

**“CIVIL PARTNERSHIP:  
A LEGAL STATUS FOR COMMITTED  
SAME-SEX COUPLES IN NORTHERN  
IRELAND”**

**A Consultation by the Office of Law Reform  
Department of Finance and Personnel**

# **CONTENTS**

## **PART A: OVERVIEW**

### **MINISTERIAL FOREWORD**

#### **1. EXECUTIVE SUMMARY**

- A New Legal Status to End Disadvantage
- Legal Consequences: Rights and Responsibilities
- Formal Procedures

#### **2. INTRODUCTION AND STRUCTURE OF THIS PAPER**

- Introduction
- Structure of this Paper
  - Overview
  - Rights and Responsibilities
  - The New Legal Status
  - The Proposal and How to Respond

#### **3. BACKGROUND AND CONTEXT**

- Introduction
- Fairness, Equality and Social Justice
- The UK Government Approach
- The Northern Ireland Context
- The Way Forward for Northern Ireland

## **PART B: RIGHTS AND RESPONSIBILITIES**

#### **4. OVERVIEW**

- Table of transferred, reserved and excepted matters

## **5. DURING THE CIVIL PARTNERSHIP**

- 5.1 Immigration
- 5.2 Elections
- 5.3 Giving Evidence in Court
- 5.4 Making Decisions on Behalf of Adults with Mental Incapacity
- 5.5 Prison Visiting
- 5.6 Protection from Domestic Violence
- 5.7 Adoption
- 5.8 Parental Responsibility
- 5.9 Hospital Visiting and Medical Treatment
- 5.10 Income-Related Benefits
- 5.11 Increases for Dependants
- 5.12 State Pensions
- 5.13 Life Insurance

## **6. ON DISSOLUTION OF A CIVIL PARTNERSHIP**

- 6.1 Children – Residence and Contact
- 6.2 Child Support
- 6.3 Maintenance for Former Partners and Children of the Family
- 6.4 Property Division on Dissolution of the Partnership

## **7. UPON THE DEATH OF A CIVIL PARTNER**

- 7.1 Registering the Death of a Partner
- 7.2 Inquests and Burial
- 7.3 Post Mortems and Organ Retention
- 7.4 Bereavement Benefits
- 7.5 Survivor Pensions – Private Pension Schemes
- 7.6 Survivor Pensions – Public Service Pension Schemes
- 7.7 Injury Benefits
- 7.8 Fatal Accidents Compensation
- 7.9 Criminal Injuries Compensation
- 7.10 Intestacy
- 7.11 Inheritance
- 7.12 Tenancy Succession

## **PART C: THE NEW LEGAL STATUS**

### **8. FORMAL REQUIREMENTS**

- 8.1 Introduction
- 8.2 Age
- 8.3 Exclusivity
- 8.4 False Declarations
- 8.5 Prohibited Degrees of Relationship

### **9. THE REGISTRATION PROCESS**

- 9.1 Introduction
- 9.2 Delivery of Civil Partnership Registration
- 9.3 Requirement to Give Notice
- 9.4 Waiting Period
- 9.5 Exceptions to the Waiting Period
- 9.6 Location
- 9.7 Registration for those who are Housebound or Detained
- 9.8 Cost
- 9.9 Procedure
- 9.10 Privacy Issues
- 9.11 Recognition of Civil Partnerships Across the UK
- 9.12 Recognition in Northern Ireland of Civil Partnerships Registered outside the UK

### **10. THE DISSOLUTION PROCESS**

- 10.1 Introduction
- 10.2 Grounds for Dissolution
- 10.3 Formalities and Procedure
- 10.4 Void and Voidable Registered Civil Partnerships
- 10.5 Order for Separation
- 10.6 Public Funding for Dissolution

## **PART D: THE PROPOSAL AND HOW TO RESPOND**

### **11. SUMMARY OF THE PROPOSAL**

### **12. YOUR RESPONSE**

**Annex A REGULATORY IMPACT ASSESSMENT**

**Annex B EQUALITY IMPACT ASSESSMENT**

## **MINISTERIAL FOREWORD**

At present there is no recognised legal status accorded to same-sex couples who want to formalise their relationship and live their lives in partnership together. There is no legal framework of rights and responsibilities to acknowledge, reflect or support their commitment to each other. This feature of our current law causes serious inequality and social injustice.

The disadvantages faced by committed same-sex couples range across a wide spectrum of rights and responsibilities. It might be something like finding oneself excluded from a hospital visit to a seriously ill partner, or losing possessions or a home one has shared for years when a partner dies without leaving a will. It might involve immigration, social security or pension rights or protection from domestic violence.

The Government has announced proposals to remedy this situation in England and Wales through a Civil Partnerships Bill. This Bill will create a scheme for registering civil partnerships. Same-sex couples who register will obtain the new legal status of "civil partner", which will enable them to access a range of rights and responsibilities. The Scottish Executive has said that it intends to invite the Scottish Parliament to agree that provisions to introduce similar reform for Scotland should be included in the forthcoming Bill.

This paper now addresses these issues in the Northern Ireland context. It proposes that a civil partnership registration scheme should be introduced for Northern Ireland, to ensure that people here have equality and parity of treatment with others throughout the United Kingdom. In order to achieve this, it proposes that provisions for Northern Ireland should be taken forward at the same time as legislation for the rest of the United Kingdom.

I welcome your views on these proposals.

**IAN PEARSON**

**Parliamentary Under-Secretary of State**

# 1. EXECUTIVE SUMMARY

## *A New Legal Status to End Disadvantage*

- 1.1 Committed same-sex couples face many disadvantages in their day-to-day lives because there is no legal recognition of their partnerships. Unlike opposite-sex couples, who can choose to formalise their relationships through marriage, same-sex couples have no way in which they can gain legal recognition of their rights and responsibilities together.
- 1.2 It is proposed to create schemes in the United Kingdom under which committed same-sex couples would be able to register their partnerships and attain a new legal status of 'civil partner'. This would enable 'civil partners' to set their rights and responsibilities together within a formal legal framework.

## *Legal Consequences: Rights and Responsibilities*

- 1.3 On registration, civil partners would acquire legal rights and responsibilities, which would operate during the civil partnership, on dissolution of the civil partnership and on the death of one of the civil partners. This would acknowledge that the parties had made a commitment to each other and help them to organise their lives together as civil partners.
- 1.4 Rights and responsibilities would include:
- joint treatment for income-related benefits or state pensions;
  - recognition for immigration purposes;
  - arrangements for property division on dissolution of the partnership;
  - right to register the death of a partner;
  - new inheritance, intestacy and compensation rights.
- 1.5 The legal rights and responsibilities conferred on civil partners would, to a large extent, reflect those of marriage but civil partnership is not marriage and marriage will remain the union of one man and one woman. Same-sex

partnership registration schemes already operate alongside marriage in some other countries within the European Union and elsewhere.

### ***Formal Procedures***

- 1.6 A couple wishing to register their civil partnership would be required to give the Registrar 14 days' notice of the intention to register the partnership and to sign a civil partnerships register. The couple would be required to declare that they were not in an existing civil partnership or marriage.
  
- 1.7 The legal status of civil partnership is intended only for committed, exclusive and permanent partnerships. It is recognised, however, that the civil partnership might break down. In this event, there would be a formal, court-based process for dissolution of the civil partnership on the ground that it had broken down irretrievably.

## 2. INTRODUCTION AND STRUCTURE OF THIS PAPER

### *Introduction*

2.1 Civil partnership is not a new concept and civil partnership schemes exist in a number of countries across the world. For example, there are same-sex partnership schemes giving certain rights and responsibilities to same-sex couples in most of the Member States of the European Union. There are also schemes in some Canadian, United States and Australian jurisdictions. A proposal is under consideration in New Zealand.

2.2 The Office of Law Reform has been considering options for the introduction of a same-sex partnership registration scheme in Northern Ireland. We have examined the recent proposals for the introduction of civil partnership registration schemes in England and Wales and in Scotland.

2.3 In June 2003, the Department for Trade and Industry ("DTI") published a consultation paper on civil partnership registration for same-sex couples in England and Wales.<sup>1</sup> The Scottish Executive has also published a consultation paper<sup>2</sup> and has announced that, in the event that the Parliament at Westminster takes forward legislation, it is proposed to include Scottish provisions in a Civil Partnerships Bill for Great Britain.

2.4 The thrust of these proposals from the DTI and the Scottish Executive is that a new legal status of "civil partner" should be created. This would enable same-sex couples to register their partnership and from then on be treated in law as a family unit, in a similar way to married couples. Certain defined rights and responsibilities would follow as a consequence of the registration of their civil

---

<sup>1</sup> 'Civil Partnership: A framework for the legal recognition of same-sex couples' (<http://www.dti.consultations/pdf/consult-civil.pdf>.) See also Government's Report on Responses: <http://www.womenandequalityunit.gov.uk/research/index.htm#cp-responses>

<sup>2</sup> 'Civil Partnership Registration: A Legal Status for Committed Same-Sex Couples in Scotland' (<http://www.scotland.gov.uk/consultations/justice/cprs-00.asp>.)

partnership. In this way, many of the inequalities that same-sex couples face in their day-to-day lives could be remedied.

