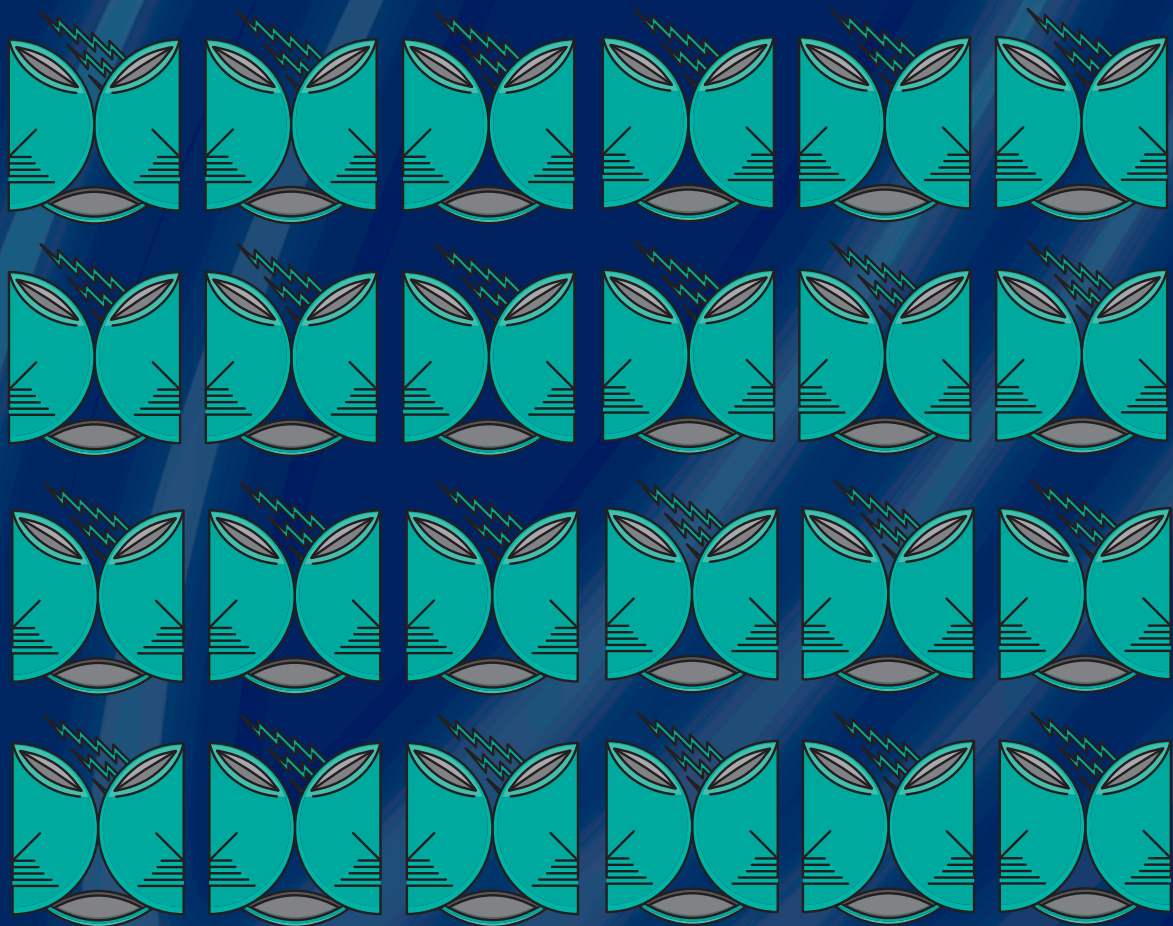


RESPONSES TO CIVIL PARTNERSHIP

A framework for the legal recognition of same-sex couples

November 2003





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FOREWORD

On the 30th June 2003 I launched the Government's consultation paper, 'Civil partnership: a framework for the legal recognition of same-sex couples'.

The consultation sought views on the Government's proposal to create a civil partnership registration scheme for same-sex couples in England and Wales.

The response to the consultation paper has been tremendous and 3,167 responses were received by the Women and Equality Unit in the Department of Trade and Industry and the Equality Unit in the National Assembly of Wales.

Lesbian, gay and bisexual groups, voluntary organisations, local authorities, businesses, equality practitioners and religious groups all contributed to the consultation process and hundreds of individuals sent in their comments through letters, e-mails, postcards, petitions and posters.

I would like to thank those who responded to the consultation for their thoughtful and constructive comments on the issues raised in the paper.

The report that follows details what you told us, analyses the issues you raised and answers your questions.

I hope that you will find it useful and informative.



Jacqui Smith, MP

Minister of State for Industry and the Regions and Deputy Minister for Women and Equality.

1. What you told us

- 1.1 The consultation period ran from 30th June to 30th September 2003 and this report summarises the responses that were received¹ :
- from pages 9 to 12 we provide an analysis of the responses and the campaigns that were run by organisations;
 - from pages 13 to 21 we look at the emerging themes and key areas of concern;
 - from pages 22 to 31 we analyse the responses to the specific questions we asked on page 65 of the consultation paper and;
 - from pages 32 to 42 we answer particular questions and expand on the Government's policy in particular areas.

