

**“Civil Partnership:
A Legal Status for Committed Same-Sex Couples in
Northern Ireland”**

ANALYSIS OF RESPONSES

**Office of Law Reform
Department of Finance and Personnel**

FOREWORD

On the 19th December 2003, I launched the consultation paper, "*Civil Partnership: A Legal Status for Committed Same-Sex Couples in Northern Ireland*".

The consultation was widely circulated and sought views on the Government's proposal to create a civil partnership registration scheme for same-sex couples in Northern Ireland. This would involve the creation of a wholly new legal status, with consequent rights and responsibilities. The consultation period closed on 5th March 2004.

The Office of Law Reform received 462 responses to the consultation. The responses came from both individuals and groups, including lesbian, gay and bisexual groups, churches and religious organisations, public bodies, trade unions and non-statutory organisations.

The validity of consultation depends on the extent to which it succeeds in drawing views from the diversity of opinion in our society. I would like to thank all those who responded to the consultation for taking the time to make a contribution.

This report details what you told us, analyses the issues you raised and sets out the way forward.

Ian Pearson MP

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Chapter 1 INTRODUCTION and OVERVIEW of the RESPONSE

1. The Office of Law Reform published its consultation document *"Civil Partnership: A Legal Status for Committed Same-Sex Couples in Northern Ireland"* on 19th December 2003. The consultation period ran from 19th December 2003 to 5th March 2004. A small number of responses were received after 5th March 2004. These responses were read and included as far as possible in the analysis.

2. This Report represents an analysis of the responses that were received and is guided by the Cabinet Office Code of Practice on Consultation:

"Do not simply count votes when analysing responses. Particular attention should be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected." (Criterion 4.1)

3. The more extreme language used, in some cases, to express views is not reflected in this analysis as it would be potentially very offensive. This approach is in line with that taken by the Scottish Executive, which stated in its Analysis of Responses that:

"Although we received some intemperate comments on both sides of the argument, we have not relayed material which is insulting or degrading."

4. Overall 462 responses were received. Of these, 416 (90%) were from individuals and 46 (10%) were from interested representative groups or bodies, such as lesbian, gay, bisexual (LGB) organisations, churches, non-governmental organisations, local authorities, trusts, trade unions, student representatives and statutory bodies.

5. Although a 'question and answer style' *proforma* was included in the consultation document for ease of reply, only 42 respondents used the *proforma* to facilitate their response.
6. Most respondents (86%) were opposed to the introduction of civil partnership in Northern Ireland. Most organisations (60%), however, including the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, were supportive of the proposal, (27 supportive, 17 opposed).
7. Of those who opposed civil partnership, marriage issues featured as a significant reason for objection (87%). There was an equal division in those who felt that civil partnership was '*gay marriage*' and those who were concerned that it would undermine marriage. Many of those in opposition mentioned religious issues (69%) and children's issues (56%).
8. A significant proportion of responses (54%) felt that civil partnership should be available for siblings or other family members. Only a relatively small proportion (23%), however, felt that civil partnership should be available to opposite sex couples and the vast majority of these were in favour of civil partnership in any event.
9. A high proportion of those in support of civil partnership felt that equality was an issue (86%). It was also thought by just over a third (35%) of those in favour of civil partnership that civil partnership didn't go far enough or that it was a '*second class status*'.

Chapter 2 KEY THEMES

This part identifies and summarises a number of themes and concerns that emerged throughout the responses to the consultation paper.

1. Equality and Social Justice

1.1 Two clear equality issues emerged from the responses: views on equality and fairness in general terms and views on section 75 Northern Ireland Act, specifically the impact on section 75 protected categories and whether civil partners should be a new protected category under section 75.

1.2 For those in support of civil partnership, equality and social justice were very significant: 86% of those in favour cited equality or social justice reasons. Representative groups were particularly supportive of equality arguments: 23 groups cited the importance of equality arguments in favour of the proposal.

- **An Important Measure for Equality and Social Justice**

"In August 2001 the Commission published a research report, which it had commissioned from researchers at the University of Ulster, entitled Enhancing the Rights of Lesbian, Gay and Bisexual People in Northern Ireland. One of the Report's recommendations, since adopted by the Commission, was that Parliament and the Assembly should enact laws to recognise same-sex relationships through registration of partnerships." (Northern Ireland Human Rights Commission)

"It is imperative that the status, rights and responsibilities of same-sex couples in Northern Ireland are the same as people in all other parts of the United Kingdom." (Equality Commission for Northern Ireland)

"...the proposals in the consultation document would certainly go a long way towards ending discrimination within this area in Northern Ireland." (The Rainbow Project)

"Long-standing gay couples have suffered a lack of legal certainty in many aspects of relationships often alongside a degree of hostility and discrimination not faced by heterosexual couples. The proposals are therefore both overdue and welcome." (The Law Centre (NI))

"As a lesbian mother, current legislation does not address my needs, or my child's right to have his family unit recognised. I would argue that it discriminates against and hurts children of gay parents in very significant ways, both practical and emotional. As part of the work being done to fight bullying of gay youths and of the children of gay people and to raise their self-esteem, official recognition of same-sex partnerships could be invaluable."

(Individual response)

- 1.3 Nine groups and 162 individuals made equality arguments against the proposal, with significant reference made to being lesbian, gay or bisexual as a "lifestyle choice", less deserving than other disadvantaged groups.