- 2.5 There are strong equality and social justice arguments in favour of the introduction of civil partnership registration. There are also strong parity arguments in favour of the introduction of co-ordinated schemes across the United Kingdom, that is to say, including provisions for a Northern Ireland scheme alongside the proposals for England and Wales and Scotland.
- 2.6 In order to alleviate the inequalities and social injustices experienced by same-sex couples in Northern Ireland and to ensure parity across the United Kingdom, we propose that, in the event that the UK Parliament takes forward legislation, civil partnership registration for Northern Ireland should be taken forward at the same time.
- 2.7 This paper addresses these issues and other relevant matters in the light of the proposals put forward for England and Wales and Scotland. It considers the extent to which the proposals might provide a suitable means of remedying the inequalities and social injustice which currently affect same-sex couples in Northern Ireland.
- 2.8 It should be emphasised at this point that, even if it is decided that a civil partnership scheme should *not* be introduced in Northern Ireland, there are certain implications of the proposals for England and Wales and Scotland which would extend to Northern Ireland. Under the Government's proposals, same-sex couples living in Northern Ireland could travel to another part of the United Kingdom to register their civil partnership. The Government's intention, expressed in the DTI consultation paper, is that people who register a civil partnership in England and Wales and then move or return to Northern Ireland, should continue to be entitled to those rights and accept those responsibilities flowing from areas of law for which legislation is generally made in Parliament at Westminster, ("excepted" and "reserved" matters) rather than in the devolved administration in Northern Ireland ("transferred" matters).

- 2.9 Without a civil partnership scheme in place in Northern Ireland, even those couples who were able to travel to other parts of the United Kingdom to register their partnership could, on their return to Northern Ireland, access rights and responsibilities in the “excepted” and “reserved” areas of law only. This would mean that many rights and responsibilities relevant to civil partners, such as social security, financial support and fatal accident compensation, could not be accessed because they are “transferred” matters (please see Table at paragraph 4.4 below which further explains “excepted”, “reserved” and “transferred” matters).
- 2.10 We want to ensure that same-sex couples in Northern Ireland have equality with their counterparts in other parts of the United Kingdom in all areas of law, whether “transferred”, “reserved” or “excepted”.

### *Structure of this Paper*

- 2.11 This paper has been divided into 4 main parts as detailed below:-
- **Part A ‘Overview’** provides background and context to the concept of civil partnership registration, explains the important fairness, equality and social justice arguments in the context of Europe, the United Kingdom and Northern Ireland and discusses the benefits for Northern Ireland of inclusion in a UK-wide Civil Partnerships Bill.
  - **Part B ‘Rights and Responsibilities’** highlights the major areas of law which currently fail to give legal recognition to same-sex couples and so cause disadvantage during partnerships, after partnerships end and on the death of a partner.
  - **Part C ‘The New Legal Status’** explains the eligibility requirements and formalities for entry into a civil partnership and the grounds for, and the processes involved in, the dissolution of a civil partnership.

- **Part D ‘The Proposal and How to Respond’** summarises the proposals for civil partnership outlined in this Consultation document and details how and when to respond to the Consultation. Responses must be sent in writing or by e-mail to the Office of Law Reform no later than 5 March 2004.

### **3. BACKGROUND AND CONTEXT**

#### *Introduction*

- 3.1 This chapter explains the background to the proposal to introduce civil partnership registration for same-sex couples in Northern Ireland, alongside similar schemes proposed for Great Britain. It sets the complicated and sensitive issue of civil partnership registration in context.

#### *Fairness, Equality and Social Justice*

- 3.2 There is significant unfairness and inequality caused by the fact that, although many committed same-sex couples live, to all intents and purposes, as families, they experience serious social disadvantages. For example, many have been refused a hospital visit to see their seriously ill partner or, on the death of their partner, have been denied financial or property rights despite having supported their partner for many years. This is not acceptable.
- 3.3 A number of European Union Member States such as France and the Netherlands, as well as some states and jurisdictions in the United States, Canada and Australia have sought to remedy such inequalities by introducing civil partnership registration schemes. Such schemes give committed same-sex couples the choice to register their partnership and take up the rights and responsibilities which flow from registration.
- 3.4 In the European Union, the Employment Framework Directive (2000/78/EC), which prohibits discrimination in employment and training on grounds including sexual orientation, with a view to putting into effect the principle of equal treatment, is important because it is the first European measure which gives legal protection on grounds of sexual orientation. These obligations have been implemented by the Employment Equality (Sexual Orientation) Regulations (NI) 2003 which came into operation on 2 December 2003. There

is, however, no EU law that requires Member States to create civil partnership registration.

### ***The UK Government Approach***

- 3.5 The Government's proposals are a response to the serious disadvantages experienced by committed same-sex couples at present, in the absence of legal recognition of their relationships.
- 3.6 The Government considers that disadvantages, such as the refusal of a hospital visit to see a seriously ill partner or the fact that a same-sex couple who have supported each other financially for many years often have no way of gaining pension rights, are not acceptable. The Government views civil partnership registration as important in promoting social equality and social justice.
- 3.7 The Government believes that the most effective way to ensure legal recognition of same-sex relationships is by an opt-in civil partnership registration scheme. By opting to register their partnership, the couple would demonstrate the seriousness of their commitment, formalise their rights and responsibilities to one another and set them within a clear legal framework.
- 3.8 This new legal status would promote and support stable and committed relationships. It would clarify the nature and extent of rights and responsibilities. In the event of irretrievable breakdown of the civil partnership, it would also facilitate formal dissolution and its legal consequences.
- 3.9 Whether during the civil partnership, or after its dissolution, or on the death of a civil partner, legal recognition would ensure legal certainty in determining when rights and responsibilities flowing from the partnership began and ended. This certainty is preferable to the present legal uncertainties and consequent difficulties in this area.

### *The Northern Ireland Context*

- 3.10 In addition to the fairness and equality issues which affect England and Wales and Scotland, Northern Ireland has equality and parity obligations set within its constitutional framework.
- 3.11 For example, one of the requirements under section 75 of the Northern Ireland Act 1998 is that public authorities must, in exercising their functions, have due regard to the need to promote equality of opportunity between persons of different sexual orientation. Civil partnership will provide a further means to promote equality.
- 3.12 There is a specific question of parity throughout the United Kingdom in relation to social security, a transferred matter under the Northern Ireland Act 1998. There is a long-standing policy of parity in social security and that has now been given a statutory basis in section 87 of the 1998 Act. The result is that the two social security systems in Great Britain and Northern Ireland virtually operate as one, with changes in Great Britain mirrored here from the same date. It is important that that approach should be maintained as regards the introduction of civil partnerships.
- 3.13 Apart from social security, there is a broader issue of parity across the United Kingdom. If Northern Ireland did not introduce a civil partnership registration scheme, there would be considerable disparity in the rights afforded to same-sex couples in Northern Ireland compared to same-sex couples in other parts of the United Kingdom. Under the Government's proposals, same-sex couples living in Northern Ireland could travel to another part of the United Kingdom to register their civil partnership.
- 3.14 We do not believe that couples should have to travel to other parts of the United Kingdom to register their civil partnership if they wish to avail of the opportunity to acquire the new legal status as this would cause disadvantage to same-sex couples on low incomes or with certain disabilities. Further, without

legislation which puts a scheme in place in Northern Ireland, even those couples able to travel to another part of the United Kingdom to register their partnership would not enjoy the full package of rights on their return. They would find that local Northern Ireland law did not accord them the same entitlements here as their counterparts in the rest of the United Kingdom were able to access. They would continue to enjoy only those rights and responsibilities which would apply to Northern Ireland under the Great Britain legislation.

### *The Way Forward for Northern Ireland*

- 3.15 Reference has already been made (see para 2.8 to 2.10 above) to the fact that the introduction of civil partnership registration schemes involves reform of various areas of law. This mix of issues is discussed in detail in Parts B and C of this paper and is illustrated by the Table at paragraph 4.4.
- 3.16 Some of the subject matter falls in the devolved or transferred field and is therefore the responsibility of the Northern Ireland Executive, Assembly and Departments. Other issues are outside the remit of the devolved institutions and are the concern of the UK Government and Parliament. There is a complex web of statutory legislative provisions to be constructed in introducing civil partnership registration schemes across the three jurisdictions of the United Kingdom – England and Wales, Scotland and Northern Ireland. At the same time we must ensure that the schemes are mutually compatible and co-ordinated and give proper equality and parity of treatment, to people moving throughout the United Kingdom.
- 3.17 Against this background, much thought has been given to finding the best way forward for Northern Ireland. The proposal in this paper is that Northern Ireland provisions should be included in a single UK-wide Civil Partnerships Bill. This Bill would set up civil partnership registration schemes for England and Wales, Scotland and Northern Ireland. Same sex

couples in each jurisdiction could register their partnerships in the most appropriate location available to them provided they satisfied the relevant eligibility criteria. They would then have access to a comprehensive package of rights and responsibilities, extending across excepted, reserved and transferred matters. Their status and their rights and responsibilities would be essentially the same as people in all other parts of the United Kingdom.