¹ The deadline for responses was extended to 3 October 2003. While responses were received after that date and their contents were noted, they have not been included in the statistics and comments that follow.

2. Analysis of your responses

83% of responses supported the principle of a civil partnership scheme²

Individuals

- 2.1 Many hundreds of individuals responded to our proposal for a legal framework for the recognition of same-sex couples.

84% of individuals responding supported the principle of a civil partnership scheme³

Campaigns

- 2.2 Throughout the three months of consultation it was clear that various campaigns were run both in support of and in opposition to our overall proposal. The two largest, and most statistically significant, were those run by Stonewall in support of civil partnership and by The Christian Institute in opposition to the proposal.

Stonewall

- 2.3 Stonewall ran a postcard and letter campaign in support of the proposals:
- from Stonewall we received 681 postcards and letters;
 - from Stonewall Cymru (Wales) we received 279 signatures on petitions and 58 postcards.

Other

- 2.4 We also received an independent petition from Wales, signed by 449 people, supporting the principle of a civil partnership scheme.

² 2635 responses expressing support out of 3167 responses (2635/3167 * 100 = 83.2%).

³ 2493 responses expressing support out of 2975 responses (2493/2975 * 100 = 83.7%).

The Christian Institute

- 2.5 The Christian Institute asked the public to consider submitting their own responses to the Government's scheme. While inviting individual responses, the Institute explained in their briefing why they believed Christians should oppose the scheme.
- 2.6 Our analysis of content suggests that the Government received 202 letters drawing on The Christian Institute's briefing.

Organisations

- 2.7 The Government also received 192 responses from a number of organisations representing lesbian, gay and bisexual groups, the public and the private sector, voluntary organisations, trade unions, nationally-based religious groups and individual congregations.

74% of organisations responding supported the principle of a civil partnership scheme⁴

- 2.8 Of those Lesbian, Gay and Bisexual organisations that responded:⁵
 - 95% (35 responses) supported the Government's proposal;
 - 5% (2 responses) opposed, or did not offer an opinion on, the principle of a civil partnership scheme.

⁴ 142 responses expressing support out of 192 responses (142/192 * 100 = 73.9%).

⁵ Many of these groups also represented the interests of the transgender community.

2.9 Of those representing the Public Sector:

85% (70 responses) supported the principle of a civil partnership scheme;

15% (12 responses) opposed, or did not offer an opinion on, the principle of a civil partnership scheme.

2.10 Of those representing the Private Sector:

42% (5 responses) actively supported the the principle of a civil partnership scheme;

58% (7 responses) did not offer an opinion on the principle of the scheme and none opposed the principle of a civil partnership scheme.⁶

2.11 Of those representing the Voluntary Sector:

77% (10 responses) supported the principle of a civil partnership scheme;

23% (3 responses) opposed, or did not offer an opinion on, the principle of a civil partnership scheme.

⁶ 58% did not offer an opinion on the principle of a civil partnership scheme. These responses dwelt on the technicalities of the proposed scheme.

2.12 Of those representing Trade Unions:

91% (10 responses) supported the principle of a civil partnership scheme;

9% (1 response) opposed the principle of a civil partnership scheme;

2.13 Of those representing nationally-based religious groups:⁷

53% (9 responses) supported the principle of a civil partnership scheme;

47% (8 responses) opposed, or did not offer an opinion on, the principle of a civil partnership scheme;

2.14 Of those representing individual religious groups and congregations:⁸

15% (3 responses) supported the principle of a civil partnership scheme;

85% (17 responses) opposed the principle of a civil partnership scheme.

⁷ For example, the Church of England, the Catholic Bishops Conference, the Salvation Army, the Methodist Church and others.

⁸ These were largely Baptist, Evangelical, Free and Congregational churches.

3. Emerging Themes

3.1 Throughout the responses to the consultation paper a series of themes emerged and a number of concerns were raised about the Government's proposals. In this part of the report we summarise those themes and concerns.

Gay marriage?

3.2 Some respondents felt that the proposals for civil partnerships closely resembled marriage. It was clear that many of those who supported the principle of a civil partnership scheme would prefer that marriage was made available to same-sex couples. Many respondents felt that it made little sense to create a separate status that was similar to one already available.

"It is a matter of regret that the Government has not just changed the legal definition of the word 'marriage' to include same-sex couples, but the framework for the Civil Partnership seems to offer much to improve the human rights of gay men and women..."

3.3 Others told us that they didn't want a form of gay marriage and were glad that the Government was suggesting a purely civil status.

"Whilst my partner and I cannot legally marry, recognition that marriage is not the only acceptable status for long-term relationships is important to me. I believe that although my relationship mirrors many aspects of marriage, it also has differences in terms of how we view being together..."

- 3.4 Others expressed concern that civil partnerships and marriage were similar and that civil partnerships were essentially a form of 'gay marriage', which would undermine the unique position of marriage in society.

“Marriage is a unique and natural relationship which provides the best foundation for the bringing up of children in a healthy and balanced way and the best foundation therefore for society as a whole. To in any way give the indication that there are other relationships, which are in any way, comparable to this unique relationship is deeply misleading and confusing to our society. Legislation which provides the same rights in law to gay couples will send out the strong signal that gay and heterosexual relationships are on an equal footing.”