"Any perceived disadvantages are as a result of their chosen lifestyle, not a shortcoming in the law. Other disadvantaged couples or individuals, eg. disabled, elderly etc. are not in that position through choice so the proposal is unfair to them as special provision is being made for same-sex couples."

(Religious organisation)

"The very thought of facilitating what is considered immoral by many would have an unequal impact on those of certain religious beliefs, marital status or older generation. It would also unequally impact on young people brought up by partners in a same sex relationship. Such young people would in many cases be denied exposure to the heterosexual lifestyle of the majority of the population." (Individual response)

"The legal recognition proposed for civil partnerships facilitates the demands of a tiny minority of perverse relationships, while denying these civil benefits to many other regular and more deserving partnerships in society that currently are denied the benefits of lifelong commitments afforded to married couples. In the light of this, the desire for "justice" and "equality" emphasised in the consultation document rings rather hollow."(Individual response)

"This action if taken is a total discrimination against "normal" people, eg sisters or brothers or a mother and disabled daughter who live together all their lives, people who are not involved in homosexual relationships."
(Individual response)

The Government remains convinced of the strong equality and social justice imperatives behind the civil partnership proposal. There is significant unfairness and inequality caused by the fact that, although many committed same-sex couples live in partnership, and to all intents and purposes, as families, they experience serious social disadvantages due to the absence of any legal recognition of their partnerships.

Relatives, such as two sisters living together or a child caring for a parent, already have legally-recognised relationships and rights to reflect that relationship and would not be assisted by civil partnership but two lesbians who have shared each others' lives for many years can still be treated in law as complete strangers. This is not just.

The Government is committed to recognising this partnership and to ensuring parity of provision across the United Kingdom for same-sex partners who choose to register their partnership.

- 1.4 In relation to section 75 of the Northern Ireland Act, many of those who favoured the proposal were strongly in favour of inclusion as a category within, or on a par with, the category of 'marital status.'

- **Section 75 Northern Ireland Act**

"We therefore fully support a single UK wide Civil Partnerships Bill, taking into account the distinct nature of section 75 of the Northern Ireland Act."
(Equality Commission for Northern Ireland)

"We strongly disagree with the proposal that civil registration will not be included within marital status and feel that it is analogous with many key elements of the proposals which confer parity with 'spouse' etc We believe that the concept of marital status has evolved in line with changes in society and that it should accommodate the civil registration process. This would ensure that same-sex couples can be protected on a par with married couples. If this is not the case, then same-sex couples will be denied rights afforded by section 75 and other legislation." (NI Women's Coalition)(NICTU agrees)

- 1.5 Those opposed to civil partnership objected to the perceived impact on other categories protected under section 75.

"...there will be a most severe impact in relation to the category of religious belief. Many citizens in Northern Ireland are evangelical Christians, who cannot in good conscience recognise civil partnerships as legitimate, no matter what the law might say." (Society for the Promotion of Reformation in Government)

"This is not a question of the denial of fundamental rights or equality. As to section 75, I would warn that these proposals could be hoist by their own petard; if it is a breach of ...'due regard to the need to promote equality of opportunity...' not to have civil partnerships for same-sex couples what of the lack of civil partnerships for unmarried different-sex couples?" (Individual MLA)

<p>The Government has considered the evidence and concluded that civil partnership complies with section 75.</p>

2. Civil Partnership and Marriage

2.1 A very large number (87%) of those who opposed civil partnership raised the issue of marriage. A significant proportion (35%) of those who supported civil partnership also discussed marriage.

2.2 Of those opposing civil partnership on grounds of marriage, 43% felt that civil partnership was in effect 'gay marriage'.

- **“Gay Marriage”**

"Please consider carefully what is in effect legalising 'gay marriage'."
(Individual response)

"Why should gays be able to 'marry'?" (Individual response)

"The Government may be of the opinion that this legislation can be more easily passed with minimal public opposition if they use the term 'civil partnership' rather than 'gay marriage' but in reality gay marriage is what the Government are proposing and they should acknowledge that." (Democratic Unionist Party)

"...these proposals would clearly create a state so similar to marriage that the differences would be imperceptible to the ordinary man in the street." (The Christian Institute)

2.3 Many responses said that creating the legal status of civil partnership, as equivalent to marriage, would undermine marriage. Emphasis was placed on the unique religious, historical and social status of marriage, as opposed to its status in civil law.

- **Civil Partnership would undermine marriage**

"The proposals reduce the institution of marriage to being merely about legal ceremony and rights when in reality it is about much more. Marriage between man and wife provides the best environment in which to have and bring up children and so acts as a building block towards a stable society." (Individual response)

"To elevate same-sex unions to a position of being legally equivalent to marriage is deeply offensive to most people in Northern Ireland." (Individual response)

2.4 A considerable proportion of opponents who mentioned marriage cited traditional Christian beliefs and values and referred, in particular, to the sanctity of marriage.