- 3.18 The introduction of a civil partnership registration scheme in Northern Ireland, through a Civil Partnerships Bill that extends across the United Kingdom, would complement and extend various aspects of our existing equality protections and would ensure that same-sex couples in Northern Ireland have equality and parity with their counterparts in the rest of the United Kingdom.

## **PART B: RIGHTS AND RESPONSIBILITIES**

### **4. OVERVIEW**

- 4.1 In many instances and for many purposes, the law confers rights and responsibilities according to the relationship that exists or formerly existed between one person and another. Perhaps the most obvious relationships which enjoy special legal status and confer legal obligations, such as financial provision and care, are the relationships of husband and wife or parent and child. At present, however, relationships between committed same-sex couples are not recognised by law.
- 4.2 The reality of modern life is that, even without any legal recognition or protection, many committed same-sex couples already undertake major obligations such as sharing financial resources or the upbringing of children. Providing a legal framework to give recognition, protection and clarity is a way of reflecting this existing reality. It is envisaged that civil partners would have a wide range of legal obligations towards each other and these are discussed below.
- 4.3 This Part of the paper identifies a number of areas of law which need to be amended to reflect the reality of, and to create legal certainty in relation to, committed same-sex relationships. This reform of the law will clarify the rights and responsibilities of each partner during the civil partnership, if the civil partnership is dissolved and on the death of a partner.
- 4.4 These areas of law cover “transferred”, “reserved” and “excepted” matters, as explained in paragraphs 2.8 and 2.9 above and identified in the Table below.

**TABLE OF TRANSFERRED, RESERVED AND EXCEPTED MATTERS**

<b>Transferred</b>	<b>Reserved</b>	<b>Excepted</b>
(legislation for Northern Ireland on these matters would normally be made in the devolved Northern Ireland administration)	(legislation for Northern Ireland on these matters would normally be made in Parliament at Westminster)	(legislation for Northern Ireland on these matters would normally be made in Parliament at Westminster)
Making Decisions on Behalf of Adults with Incapacity	Giving Evidence in Court (criminal)	Immigration
Protection from Domestic Violence (civil law issues)	Prison Visiting	Elections
Adoption	Criminal Injuries Compensation	Recognition of partnerships registered outside the United Kingdom (some aspects are transferred matters)
Family Law: Parental Responsibility, Children: Residence, Contact and Child Support, Maintenance	Inquests and Burials (Coroners Courts)	
Hospital Visiting and Medical Treatment	Life Insurance (part)	
Social Security Benefits		
Pensions		
Life Insurance (part)		
Property division		
Registering a death		
Post Mortems and Organ Retention		
Fatal Accidents Compensation		
Intestacy		
Inheritance		
Tenancy Succession		
The Registration Process		
The Dissolution Process		

## **5. DURING THE CIVIL PARTNERSHIP**

### **5.1 Immigration (Excepted Matter)**

5.1.1 The Immigration Rules set out the existing conditions under which people can apply for leave to enter or remain in the United Kingdom. Under the current law, the same-sex partner of someone present and settled in the United Kingdom can apply for leave to enter the United Kingdom and then limited leave to remain provided that:

- (a) they have been living together in a relationship akin to marriage for two years or more;
- (b) any previous marriage or similar relationship by either partner has permanently broken down;
- (c) they can maintain and accommodate themselves and any dependant without recourse to public funds in accommodation which they own or occupy exclusively; and
- (d) they intend to live together permanently in the United Kingdom.

At the end of a two-year probationary period the partner can then apply for indefinite leave to remain.

5.1.2 The requirement for two years' cohabitation prior to the application for leave to enter and limited leave to remain is designed to ensure that the partners are in a long-term committed relationship, and that the Immigration Rules are not being abused. Married couples are not required to cohabit for two years prior to applying for leave to enter or leave to remain because their marriage is taken as evidence of the permanent nature of the relationship.

**5.1.3 The Government proposes that the Immigration Rules should be changed to remove the two years' prior cohabitation requirement for civil partners. The two-year probationary period will continue.**

## **5.2 Elections (Excepted Matter)**

5.2.1 There are numerous rights and responsibilities, such as voting by proxy and assisting certain voters to cast their vote, that are specifically restricted to spouses because they have a legally recognised relationship.

**5.2.2 The Government proposes that where electoral legislation refers specifically to spouses it should be amended to include civil partners.**

## **5.3 Giving Evidence in Court (Reserved Matter)**

5.3.1 Article 79 of the Police and Criminal Evidence (Northern Ireland) Order 1989 currently deals with the situation where a person may be called upon to give evidence in proceedings against his or her spouse. In relation to criminal proceedings where one spouse is the accused or co-accused, the other spouse can only be compelled to give evidence for the prosecution if the offence involves an assault to the wife or husband or a person under the age of 17, or the offence is a sexual offence committed against a person under 17, or the offence is one of attempting to commit or aiding or abetting etc the commission of either of the two offences. Once the relevant part of the Criminal Evidence (Northern Ireland) Order 1999 is commenced the references to a person under the age of 17 will be changed to references to a person under the age of 16.

**5.3.2 The Government proposes that people in a civil partnership should not be compellable to give evidence against their partners except where the partner is charged with any of the offences mentioned above.**

#### **5.4 Making Decisions on Behalf of Adults with Mental Incapacity (Transferred Matter)**

5.4.1 The area of law which governs decisions made on behalf of adults with mental incapacity is currently under review.

**5.4.2 The Government proposes to ensure that married couples and civil partners will have the same rights under the proposals for new legislation.**

#### **5.5 Prison Visiting (Reserved Matter)**

5.5.1 The Prison Service finances an Assisted Prison Visits Scheme administered by the Social Security Agency. The scheme allows close relatives and partners of either sex of people in custody throughout the United Kingdom, who are in receipt of benefit and could not otherwise afford the cost of visiting regularly, to obtain assistance with the cost of making visits to prison. Unmarried partners who apply for assistance under the scheme are required to provide proof of the relationship.

**5.5.2 The Government proposes that civil partners should be treated on the same basis as married partners in terms of the information required as proof of relationship.**

#### **5.6 Protection from Domestic Violence (includes both Reserved and Transferred Matters)**

5.6.1 A variety of civil remedies for domestic violence is provided in the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Currently, some aspects of the legislation are the subject of consultation which is being undertaken by an interdepartmental Group, headed by the Department of Health, Social Services and Public Safety and the Northern Ireland Office. The consultation paper is available from the Department of Health, Social Services

and Public Safety website<sup>3</sup>. The consultation paper acknowledges that people in same-sex relationships experience domestic violence. It also acknowledges that same-sex couples do not currently enjoy the right to apply for orders which regulate the occupation of the family home.

**5.6.2 The Government proposes to ensure that civil partners have the same protection as spouses from domestic violence.**

**5.7 Adoption (Transferred Matter)**

5.7.1 The current legal framework for domestic adoption is set out in the Adoption (Northern Ireland) Order 1987. Under that Order, a single person (regardless of sexual orientation) can apply to adopt a child on his or her own, but only married couples may jointly apply to adopt.

5.7.2 The Adoption and Children Act 2002, which overhauls the corresponding legislation in England and Wales, contains provisions that will facilitate joint applications from unmarried couples. This means that, if a same-sex couple is assessed as suitable to adopt and obtain an adoption order, both partners will be treated as the child's legal parents. This applies in England and Wales only.

**5.7.3 The Government intends to review adoption law in Northern Ireland with the intention of bringing forward legislation which will reform and consolidate existing law. This review will involve public consultation on the whole range of issues regarding adoption, including same-sex adoption.**

---

<sup>3</sup> [Tackling Violence At Home - The Government's Proposals on Domestic Violence in Northern Ireland \(http://www.dhsspsni.gov.uk/publications/2003/domestic\\_violence/domestic\\_violence.html.\)](http://www.dhsspsni.gov.uk/publications/2003/domestic_violence/domestic_violence.html)

## **5.8 Parental Responsibility (Transferred Matter)**

5.8.1 Having parental responsibility for a child means being able to take decisions that affect a child's life, such as where the child goes to school or consenting to medical treatment. It is not necessary to be the biological parent to have parental responsibility and not every parent has parental responsibility for their children.

5.8.2 Under the Children (Northern Ireland) Order 1995, mothers automatically have parental responsibility as do fathers who are married to the mother at the time of the birth of the child. Unmarried fathers may acquire parental responsibility by jointly registering the birth of the child with the mother, by entering into a parental responsibility agreement with the mother and registering it with the court or by obtaining an order of the court. Other people can acquire parental responsibility, for example if they have been granted a residence order in relation to the child.

5.8.3 The children of civil partners will be treated as children of the family. Civil partners will be the step-parents of their partner's children. Since 2002, step-parents in Northern Ireland have been able to apply to the court for a parental responsibility order in relation to their spouse's children.

**5.8.4 The Government proposes that civil partners should be able to apply to the court to gain parental responsibility for their partner's children in the same way as step-parents.**

## **5.9 Hospital Visiting and Medical Treatment (Transferred Matter)**

5.9.1 Although there is no law governing these issues, many same-sex couples have experienced difficulties in visiting their partners in hospital and acting as 'next-of-kin'. There is, in fact, nothing to prevent same-sex partners acting as 'next-of-kin'.

