsection (2)* provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained otherwise than by proceedings if:

- (a) it is effective under the law of the country where it was obtained,
- (b) at the relevant date:
 - both civil partners were domiciled there; or
 - either civil partner was domiciled there and the other was domiciled in a country under the law of which the dissolution etc. is recognised as valid, and
- (c) neither civil partner was habitually resident in the United Kingdom for the year immediately before the relevant date.

126. *Subsection (3)* defines the “relevant date” as regards overseas dissolutions etc. obtained by proceedings as being the date the proceedings commenced, and for those obtained otherwise than by proceedings as being the date it was obtained.

Clause 171: Refusal of recognition

127. *Subsection (1)* provides for the refusal of recognition of the validity of an overseas dissolution, annulment or legal separation in any part of the United Kingdom if it was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in that part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in that part.

128. *Subsection (2)* provides for the refusal of recognition of the validity of an overseas dissolution or legal separation in any part of the United Kingdom if it was obtained at a time when according to the law of that part there was at that time no civil partnership in existence.

129. *Subsection (3)* provides for the refusal of recognition of the validity of an overseas dissolution, annulment or separation if, in relation to proceedings, steps as to notice were not taken or one of the civil partners was for any reason not given a reasonable opportunity to take part in the proceedings; or in the absence of proceedings, if there is no official documentation regarding the effectiveness and validity of the dissolution etc in the country where it was obtained.

130. Recognition may also be refused in either case if recognition of the dissolution etc. would be manifestly contrary to public policy.

131. *Subsection (4)* defines the meaning of “official” in relation to the documents referred to in *subsection (3)* and “the relevant date” in relation to the domicile of a civil partner also referred to in that subsection. “Proceedings” is defined in clause 172(5) as meaning judicial or other proceedings.

Clause 172: Supplementary provisions relating to recognition of dissolution etc.

132. *Subsection (1)* provides, for the purposes of clauses 170 and 171, that a civil partner is to be treated as domiciled in a country if he was domiciled in that country either according to the law of that country in family matters or according to the law of the part of the United Kingdom where the question of recognition arises.

133. *Subsection (2)* gives Scottish Ministers (along with the Lord Chancellor) the power to make regulations concerning recognition of the validity of overseas annulments where there are cross-proceedings, for example where the validity of an order is contested, and with respect to cases where a separation is converted into a dissolution effective under the law of the country where it is obtained. They may also make regulations about proof of findings of fact in proceedings outside the UK and applying clauses 170 and 171 with modifications for countries with territories with different systems of law for dissolution etc.

134. *Subsections (3) and (4)* provide that this power is exercisable by statutory instrument, subject to the negative resolution procedure in the Scottish Parliament.

135. *Subsection (5)* defines the meanings of “annulment”, “part of the United Kingdom”, and “proceedings”, in clauses 168 to 173.

136. *Subsection (6)* states that nothing in this Chapter requires recognition of any finding of fault made in dissolution etc proceedings or recognition of any maintenance, custody or other ancillary order made in those proceedings.

Clause 173: Non-recognition of overseas dissolution etc. not a bar

137. Under this clause, when a court in any part of the United Kingdom has granted a dissolution or annulment of a civil partnership, or a dissolution or annulment has been recognised as valid by virtue of this Chapter, the fact that the dissolution or annulment would not be recognised outside the United Kingdom does not prevent either party from entering a later marriage or civil partnership in that part of the United Kingdom or make the later marriage or civil partnership invalid in that part.

Chapter 4 – Miscellaneous and Supplementary

Clause 174: Commanding officers' certificates for Part 2 purposes

138. This clause allows provision to be made by Order in Council for the situation where a couple, one of whom is a member of the armed forces serving outside the United Kingdom and the other resident in England and Wales, wish to register as civil partners in England and Wales. Under such an Order, the member of the armed forces could give notice of the proposed civil partnership to his commanding officer, who could then issue a certificate of no impediment. A civil partnership schedule could be issued in England and Wales under clause 20 on production of the certificate, without the need for the member of the armed forces to give notice in England and Wales. The clause follows the approach taken in the Marriage Act 1949 (c.76) in relation to persons serving in a naval vessel at sea, but extends this approach to all the armed forces.

