

Civil Partnership (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Civil Partnership (Scotland) Bill, introduced in the Scottish Parliament on 30 September 2019.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 57-EN);
- a Policy Memorandum (SP Bill 57-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 57-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

The Bill – what it will do

4. The Bill will extend civil partnership to mixed sex (opposite sex) couples. In this Financial Memorandum, the Scottish Government uses the term “mixed sex civil partnership”. Others, including the United Kingdom Government, use the term “opposite sex civil partnership”. The UK Government also uses the abbreviation “OSCP”.

5. Civil partnerships were introduced by the Civil Partnership Act 2004. They were modelled closely on marriage. As currently constituted, civil partnerships can only be formed by couples of the same sex. Generally, couples in marriages and couples in civil partnerships have the same rights

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

and responsibilities. There have been some differences in relation to survivor benefits in pensions and there are also some differences in respect of aspects of family law.

6. The Marriage and Civil Partnership (Scotland) Act 2014 extended marriage to same sex couples. In England and Wales, the Marriage (Same Sex Couples) Act 2013 made similar provision. On 27 June 2018, the UK Supreme Court in a case relating to England and Wales¹ made a declaration that aspects of the 2004 Act to the extent that they preclude a mixed sex couple from entering into a civil partnership are incompatible with the European Convention on Human Rights.

7. Following the UK Supreme Court decision, the Scottish Government consulted on the future of civil partnership in Scotland². This consultation put forward two options on the future of civil partnership – that no new civil partnerships could be registered in Scotland from a date in the future or extending civil partnerships to mixed sex couples. Following this consultation, the Scottish Government announced that it intended to extend civil partnership to mixed sex couples³.

Estimates of potential number of mixed sex civil partnerships

8. Costs will arise in relation to the registration of mixed sex civil partnerships and in relation to rights and responsibilities which mixed sex civil partners will have.

9. A key driver in relation to costs is the question of how many mixed civil partnerships will be registered. This is not easy to predict but potential numbers are given below. As indicated below, there are a variety of

¹ The UK Supreme Court decision is at

<https://www.supremecourt.uk/cases/uksc-2017-0060.html>

² The Scottish Government consultation following the UK Supreme Court decision is at <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/>

³ The Scottish Government decision following the consultation is at <https://www2.gov.scot/Topics/Justice/law/17867/civil-partnership-in-scotland>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

sources that can be used to estimate the potential number of mixed sex civil partnerships in Scotland.

Figures from Scotland

10. Since 2014, marriage and civil partnership have both been available to same sex couples in Scotland. National Records of Scotland (“NRS”) publish statistics on the number of marriages and civil partnerships in Scotland⁴. The table below shows the number of same sex marriages and civil partnerships which took place in Scotland in 2018. The Scottish Government has excluded from this table same sex marriages which are formed by couples changing their civil partnership to marriages so that the table is just showing new registered relationships.

Table 1. Same sex marriages (excluding changes from civil partnerships) and civil partnerships registered in Scotland in 2018 (source NRS – tables 7.02 and 7.10)⁵

Same sex marriage (excluding changes from civil partnerships)			Civil partnership		
Male couples	Female couples	Total	Male couples	Female couples	Total
349	542	891	38	27	65

11. This shows that the total number of new registered same sex relationships registered in Scotland is 956. 65 of these were civil partnerships which gives a percentage of 6.8%.

⁴ NRS Statistics for 2018 are at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

⁵ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

12. There were 26,546 mixed sex marriages in Scotland in 2018⁶. Using the percentage figure of 6.8% given above suggests there could be around 1,800 mixed sex civil partnerships in Scotland. However, the figures from the Netherlands, discussed below, show that although registered partnerships are becoming more popular amongst mixed sex couples, they remain more popular proportionately amongst same sex couples. This is also true of New Zealand civil unions and of French pacte civil de solidarité (Pacs) both of which are discussed below in this Financial Memorandum. This suggests, therefore, that a figure of mixed sex civil partnerships based on the number of same sex civil partnerships registered in Scotland could be high.

Figures from the Netherlands

13. In the Netherlands, marriage and registered partnership (the Dutch equivalent of civil partnership) are both available to mixed sex and same sex couples. The Dutch CBS service⁷ publishes statistics on the number of marriages and registered partnerships which took place in the Netherlands in 2018⁸. The table below shows the number of marriages and registered partnerships which took place in 2018.

Table 2. Registered partnerships and marriages registered in the Netherlands in 2018 (source CBS)

Registered partnership		
Same sex	Mixed sex	All

⁶ <https://www.nrscotland.gov.uk/files//statistics/time-series/marr-18/mcp-time-series-18-mt.01.xlsx>

⁷ Statistics Netherlands, also known as the Dutch Central Bureau of Statistics (Centraal Bureau van Statistiek) or CBS, is an autonomous agency which collects and processes data and publishes statistical reports. CBS performs public service tasks but operates independently and not under the direct authority of a Dutch ministry. The Minister of Economic Affairs is politically responsible for relevant legislation, budget and conditions. CBS is financed from the state budget.