**5.9.2 The Government believes that the creation of the status of civil partner will help to bring about a change in attitude and to remove the difficulties currently faced by same-sex couples when one partner becomes ill.**

#### **5.10 Income-Related Benefits (Transferred Matter)**

5.10.1 Income-related benefits<sup>4</sup> are ‘safety-net’ benefits, which take into account the needs of the individual and, if they have one, their family. Unlike opposite-sex couples, who are treated as a single household or family unit, same-sex couples are currently treated as individuals. When one spouse claims an income-related benefit<sup>5</sup>, the other spouse may be required to make payments which offset some or all of the benefit paid until the marriage ends.

**5.10.2 The Government proposes that civil partners should be treated as a single family unit for income-related benefits purposes and that civil partners should be liable to maintain each other in the same way as married couples. In addition, unregistered cohabiting same-sex couples should also be assessed as a single family unit in the same way as opposite-sex cohabiting couples. The Government will ensure that this matter is handled sensitively.**

#### **5.11 Increases for Dependants (Transferred Matter)**

5.11.1 Increases for adult dependants<sup>6</sup> for social security benefits are payable for spouses, subject to earnings, including either a separated spouse who is being maintained by the claimant or another person who is looking after the claimant’s children (which could include a same-sex or opposite-sex partner).

---

<sup>4</sup> Income-related benefits are: Income Support, Pension Credit, Income-based Jobseekers’ Allowance and Housing Benefit.

<sup>5</sup> These rules are not included in the Pension Credit legislation.

<sup>6</sup> Increases for adult dependents are payable with Incapacity Benefit; Maternity Allowance; Carer’s Allowance; Severe Disablement Allowance; Widowed Parent’s Allowance; Retirement Pension (category A or B) and Unemployability Supplement.

**5.11.2 The Government proposes that increases for adult dependants should be payable for civil partners, depending on earnings, in the same way as they are for spouses.**

## **5.12 State Pensions (Transferred Matter)**

5.12.1 Since it was founded over fifty years ago, the state pension system has undergone many changes to reflect changing needs in society and to extend the ways in which people can prepare for retirement.

5.12.2 The Government's decisions on the way in which state pensions might take account of civil partnerships will be affected by a forthcoming change.

5.12.3 From 2010, the state pension age for men and women will begin to be equalised over a 10-year period. Also in 2010, derived pension rights for spouses and some other pension benefits will begin to be available on equal terms to men and women. By 2020, therefore, the state pension scheme will provide fully equal rights, at the same age, to people who are married.

5.12.4 The main state pension rights that married couples get today are:

- (1) Category BL pensions: A married woman who does not have enough National Insurance contributions to earn a basic state pension of her own can use her husband's contribution record to get a category BL pension, as long as he has reached state pension age and claimed his pension. This could give the wife a pension of up to 60% of the full basic state pension. At present, a husband cannot receive category BL pensions based on his wife's contributions.
- (2) Category B pensions: When a husband dies, his wife can inherit a state pension at the rate the husband was entitled to (to top up her own pension) plus a proportion of his additional pension (SERPS). In limited circumstances a husband can inherit his late wife's pension.

- (3) Pensions on divorce: On divorce, either spouse can ‘substitute’ the other’s contribution record for his or her own if the spouse’s record is better than his or hers.

5.12.5 In 2010, category BL pensions will become equally available to men and women but it is not until state pension age is fully equalised in 2020 that pension rights will be the same, and accessed at the same age, for both sexes.

**5.12.6 The Government proposes that state pension rights should be extended to civil partners. This is an important area of policy and the Government is actively pursuing the most appropriate approach to take.**

### **5.13 Life Insurance (includes both Reserved and Transferred Matters)**

5.13.1 A person who is intended to benefit from a life insurance policy must have an insurable interest in the life that is insured. Married couples are *presumed*, as a matter of law, to have an unlimited insurable interest in each other’s lives and therefore do not have to prove the existence of an actual interest. As a result, a husband could, for example, insure his own life for his wife’s benefit because the fact that they have entered that legally recognised relationship indicates that she has an insurable interest in his life. The Government believes that civil partners should benefit from an equivalent presumption that they have an unlimited insurable interest in each other’s lives.

**5.13.2 The Government proposes that civil partners should be presumed to have an unlimited insurable interest in each other’s lives.**

## **6. ON DISSOLUTION OF A CIVIL PARTNERSHIP**

### **6.1 Children – Residence and Contact (Transferred Matter)**

6.1.1 Any child brought up in a civil partnership has a right to the protection and promotion of his or her welfare and best interests. On dissolution of a civil partnership, provisions in existing law should be extended to make arrangements for the children of the civil partners and any children treated by the civil partners as dependants or as children of the family during the civil partnership.

6.1.2 The Court would be required to consider whether it should exercise its powers under the Children (Northern Ireland) Order 1995 in respect of any children before the order for dissolution of the civil partnership is made. Civil partners will be able to make an application for a contact or residence order in respect of a child of the partnership under Article 8 of the Children (Northern Ireland) Order 1995.

6.1.3 In some cases, civil partners will have children before they enter into the civil partnership and these children will continue to have contact with their parents outside the partnership. This will not be affected by a parent entering into a registered partnership or affected by the breakdown of that partnership. It is considered that when it is in the child's best interests, he or she should continue to have contact with both parents and also with former partners of the parents where that is appropriate and the child has been treated as a child of the family.

**6.1.4 The Government proposes that former civil partners should be able to apply to the court to have the question of contact or residence determined under the provisions of Article 8 of the Children (Northern Ireland) Order 1995.**

## **6.2 Child Support (Transferred Matter)**

6.2.1 The Child Support (Northern Ireland) Order 1991 sets out how child support liability is to be calculated, following the breakdown of a relationship, and provides for the income, housing costs and family responsibilities of the parents to be taken into account.

6.2.2 The aim of the child support system is to provide consistent rules for assessing liability for child maintenance and a rapidly accessible means of collecting and enforcing the payments that are due. However, as people in same-sex relationships are not treated as a couple for the purpose of the child support legislation, they may be disadvantaged during the assessment process and may end up paying more child support than they would have done if they were members of an opposite-sex couple.

**6.2.3 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 cohabiting same-sex couples.**

## **6.3 Maintenance for former partners and children of the family (Transferred Matter)**

6.3.1 Although the duty to maintain a child, following separation, is now mainly enforced through the child support system, the courts retain a residual power to order a parent to provide for a child and may also direct that one spouse make financial provision for the other.

6.3.2 Claims for maintenance, in the form of periodical payments or a lump sum, may be made under the Matrimonial Causes (Northern Ireland) Order 1978,

the Domestic Proceedings (Northern Ireland) Order 1980 or the Children (Northern Ireland) Order 1995 (which, as the title suggests, is child-specific).

**6.3.3 The Government recognises that a registered civil partnership will involve a significant commitment from each party and it proposes, therefore, that either party should, subject to the child support arrangements and in appropriate circumstances, be able to apply to a court for financial relief following the breakdown of the relationship.**

**6.4 Financial relief and property division upon dissolution of partnership or where partnership is declared void (Transferred Matter)**

6.4.1 The Matrimonial Causes (Northern Ireland) Order 1978 establishes a comprehensive regime for the provision of financial relief and the division of property, following the dissolution or annulment of a marriage.

6.4.2 In such circumstances, the High Court or a divorce county court may make an order for periodical payments, the payment of lump sums, the sale of property and the division of the proceeds of sale, the creation and variation of settlements or the transfer of property from one spouse to the other.

6.4.3 The 1978 Order sets out a number of factors that the court must consider before exercising its powers. However, essentially, the court's objective is to rearrange the spouses' financial affairs to take account of their past, present and future circumstances and the above orders can be made for the benefit of either spouse, their children or any child who has been treated as a child of the family.

**6.4.4 The Government proposes that the courts should have similar powers with regard to financial relief and the division of property on dissolution of a registered civil partnership or if a partnership is declared void.**

## **7. UPON THE DEATH OF A CIVIL PARTNER**

### **7.1 Registering the Death of a Partner (Transferred Matter)**

7.1.1 There are only certain categories of people who can register a death, including a relative or someone present at the death.

**7.1.2 The Government proposes that civil partners should be added to the list of those who can register a death.**

### **7.2 Inquests and Burial (Reserved and Transferred Matters)**

7.2.1 Under the jurisdiction of the coroner's court and in relation to inquests, married partners have the right to be notified of the date, place and time of the inquest and to question witnesses at the inquest. The legislation governing Coroners' courts also extends rights, such as access to relevant records, to "properly interested persons".

7.2.2 Certain categories of people, mainly relatives and personal representatives, also have rights in relation to burial, exhumation and cremation.

**7.2.3 The Government proposes that all of the above rights should be extended to civil partners, as appropriate.**

### **7.3 Post-Mortems and Organ Retention (Transferred Matter)**

7.3.1 The Department of Health, Social Services and Public Safety has recently published proposals for new legislation on human organs and tissue. These proposals can be found on the Department's website.<sup>7</sup>

---

<sup>7</sup>([http://www.dhsspsni.gov.uk/hss/hoi/documents/New\\_Legislation.pdf](http://www.dhsspsni.gov.uk/hss/hoi/documents/New_Legislation.pdf).)