Clause 175: Certificates of no impediment to overseas relationships

139. This clause permits the making of an Order in Council to allow for the issue of certificates of no impediment where a United Kingdom national (or a Commonwealth national if prescribed in the Order in Council) intends to enter into an overseas relationship with a person who is neither a United Kingdom national nor a Commonwealth national. The Order in Council will also prescribe the countries or territories which are covered. This power will be used to make provision corresponding to the provisions of section 1(1) of the Marriage with Foreigners Act 1906 (c.40). "United Kingdom national" is defined in clause 180. The criteria for what constitutes an "overseas relationship" are set out in clauses 152 to 154.

Clause 176: Transmission of certificates of overseas relationships etc.

140. This clause permits the making of an Order in Council to provide for the transmission to UK Registrars General of foreign certificates in relation to overseas relationships, for the issue of certified copies by the Registrar General, and for these to be received in evidence. This clause will be used to make provision for civil partnerships corresponding to the provisions of section 18(2) of the Foreign Marriage Act 1892 (c.23). It is envisaged that a separate Order in Council would be made for Scotland under this provision.

Clause 177: Power to make provision relating to certain Commonwealth forces

141. This clause permits the making of an Order in Council to ensure that, where the law of certain Commonwealth countries makes provision corresponding to clause 151 of this Bill (allowing for registration by armed forces personnel serving abroad), relationships formed under such provisions can be recognised in the UK. This will enable provision to be made, if necessary, equivalent to that which can be made under section 3(2) of the Foreign Marriage Act 1947 (c.33).

Clause 178: Fees

142. *Subsections (2) and (3)* provide power for the Registrar General for Scotland, with the approval of the Scottish Ministers, to make regulations prescribing fees in respect of things done by virtue of an Order in Council under Part 5 of the Bill.

Clause 179: Orders in Council: supplementary

143. This clause contains supplementary provisions in relation to the powers to make an Order in Council contained in clauses 150, 151, 174, 175, 176 and 177. Statutory instruments containing an Order in Council under those clauses are to be subject to the negative resolution procedure, including where other provisions are included which are made by Order in Council under existing legislation on foreign marriages, such as the Foreign Marriage Act 1892. This clause also provides that Orders in Council under those clauses may make different provision for different cases. This may be necessary, for example, to take account of differing local conditions in different countries. They may in addition include, for example, supplementary, consequential and transitional provisions and *subsection (2)* makes clear that such provisions may correspond to provision made under this Bill or under any Act relating to marriage outside the UK

Clause 180: Interpretation

144. This clause defines the terms “United Kingdom national” and “Her Majesty’s forces” for the purposes of this Part of the Bill.

Part 6 – Relationships arising through civil partnerships

Introduction

145. The clauses in this Part of the Bill relate to the interpretation of references to certain familial relationships in legislation including legislation made by the Scottish Parliament and Northern Ireland legislation.

Clause 181: Interpretation of statutory references to stepchildren etc.

146. This clause provides that references to “step” relationships and “in-laws”, in any provision to which the clause applies, are to be read as including relationships arising through civil partnership.

Clause 182: Provisions to which section 177 applies: Acts of Parliament etc.

147. This clause applies clause 181 to any provision of a future Act (including Acts of the Scottish Parliament) or future subordinate legislation (subject to any indication to the contrary) and to references in existing legislation as listed in Schedule 15. In addition, this clause provides an order-making power to amend Schedule 15 and to apply clause 181 to provisions of existing subordinate legislation.

Part 8 – Supplementary

Clause 190: Regulations and orders

148. This section provides that powers conferred by the Bill to make regulations or orders (except orders by a court) may be exercised so as to make different provision for different purposes and to make ancillary provision.