⁸ The Dutch statistics are at <https://opendata.cbs.nl/statline/#/CBS/en/dataset/37772eng/table?ts=1563196103584>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Male couples	Female couples	Total	Couples	Total
311	338	649	19,181	19,830
Marriage				
Same sex			Mixed sex	All
Male couples	Female couples	Total	Couples	Total
682	820	1,502	62,813	64,315

14. The Dutch statistics also show the growing popularity of mixed sex registered partnership in the Netherlands (although proportionately it remains more popular amongst same sex couples). In 2015, there were 12,331 mixed sex registered partnerships; in 2016, 15,090; in 2017, 17,194; and in 2018 19,181.

15. The total number of mixed sex relationships entered into in the Netherlands in 2018 was 81,994 (19,181 registered partnerships and 62,813 marriages). The 19,181 registered partnerships represent 23.4% of these. Extrapolating this figure to Scotland (using the figure of 26,546 mixed sex marriages) suggests that there could be 6,211 mixed sex civil partnerships a year in Scotland.

16. However, the Scottish Government doubts that the number of mixed sex civil partnerships registered in Scotland would be as high as that, for a number of reasons.

17. Firstly, the number of same sex civil partnerships registered in Scotland has fallen markedly since the introduction of same sex marriage. There was an average of over 500 a year before the introduction of same sex marriage whereas in recent years numbers have been averaging

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

around 70⁹. In the Netherlands, by contrast there were, in 2018, 649 same sex registered partnerships (30.1%) and 1,502 same sex marriages (69.8%). If we assume that the drivers for civil partnership are the same for mixed sex couples as they are for same sex couples then there is an argument that registered partnerships are more popular generally in the Netherlands than civil partnerships are in Scotland¹⁰.

18. Secondly, civil partnerships in Scotland and registered partnerships in the Netherlands may not be directly comparable, given that in the Netherlands if both parties have a registered partnership, are in agreement and do not have children, they can terminate the partnership out of court¹¹.

19. Thirdly, all marriages and registered partnerships in the Netherlands must be solemnised by the civil registrar¹² whereas in Scotland marriages can be solemnised by religious or belief bodies (or by the registrar) and civil partnerships can be registered by religious or belief bodies (or by the registrar). It is possible that the role played by religious bodies in Scotland may lead to a continuing emphasis of marriage over civil partnership, as some religious bodies may take the view that couples who wish to enter into a formal relationship should marry rather than enter a civil partnership.

20. Fourthly, to marry or enter a registered partnership in the Netherlands at least one of the parties must be a Dutch national or resident in the

⁹ Table 7.10 gives numbers of civil partnerships registered in Scotland: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

¹⁰ There is little hard evidence on the drivers for why a mixed sex couple may choose a specific type of union. Reasons which are put forward include perceptions that marriage is patriarchal and that marriage is a religious institution.

¹¹ <https://www.government.nl/topics/divorce-separation-and-termination-of-registered-partnership/divorce-legal-separation-or-termination-of-a-registered-partnership> In Scotland, all divorces and dissolutions are court based. There is a simplified process in place for some cases.

¹² <https://www.government.nl/topics/marriage-cohabitation-agreement-registered-partnership/question-and-answer/marriage-or-entering-into-a-registered-partnership>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Netherlands¹³. This contrasts with Scotland where a large proportion of marriages are formed by people resident outside Scotland (mostly elsewhere in the United Kingdom)¹⁴. If people are choosing to travel to Scotland to enter into a registered relationship, it is possible that this too may lead to a continuing emphasis of marriage over civil partnership as amongst mixed sex couples “tourist” marriages may be more popular than “tourist” civil partnerships.

Figures from New Zealand

21. In New Zealand, marriage and civil union (the New Zealand equivalent of civil partnership) are both available to mixed sex and same sex couples. Stats New Zealand¹⁵ publishes statistics on the number of marriages and registered partnerships which took place in New Zealand in 2018¹⁶. The table below shows the number of marriages and registered partnerships which took place in 2018.

Table 3. Civil Unions and marriages registered in New Zealand in 2018 (source: Stats NZ)

Civil unions		
Same sex	Mixed sex	All
Couples	Couples	Total

¹³<https://www.government.nl/topics/marriage-cohabitation-agreement-registered-partnership/question-and-answer/marrying-a-foreign-national-in-the-netherlands>

¹⁴ See table 7.09 <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

¹⁵ Stats NZ Tātauranga Aotearoa is New Zealand’s official data agency. Stats NZ is a government department, but operates independently of government.

¹⁶ The New Zealand statistics are at <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2018> (Please see tables 6 and 7 at the second link).

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

30	48	75 ¹⁷
Marriage		
Same sex	Mixed sex	All
Couples	Couples	Total
867	23,124	23,991

22. It can be seen from this that civil unions have not had a significant take-up in New Zealand, although proportionately they are more popular amongst same sex couples.

23. There were 897 registered same sex relationships in New Zealand in 2018: 30 (3.3%) were civil unions and 867 (96.7%) were marriages.

24. There were 23,172 registered mixed sex relationships in New Zealand in 2018: 48 (0.2%) were civil unions and 23,124 (99.8%) were marriages.