- **Religious objections to the relationship between Marriage and Civil Partnership**

"Marriage was instituted by God. A man and woman enter into a relationship where children can be conceived and nurtured and the couple (man and woman) have a commitment to each other. Matthew 19: 4-5." (Individual response)

"As a Christian organisation, our understanding of marriage is an orthodox Biblical one, shared by millions of believers across the world and used as a bedrock of society for centuries. However, we believe that for much of the gay community, this debate is not about marriage but about recognition and injustice. We are happy to consider the best ways of redressing those injustices but not ways of redefining or weakening marriage." (Evangelical Alliance)

"Whilst the Church would wish to be supportive and welcoming to people of all sexual orientations, it believes that the sexual act should be practised in a committed heterosexual relationship. That is what makes marriage unique. Offering civil partnership registration in a way which clearly mirrors the present marriage regulations is to challenge the uniqueness of marriage as a God-given ordinance." (Presbyterian Church in Ireland)

"Many recent changes in the law to combat unjust discrimination against homosexual people were necessary and important, and we strongly support them. The Catholic Church teaches that homosexual people are to be 'accepted with respect, compassion and sensitivity'. Sadly, this is still not always the reality either in our society or in the Church, and we must all continue to work to achieve it. We also believe, however, that the Government's proposal to create civil partnerships for same sex couples is unnecessary to ensure the protection of human rights and would seriously undermine common good by undermining the natural institutions of marriage and the family, which are also the subject to the Government's duty of care. We are therefore strongly opposed to the development of such a scheme." (The Catholic Bishops of Northern Ireland)

"Nature itself teaches the principle of the family as the building block of society and the means for its protection. This view is clearly taught in the Bible, the revealed will of God, where the principle of the relationship of the man-woman married relationship is established in the earliest chapters. It is consistently defended and all deviation from it is condemned. Same-sex relationships fly in the face of this teaching." (Association of Baptist Churches in Ireland)

- 2.5 Those responses which expressed the view that marriage should be available to same-sex couples or that civil partnership did not undermine marriage were from LGB individuals or organisations, a legal academic, a political party and trade unions. Of those, a proportion (35%) felt that civil partnership was 'a second-class status' and that marriage should be equally available to same-sex

couples. Both the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, however, welcomed the proposals for civil partnership.

- **Civil Partnership: A Second-Class Status**

“Civil partnership for same-sex couples/marriage for heterosexual couples effectively creates ‘a second-class marriage for gay people...” (Individual response)

“We want to be able to marry simply to be equal with other loving, consenting people who have this right which does not threaten anyone. If marriage was extended to same sex couples it would effectively bring immediate and full equality.” (QueerSpace)

“We are disappointed that the Government has chosen to create an alternative structure to marriage in the form of a civil registration scheme...As marriage in a civil legal framework is completely secular this would not affect the freedom of any religious group to define its own concept of marriage, which they currently do...It would ensure that lesbians, gay and bisexuals would not be regarded as second class citizens with a second class civil registration process...In the absence of the extension of marriage to accommodate same-sex couples, we do believe that a civil registration scheme does offer the next best option.” (Northern Ireland Women’s Coalition)

The Government has no plans to permit same-sex couples to marry. Marriage remains the union of one man and one woman and is the choice of the majority of people seeking to build stable relationships. The Government continues to support this choice but same-sex couples deserve recognition in law and that is why we see a case for civil partnership registration. The proposals detailed in the consultation paper are for an entirely new legal status to be obtained through registering a civil partnership. The intention is to recognise and support stable same-sex partnerships. Same-sex partnership registration schemes already operate alongside opposite-sex marriage in other countries throughout the world.

3. Religious Views

3.1 Many of the individual responses in opposition to civil partnership commented on religious beliefs (262). Responses were received from both individual clergy (13) and from churches and religious organisations (12). Some individuals grouped together to campaign against civil partnership. The biblical teaching on marriage and relationships between men and women was referred to in many of these responses. The view expressed was that homosexuality and recognition of same-sex relationships are contrary to God's teaching.

- **Contrary to God's teaching**

"Genesis 2 verse 24 says for this reason a man will leave his father and mother and be united to his wife and they will become one. It does not say man will leave his mother and father and be united to man this is going against all I stand for and all my God has done." (Individual response)

"Homosexuality is an abomination to the Lord." (Individual response)

"Since Christians are rightly opposed to recognition of any perversion of God's gift of sexuality, it is likely that this legislation would be used against churches who will be unable to recognise these immoral arrangements." (Congregational Church)

"As this is totally against Biblical standards which all our laws should be based on, it is therefore very offensive and totally wrong." (Individual response)

"God Himself has been excluded but His book contains ample assessment of the costs associated with same sex relationships – eg. Romans chapter 1. This book is after all the basis of much of British law and the standard on which an oath is sworn in a court of law. What a strange perversion of logic to

contradict what is held up as truth and in so doing encourage what the Bible calls an evil practice under the cloak of the pretended virtue of equality.”
(Religious organisation)

3.2 A representative LGB group noted a dominance of religion in social life which it said leads to difficult circumstances for lesbian, gay and bisexual people. Whilst the prevalence of Christian beliefs was evident in many responses, the Catholic Church noted the need to treat LGB people with respect, compassion and sensitivity and the Presbyterian Church in Ireland advocated supporting and welcoming people of all sexual orientations,

- **Dominance of Religion**

“CoSO would like to draw attention to...the difficult circumstances concerning lesbian, gay and bisexual (LGB) people in Northern Ireland due to the prevailing social conservatism and dominance of religion in social life.”
(Coalition on Sexual Orientation)

“ What the government fails to recognise is that this disagreement with homosexual practice is based on moral and religious views. It is not merely ‘cultural’.” (The Christian Institute)

The Government respects the right of people in Northern Ireland to hold and lawfully observe and express their religious beliefs. Whilst it is noted that the proposal to create a new legal status of civil partnership may offend the religious beliefs of some persons, there is no intention or desire to interfere with religious beliefs in any way. The registration of a civil partnership will be an entirely civil process involving no religious element. It will not interfere in any way with the teaching or policies followed by Churches or any other religious body. That is a matter for the Churches to determine, not for Government to dictate.