**7.3.2 The Government proposes to address issues in relation to nearest relative or the most appropriate person to give consent for post-mortems and tissue and organ retention.**

#### **7.4 Bereavement Benefits (Transferred Matter)**

7.4.1 Bereavement benefits are normally paid to people of working age following the death of a spouse. They are only available to married partners. They cannot be paid if the surviving spouse is living with someone else as husband and wife.

7.4.2 Bereavement benefits were introduced in 2001 and included the following:

- (i) Bereavement Payment – a lump sum payment of £2000 payable immediately to help with costs arising on bereavement;
- (ii) Bereavement Allowance – a weekly benefit payable to widows and widowers aged 45 and over without dependant children for up to 52 weeks following the death;
- (iii) Widowed Parent’s Allowance – a weekly benefit that is payable to widows and widowers with dependant children.

**7.4.3 The Government proposes that civil partners should be entitled to bereavement benefits, subject to the standard eligibility conditions, if one partner dies.**

#### **7.5 Survivor Pensions – Private Pension schemes (Transferred Matter)**

7.5.1 Most private pension provision is provided through occupational pension schemes which can be:

- (i) Defined Benefit – where the pension payable depends on the length of service and the salary earned by the employee (final salary schemes);  
or
- (ii) Defined Contribution – where the contributions are invested to provide a pot of money on retirement, which is used to buy an annuity.

Personal pensions and stakeholder pensions, which are other types of private pension provision, are defined contribution arrangements between providers and individuals.

7.5.2 Employers providing defined benefit pension schemes that are used to contract their employees out of the State Second Pension Scheme (formerly SERPS) are required to pay a survivor pension to the surviving spouse of a scheme member. In practice, many private sector schemes make payments to others, including opposite-sex and same-sex partners if scheme rules allow trustees to do this but there is no legal requirement for them to do so. Members of defined contribution occupational schemes and personal pension schemes that are contracted out of the State Second Pension Scheme are required to provide for a survivor pension for their spouse but only on that part of the pension derived from the National Insurance contribution rebate and its investment return (the protected rights).

**7.5.3 The Government proposes that the conditions for contracting out should be amended to include a requirement for survivor benefits to be paid to civil partners. This is an important area of policy and the Government is actively pursuing the most appropriate approach to take.**

## **7.6 Survivor Pensions – Public Service Pension Schemes (Transferred Matter)**

7.6.1 Public service pension schemes provide occupational pension benefits to members and their eligible survivors, which include any children and the

married partner of the member. Most public service schemes do not provide survivor pensions to unmarried partners, although death lump sum benefits may be provided to unmarried partners in some schemes where members are able to nominate them.

7.6.2 The Government's policy is that if the membership of a public service scheme wants to extend eligibility for survivor pensions to unmarried partners and is prepared to meet the additional costs, the Government is prepared to consider how practicable arrangements could be devised for achieving this. The Northern Ireland Civil Service has introduced a new scheme, which includes unmarried partner benefits on this basis. There is no change to the Government's policy regarding partners who are neither married nor registered. A number of public service schemes, however, are conducting reviews on whether and how to introduce unmarried partner benefits among other reforms.

**7.6.3 The Government proposes that members of public service pension schemes will earn entitlement to survivor benefits, including a survivor pension, for civil partners in the same way as for married partners.**

## **7.7 Injury Benefits (Transferred Matter)**

7.7.1 Some public service employment groups, such as the armed forces, the Northern Ireland Civil Service, the Health Service, the Fire Service and District Councils have injury benefit schemes, allowing the payment of benefits to family members following the death of an employee. The payment of injury allowances to family members is consequential upon arrangements in pension schemes for surviving spouses and dependants' pensions. The policy on injury benefits therefore follows the policy on public service pensions.

**7.7.2 The Government proposes that civil partners should be entitled to injury benefits on the same basis as married partners.**

## **7.8 Fatal Accidents Compensation (Transferred Matter)**

7.8.1 The Fatal Accidents (Northern Ireland) Order 1977, (as amended by the Damages for Bereavement (Variation of Sum) (Northern Ireland) Order 2002), enables claims for financial loss to be made by certain categories of person in respect of a death which occurs as a result of another person's negligence. In addition, article 3A of the Order allows an award for bereavement damages to be made only to a spouse or a parent. The current maximum award is £10,000.

**7.8.2 The Government proposes that civil partners should be added to the statutory list of persons able to claim for financial loss and that civil partners should be able to claim bereavement damages in respect of a death that occurs as a result of another person's negligence.**

## **7.9 Criminal Injuries Compensation (Reserved Matter)**

7.9.1 The Criminal Injuries Compensation Scheme, which is operated by the Compensation Agency, provides payment at the taxpayers' expense to blameless victims of crimes of violence and those injured in trying to apprehend criminals or to prevent crime.

7.9.2 In May 2002, the Scheme was amended to allow same-sex partners to make a fatal injury application in the event of a partner's death. Both opposite-sex and same-sex partners can make an application if they were living together with the deceased as a partner in the same household immediately prior to the death and had been so living throughout the 2 years immediately before that date.

7.9.3 Married partners only need to provide their marriage certificate as proof of their relationship to the deceased. The Government believes that the registration of a civil partnership would demonstrate that that couple were in a long-term committed relationship, so that there should be no need for a 2-year cohabitation requirement for civil partners.

**7.9.4 The Government proposes that there should be no 2-year cohabitation requirement for civil partners who make a fatal injury application under the Criminal Injuries Compensation Scheme.**

## **7.10 Intestacy (Transferred Matter)**

7.10.1 If someone dies without leaving a will, the intestacy provisions in the Administration of Estates Act (Northern Ireland) 1955, (as amended), set out what will happen to the estate. These provisions are designed to reflect the wishes of the average person by dividing up the estate among close relatives. Same-sex partners do not currently have any rights under the intestacy rules.

7.10.2 As well as setting out who will inherit the estate, the intestacy provisions also give the order of priority of those persons who are entitled to administer the estate where the deceased dies wholly intestate. The order of priority is set out in the Non-Contentious Probate Rules, in Order 97 of the Rules of the Supreme Court 1980.

**7.10.3 The Government proposes that civil partners should be able to inherit under the Administration of Estates (Northern Ireland) Order 1955, in the same way as spouses and that civil partners should be given the same priority as spouses in applications for a grant of administration.**

## **7.11 Inheritance (Transferred Matter)**

7.11.1 If a civil partner has made a will, then the terms of the will should set out what will happen to his or her estate in the event of his or her death. However, the Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979 ("the 1979 Order") allows certain people to claim provision from the deceased's estate or assets by making an application to the Court if they feel that the will or rules of intestacy do not make adequate provision for them.

The Court can order payment from the deceased's assets or the transfer of property if the applicant's claim is accepted. Same-sex partners can already make a claim under the 1979 Order but they need to prove that they were dependent on or maintained by the deceased, whereas spouses do not.

7.11.2 If a child has been brought up by the civil partners as a "child of the family", that child could make a claim on the estate of the deceased under the 1979 Order.

**7.11.3 The Government proposes that civil partners and former civil partners should be expressly added to the categories of people who can make claims under the 1979 Order and their application treated on the same basis as applications made by spouses.**

## **7.12 Tenancy Succession (Transferred Matter)**

7.12.1 If someone who holds a tenancy dies and his or her same-sex partner was living in the property, the partner may be able to inherit or succeed to the tenancy, depending on the circumstances. There are three types of housing tenancies which have full security of tenure: Rent (Northern Ireland) Order tenancies, statutory tenancies and secure tenancies.

7.12.2 As a result of the Court of Appeal decision in Ghaidan v Mendoza [2002] 4 All ER 1162, same-sex partners in Great Britain can now succeed to Rent Act tenancies. It is likely that, if a similar case were taken in Northern Ireland under the Rent Order (Northern Ireland) Order 1978, a similar decision would be given.

7.12.3 The Government believes that the statutory law should reflect the fact that civil partners would have a legally recognised relationship.

**7.12.4 The Government proposes that civil partners should be given the same rights as married partners in relation to tenancies, including the right to succeed.**

## **PART C: THE NEW LEGAL STATUS**

### **8. FORMAL REQUIREMENTS**

#### **8.1 Introduction**

8.1.1 Civil partnerships will create a new legal status that is intended to be permanent and as such, it is appropriate that they should be subject to the following requirements and formalities.

#### **8.2 Age**

8.2.1 The Government proposes that same-sex couples should be able to register their partnerships provided both partners are aged 16 or over. Written consent would be required from those having parental responsibility for the partner under the age of 18.

#### **8.3 Exclusivity**

8.3.1 The Government believes that individuals should only be able to enter into one civil partnership or marriage at any given time. Any individual who was in an existing marriage or civil partnership should not be able to register a partnership with another person until the existing marriage or civil partnership had been legally dissolved.

8.3.2 If an individual had been in a previous civil partnership or marriage, before registering a civil partnership with another person, they would be required to provide evidence of the termination of that relationship by death, nullity, divorce or dissolution.