The Government has no plans to allow same-sex couples to marry. The proposals are for an entirely new legal status of civil partnership. Same-sex partnership registration schemes already operate alongside opposite-sex marriage in some other countries.

Why exclude opposite-sex couples?

- 3.5 Some respondents felt that civil partnership registration should be open to opposite-sex couples.

“My only regret is that (the proposals) don’t include provision to include heterosexual couples within the partnership framework, and that the proposals don’t propose a marriage option for those same-sex couples who might wish that option.”

- 3.6 Others said that opposite-sex couples already had the opportunity of gaining legal recognition for their relationships.

“Same-sex couples currently face a unique discrimination. Opposite-sex couples have the choice to enter marriage (religious or civil) to secure legal recognition for their relationships. Same-sex couples currently have no means of securing legal recognition and therefore cannot enjoy any legal rights, or take on any responsibilities, for their relationship. We welcome the creation of a civil partnership registration scheme to address this injustice.”

Opposite-sex couples can already attain legal (and socially recognised) status for their relationships through marriage, whether by a religious or civil ceremony. We recognise that not all opposite-sex couples may wish to marry, but that decision is theirs to make, and they have the option to do so if they wish.

We also recognise that some unmarried opposite-sex couples are under the mistaken impression that they already have a legally recognised status as “common-law” husband and wife. This misconception can lead to difficulties – for example, one partner might be left financially vulnerable after the breakdown of their relationship because the partners had not made any clear arrangements or agreements about ownership of their shared property or property bought with joint funds.

While we recognise this type of problem, it is a different problem from the situation of same-sex couples who want to formalise their relationship and cannot. We do not believe that the solution for those opposite-sex couples, who do not want to get married, is to offer them another way of entering into a similarly formal kind of legal commitment to each other.

The Department of Constitutional Affairs is leading a cross-government working group to explore how best to raise public awareness about the rights and responsibilities of opposite-sex cohabitants and to dispel the myths around "common law marriage".

Home-sharers, carers and siblings

- 3.7 Many respondents voiced concerns that individuals who cohabit, but who are not in a sexual relationship, (i.e. home-sharers, carers and siblings) would be at a disadvantage by not being included in the proposals. Some respondents said that these people face the same problems as same-sex couples if they live together as co-dependents; for example, two sisters who live together, a relative who cares for a disabled person or a son living with his elderly father.

“The Government could create a legal status of ‘co-dependency’ which would include all the many people, not in a sexual relationship, who live together and yet are discriminated against when one of the home-sharers dies.”

The proposed civil partnership registration scheme is aimed at addressing a specific shortcoming in the recognition of same-sex couple relationships.

The Government believes that home-sharers, carers and siblings generally don't have the same case for being recognised as a couple.

In the case of siblings, they already have a legally recognised relationship to each other, and the rights to reflect that relationship, in areas such as inheritance and when visiting in hospital. This does not apply to a same-sex couple who can be treated as two strangers under current law.

Tax

- 3.8 A large number of people raised concerns that the consultation document did not sufficiently address issues surrounding inheritance tax, and sought confirmation that civil partners would be granted the same rights as spouses under any new legislation.
- 3.9 The comments showed that many respondents felt it would be unacceptable if the proposals did not contain sufficient provision for the transfer of assets without payment of inheritance tax upon the death of a civil partner.

"I am particularly keen to see this introduced quickly as I have a very close friend who is one half of a lesbian couple with twelve-year-old twins. She is dying of breast cancer. The effect on her partner will be to force her to sell their jointly owned house and uproot the children at a very difficult time in their lives. Her prognosis is a maximum of two years. This legislation may be too late for her, but please do all you can to limit its effect on others."

Exemption from inheritance tax is a key issue for many same-sex couples. The Budget process will take full account of the comments that have been received as part of the consultation process and their implications for the tax system.

Religious concerns

3.10 A number of people commented on the proposals on religious grounds. Some felt that any legal recognition of same-sex couples was contrary to the teachings of the Bible and other religious texts. Some said “holy matrimony is not the same as a homosexual liaison” and it would be “deeply offensive to Christians to equate the two”.

“As a Baptist Minister, I cannot see how gay relationships can possibly be equated to marriage. Marriage is a unique institution because it allows for the possibility of children being conceived and nurtured. In marriage, a man and a woman make an exclusive commitment to each other. Whilst I recognise that this does not always work out in practice, no comparable situation can ever apply with homosexual couples.”

3.11 Others made it clear that they felt civil partnerships were entirely compatible with their religious beliefs.

“As a Church of England priest, I warmly and wholeheartedly endorse the proposals for Civil Partnership registration for lesbian and gay couples. Justice for all is one of the central Christian teachings, and at the heart of the Bible. Lesbian and gay people who have made a commitment in a relationship deserve the same rights and benefits as heterosexual couples who marry.”

3.12 Others said that religious organisations should be free to choose whether their faith should allow or forbid same-sex registrations.

It is not for the Government to interfere in matters that are clearly for religious groups to decide for themselves. These are decisions best left to individual faiths. The registration of a civil partnership would be a purely civil process and involves no religious element.