Clause 191: Power to make further provision in connection with civil partnership

149. *Subsection (1)* confers power (which is not restricted by any other provision of the Bill (see *subsection (5)*) to make, by order, supplementary, incidental, consequential, transitory, transitional or saving provision considered appropriate for the general purposes of the Bill, for any particular purpose of the Bill, or in consequence of any provision by or under the Bill or for giving effect to such a provision.

150. This power is exercisable by a Minister of the Crown, by the Scottish Ministers in relation to a provision within the legislative competence of the Scottish Parliament and by the National Assembly for Wales in relation to matters with respect to which functions are exercisable by the Assembly (except in relation to a provision made by virtue of *subsection (3)*).

151. By *subsection (3)* this includes the power to amend or repeal primary legislation (or Scottish primary legislation) and it includes the power to repeal or amend provisions conferring a power to make subordinate legislation whose exercise is currently limited to cases of marriage. An order may also amend, repeal or revoke Church legislation (*subsection (3)(b)*).

152. By *subsection (4)* an order may provide for provisions of the Bill to come into force with modifications until other provisions are commenced. An order may amend or revoke subordinate legislation (*subsection (4)(b)*), including subordinate legislation made by the Scottish Ministers.

153. The power is exercisable by statutory instrument and is subject to the negative procedure unless it contains any provision made by virtue of *subsection (3)* in which case it is subject to the affirmative procedure

Clause 192: Community obligations and civil partners

154. This power allows Ministers to make parallel provision to any made under section 2(2) of the European Communities Act 1972 which relates to persons who are or have been married (or whose marriage was void) where it does not relate to persons who are or have been civil partners (or whose civil partnership was void).

Clause 193: Consequential amendments, repeals etc.

155. This clause introduces Schedule 20 (which makes minor and consequential amendments to other Acts arising from the provisions of the Bill), Schedule 21 (which makes minor and consequential amendments to enactments relating to Scotland), and Schedule 22 (which contains repeals of provisions of existing legislation).

Clause 194: Extent

156. The Bill makes provision in relation to England, Wales, Scotland and Northern Ireland. Part 2 and related Schedules extend only to England and Wales, Part 3 and related Schedules to Scotland only and Part 4 and related Schedules to Northern Ireland only. Certain other clauses and Schedules are also limited in extent. Amendments and repeals have the same extent as the provisions amended or repealed.

Clause 195: Commencement

157. This clause provides for the coming into force of the provisions of the Bill. All substantive provisions of the Act are to come into force by commencement orders. These orders will be made by the Secretary of State, except for the Scottish provisions which will be made by the Scottish Ministers and the Northern Ireland provisions which will be made by the Department of Finance and Personnel, both after consulting the Secretary of State. The Secretary of State must also consult the Scottish Ministers or the Department of Finance and Personnel before commencing certain other provisions.

Clause 196: Short title

158. The short title will be the Civil Partnership Act 2004.

Schedules

Schedule 10 – Forbidden degrees of relationship: Scotland

159. *Paragraph 1* of Schedule 10 lists the relationships connecting people that absolutely forbid the registration of a civil partnership between them. *Paragraphs 2* and *3* list the relationships connecting people that forbid the registration of a civil partnership between them, unless the requirements specified in clause 84 are met.

160. The prohibitions in Schedule 10 closely follow those that are set out in the Marriage (Scotland) Act 1977.

Schedule 11 – Financial provision in Scotland after overseas proceedings

161. This Schedule explains the circumstances under which a Scottish court may consider an application for financial provision following the dissolution or annulment of a civil partnership overseas.

Part 1- Introductory

162. This Part states that the provisions of Schedule 11 will apply wherever a civil partnership has been dissolved or annulled after judicial or other proceedings overseas, and the dissolution or annulment is entitled to recognition in Scotland. Dissolutions or annulments granted before the commencement of Schedule 11 are included. “Overseas” is defined as meaning outside the British Islands.

