



## **Civil Partnerships (Scotland) Bill Call for Views**

**January 2020**

### **About Children in Scotland**

Giving all children in Scotland an equal chance to flourish is at the heart of everything we do. By bringing together a network of people working with and for children, alongside children and young people themselves, we offer a broad, balanced and independent voice. We create solutions, provide support and develop positive change across all areas affecting children in Scotland. We do this by listening, gathering evidence, and applying and sharing our learning, while always working to uphold children's rights. Our range of knowledge and expertise means we can provide trusted support on issues as diverse as the people we work with and the varied lives of children and families in Scotland.

We welcome the opportunity to inform the Civil Partnerships (Scotland) Bill and have responded from a child rights perspective. To inform our response we have drawn on the expertise from other organisations including: LGBT Youth Scotland, The Scottish Equality and Human Rights Commission and Engender.

### **1. What is your view of the Bill's approach to achieving equality by making civil partnerships available to different sex couples, rather than closing future civil partnerships to all couples?**

Children in Scotland is fully supportive of legislation which opens civil partnerships to opposite sex couples. This change would support the legislation to be compatible with Article 14 of the European Convention on Human Rights.<sup>1</sup> Additionally, one of the recommendations of the Scottish Equality and Human Rights Commission is to: "to allow mixed-sex couples to enter into a civil partnership."<sup>2</sup> Mixed civil partnerships are currently available in England and Wales and this change in legislation would make Scotland compatible with other parts of the United Kingdom.

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<sup>1</sup> <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>

<sup>2</sup> Equal Access to Marriage: Ending the segregation of same-sex couples and transgender people in Scotland 2011

We believe that everyone should have the choice to enjoy the rights, entitlements and benefits of a civil partnership. Opening out civil partnerships will have positive implications to the lives of children and young people. It will directly impact young people aged 16 and 17, children whose parents who have chosen to enter mixed civil partnerships and to children born to parents in existing mixed civil partnerships.

**2. What will the impact of the Bill and its provisions be on you, your community or your organisation? Give consideration as to whether there is any impact on human rights or equality issues for any particular groups of people.**

**Implications for young people aged 16 & 17**

We recognise that the UNCRC states that child marriage is any marriage where at least one of the parties is under the age of 18. However, the joint general comment from the UNCRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognises that marriage can take place at the aged of 16 where defined in law and where clear informed consent is given.<sup>3</sup>

Although we are aware that the figures for young people choosing to get married are small (as can be seen by figures from the Office of National Statistics for Scotland<sup>4</sup>) changes to legislation would offer young people more choice to formally recognise their relationship and enjoy the same benefits afforded to married couples and those in same sex civil partnerships.

Additionally, opening out civil partnerships to everyone would help support LGBT young people. LGBT Youth Scotland highlighted in response to previous consultation that young people expressed concern about being 'outed' by revealing their civil partnership status.<sup>5</sup> This situation could be eradicated if civil partnerships were open to all and would therefore promote greater equality and inclusion.

**Impact on families**

Civil partnerships offer an alternative option for mixed sex couples who do not feel comfortable with marriage.<sup>6</sup> Whilst, we recognise that cohabiting couples are offered some benefits these would be considerably extended through civil partnership by providing legal rights and responsibilities.<sup>7</sup>

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<sup>3</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement>

<sup>4</sup> <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/marriages-and-civil-partnerships/marriages-and-civil-partnership-time-series-data>

<sup>5</sup> [https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/view\\_respondent?\\_b\\_index=420&uuld=501277857](https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/consultation/view_respondent?_b_index=420&uuld=501277857)

<sup>6</sup> <https://www.engender.org.uk/content/publications/Engenders-response-to-the-Scottish-Governments-Consultation-on-Civil-Partnership.pdf>

<sup>7</sup> *The Future of Civil Partnerships in Scotland*

For example, Engender in its 2015 response to the Scottish Government Consultation on Civil Partnerships stated that “the additional option of entering into civil partnerships would strengthen women’s rights and security. In turn, this would have an impact on child poverty.”<sup>8</sup>

Additionally, the Bill makes provision that a man in a civil partnership with the mother of a child will obtain parental rights and responsibilities. We support the changes to The Children (Scotland) Act 1995. This provision helps to support Article 18 of the UNCRC which states that:

“State parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”<sup>9</sup>

As rights holder’s, children require support from those with corresponding parental responsibilities.<sup>10</sup> The recognition of both parents through civil partnership helps to ensure that children’s rights have greater protections.

We believe that children should be encouraged to maintain positive relationships with both parents where appropriate.<sup>10</sup> However whilst we believe this is a positive development, best interests of the child (Article 3 of the UNCRC) should be paramount to any decision affecting them. It is important that a holistic view of the child is taken, which looks at who and what matters to the child and by asking the child to share their views.<sup>10</sup>

### **3. The Bill will make consequential changes to existing legislation to carry through the effect of the main change. Do you have any comment to make on these changes?**

As has been discussed in question 2 we support the changes to The Children (Scotland) Act 1995. We feel these would have positive implications for children by ensuring that both parents have legal rights and responsibilities for the child’s care and welfare.

Additionally, we are pleased that changes to legislation will help support transgender people as they would no longer be required to dissolve their civil partnership if they were to receive a gender recognition certificate.<sup>5</sup> We are aware that consultation is currently underway regarding the Gender Recognition Reform (Scotland) Bill and will be outlining our position in our response.

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<sup>8</sup> <https://www.engender.org.uk/content/publications/Engenders-response-to-the-Scottish-Governments-Consultation-on-Civil-Partnership.pdf>

<sup>9</sup> [https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_summary-1.pdf](https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_summary-1.pdf)

<sup>10</sup> [https://childreninscotland.org.uk/wp-content/uploads/2018/09/Family\\_Law\\_Review.pdf](https://childreninscotland.org.uk/wp-content/uploads/2018/09/Family_Law_Review.pdf)

However, we would like to emphasise that Article 8 of the UNCRC states that a child has the right to an identity. This would mean that transgender young people aged 16 and 17 would be able to confidently enter into a civil partnership.

We are also pleased that the Bill includes a criminal measure to prevent forced civil partnerships.<sup>11</sup> This is significant because almost one third of forced marriages involve young people under the age of 18.<sup>12</sup> Introducing this measure helps to ensure that young people are protected and kept safe.

**4. Is there anything else about civil partnerships that should be included in (or excluded from) the Bill? If so, what changes would you like to see and why? Please explain your reasons.**

NA

**5. Will the Bill result in any resource implications for your organisation or you as an individual? If so, please explain and provide any supporting information.**

See our response to question 2.

**For further information please contact:**

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<sup>11</sup> Civil Partnerships (Scotland) Bill: child rights and wellbeing impact assessment 2019

<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/804044/Forced\\_Marriage\\_Unit\\_Statistics\\_2018\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804044/Forced_Marriage_Unit_Statistics_2018_FINAL.pdf)