Elderly same-sex couples

3.13 It was stated that in 10 years time there will be more lesbian and gay people aged over 60 than lesbian and gay people aged under 26, and that this raised issues regarding the appropriate treatment of civil partners in nursing homes and those civil partners who might need domiciliary care. Some people expressed concern that proper consideration should be given to the needs of those elderly same-sex couples who register their partnerships and the subsequent recognition and respect of their partnerships in the context of providing and receiving care.

“Some of the responsibilities of registered partners have serious and disadvantageous implications, particularly in older age.”

The national minimum standards for care homes require that residents are treated with respect and dignity and their right to privacy is upheld; that the lifestyle experienced in the home satisfies their social, cultural, religious and recreational interests and needs.

The proposals for civil partners balance the responsibilities of caring for and maintaining a partner with a package of rights – for example, in the area of inheritance.

European Community Law

3.14 It was asked if the Government was proposing a civil partnership registration scheme so as to avoid breaching EC employment laws banning discrimination against people on the grounds of sexual orientation.

"What is the EU law on same-sex marriage/partnerships? Aren't the UK bound to eventually adopt EU rulings?"

The Government is proposing the creation of a new legal status of civil partnership for reasons of general equality and social justice. It will make a real difference to the lives of same-sex partners by providing legal recognition of their relationship. There is no EU law that requires member states to create a legal status for same-sex couples.

The requirements of EC employment law to prohibit discrimination on grounds of sexual orientation are a separate issue and the requirements have been fully implemented by the Government. New employment equality regulations coming into force on 1 December 2003 prohibit discrimination in the workplace on the grounds of sexual orientation for the first time. This is a big step forward.

4. Your responses to our questions

- 4.1 On page 65 of the consultation paper respondents were asked if they wished to comment on eight specific areas arising from the proposed scheme.
- 4.2 We also asked for any other comments. We deal with answers to this question on page 32.

Questions

Are there any other measures that could be taken to further ensure the safe registration of same-sex couples while meeting the need for a public register?

- 4.3 Some people accepted that a public declaration was necessary given the significant commitment being made and to hasten the culture change that civil partnerships will encourage.

Points raised:

- the responsibility to make a public declaration should fall as much on same-sex couples as it does on opposite-sex couples when they marry;
- if the civil partnership scheme was open to opposite-sex, as well as same-sex, couples then people would be less able to use the information to identify a person's sexual orientation.

- 4.4 There was however a widespread concern about protecting the safety of same-sex couples who might register their civil partnership. Fear of homophobic violence is a real concern and many felt that a civil partnership register would provide easy access to the names, addresses and occupations of lesbian, gay and bisexual couples. It was felt by many people that the personal details of those who registered should not be made available to the public.

Points raised:

- many couples would not register a civil partnership because they would not want to "come out" publicly. As one person said: "Why should they be forced to go public to get their rights and responsibilities?"

- couples might be reluctant to sign up knowing this information was being held;
- a person requesting any information about a civil partnership should only be allowed to do so if they had a legitimate interest that could be proved;
- only very limited details should be made public and it should not be possible to find out where a civil partner lived from the information made available to the public;
- information about civil partners should only be made available after an application had been made and the civil partners had agreed that the relevant information could be given out;
- couples who wished to be able to register anonymously should be allowed to do so or should be able to register their civil partnership outside of the area where they live.

The Government proposes that under changes proposed in the consultation paper 'Civil Registration: Delivering Vital Change', registration information would be available to the public but certain information (addresses and occupations) would be restricted.

Do you wish to comment on the proposed recognition arrangements in paragraph 4.19?

4.5 92% of those who responded to this question said that civil partners registered in England and Wales should be entitled, throughout the UK, to all the rights and responsibilities in reserved areas that flow from registration of a civil partnership.

Points raised:

- it would be wrong if same-sex couples in Scotland or Northern Ireland should have to come to England or Wales to register their civil partnership. Where a couple do register their partnership in England or Wales, if on their return to Scotland or Northern Ireland their relationship was not recognised this might prove very difficult and create worrying inequalities throughout the United Kingdom;
- in these cases the Scottish Executive and the Northern Ireland Assembly should be required to acknowledge the same legal rights and protections in their territories as flow from civil partnership registration elsewhere in the United Kingdom.

Differences will be less likely to arise if civil partnerships are also introduced in the other territories. In that regard, the Scottish Executive has said that when and if civil partnership legislation is introduced into the UK Parliament, the legislation should include provision for Scotland. The Executive believes that a Sewel motion and legislation by the UK Parliament would offer the simplest and most appropriate means of ensuring consistency between England and Wales and Scotland.

There has been no decision yet as to whether a civil partnership scheme should be extended to Northern Ireland. The issues are under consideration with a view to consultation in Northern Ireland as soon as possible.

Do you wish to comment on the proposed arrangements for the electoral process in paragraph 7.4?

4.6 79% of those who responded to this question said they agreed with the proposal to amend electoral legislation to refer to civil partners where it refers to spouses.

Points raised:

- civil partners should be treated in the same way as spouses;
- an amendment should be made to include any nominated partner.