Part 2- Circumstances in which court may entertain application for financial provision

163. This Part provides that the Scottish court may entertain an application by one of the former (or former ostensible) civil partners following the overseas dissolution or annulment if the criteria specified in paragraphs 2(2) and (3) are satisfied. The application must be made by the party who did not initiate the overseas proceedings, and must be made within five years of the overseas dissolution or annulment taking effect. Both former partners must be alive when the application is made. The other criteria are designed to ensure a substantial connection between the civil partnership and Scotland, and between the parties and both Scotland and the jurisdiction of the relevant court. Paragraph 2(4) gives priority to the jurisdictional standards set out in Part 1 of the Civil Jurisdiction and Judgements Act 1982 and in Council Regulation (EC) No 44/2001, which will supersede the criteria in *paragraph 2(2)* where they apply.

Part 3 - Disposal of Applications

164. Under this Part, Scots law will generally apply to the disposal of the application. In particular, the court is to endeavour to place the parties in the position they would have been in had the application for financial provision been disposed of by the Scottish court as part of a Scottish action for dissolution or annulment and on the date when the overseas dissolution or annulment took effect. The court is to have regard to the resources of the parties and to any order for financial provision already made overseas in or in connection with the foreign dissolution or annulment proceedings. An interim periodical allowance may be ordered where appropriate to relieve hardship. However, where the Scottish court's jurisdiction is based solely on the presence of a former family home of the parties in which the respondent has an interest, any order made must relate to the family home, its contents or their capital value.

Part 4 - The expression "order for financial provision"

165. This Part defines the term "order for financial provision" with reference to section 8(1) of the Family Law (Scotland) Act 1985 (as amended by this Bill), and to clause 107.

Schedule 21 – Consequential amendments: Scotland

166. This Schedule sets out consequential amendments that will be required to Scottish primary legislation to take account of the new status of civil partners. The amendments pick up instances where spouses have a particular right or responsibility and where it is appropriate that this also apply to civil partners.

Part 1 – Amendments of the Succession (Scotland) Act 1964 (c. 41)

167. The Succession (Scotland) Act 1964 sets out the rights that spouses have under the law of succession (i.e. the law which governs how property is, on the death of its owner, handed over to those who succeed to it). This clause amends references to spouses throughout the Succession (Scotland) Act 1964 to include reference to civil partners. This has the effect of providing civil partners with the same rights of succession as spouses.

Part 2 – Amendments of the Family Law (Scotland) Act 1985 (c. 37)

168. This clause addresses the financial provision which should be made when a civil partnership ends. It makes amendments to the Family Law (Scotland) Act 1985 to include reference to civil partners. The amendments mean that civil partners should be treated in the same way as spouses in determining the rights and responsibilities to financial provision following dissolution of a civil partnership. It further provides that any child brought up in a civil partnership as a child of the family can be financially provided for following the breakdown of the civil partnership. This part of the Bill is easiest read in conjunction with the Family Law (Scotland) Act 1985.

Part 3 – Amendments of the Bankruptcy (Scotland) Act 1985 (c. 66)

169. This clause amends the Bankruptcy (Scotland) Act 1985 to ensure that civil partners are recognised in the same way as spouses.

Part 4 – Miscellaneous amendments

170. This part amends various pieces of primary legislation to include civil partners as appropriate.

Financial Consequences

171. A Regulatory Impact Assessment has been published with the Bill. This sets out the costs and benefits of the Civil Partnership Bill across the UK and, with contributions from the devolved administrations, takes account of costs in devolved areas.

172. In devolved areas, we consider that the principal costs will come from the creation and dissolution of civil partnerships. The key areas affected are likely to be the registration service, the Scottish Court Service and legal aid. These costs are expected to be minimal and for the registration service should be covered by the fees prescribed under Part 3 of the Bill.

173. In most cases where there is a financial consequence of registering a civil partnership, it will fall in a reserved area such as benefits and pensions. The following provides more detail about the assumptions that have been made and the costs that have been estimated in devolved areas.