4. Other Co-Dependents: Siblings; Opposite Sex; Unmarried Partners and other cohabitants

4.1 Many respondents who were both in favour and against the proposals commented that the proposals excluded certain categories of individuals who are in dependent non-sexual relationships. The view was expressed that some of the rights and responsibilities proposed for civil partners should be extended to categories of individuals who cohabit but who are not necessarily living as a couple. These categories of individuals include siblings living together, elderly parents and carers. 215 opponents commented that siblings should be included and 163 opponents mentioned inclusion for carers. Some of those in favour of civil partnership also suggested inclusion for siblings.

4.2 From the wording in the responses on this issue, it appears that a letter writing campaign was organised. The main concern expressed in these letters is that where two unmarried sisters have shared a home all their lives, on the death of one, the other will not enjoy the legal benefits proposed for same-sex partners. The view expressed is that exclusion could lead to inequality and discrimination.

- **Non-sexually defined domestic relationships**

“It is also discriminatory against a very large number of people e.g. a child who cares for a parent for years or two sisters who have lived together all their lives, yet they are left out of this scheme-ignored by the Government.”
(Individual response)

“The Evangelical Alliance is also keen to highlight on this point that the numbers of non–sexually defined domestic partnerships in the UK are far higher than the numbers of same-sex sexual partnerships. Whether these may be elderly brothers living together, or a daughter living with and caring for a mother in her old age, these partnerships also face many disadvantages which

ought to be remedied by reform of the law in Northern Ireland.” (The Evangelical Alliance)

- 4.3 A small number of respondents from both viewpoints raised issues about unmarried opposite sex couples and some stated that civil partnership registration should be open to them.

- **Partnership rights should be available to opposite sex partners**

“In addition by restricting the registration scheme to same-sex couples, many questions are left unanswered in relation to the status of unmarried opposite-sex cohabitants.” (Individual response)

“As a principle, Congress believes that partnership rights should be available to all partners regardless of whether they have chosen to register officially or to marry.” (Northern Ireland Committee, Irish Congress of Trade Unions)

- 4.4 The number of same-sex couples recorded in the 2001 census was compared to the numbers in other co-dependent households by some respondents.

- **Number of same-sex couples in Census**

“I find it very unfair that the 288 NI households (recent census) considering themselves to be of homosexual/lesbian orientation should be given civil partnership status amounting to the same legal rights as those who are married.” (Individual response)

The Government believes that home-sharers, carers and siblings share important relationships but maintains that their circumstances are different and that they do not have the same case for being recognised in law as a couple. Opposite sex couples already have the option of attaining legal status for their relationships through marriage, whether by civil or religious ceremony. Civil partnership registration is aimed at addressing a specific shortcoming in the recognition of relationships between same-sex couples, who may be treated in law as strangers even where they have spent their lives together. The census recorded the number of same-sex *households* and specifically noted that the statistics on same-sex may not reflect the actual picture in Northern Ireland. One of the reasons for not registering may have been fear of homophobic attacks. In any event, the issue is one of fairness rather than numbers affected.

5. Family and Children Issues

5.1 The creation of a new legal status touches upon complex issues of family law. The majority of responses against civil partnership raised issues relating to family and children (65%). Many expressed the view that traditional family values have been placed under attack. Just over a third in favour also raised issues under this theme (34%).

- **The traditional family unit**

“The traditional family is vital to a stable society, providing balance, security, stability, and a means of passing values from generation to generation. The great majority of children are raised by married couples. Same sex partnerships are a fundamental contradiction of this stable order. They cannot procreate children, and they deny adopted children the balance of parenting by both sexes.” (Society for the Promotion of Reformation in Government)

“I cannot think of a more destabilizing proposal to render family life of little value.” (Individual response)

“Children need healthy male and female role models (through a mother and father), to grant homosexual or lesbian couples custody of children is to deprive them of the male or female role model they deserve.” (Individual response)

5.2 Other responses, particularly from groups and organisations focused on changing societal patterns of family formation that would gain recognition by the introduction of the civil partnership scheme.

- **Preserving the integrity of the family unit**

“Contrary to the popular characterisation of the scheme by the media as “gay marriage” the civil partnership scheme acknowledges that within our society patterns of family formation have been changing.” (The Bar Council)

“The advantage of the proposal seems to be mostly that it may help bring about a change in attitudes and make it easier to convince judges, in that it gives same sex partners the status of step parents, and gives moral recognition to the family unit.” (Individual response)

- 5.3 Those against the government’s proposal stressed that an essential balance is for children to have male and female parents. Those in favour also asked for equivalent rights as married couples. Some of those in favour of the proposal suggested that same-sex couples should be allowed to enter a formal agreement on contact and residence issues. One respondent raised the issue that children born to married couples can be registered to both parents without petitioning the court, regardless of whether the child is biologically related to both parents as in donor insemination cases.

- **Parental Responsibility**

“CoSO suggests that this responsibility be extended to partnered couples as well, so any child born into the relationship (after registration) is legally and automatically the responsibility of both partners.” (Coalition on Sexual Orientation)

“The Adoption and Children Act 2002 allows for formal agreements and this option should be made available to same-sex partners. It would mean that a same-sex parent should also be able to gain parental responsibility in respect of their partner’s child by either a court order or by entering formal agreement with the child’s parent/s” (Individual response)

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. Having parental responsibility enables someone to make decisions that affect a child’s life. Parents do not always have parental responsibility for a child, and people who are not parents can be given parental responsibility. Adoptive parents acquire parental responsibility when they adopt a child.