The Government proposes that where electoral legislation refers specifically to spouses it should be amended so that it also applies to civil partners.

Do you wish to comment on the possible arrangements for unregistered same-sex couples in relation to income-related benefits in paragraph 7.20?

- 4.7 69% of those that responded to this question agreed that unregistered same sex couples should be treated in the same way as unmarried couples for the purposes of income-related benefits. This would ensure uniformity of treatment and would not deter same-sex couples from entering a civil partnership.
- 4.8 It was also recognised that this might lead to unregistered same-sex couples receiving a lower level of benefit or no benefit at all but some felt that this was acceptable to ensure equality. If this were not done, then the probable loss of benefits for some same-sex couples at the point of registration might prove a deterrent to registering a civil partnership and could therefore undermine the scheme. However, if all couples (married, unmarried, registered in a civil partnership or not) were treated the same then this risk would be alleviated.

Points raised:

- those making decisions about the income-related benefits of unregistered same sex couples would inevitably have to make assumptions about a person's sexual orientation. This would require sensitivity and training. This might also lead to the 'outing' of some same-sex couples;
- respondents expressed concern about the position of home-sharers or cohabitants who were not in a sexual relationship but lived together. If they were assumed to be an unregistered same-sex couple this would entitle them to lower benefit levels or no benefit at all based on an incorrect assumption about their relationship;
- it was wrong to impose financial responsibilities on unmarried or unregistered couples without extending the rights incumbent upon marriage or registration of a civil partnership;
- by failing to open marriage to same-sex couples then the 'equality' argument, that might be used to justify introducing parity between unmarried couples and unregistered couples, could not be used.

The Government proposes that civil partners should be treated as a single family unit for income-related benefits purposes. In addition, where appropriate unregistered cohabiting same-sex couples should also be assessed as a single family unit as is the case for unmarried cohabiting opposite-sex couples. The Government will ensure that this matter is handled sensitively.

Treating same-sex couples (whether registered or unregistered), in the same way as opposite-sex couples (whether married or unmarried) in relation to income-related benefits is the best way to ensure fairness in this area and ensure that a same-sex couple who wish to register a civil partnership would not be financially worse off than they would be if they chose not to register their partnership.

Do you wish to comment on the proposed arrangements for unregistered same-sex couples in relation to child support in paragraph 8.5?

4.9 68% of those that responded to this question felt that unregistered same-sex couples should be treated in the same way as unmarried couples for the purposes of child support.

Points raised:

- it is important that there will be no difference in the treatment of opposite-sex couples and same-sex couples in the assessment of child support;
- where an opposite-sex unmarried couple cohabits with children, a non-resident parent can apply for the child support assessment to be reduced. At the moment this does not apply with a same-sex relationship and this should be changed to provide equal treatment across the board;
- some women with children (and potentially some men with children) share a home but are not partners. They should not have rights over each other's children and no assessment for child support should be reduced on this assumption.

The Government proposes that civil partners should be assessed in the same way as married people for the purposes of child support. The Government also proposes that where married and unmarried opposite-sex couples are currently treated in the same way for the purposes of child support, that same treatment should be extended to civil partners and to unregistered co-habiting same-sex couples.

Where married couples and unmarried couples are treated differently, which is the case in some areas of child support legislation, then the treatment of civil partners should be the same as that of married couples, while unregistered cohabiting same-sex couples should receive treatment equivalent to that of unmarried cohabiting opposite-sex couples.

Are there any other rights and responsibilities not discussed above that you think should be given to registered partners?

4.10 Most of those who answered this question thought that the rights and responsibilities of a civil partnership should be as close to marriage as possible:

Rights and responsibilities raised:

- the other partner in a civil partnership should be able to legally acquire parental responsibility;

The Government proposes that civil partners should be able to acquire parental responsibility in respect of their partner's children in the same way as married people. It is not intended that this should alter the responsibility of the natural parents to support their children.

- coroner legislation should be addressed;

The Government will consider what amendments to coroner legislation would be necessary to achieve parity for civil partners in respect of inquest proceedings.

- student funding criteria needs to be addressed as it refers to opposite-sex couples in its definitions;

The Government proposes that criteria for the funding of students in higher education would be addressed so that same-sex couples are treated in the same way as opposite-sex couples.

What do you think of the term “civil partnership registration”? Is there a term that you would prefer?

4.11 The term “civil partnership registration” attracted both support and criticism.

Points raised:

- some people felt that the term was appropriate as it described exactly the status that was being proposed and it was a positive term;
- others felt that it was too clinical a term and sounded like a business relationship; it was too cold and rather clumsy.

4.12 Building on the arguments put forward for a form of gay marriage, some people felt that rather than introducing a civil partnership scheme, the status of marriage should be opened up to include same-sex couples. The term ‘marriage’ would therefore be the correct one to use.

4.13 Some same-sex couples, however, made it clear that they did not want to ‘marry’ each other but wanted an entirely civil status that had no religious or moral overtones.

4.14 ‘Civil union’ was another popular suggestion, especially as it was a term that was already used in other countries.