Take-Up Assumptions

174. While no exact data is available, a wide range of research suggests that lesbian, gay and bisexual people constitute 5-7% of the total adult population⁶. Scotland's total adult population in 2002 was 4.1 million; therefore a 5-7% range would be 200,000 to 290,000 people. The 5% figure has been used in calculations.

175. It is very difficult to predict the likely take-up of civil partnership, since it is a new institution. The UK Government has looked at other European partnership registration schemes to inform take up assumptions for civil partnerships and has identified the Civil Partnership Registration Schemes in Sweden, Norway, Denmark and the Netherlands as suitable comparators. This is provided in detail in Annex A of the Regulatory Impact Assessment, but the key points are:

- We expect there will be an initial influx of new civil partnerships in the first year following the introduction of civil partnerships since lesbian, gay and bisexual people who have been unable to take advantage of such an institution before. Some may prefer to wait until such a new institution is proven and well known before feeling comfortable enough with the notion of this form of permanent relationship.
- The assumption has been made that by 2050 the proportion of the heterosexual population who are married will be around one-third. This is a modelling assumption based upon projections produced by the UK Government's Actuary's Department. It is not a prediction or a planned outcome, but simply enables an illustration of the possible scale of the financial impact of the new status. It does not reflect the UK Government's or the Scottish Executive's views or intentions with regard to marriage.
- The assumption has been made that the proportion of the LGB population who are in a registered Civil Partnership in 2050 will be 5% (under the low scenario) or 10% (under the high scenario) of the proportion of the heterosexual population who are married.

⁶ The sources used to estimate a 5-7% range are detailed in the Regulatory Impact Assessment (page 13, footnote 13).

176. These assumptions have been used to estimate the likely take up of civil partnerships in Great Britain, which are detailed in the Regulatory Impact Assessment.

Take up in Scotland

177. To take a 10% share of the UK figures for Scotland is too crude. We have instead used population projections for Scotland and applied the same methodology used by the UK Government. Our projections do not extend to 2050. The latest period for which we have projected population data is 2018. The estimated take up figures for Scotland are detailed below:

	Population aged 15+ in Scotland*	LGB population - taking as 5% of population aged 15+	Low take up scenario		High take up scenario	
			Proportion of LGB population in a registered civil partnership	Number of LGB people in civil partnerships	Proportion of LGB population in a registered civil partnership	Number of LGB people in civil partnerships
			%		%	
2008	4,204,200	210,210	0.33%	694	0.66%	1387
2013	4,219,100	210,955	0.62%	1308	1.25%	2637
2018	4,222,700	211,135	0.84%	1774	1.69%	3568

* Although the population is taken for 15+, only those of 16 years and over will be able to enter a civil partnership. This is as close as we can get to a Scottish figure.

Costs to the civil registration service

178. A computerised system is already in place and therefore set-up costs are expected to be minimal and can be met from within existing resources. The prescribed fees for registering couples will meet costs to local registration authorities.

Costs to the Scottish Court Service

179. The Scottish Court Service does not envisage a major increase in costs and will meet any costs out of existing resources.

Costs to registering couples

180. The fees for registration of a Civil Partnership in Scotland would be prescribed by the Registrar General for Scotland – as currently happens for marriage. It is envisaged that the fees for civil partnership will be broadly similar to those for marriage. These will be set at a level to recover costs.

181. There would also be costs associated with dissolution. Couples might need legal advice on both registration and dissolution, which would result in costs to them – it is very difficult to meaningfully assess the likely costs to couples associated with dissolution due to a lack of appropriate information but advice under the legal aid scheme would be available to those who met the statutory test.

Costs to the Scottish Legal Aid Board

182. Advice and assistance may be available for advice in connection with the simplified procedure for dissolution and legal aid may be available for court proceedings if the simplified procedure is not appropriate. In either case, the usual statutory tests would apply. We expect that costs will be minimal and able to be met out of existing resources.

Scottish Executive
April 2004