5.4 Several respondents were concerned about the effect of the proposals on the welfare of children. The view was expressed that residence should be with a mother and father.

- **The child’s welfare as paramount**

“Whilst I accept that the majority of homosexual or lesbian couples who wish to take custody of a child would be doing so with good motives it cannot be deemed however good the intentions, to be in the best interests of the child to be deprived of a having both a mother and father.” (Individual response)

“Men and women are distinctly different. Each gender brings vitally important – and unique elements to a child’s development. Research reveals that the presence of a father in the home affects children’s cognitive and verbal skills, academic performance, involvement in or avoidance of high-risk behaviours and crime, and emotional and psychological health. A wealth of research and information has been published about the power and importance of the mother-child bond.” (Individual response)

“In respect of the sections in relation to Adoption (5.7), Parental responsibility (5.5) and Residence and Contact (6.1) the Family and Childcare Programme would advocate decisions that have the child’s welfare as paramount. Each child’s particular needs should be taken into account when making decisions about the overall assessment. The sexual disposition of the

child's carer would be one theme in the overall assessment." (North and West Belfast Health and Social Services Trust)

The Government believes that wherever it is safe and in the children's best interests, children should continue to have contact with both their parents and also with former partners of their parents where they have been treated as children of the partnership. It is therefore proposed that registered partners should be able to apply to the court for a contact or a residence order under the provisions of Article 8 of the Children (NI) Order 1995.

5.5 The issue of child support was also mentioned by a small number of respondents.

- **Child support**

"... your proposals do not deal with the situation where the children's non-residential parent is paying child support. Does this end when the partnership is entered into? What if the partnership breaks down?" (Northern Ireland Commissioner for Children and Young People')

The Government views the establishment of a registered civil partnership as a serious matter, which will involve significant commitments between the parties. Civil partnership registration would not alter the liability of parents to pay child support. Registered partners should be assessed in the same way as spouses for the purposes of child support. The courts should, while respecting arrangements made under the Child Support legislation, be able to make orders to provide reasonable maintenance for children who are treated as children of the family, and this duty should be enforceable through a court.

5.6 There were wide views on the issue of adoption by same-sex couples from both proponents and opponents of the proposed scheme. Opponents were concerned that children would be based in an unbalanced situation:

- **Adoption**

"The logical next step for such partnerships is that they will seek to foster or adopt children. There are enough pitfalls in the field of child-rearing/child-care without encouraging the placing of children in such an unbalanced situation." (Individual response)

"We do not think that adoption is acceptable. Child's orientation must not be influenced by anything but their natural upbringing. Being adopted by same-sex, children will have inclination on their sexuality and will suffer disastrous psychological trauma in their life." (All Cultures Together in Education ACTE)

5.6 Some respondents considered that it would be preferable to give same-sex registered partners the same adoption and fostering rights as married couples.

"We do not agree with the proposal to legislate following the review of adoption law in Northern Ireland. If same-sex couples who register are afforded rights and responsibilities on a par with opposite-sex married couples, then there should be no difficulty in affording those rights in relation to adoption in terms of where the law currently stands." (Northern Ireland Committee, Irish Congress of Trade Unions)

"NICVA would argue that the extension of the Adoption and Children Act 2002 to Northern Ireland would allow a same-sex partner to gain parental responsibility by entering formal agreement as well as by court order." (Northern Ireland Council for Voluntary Action)

"...gay people can adopt as single parents and only married couples who have been married for more than two years are able to adopt as a couple. As gay

marriages are not recognisable in Northern Ireland, a gay person can only apply to adopt as a single person rather than as a couple of adoptive parents. Board Officers would agree that the adoption law needs to be reviewed and brought into line with England and Wales.” (Eastern Health and Social Services Board)

The Government believes that the needs and welfare of the child should be at the heart of the adoption process. Single lesbians and gay men may already adopt children, but only married couples may apply to adopt jointly in Northern Ireland. The Government intends to review adoption law in Northern Ireland. The review will involve public consultation.

6. Specific Rights and Responsibilities

1. In contrast to those who commented on family and children issues, discussed in chapter 5 above, most of those who commented on other specific rights and responsibilities, were in favour of civil partnership in any event.

- **Immigration**

2. Those in favour of civil partnership who commented on immigration supported the proposal to allow same-sex registered partners the same right to apply for leave to enter the United Kingdom as married partners. Some also commented that those wishing to form a civil partnership should gain equal rights with fiancés or fiancées to apply for leave to enter the UK.

The Government believes that civil partnership registration will also be evidence of the permanent nature of the relationship. Therefore, the Government proposes to remove the two-year cohabitation requirement for civil partners. All partners, whether married, civil or neither, will still be subject to a further two-year probationary period before they can apply for indefinite leave to remain.

- **State Pensions**

3. Some of those in favour of civil partnership expressed concern that the State Pension be extended to civil partners.

The Government is actively pursuing the most appropriate approach to take in order to ensure that State pensions are extended to civil partners in due course. The decision will be affected by the changes scheduled from 2010 when the state pension age for men and women will begin to be equalised.

4. Some responses raised issues about the implications of civil partnership for the taxation system. A repeated issue related to the treatment of registered civil partners under revenue law. Views were stated that civil partners should receive the same treatment as spouses in the context of taxation and particularly exemptions from inheritance and capital gains tax, which can result in serious consequences for partners who have shared a home.