Other terms suggested included:

- Civil partnership
- Life partnership registration
- Spousal registration
- Partnership acknowledgement
- Partnership commitment
- Life-Pairing
- Civil commitment
- Act of union
- Register of commitment
- Partner alliance
- Life covenant

The Government proposes that the term ‘civil partnership’ is used for this new legal status for same-sex couples.

Is there a more attractive term to use than “registered partner”? (Feel free to be creative!)

4.15 While some supported the use of the term “registered partner” there was, however, concern that the term sounded too dry and bureaucratic. The term had business and commercial overtones, and sounded rather clinical and legalistic.

Other suggestions included:

- Civil Partner
- Partner
- Life Partner
- Dedicated Partner
- Partner-in-life
- Covenanted Partner
- Legal Partner

- Civil Spouse
- Spouse
- Husband
- Wife
- Co-husband
- Co-wife
- MATE – Married and Together

- Significant Other
- Betrothed
- Beloved

- Lebensabschnittsmitfahrer
(Translation: fellow companion on this part of my journey through life)

The Government proposes that the term ‘civil partner’ be used to refer to those who register a civil partnership.

5. Your Questions

5.1 We asked for comments on any other aspects of the Government's civil partnership proposal. Many similar questions were asked in a variety of different ways. We hope that the clarification below will prove useful.

Creation of a New Legal Status

- Q. Why are you imposing a "heterosexual" model on same-sex couples?
- A. **Civil partnerships are designed to support stable families and to recognise committed, interdependent and loving relationships. The Government does not believe that any of these characteristics or qualities are exclusive to heterosexual people's relationships.**

Formal Requirements

- Q. Sixteen is too young to register a civil partnership; surely eighteen is a more suitable age?
- A. **Registering a civil partnership would constitute a significant life-decision. The law in England and Wales currently considers that at the age of sixteen or seventeen a person can marry with prior consent of an adult or body with responsibility for them. Choosing to register a civil partnership would require no greater decision or commitment.**
- Q. Why are you not proposing to have a provision similar to bigamy for civil partnerships? Why should same-sex couples escape this requirement?
- A. **A bigamist can be prosecuted for committing both bigamy and an offence akin to perjury if they marry whilst they are already in a subsisting marriage. The Government believes that the criminal consequences of the relevant offence akin to perjury, (which are equivalent to those of bigamy), together with the proposals to ensure the validity of civil partnerships, would provide enough deterrent to the offender and provide enough protection to the public.**

Q. If a civil partner marries while already in a civil partnership, what protections will there be for the original civil partner? If the partner who has “married” has any substantial assets there will be scope for two competing claims against them. Which is to prevail?

A. People would be required to end a civil partnership before entering a marriage. If a civil partner purports to marry while already a party to a civil partnership the subsequent marriage would never have been valid. Any individual who goes through a marriage ceremony knowing that he or she is already in a civil partnership would be guilty of the serious offence akin to perjury for which criminal sanctions will apply.

With relation to the assets, the subsisting civil partnership would be the valid and legally recognised relationship as the marriage would be considered by the law as void.

Q. Will transsexual people who have legally changed their gender be allowed to register a civil partnership in their new gender?

A. Yes. Under the proposals contained in the draft Gender Recognition Bill, a person who has gained recognition in their acquired gender, will become legally of the acquired gender. If legislation is passed allowing the registration of civil partnerships, they would therefore be entitled to register a civil partnership in the new gender.

Q. Can existing marriages be automatically converted to a civil partnership at the point of gender recognition and vice versa?

A. Existing marriages or civil partnerships will have to be annulled before recognition in the acquired gender can be given to one of the parties. An individual who has either been married or in a civil partnership prior to receiving recognition in the acquired gender could however, subsequent to receiving recognition, register a civil partnership with, or marry, the same individual. The Government is considering ways in which the gap, during which the relationship of the two parties has no legal status, could be minimised.

The Registration Process

- Q. How will you protect same-sex couples from registration officers who disapprove of civil partnerships and might offer an inferior service?
- A. **There would be a legal requirement on registration officers to provide the means to register a civil partnership and this would have to be provided to the same high standards as for other statutory services.**
- Q. What about those registration officers who would hold a principled and moral objection to conducting a civil partnership registration? Will they be forced to conduct registrations?
- A. **Registration officers would be under a statutory duty to provide a civil partnership registration service.**
- Q. Why can't we have a ceremony?
- A. **The legal requirements of civil partnership registration are likely to involve giving notice of intention to register, meeting the eligibility requirements and signing the civil partnership register in the presence of a registration officer and two witnesses. Same-sex couples could arrange a ceremony in addition if they wish, but this would not be legally required. Responses to the consultation suggest that some couples do want a ceremony and other couples don't. Local authorities would gain responsibility for providing the registration service. Local authorities would be free to offer a ceremony on the day of registration if they so wish. Whether a ceremony is held would be a decision for both the local authority and the couple.**

The Government has no desire to restrict unnecessarily individuals' freedom to celebrate the registration of their civil partnership.