8.3.3 The Government proposes to require same-sex partners, who wish to register a civil partnership, to declare that they were not in an existing civil partnership or marriage.

#### **8.4 False Declarations**

8.4.1 The Government proposes to create new offences of perjury to deal with situations where a couple declared that there was no impediment to a civil partnership and it later transpired that there was such an impediment.

8.4.2 There would be safeguards against registrations arranged for the sole purpose of evading statutory immigration controls.

#### **8.5 Prohibited Degrees of Relationship**

8.5.1 The Government proposes that people wishing to register a civil partnership would be prohibited from doing so if they were related by close blood or half blood ties, adoption (in particular circumstances), or were related by degrees of affinity (relationships arising out of either their former marriages/civil partnerships, or those former marriages/civil partnerships of certain relatives).

## **9. THE REGISTRATION PROCESS**

### **9.1 Introduction**

9.1.1 The Government intends the procedures for registering a civil partnership to be limited to fulfilling the formal requirements outlined in Chapter 8. There is no requirement or provision for a ceremony but the couple can arrange a ceremony independently if they so choose.

### **9.2 Delivery of Civil Partnership Registration**

9.2.1 As will be the case in Great Britain, the Government considers that local registration authorities are best placed to deliver civil partnership registration. Involvement of the registration service will help to emphasise the stability and permanence of the partnership arrangements. The registration service is also well placed to act as a focal point for information on services associated with key life events.

### **9.3 Requirement to Give Notice**

9.3.1 Prospective civil partners would be required to give notice together or separately but must do so in writing. This could be by post although the parties would be required to attend in person if the registrar deems it necessary. Details would be entered in the “notice book” which could be inspected by the public in case of objection.

9.3.2 Prospective civil partners would not be able to give notice of registration more than 12 months before the date of registration.

9.3.3 Anyone who knows for example of a legal impediment to a forthcoming civil partnership registration would have the same opportunity to raise an objection as he or she would have in relation to other formal changes of legal status.

## **9.4 Waiting Period**

9.4.1 The Government proposes a 14-day waiting period between giving notice and registration in order to allow sufficient time to check compliance with the formal requirements set out in Chapter 8 above.

## **9.5 Exceptions to the Waiting Period**

9.5.1 The Government plans to make provision for the registrar to reduce the waiting period in exceptional circumstances, where he considers it appropriate to do so.

9.5.2 Such circumstances might include an urgent military posting or where one of the parties was terminally ill.

## **9.6 Location**

9.6.1 The Government plans to enable registrars to carry out a civil partnership registration at an appropriate place, other than the registrar's office.

## **9.7 Registration for those who are Housebound or Detained**

9.7.1 It is intended to make provision for those who are housebound or detained to enter into a civil partnership at the place where they are housebound or detained rather than at the registration office.

## **9.8 Cost**

9.8.1 There would be a statutory fee for giving notice to the registrar and for the registrar's attendance at a civil partnership registration.

## **9.9 Procedure**

9.9.1 The proposed procedure for registering a civil partnership is a purely civil procedure and outlined below.

9.9.2 The prospective civil partners give notice in writing to the registrar of intention to register their civil partnership.

9.9.3 The registrar checks compliance with the formal requirements during which time the couple wait for a minimum of 14 days.

9.9.4 In consultation with the registrar, a date is set for the civil partnership registration.

9.9.5 On the day of the registration, each member of the prospective civil partnership will sign the register in the presence of the registrar and two witnesses over 16 years of age.

9.9.6 The civil partners may receive a certificate as evidence of the registration of their civil partnership.

## **9.10 Privacy Issues**

9.10.1 The Government recognises that some same-sex couples may want the fact of their registration to remain private.

9.10.2 The Government proposes that registration information would be available to the public but certain information (addresses and occupations) would be restricted.

## **9.11 Recognition of Civil Partnerships Across the UK**

9.11.1 If civil partnership registration schemes are established in the three jurisdictions of the UK, then it is proposed that registration of a civil partnership in any part of the UK should be recognised, for all intents and purposes, in all other parts of the UK.

9.11.2 This would mean, for example, that a couple who had registered in England, Wales or Scotland could come to Northern Ireland and continue to access all their rights as civil partners. The same would apply to a couple who had registered in Northern Ireland and moved to England or Scotland.

## **9.12 Recognition in Northern Ireland of Civil Partnerships Registered outside the UK**

9.12.1 The Government is considering whether civil partnership registration schemes in operation in other countries should be recognised in the UK.

## **10. THE DISSOLUTION PROCESS**

### **10.1 Introduction**

10.1.1 The Government intends registered civil partnerships to be permanent, committed relationships and therefore believes that an appropriate degree of formality should be required to bring a civil partnership to an end.

10.1.2 The Government proposes that the arrangements for the dissolution of a civil partnership should be broadly similar to those required to bring a marriage to an end by a decree of divorce, so requiring an application to the Court.

### **10.2 Grounds for Dissolution**

10.2.1 The Government proposes that grounds for dissolution of the civil partnership should be the irretrievable breakdown of the relationship.

10.2.2 In order to show that the partnership had broken down irretrievably, it would be necessary to produce evidence of unreasonable behaviour, such that the applicant could not reasonably be expected to remain in the partnership. Alternatively, the applicant could rely on desertion or on the fact that the parties had been separated for a period of 2 years (with the consent of the other party) or 5 years (without such consent).

### **10.3 Formalities and Procedure**

10.3.1 The Government proposes that civil partnerships should be dissolved only by an order of the Court, on formal application by one of the civil partners.

10.3.2 An application for an order for the dissolution of the partnership would not be accepted until at least one year has passed since registration.

10.3.3 If the Court were satisfied on the evidence that the civil partnership had irretrievably broken down, a provisional Court order for dissolution of the partnership would be granted.

10.3.4 After a period of 6 weeks, an application could be made to make the provisional order absolute.

10.3.5 If at any stage it appeared that the civil partners might be able to be reconciled, it would be possible to apply for the Court proceedings to be adjourned.

#### **10.4 Void and Voidable Civil Partnerships**

10.4.1 In some circumstances, a civil partnership might be *void* (having never been valid) or *voidable* (able to be declared invalid on the application of one of the parties).

10.4.2 The Government proposes that the partnership should be void if:

- It was not a valid partnership because:
  - (a) the parties were within the prohibited degrees of relationship;
  - (b) either party was under the age of 16;
  - (c) the parties had disregarded the requirements for registration of the partnership; or
  - (d) the parties were not of the same sex.
  
- At the time of registration either party was already lawfully married or was a party to another civil partnership.

10.4.3 The Government proposes that the partnership should be voidable if either of the parties did not validly consent to the registration of the civil partnership as a result of:

- duress;
- mistake;

- one partner being pregnant by a third party without the other's knowledge; or
- lack of mental capacity to consent to the registration.

10.4.4 The effect of an order that the partnership is voidable would be to bring that partnership to an end from the date the order was made absolute.

10.4.5 Property relief would be available following an order that the civil partnership was void or voidable.

## **10.5 Order for Separation**

10.5.1 Where civil partners had fulfilled the requirements for an order for dissolution, they could apply instead for an order for separation. Unlike an order for dissolution, an order for separation would not permit the partners to register a new civil partnership or to marry.

## **10.6 Public Funding for Dissolution**

10.6.1 When civil partners are dissolving their partnership, they may need legal aid, advice or assistance. It is expected that legal aid will be available to civil partners involved in dissolving their partnership, depending on their means and the merits of their case.

10.6.2 The Government proposes that public funding should be available, where appropriate, for legal aid, advice and assistance during the dissolution process.

## **PART D: THE PROPOSAL AND HOW TO RESPOND**

### **11. SUMMARY OF THE PROPOSAL**

- 11.1 Committed same-sex couples face many disadvantages because there is no legal recognition of their partnerships. This is an unacceptable situation which ought to be remedied by reform of the law in Northern Ireland.
- 11.2 Same-sex couples in Northern Ireland should be able to register their partnerships in order to have access to a wide range of rights and responsibilities.
- 11.3 Same-sex couples in Northern Ireland should be able to register their partnerships here rather than travel to Great Britain to do so.
- 11.4 Civil Partnership registration schemes set up for England and Wales, Scotland and Northern Ireland should be co-ordinated, comprehensive and mutually recognised throughout the United Kingdom.
- 11.5 Our preferred route for the introduction of a civil partnership registration scheme for Northern Ireland is through inclusion in a UK-wide Civil Partnerships Bill to be introduced at Westminster.
- 11.6 In Part B of this paper, we put forward a package of rights and responsibilities following upon civil partnership registration. This represents an appropriate response to remedy the disadvantages currently faced by same-sex couples (a) during the partnership; (b) on dissolution of the partnership; and (c) on the death of a partner.
- 11.7 In Part C of this paper, we set out the formal requirements for entering into a registered civil partnership, the registration process and the dissolution process. This provides an appropriate system to give legal recognition to committed same-sex couples.

## 12. YOUR RESPONSE

We welcome your views on any of the issues covered by this paper.

This consultation paper can also be viewed on the Office of Law Reform website: <http://www.olrni.gov.uk>. A summary document is available on request in a range of languages and formats.