- **Tax and Inheritance Tax**

The Government recognises that there will be implications for the tax system from any civil partnership registration scheme and these will be addressed in the first available Finance Bill.

5. Some queries were raised about the impact of civil partnerships on social security provisions.

- **Social Security: Income-Related Benefits**

The Government intends to treat civil partners as a single family unit, with an obligation to support one another, for income-related benefits purposes.

7. Registration and dissolution

7.1 The vast majority against the scheme were individual respondents who expressed opposition to allowing same-sex couples register their partnerships in any event.

7.2 Overall, very few respondents commented on registration and dissolution. Almost half of those in favour of civil partnership commented on registration and dissolution issues (48%). Most welcomed the proposals for registration. Local registration was welcomed to avoid disadvantage, particularly to same-sex couples on low incomes or with disabilities.

- **Registration in Northern Ireland**

“ The facility to register civil partnerships should be made available to all same-sex couples in Northern Ireland. The imposition of a requirement to travel to Great Britain to achieve registration is arbitrary and unfair.” (The General Council of the Bar of Northern Ireland)

“It would be unacceptable if, having registered in other parts of the UK, couples found most of the rights acquired there did not apply here (i. e. ‘transferred matters’ normally decided by the devolved Northern Ireland administration, such as protection from domestic violence, child support, adoption, family law, pension, inheritance, hospital visiting and medical treatment etc” (Individual response)

7.3 Most respondents who commented on registration agreed with the proposed requirements and formalities. Of those who oppose civil partnership, one organisation disagreed with the formal requirements.

- **Requirements and Formalities**

“The Trust believes the requirements and formalities described with respect to age, exclusivity, false declarations and prohibited degrees of relationship represent appropriate formal requisites in relation to the legal status of same sex civil partnerships.” (Down Lisburn Trust)

“The formal requirements (e.g., prohibition in the case of blood or half blood ties) indicate that the Office of Law Reform believes that these partnerships would be sexual in nature. This suggests that the Office of Law Reform is knowingly and deliberately introducing a form of same-sex marriage and, furthermore, discriminating against a multiplicity of supportive, but non-sexual, relationships that people enter in to.” (CARE, London)

- 7.4 Some responses expressed concerns relating to the role of registrars who do not wish to take part in formalising a ‘homosexual union’. Others suggested training for registrars.

- **Registrars**

“We have a further concern which relates to the registrars who will be required to perform civil partnerships. What of those who, for deeply held moral or religious reasons, do not wish to take part in formalising a homosexual union?” (The Christian Institute)

“...however reforming the law is not enough, any reform must be backed up with awareness training for registrars and an assurance that public institutions will not be able to bar same sex couples from registering.” (Individual response)

- 7.5 A small number of respondents from the lesbian, gay and bisexual community commented on the wish to have a ceremony.

- **Right to perform a ceremony**

“Same sex couples want the rights to exchange vows in front of their friends and family” (PROUD)

7.6 Concerns were expressed about the fear of homophobic attack once registration information becomes public, in responses from organisations and from individuals. Some respondents suggested monitoring of public access to registers.

- **Privacy of all registering couples**

“COSO proposes strict measures to protect the privacy of all registering couples. Certainly the publicly available data about couples who intend to register should be limited to first initial, last name, with no addresses and no occupations provided for all couples” (Coalition on Sexual Orientation)

7.7 Many of the respondents who commented agreed with the dissolution process. The view was expressed that the dissolution provision should mirror divorce provisions and divorce law should be reformed to allow no fault divorces. One respondent referred to terminology.

- **Dissolution**

“ About the use of terminology, I would favour the use of divorce to dissolution. In my understanding divorce is a legal regulation and thus has no religious connotation.” (Individual response)

“We would urge government to reform the existing divorce system to set divorce on a no-fault footing. In this reform the current two to five year periods for separation should be re-considered.” (Women’s Support Network)

The Government believes that couples who want to register a partnership should be required to register with the local registration office. Registrars would attend to the formalities of registering the partnership, they would not provide a ceremony. Couples who wish to follow their registration with some celebratory event could arrange that themselves, but a ceremony would not form part of the formal registration procedure. Those effecting civil partnership are entering into an arrangement from which rights and responsibilities flow. It is therefore important that the registration should be undertaken to the highest possible standards. Registrars have the professional expertise and experience to do such work and can also provide a local service in the same way as they do for other

8. Westminster Legislation

- 8.1 The consultation proposes that legislation to permit civil partnership registration for same-sex couples in Northern Ireland should be made by an Act of Parliament at Westminster. All of those who supported the proposal agreed that this was the best way forward. Opposition to the proposed method of legislating was expressed by some of those who objected to the proposal.

“...we oppose the introduction of gay marriage anywhere in the United Kingdom..” (Democratic Unionist Party)

“Because of the number of Christians in N.I. relative to England the proposal would face greater opposition through debate in a local assembly. The scheme could thus be foisted unequally on an unwilling population in N.I.” (Religious organisation)

“Not only would I oppose such legislation on religious and moral grounds but also on ethical. I feel that it is yet another example of the attempted imposition in N Ireland (which remains a relatively conservative society) of an amoral liberal humanist agenda being vigorously promoted by a largely English and European secular elite.” (Individual response)

- 8.2 Those in favour of Westminster thought that it would be best to introduce civil partnership registration schemes across the United Kingdom in a co-ordinated way, with the same basic principles applying throughout the United Kingdom at the same time. Otherwise, it is likely that there would be problems for individuals moving from one part of the United Kingdom to another and having different rights and responsibilities at various times.