- Q. Will we be able to register outside of the registration office? Can we register in a different area to our own?
- A. **The Government's consultation paper 'Civil Registration: Delivering Vital Change' proposes the removal of current geographical constraints that eventually might allow couples a wider choice of where to access registration services.**
- Q. Will same-sex couples be able to register a UK civil partnership abroad?
- A. **The Government is carefully considering whether to offer same-sex couples the facility to register their partnership at a UK diplomatic post abroad in certain circumstances, in a similar way as applies for marriage. However, any such facility would depend on there being insufficient facilities to register a civil partnership under the law of the foreign country where they resided, and on the agreement of the country in question.**

Recognition of Overseas Partnership Schemes

- Q. Will you recognise civil partnerships, same-sex marriages and cohabitation agreements entered into outside the UK?
- A. **The Government is minded to set out specific criteria that overseas partnership schemes would have to meet in order for the UK Government to recognise them as conferring the status of civil partnership under English law.**

The Dissolution Process

Q. Why not operate a no-fault dissolution process?

A. The previous Government passed legislation attempting to institute no-fault divorces in marriage law. Pilot exercises testing the provision of divorce information indicated that the legislation would not achieve its policy objectives of saving saveable marriages and reducing conflict on divorce. The Government has decided not to implement the provisions and to repeal them when a suitable legislative opportunity arises.

The Government therefore does not think that this would be an appropriate model for civil partnerships.

Q. Adultery has been omitted as a ground for dissolution. Is it intended that adultery be a possible unreasonable behaviour ground for dissolution?

A. Yes. Adultery has a specific meaning within the context of heterosexual relationships and it would not be possible nor desirable to read this across to same-sex civil partnerships. The conduct of a civil partner who is sexually unfaithful is as much a form of behaviour as any other. Whether it amounted to unreasonable behaviour on which dissolution proceedings could be grounded would be a matter for individual dissolution proceedings.

Q. Why not include a pre-nuptial style agreement to enable property issues to be agreed in advance of dissolution, rather than copy divorce proceedings?

A. Couples are free to set up a pre-partnership agreement if they wish but these forms of agreements would not be legally binding as financial and personal circumstances often change over the course of a relationship.

Q. Why is desertion not a fact to prove irretrievable breakdown in the dissolution of a civil partnership?

A. After further consideration the Government proposes that desertion of one civil partner by the other should be a fact that could be brought as evidence of irretrievable breakdown. This provision will assist in some circumstances and will also help some partners who have to apply for maintenance.

Q. Could the transmission of a venereal disease from one civil partner to another make a civil partnership voidable, as it is for marriage? What about non-consummation?

A. It is a medical fact that men and women may carry certain venereal diseases over many years, without their knowledge. We do not believe it is appropriate in present day circumstances to include this as a ground to nullify a civil partnership. The deliberate transmission of a sexually transmitted disease might well be considered as a basis for dissolution as a fact proving unreasonable behaviour.

Consummation has a specific meaning within the context of heterosexual relationships and it would not be possible nor desirable to read this across to same-sex civil partnerships. The absence of any sexual activity within a relationship might be evidence of unreasonable behaviour leading to the irretrievable breakdown of a civil partnership, if brought about by the conduct of one of the parties. However, that would be a matter for individual dissolution proceedings.

Q. Is there a duty to cohabit as there is for marriage? What about older gay couples who maintain separate households and have done so for many years? Will they be forced to live together?

A. The obligation to cohabit in the case of marriage arises from the common law and can no longer be enforced. However, it does still underlie the ground on which a married person can seek a divorce (for example in support of the facts of desertion and separation) where it operates to specify a norm of behaviour. The Government is proposing that separation, desertion and unreasonable behaviour will apply for dissolution of a civil partnership in the same way as for divorce.

Cohabitation means living in a shared household. The obligation to cohabit can be achieved by separate homes, which can form one household if this is the customary arrangement for the partners concerned. The duty to maintain and support each other would nevertheless be as real for them as for same-sex couples living in the same home or sharing households.

If two civil partners do not have a shared household that would be a matter for them, and no-one will force them to live together. The situation is no different for married couples.

On dissolution of a civil partnership where there has been no shared household, these circumstances would be taken into account by the court when considering the facts of the case in the dissolution proceedings.

Rights and Responsibilities

- Q. Why should I lose out on some rights by choosing not to register a civil partnership?
- A. The registration of a civil partnership involves both legal obligations as well as legal protections. It would not be appropriate for couples to gain all the rights without any of the responsibilities. Certain rights, for example, protection from domestic violence would not be dependent upon the registration of a civil partnership.⁹

Immigration

- Q. Non-married partners must be resident for five years to qualify for naturalisation as a British citizen and married partners only three years. Will registered same-sex partners be able to qualify after three or five years?
- A. The Government intends to amend British nationality law to put civil partners on the same footing as spouses. A three year residence period will apply to both.
- Q. If the civil partnership law comes into force will this mean that my same-sex partner who lives in a different country will be able to come and live here in England with me?
- A. If you are a UK national, your same-sex partner will be able to apply for entry clearance to come to the UK to register a partnership with you. Once entry clearance is obtained and you have registered, your partner may apply for leave to remain in the UK for two years in the first instance. At the end of this period and provided the partnership is still subsisting and other criteria are met, application can be made for settlement.