Please complete the details in the form included at pages 50-55 and send your comments to us at the address below, **by 5 March 2004**.

Civil Partnerships Bill Team  
Office of Law Reform  
1st floor Lancashire House  
5 Linenhall Street  
Belfast  
BT2 8AA

Tel: 028 90 542900  
e-mail: [info@olrni.gov.uk](mailto:info@olrni.gov.uk)

Name: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Are you responding as:

An Individual

On behalf of a group or organisation

For the purposes of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire. Please tick as appropriate:

- |                               |                       |                        |                       |
|-------------------------------|-----------------------|------------------------|-----------------------|
| LGBT organisation             | <input type="radio"/> | Religious organisation | <input type="radio"/> |
| Local authority               | <input type="radio"/> | Academic Organisation  | <input type="radio"/> |
| Legal sector                  | <input type="radio"/> | Advice sector          | <input type="radio"/> |
| UK Government                 | <input type="radio"/> | Political              | <input type="radio"/> |
| Statutory Body                | <input type="radio"/> | Individual             | <input type="radio"/> |
| Non-governmental organisation | <input type="radio"/> |                        |                       |

Do you agree to your response being made public (on the Office of Law Reform website)?

Yes  No  Partly (please specify)

Where confidentiality is not requested, we may publish your response in full including your name and address.

Are you content for the Office of Law Reform to contact you again in the future for consultation purposes?

Yes  No

In particular, we ask for your comments on the following points:

1. Committed same-sex couples face many disadvantages because there is no legal recognition of their partnerships. This is an unacceptable situation which ought to be remedied by reform of the law in Northern Ireland.

**Your Comments:**

2. Same-sex couples in Northern Ireland should be able to register their partnerships in order to have access to a wide range of rights and responsibilities.

**Your Comments:**

3. Same-sex couples in Northern Ireland should be able to register their partnerships here rather than travel to Great Britain to do so.

**Your Comments:**



4. Civil Partnership registration schemes set up for England and Wales, Scotland and Northern Ireland should be co-ordinated, comprehensive and mutually recognised throughout the United Kingdom.

**Your Comments:**



5. Our preferred route for the introduction of a civil partnership registration scheme for Northern Ireland is through inclusion in a UK-wide Civil Partnerships Bill to be introduced at Westminster.

**Your Comments:**

6. In Part B of this paper, we put forward a package of rights and responsibilities following upon civil partnership registration. This represents an appropriate response to remedy the disadvantages currently faced by same-sex couples (a) during the partnership; (b) on dissolution of the partnership; and (c) on the death of a partner.

**Your Comments:**

7. In Part C of this paper, we set out the formal requirements for entering into a registered civil partnership, the registration process and the dissolution process. This provides an appropriate system to give legal recognition to committed same-sex couples.

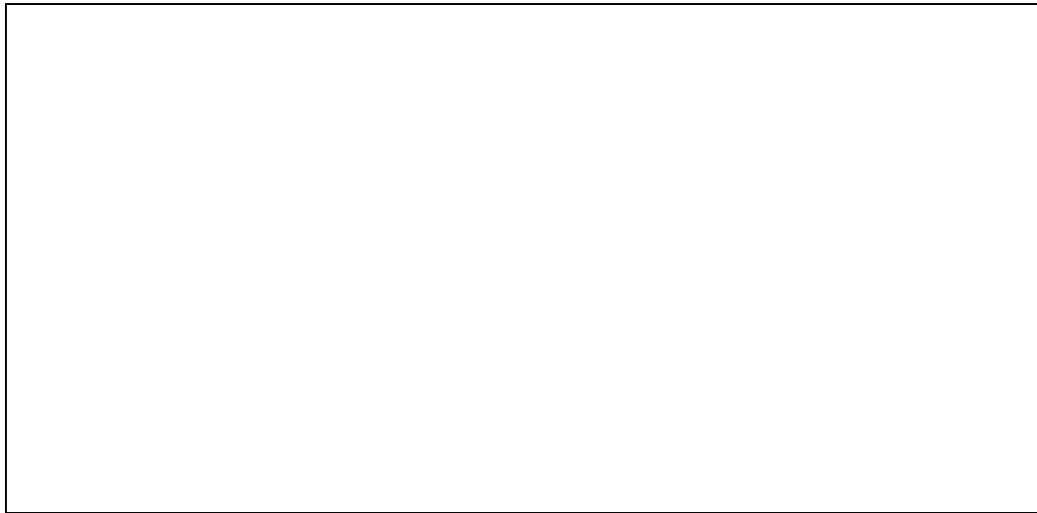
**Your Comments:**

8. Annex A contains a partial Regulatory Impact Assessment. Please provide any information which would assist in identifying and assessing the costs associated with this project, in particular, information concerning the likely take-up of the new scheme for civil partnership registration.

**Your Comments:**

9. Annex B contains an Equality Impact Assessment. Please provide any evidence of differential equality impact on the nine categories in section 75 of the Northern Ireland Act 1998.

**Your Comments:**

A large, empty rectangular box with a thin black border, intended for the user to provide their comments on the Equality Impact Assessment.

## **Annex A REGULATORY IMPACT ASSESSMENT**

### **1. Intended Effect**

- The civil partnership registration scheme is intended to give committed same-sex couples in Northern Ireland the opportunity of gaining a legal status for their relationships. Couples who enter into this new legal status will gain a package of rights and responsibilities.

### **2. Reasons for action**

#### **2.1 Lack of Legal Recognition for Same-sex Couples**

- Same-sex couples currently have no way of gaining a legal status for their relationships. This is not acceptable in a society committed to equality and social justice.
- The lack of a legal status means that same-sex couples are denied access to some of the rights and responsibilities that are given to married couples to reflect the commitment they have made to each other. This can lead to a variety of disadvantages, from denial of survivors' pension rights, to exclusion from hospital visits.

### **3. Options for Action**

#### **3.1 No Action**

- This option would fail to address any of the problems described above and could not be justified in light of the introduction of civil partnership in the rest of the United Kingdom.

#### **3.2 Tackle Individual Problems one by one**

- In the absence of any mechanism, such as civil partnership, through which committed same-sex couples could gain and declare their legal status, it would

be very difficult to determine which couples would be entitled to rights and responsibilities and when these would accrue.

- There would be a danger of imposing rights and responsibilities on couples who did not want them and would not choose to make a formal, legally-recognised commitment to each other by registering their partnership.
- Dealing with individual problems in a piecemeal fashion would fail to provide legal recognition of same-sex relationships. It would also take a long time to complete as a large amount of legislative amendment would be required.
- This option would be particularly difficult to sustain as it would be operating in parallel with some same-sex couples who had registered in other parts of the United Kingdom and gained some rights exercisable on their return to Northern Ireland. Such parallels would lead to unacceptable confusion, inequalities and legal uncertainty.

### **3.3 A Civil Partnership Registration Scheme**

- A civil partnership registration scheme would provide legal recognition for those same-sex couples who chose to make a commitment to each other and so gain a package of rights and responsibilities.
- This option would provide important clarity and legal certainty as to when rights and responsibilities accrued and ended. Importantly, this option would also ensure that same-sex couples in Northern Ireland have parity with their counterparts in the rest of the United Kingdom.
- This is the only viable option for Northern Ireland.
- Because there is no reliable data and because a number of policy areas are still being considered, we do not provide detailed costings for setting up a scheme at this stage. More information will be made available in due course. To

assist us in producing detailed costings we are seeking comments (see box 8 on the Response Form at page 54 above).

#### **4. Who would be affected?**

##### **4.1 Users of the Registration Scheme**

- Those directly affected by the introduction of a civil partnership registration scheme would be the potential users, that is, same-sex couples in Northern Ireland.
- It is very difficult to predict the likely take-up of civil partnership registration since there is very little reliable data about the actual size of the lesbian, gay and bisexual population in Northern Ireland.
- The DTI consultation paper estimated that between 5% and 7% of the total adult population in England and Wales is made up of lesbian, gay and bisexual people. We consider that this may be an overestimation as regards Northern Ireland. Historically, many people with lesbian, gay or bisexual preferences migrated from Northern Ireland.
- Partnership schemes in other countries have not been in operation long enough to provide useful benchmarks.

##### **4.2 Providers of the Registration Service**

- There would be an impact on the registration service in Northern Ireland, which would operate the civil partnership registration scheme.

##### **4.3 Taking Account of the New Status**

- There would be an impact on employers, both in the private and public sectors, in terms of employment benefits and occupational pension rights for civil partners.

- Changes to the tax and benefits systems would involve administrative changes for government and local authorities.
- The new legal status would have an impact on practice for treating patients and their families within the Health Service.
- The creation of the new legal status would affect any other areas in which family status is taken into account. Accordingly, organisations might need to consider changing their policies and practice, any guidance and any forms on which people are asked to declare their status.

## **5. Overall Benefits**

### **5.1 Stable Relationships**

- Civil partnership registration would bring increased security and stability to those same-sex couples who register and to their children. Civil partnership registration would encourage stable relationships, which are an important asset to the community as a whole.
- Stable relationships also benefit the economy. It is expected that civil partners would share their resources and support each other financially, reducing demand for support from the State.