“The Commission previously responded to the Women and Equality Unit’s consultation for GB on this issue and called for the introduction of similar legislation in Northern Ireland at the same time. We therefore fully support a

single UK wide Civil Partnerships Bill, taking into account the distinct nature of section 75 of the Northern Ireland Act. It is imperative that the status, rights and responsibilities of same-sex couples in Northern Ireland are the same as people in all other parts of the United Kingdom.” (Equality Commission for Northern Ireland)

"The arguments put forward in the consultation paper in support of a UK-wide Civil Partnerships Bill are cogent and compelling." (The General Council of the Bar of Northern Ireland)

The Government believes that the introduction of a civil partnership registration scheme in Northern Ireland through a Civil Partnerships Bill that extends across the United Kingdom would ensure that same-sex couples in Northern Ireland have equality and parity with their counterparts in the rest of the United Kingdom. Of course once devolution is restored then the Northern Ireland Executive and Assembly are able to decide on transferred matters so they could choose then what to do on the issues within their remit. At present, however, there is no Assembly so these decisions have to be taken under direct rule and legislation taken forward at Westminster.

CHAPTER 3 ANALYSIS OF *PROFORMA* RESPONSES

This section summarises 42 *proforma* responses received. Nine questions were put to the public for their comments. 36 responses were in favour of civil partnership whilst six disagreed. The majority of responses came from individuals (22). The other responses were sent by a local authority (1), religious organisations (3), non-governmental organisations (NGOs) (5), lesbian, gay and bisexual (LGB) groups (5), students' organisations (2), legal organisations (2), one trade union and one political party.

Question 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.

This question raises two issues. Firstly, whether same-sex couples face disadvantages and secondly whether this creates an unacceptable situation that requires reform of the law.

Most respondents agreed that same-sex couples suffer disadvantage and welcomed the proposals. An individual respondent welcomed official recognition as invaluable in the fight against bullying of gay youths and children of gay people.

Six respondents out of the 42 disagreed with any legal recognition of civil partnerships. Out of these, three individual responses disapproved of same-sex relationships. One respondent considered that the lifestyle was one chosen by lesbian, gay and bisexual people and that the disabled and elderly were unfairly excluded from registration. The remaining two opponents considered that while injustices do exist, these should be remedied on a case-by-case basis. They both referred to '*non-sexually defined domestic partnerships*':

“These domestic relationships based on companionship are often crucial to the social fabric and at least as deserving of legal recognition as same-sex partnerships.” (Evangelical Alliance)

Respondents in favour of the proposal suggested the inclusion of heterosexual unmarried couples in civil partnership registration. Some proposed that marriage should open up to same-sex couples.

Wording was an issue for some of those in favour who objected to use of 'committed long term relationships' because they considered that this encouraged a homophobic attitude of same-sex couples not being committed to long-term relationships.

Question 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.

This question invited comments on the right to register and the wide range of rights and responsibilities which follow after registration.

Most respondents in favour of the proposals agreed that the right to register would give access to rights and responsibilities. Those objecting expressed the view that rights and responsibilities accruing on marriage should not automatically be given to other relationships because of the unique advantages that rights consequent on marriage bring to children, married people and society. One respondent referred to '*exclusionary marriage laws*'.

The views expressed are summarised as follows:

- Opening civil partnership to all couples regardless of coupled gender. (LGB organisation)
- Reforming the marriage model as a better and first option for same-sex couples since creating a second institution of civil partnership causes a '*second class status*'.
- The consequences of registration mirror those of marriage and since the substance of civil partnerships is the same as marriage, the heterosexual definition of marriage could be challenged. One respondent said that the focus of the proposals raises the question of how '*to protect unmarried opposite-sex*

partners from, inter alia, the adverse economic consequences of relationship breakdown while providing no answers.'

- Rights and responsibilities available on marriage should not be given to same-sex couples. Same-sex couples should attain rights on a case-by-case basis without reforming the law.

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

Most respondents agreed on the basis that it would cause injustice and prove a financial burden for a same-sex couple to travel to Great Britain to register. It was stated that registration in Northern Ireland was essential to promote equality of opportunity in relation to sexual orientation and for those with disabilities. One respondent expressed the view that a difference in social mores and values in Northern Ireland and the United Kingdom should be a reason for not proceeding with registration in Northern Ireland, while making registration available in Great Britain. Several respondents stated that it would be more democratic for the Northern Ireland Assembly to decide matters.

Question 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.

Respondents agreed generally with this statement whilst some NGOs called for EU-wide recognition and protocols with non-EU countries recognising same-sex partnerships. One students' organisation called for bilateral agreements and a legal organisation was concerned to ensure that the United Kingdom scheme is compatible with schemes in other EU member states.

Question 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.

There were two clear issues in the responses. These issues concerned ownership of the policy and political expediency. Some opponents considered that a restored Assembly should deal with the issue of civil partnership in the future. Other opponents felt that the majority of people in Northern Ireland did not want these measures.

The suspension of the Assembly was also cited as a reason for inclusion in a UK-wide bill. The preferred route was that providing the fastest introduction and there was an unwillingness to wait for the return of the Assembly. Members of one LGB group considered the '*lack of a local Assembly a useful tool in extending the rights of LGB people*'. Another respondent considered the proposed route the best way of avoiding any incompatibility in legislation, particularly transferred matters across the devolved region.