⁹ Safety and Justice: The Government's Proposals on Domestic Violence" set out how the Government proposes to amend the "associated person" criteria of the Family Law Act 1996 to provide same-sex couples who are cohabiting with the same levels of protection as cohabiting opposite-sex couples. The Government intends to legislate at the earliest possible opportunity.

Hospital Visiting and Medical Treatment

- Q. Why can't the registration of a civil partner make me the legal "next of kin"?
- A. **There is no legal definition of "next of kin" in respect of hospital visiting. The visibility of civil partnerships should lead to far greater recognition of same-sex relationships and should make it much more unlikely that medical staff could ignore the status of such a relationship.**

Pensions

- Q. We are concerned that the current proposals for state pensions will require ten years to implement and we want to know how survivor pensions in occupational schemes will be calculated.
- A. **These are important areas of policy and the Government is actively pursuing the most appropriate approach to take.**
- Q. Why can't civil partnerships happen before 2010?
- A. **The reference to 2010 in the consultation document referred to some elements of state pensions which are being equalised between men and women, not to any other proposals relating to civil partnerships.**

Life Insurance

- Q. Will insurance companies be allowed to discriminate against civil partners?
- A. **The Government intends to create a level playing field between married couples and civil partners in terms of how they are treated for life insurance purposes by creating a presumption that civil partners have an unlimited insurable interest in each other's lives. This will be of particular significance for civil partners who intend to take out a joint mortgage. It is in the interests of both the industry and of society that people who apply for insurance are treated fairly and with respect and have their premiums set such that they reflect the relative risk that they bring to the insurance pool.**

Children

- Q. Will my civil partner get automatic parental responsibility over my children?
- A. It will be open to civil partners to treat any children as children of their family. We intend to ensure that civil partners will have all the same rights and responsibilities as married step-parents. As is the case with married couples civil partners will be the step-parent of their partner's children from another relationship, but this does not automatically include having parental responsibility.

However, the Adoption and Children Act 2002 recognised that step parents often play a significant role in bringing up children of the family and has changed the law so that step-parents will be able to acquire parental responsibility, either by applying to the court for a parental responsibility order or by making a parental responsibility agreement with the child's parents.

Cost

- Q. How much is this going to cost the Government?
- A. Overall there would be costs and savings to the tax payer associated with the rights and responsibilities that would be given to civil partners. Initial costs are detailed in the Regulatory Impact Assessment in the consultation paper. A full Regulatory Impact Assessment would accompany any future legislation. Couples are likely to be charged a fee for the giving of notice and for the registration process. These fees will be set to recover the costs of providing those services.
- Q. Same-sex couples can't have children so why do they need all these benefits? These rights and responsibilities were designed for opposite-sex couples who bring up children.
- A. It is already the case that many children are brought up by same-sex couples. The Government considers it appropriate that same-sex couples who register a civil partnership should have access to those benefits and duties that help to support stable families.

Many married couples do not have children but their access to the rights and responsibilities of marriage are not limited because they do not raise a family. There is no justification for limiting same-sex couples' rights and responsibilities if they do not have children.

Implementation

- Q. Will the Government publicise this properly, educating the public and employers about the new legal status?
- A. **Yes. The introduction of a civil partnership scheme would be an important social change and employers would need guidance on what the scheme would mean for them and their employees. The culture change that would flow from the recognition of same-sex couples' relationships would lead to a greater appreciation of diversity and the Government actively supports this.**
- Q. If we register a civil partnership will we have to declare our sexual orientation every time we fill out a form?
- A. **It is envisaged that Government forms currently asking for details of a person's "marital status" would be altered to read "civil status". This category would then include both marriage and civil partnership and there would be no automatic presumption of someone's sexual orientation. Other requests for personal details would be amended, wherever possible, to ensure that references specific to marriages or civil partnerships were replaced with neutral terms.**

Name changes

- Q. Can I change my name to my partner's if I register a civil partnership with him/her?
- A. **Yes. An individual would be free to change their surname to their civil partner's if they so wished. A person would be responsible for ensuring that those organisations with their personal details would need to be notified of their name change. There is currently nothing to prevent a person changing their name to their partner's now. An individual may need to document that change by a change of name deed if they are asked for evidence of their name change. A person's name is acquired by "usage and reputation", so there would be no legal requirement to take (or not take) the name of a civil partner.**

Discrimination

- Q. Will civil partners be protected from discrimination on the grounds of being in a civil partnership?
- A. **The Government is proposing that it would be unlawful for an employer to discriminate against a person on the ground that he or she is in a legally recognised relationship (which would cover either marriage or civil partnership). Discrimination against people in employment and vocational training, on the grounds of sexual orientation, will be prohibited by the new Employment Equality (Sexual Orientation) Regulations that come into effect from 2 December 2003.**

Legislation

- Q. When will this proposal become law?
- A. **The Government will introduce legislation for a civil partnership scheme as soon as parliamentary time allows.**

Comments or Complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Philip Martin, DTI Consultation Co-ordinator, Room 725, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or mail to Philip.Martin@dti.gsi.gov.uk

If you have any queries on the consultation please call Guy Horsington in the Women and Equality Unit on 0207 276 2291.

Publication of Responses

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential.

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