### **5.2 Social Attitudes**

- The creation of a new legal status for same-sex couples would play an important role in increasing social acceptance of same-sex relationships, reducing homophobia and discrimination and building a safer and more tolerant society.

## **6. Costs of Registration System**

### **6.1 Costs to Registration Service**

- The impact on the registration system of setting up a civil partnership registration scheme is likely to be low. Systems already in place for civil marriage can be adapted for civil partnership registration, although registrars may need some additional training. The number of couples expected to register is relatively low.

### **6.2 Costs to Couples who wish to Register**

- Costs would be recovered from the couples. There would also be costs associated with dissolution, for which couples might be eligible for legal aid, depending on their means.

### **6.3 Costs to Court Service**

- The numbers of civil partnership dissolutions taken through the courts are likely to be small. There would, therefore, be few running costs other than that of additional training and guidance to the court service of extending their services to include the dissolution of civil partnerships. There would be running costs for legal aid for those couples who might be eligible for legal aid.

## **7. Employment**

- Discrimination in employment on grounds of sexual orientation has been illegal in Northern Ireland since the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 came into operation on 2 December 2003. In addition, employers would need to adapt their policies to recognise civil partners in some areas where they currently recognise forms of legal status such as marriage.

### **7.1 Benefits to Individuals**

- Some civil partners would benefit from access to survivor pensions to which they would not previously have been entitled. Some private pension providers

already pay survivor pensions to long-term partners (including same-sex partners) but this is often done on a discretionary basis and the partners may have to meet criteria such as a set period of cohabitation or proof of financial interdependence.

## **7.2 Benefits to Business**

- It is hoped that business would see improvements in recruitment and retention from offering equal employee benefits to civil partners.

## **7.3 Impact on Business**

- The Government's initial assessment is that the administrative impact of introducing a civil partnership registration scheme on business (private pension providers) would be negligible as private pension schemes already have systems in place to make payments to married dependants which could be extended to civil partners.
- There would be additional costs for those employers providing defined benefit pension schemes who currently only offer survivor benefits to married partners. Government estimates that the cost of providing survivor pensions to civil partners would be relatively low.
- Where defined benefit schemes calculate survivor pensions on the entire length of the civil partner's service (rather than pensionable service from the date of introduction of civil partnership registration only), employers would also face additional one-off costs. This is a very small proportion of the total private sector defined benefit scheme assets or liabilities.

## **7.4 Impact on Government as an Employer**

- Public service pension schemes already have systems in place to pay survivor pensions and injury benefits to married dependants of scheme members, so that administrative impact on them would be low.

- There would be additional costs to the Government and other employers in public service pension schemes from extending survivor benefits to include civil partners as well as married couples.
- Improvements to benefits in public service pension schemes are usually made in respect of future service of active members from a given date. If survivor pensions for civil partners were based on the earlier service of scheme members, there would be a further one-off cost arising from recognition of that past service. This cost is highly sensitive to the assumptions on take-up and would also depend on whether the past service of all members, or only active members, or only past service since a particular date, was reckonable.

## **8. State Pensions and Benefits**

### **8.1 Benefits to Individuals**

- Civil partners would benefit from increased financial security through arrangements designed to reflect more accurately their situation. Civil partners may become entitled to state or occupational pension rights, as well as state bereavement benefits, based on the contributions of the other partner.

### **8.2 Savings to Government**

- There may be some savings associated with recognising same-sex partners for the purposes of income-related benefits. As there is, however, only limited information about the population who are living together as partners in same-sex relationships and the likelihood of their claiming income-related benefits, savings are difficult to assess.

### **8.3 Costs to Government**

- Changes would result in a net increase in annual costs to Government from state pensions and bereavement benefits. It is assumed that costs will arise from changes in these areas which will come into effect from 2010, due to practical considerations. Rights and responsibilities in many other areas could, however, be afforded to couples before 2010.

## **9. Impact on Small Businesses**

- The impact on small businesses of the additional costs to defined benefit pension schemes will be minimal as very few small employers operate this type of pension scheme.

## **10. Competition**

- No market has been identified where these proposals would have an adverse impact on competition.

## **11. Summary**

- The greatest impact of these proposals would be on central and local Government. These costs are considered to be justified by the social policy reasons for introducing a civil partnership registration scheme for same-sex couples.
- There would be minor costs and substantial benefits for the individuals who chose to register a partnership.
- The impact on business would be very low, except for a minor cost increase for defined benefit occupational pension providers and a small increase in demand for the hospitality industry.
- There would be no direct impact on charities and voluntary organisations other than their own responsibilities as employers.

## **Annex B    EQUALITY IMPACT ASSESSMENT**

### **1.    Introduction**

1.1    In developing policy for legislation to create a scheme under which committed same-sex couples will be able to register their partnerships and attain a new legal status of ‘civil partner’, we have been considering our obligations under Section 75 of the Northern Ireland Act, to have due regard to the need to promote equality of opportunity:

- (a)    between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b)    between men and women generally;
- (c)    between persons with a disability and persons without; and
- (d)    between persons with dependants and persons without.

### **2.    Assessing the Policy**

2.1    Committed same-sex couples face many disadvantages because there is no legal recognition of their partnerships. They are denied access to the many rights and responsibilities which would flow from having legal status as a couple.

2.2    The Government's proposals for civil partnership registration are designed to address the current difference in treatment between same-sex and opposite-sex couples.

2.3    The Office of Law Reform believes that these proposals are consistent with the duty in section 75 to have due regard to the need to promote equality of opportunity.

2.4    We consider that if civil partnerships are introduced in England and Wales and Scotland, then failure to introduce a civil partnership scheme in Northern

Ireland could have an adverse impact on same-sex couples in comparison to their counterparts in the rest of the United Kingdom. Further, people with disabilities who were unable to travel to other parts of the United Kingdom to register and gain access to some rights and responsibilities, would suffer particular disadvantage.

2.5 In order to avoid any potential adverse impact on persons of different sexual orientation, we propose to set up a civil partnership registration scheme in Northern Ireland which is co-ordinated, comprehensive and mutually recognised throughout the United Kingdom.

2.6 We are aware, however, that there is a possibility that some of the issues raised in this consultation, may have potential for differential or adverse impact and so we are seeking your views on this assessment.

### **3. Consideration of Available Data and Research**

3.1 As legislation covering discrimination on grounds of sexual orientation has only come into operation very recently, there is very limited quantitative data on this subject. Much of the information provided on sexual orientation issues is largely (and legitimately) private or anecdotal. We have, however, taken this qualitative data into consideration and we welcome evidence and information for further consideration.

### **4. Assessment of Impacts**

4.1 In accordance with the Equality Commission's guidelines we have assessed whether this policy will affect differently any of the section 75 categories. We understand that the statutory equality duty goes beyond the necessity not to discriminate and focuses on how a policy better promotes equality of opportunity. We have borne this in mind throughout the policy development process.

- **Persons of Different Religious Belief**

There is no evidence that this policy will impact differently on persons of different religious belief. The proposed scheme, which is only concerned with state recognition of partnerships, will be equally accessible to persons regardless of their religious belief, or absence of religious belief.

- **Persons of Different Political Opinion**

There is no evidence that this policy will impact differently on persons of different political opinion. The proposed scheme will be equally accessible to persons regardless of their political opinion.

- **Age**

There is no evidence that this policy will impact differently on persons of different ages, except for the rule that persons under the age of 16 are not eligible to register a civil partnership and it is considered that this eligibility criterion is justified.

- **Persons of Different Racial or Ethnic origin**

There is no evidence that this policy will impact differently on persons of different racial or ethnic origin. The proposed scheme will be equally accessible to persons regardless of their racial or ethnic origin.

- **Persons of Different Marital Status**

Aside from the rule that married persons may not enter into a civil registered partnership, there is no evidence that this policy will impact differently on persons of different marital status. The status of civil partner is not a marital status. It is a completely new legal status.

- **Persons of Different Sexual Orientation**

There may be a positive impact on lesbian, gay and bisexual persons, consistent with the duty to have due regard to the need to promote equality of opportunity. As explained in the consultation paper, restricting civil partnership to couples of the same sex is not regarded as reducing the

opportunities available to couples of the opposite sex as they continue to have the opportunity to marry.

- **Men and women generally**

There is no evidence that this policy will impact differently on men as compared to women. The proposed scheme will be equally accessible to both men and women.

- **Persons with a Disability and Persons Without**

There is no evidence that this policy will impact differently on persons who have a disability and persons who do not have a disability. The proposed scheme will be equally accessible to persons with a disability and persons without, with reasonable accommodations made, where necessary. If a scheme were not introduced in Northern Ireland, people with disabilities who were unable to travel to other parts of the United Kingdom to register and gain access to some rights and responsibilities, would suffer particular disadvantage.

- **Persons with or without Dependants**

There is no evidence that this policy will impact differently on persons who have dependants and persons who do not have dependants.

## **5. Formal Consultation**

- 5.1 To enable us to complete the Equality Impact Assessment of these proposals, we are also seeking views on the equality impact through this consultation process (see box 9 on the Response form at page 55 above). Following the consultation we will evaluate and publish a report of the responses received. We will also monitor and review equality impacts as policy continues to develop.