Question 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.

Those who replied to this question generally welcomed the package of rights and responsibilities following upon civil partnership. This question produced the most detailed responses. One religious organisation commented that the consultation document lists only legal rights and has '*very little to do with responsibilities*' (CARE).

LGB organisations expressed a preference for same-sex marriage and/or full equality with opposite sex couples on immigration, adoption and taxation. (Queerspace, Lesbian Line) One students' association asked why infidelity as a ground for dissolution was not proposed because its absence reinforced the stereotype of promiscuity in gay men. Some suggested inclusion of a general non-discrimination clause compelling private/voluntary, religious and public facilities.

It was also stated that same-sex couples have a right not to be discriminated against when hospital visiting and medical treatment issues arise. The proposal that a surviving civil partner can register the death of the other partner was welcomed.

The most common issues related to immigration, adoption and taxation.

Immigration

Points raised were:

- The proposal to allow same-sex registered partners the same right to apply for leave to enter the United Kingdom as married partners was welcomed.
- Those wishing to enter a civil partnership should gain equal rights with fiancées to apply for leave to enter the United Kingdom.
- Home Office policies outside formal immigration rules should recognise registered partnerships.

Adoption

The government is due to undertake a review of adoption law in Northern Ireland. Opponents considered same-sex couples should not be given a right to adopt children. A common request from those in favour was for same-sex couples to gain adoption rights on a par with married couples and for this to be incorporated into civil partnership legislation. Some LGB organisations suggested that a court application should not be necessary where agreement is reached between the biological and prospective parents.

Taxation

A repeated issue related to the omission of taxation and treatment of registered civil partners under revenue law. Views were stated that civil partners should receive the same treatment as spouses in the context of taxation and particularly exemptions from inheritance and capital gains tax. An individual respondent was concerned that equality and non-discrimination should be borne in mind.

Question 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.

Specific issues were raised by some respondents relating to privacy of personal details in the registration process. Most respondents were concerned about confidentiality and some suggested use of initials only and surnames in the register to protect from harassment.

The concern was expressed that it should be as significant to dissolve a partnership as it is to dissolve a marriage.

Question 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.

Most respondents were unable to predict costs involved. One respondent suggested that any cost should be spent in other areas including research on non-sexually defined partnership schemes. Lesbian and gay organisations were almost unanimous that the initial take up would be low.

Question 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.

One respondent suggested that the scheme has differential effects - both negative and positive on four categories of section 75: Persons of different religious belief; of different marital status; of different sexual orientation; with or without dependents. Other responses expressed the view that the definition of 'marital status' should contain the category of civil partnership in order to accord equality of opportunity.

1. The majority of individuals who responded were opposed to the proposals. On the other hand, the majority of groups or organisations who responded, including the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, were supportive of the proposals. We considered all the responses carefully and took the full range of views expressed into account. We considered both the different arguments made and the numerical balance, as a quantitative analysis alone does would not have done justice to the range and diversity of responses. Ultimately, it was decided that the reasons why the Government put forward this policy in the first place still held good.
2. The Government remains convinced of the strong equality and social justice imperatives behind the civil partnership proposal and is committed to ensuring parity of provision across the United Kingdom for same-sex partners who choose to register their partnership. The support for the Government's position is reflected in the following quotation:

"As well as arguing for parity between the regions, we also feel that if couples were unable to register here it would send a very clear message to lesbian and gay people that Northern Ireland does not recognise them as valid citizens. Homophobia in Northern Ireland is reflected in a number of research reports which found that 67% had experience homophobic bullying in schools and that 82% experienced homophobic harassment with 55% experiencing violence in the workplace, street or their homes. A failure to recognise lesbian and gay people here would promote the culture that homophobia is an acceptable prejudice. It is vital that Government set the standard and give a clear indication that discrimination on the grounds of sexual orientation is not acceptable." (Northern Ireland branch of the National Union of Students and the Union of Students in Ireland)

3. 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 discrimination is not acceptable.
4. 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.
5. The Government also remains convinced of the legal and practical arguments in favour of civil partnership. Presently, same-sex relationships exist without any legal recognition or certainty as to their legal implications. This new legal status would clarify the nature and extent of rights and responsibilities. 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 for same-sex couples, their children and relatives and for many other agencies, including the courts.
6. The Government view is that there are inequalities and social injustice issues here that affect everyone across the United Kingdom. So our preference is for co-ordinated schemes benefiting everyone in a comprehensive way. If there was no Northern Ireland scheme then Northern Ireland same-sex couples could not register their partnerships here. They could, however, travel to England, Wales or Scotland and register there. This would present obvious disadvantages to same-sex couples in this part of the United Kingdom, particularly those on lower incomes and those with disabilities.

7. These proposals cover a mix of issues, some of them matters for the Northern Ireland Assembly and some excepted or reserved for Westminster. If the proposals went ahead in Great Britain but not in Northern Ireland, then Northern Ireland couples could register there then return to Northern Ireland and continue to enjoy the rights and responsibilities falling within the excepted or reserved field. That would mean things like immigration rights. They would not have access to the full range of rights and responsibilities envisaged in the consultation paper because the matters within the remit of the Northern Ireland Assembly – transferred matters - would not be extended to them.

8. Of course once devolution is restored then the Northern Ireland Executive and Assembly are able to decide on transferred matters and could choose what to do on the issues within their remit. The Assembly will be able to legislate in this field when it returns.