25. The New Zealand figures also show that, as in Scotland, the number of civil unions entered into by same sex couples declined markedly when same sex marriage was introduced. New Zealand introduced same sex marriage on 19 August 2013. In 2012, there were 321 same sex civil unions; 159 in 2013 and 27 in 2014. The number of mixed sex civil unions also declined following the introduction of same sex marriage although the trend here is less marked. There were 69 in 2012; 75 in 2013 and 36 in 2014.

¹⁷ This figure of 75 does not quite tally with the figures of 30 and 48. Stats NZ indicate that the data on civil unions “has been randomly rounded to protect confidentiality. Individual figures may not add up to totals and values for the same data may vary in different tables”

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

26. The New Zealand position does show a number of similarities with the position in Scotland. Marriage and civil union in New Zealand offer broadly similar rights; visitors to New Zealand can marry or enter a civil partnership there¹⁸; there is a wide range of celebrants¹⁹ and the number of civil unions declined markedly following the introduction of same sex marriage. In addition, a recent article by Stats New Zealand notes the decline in marriage rates since 1971²⁰. There has been a similar decline in Scotland²¹.

Figures from France

27. In France, marriage and the Pacte civil de solidarité (Pacs) (the French equivalent of civil partnership) are both available to mixed sex and same sex couples. The French Institut national d'études démographiques (Ined) publishes statistics on the number of marriages²² and Pacs²³ which took place in France. The table below shows the number of marriages and Pacs which took place in 2016 (the most recent year for which figures seem available in relation to the Pacs).

Table 4. Marriages and Pacs registered in France in 2016 (source Ined)

Pacs		
Same sex	Mixed sex	All

¹⁸ <https://www.govt.nz/browse/family-and-whanau/getting-married/get-a-marriage-licence/>

¹⁹ <https://www.govt.nz/browse/family-and-whanau/getting-married/celebrants/>

²⁰ <https://www.stats.govt.nz/news/marriage-and-divorce-continue-downward-trend>

²¹ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages> Please see table 7.01b

²² Ined statistics on the number of marriages registered in France are at <https://www.ined.fr/fr/tout-savoir-population/chiffres/france/mariages-divorces-pacs/mariage-nuptialite/>

²³ Ined statistics on the number of Pacs registered in France are at <https://www.ined.fr/fr/tout-savoir-population/chiffres/france/mariages-divorces-pacs/pacs/>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Male couples	Female couples	Total	Couples	Grand total
3,863	3,251	7,114	184,444	191,558
Marriage				
Same sex			Mixed sex	All
Couples			Couples	Grand total
7,065			219,549	226,614

28. It can be seen from the figures in table 4 that the Pacs is very popular in France. The number of same sex couples entering a Pacs and entering marriage is broadly the same. The number of mixed sex couples entering marriage is higher than those entering a Pacs but the numbers are relatively close.

29. However, the Scottish Government does not consider that the numbers entering the Pacs in France is a good analogy when considering the numbers who might enter a mixed sex civil partnership in Scotland. Although a same sex Pacs is recognised as a civil partnership in Scotland (and the Scottish Government’s intention is to provide similar recognition in the future to mixed sex Pacs), the rights and responsibilities in France for a couple in a Pacs are lower than the rights and responsibilities of married couples²⁴. In addition, it is easier to dissolve a Pacs in France than it is to end a marriage in France²⁵.

30. Therefore, the Scottish Government does not intend to use Pacs numbers to calculate the potential number of couples who may enter a mixed sex civil partnership in Scotland.

²⁴ <https://www.service-public.fr/particuliers/vosdroits/F1026>

²⁵ <https://www.service-public.fr/particuliers/vosdroits/F1620>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Conclusion on statistics

31. It appears to the Scottish Government, therefore, that the New Zealand statistics provide a reasonable benchmark to assess the likely take-up of mixed sex civil partnerships in Scotland. However, the Scottish Government notes that the take-up of same sex civil partnerships is lower in New Zealand than in Scotland. As indicated above, 6.8% of registered same sex relationships in Scotland are civil partnerships whereas 3.3% of registered same sex relationships in New Zealand are civil unions.

32. This suggests, therefore, that (same sex) civil partnership is more popular in Scotland than (same sex) civil unions in New Zealand. Without further evidence on drivers for mixed sex unions, it seems reasonable to assume that the same pattern would be true for mixed sex relationships. Comparing the two percentages in the previous paragraph produces a factor of 2.06. Applying this factor to the 0.2% of mixed sex relationships in New Zealand that are civil unions produces a figure of 0.412%. Applying this percentage of 0.412% to the figure of 26,546 mixed sex marriages in Scotland in 2018 suggests that **there would be 109 mixed sex civil partnerships in Scotland per year**. Obviously there will be margins of error around these figures. But based on these calculations, the Scottish Government's estimate is that the number of mixed sex civil partnerships registered in Scotland will be between 100 and 150 a year.

33. The Scottish Government will use the figure of 109 in this Financial Memorandum when considering the costs of extending civil partnerships to mixed sex couples. Given the varied experience internationally, this figure is subject to a high degree of uncertainty and will be kept under review during the course of Parliamentary scrutiny and as the legislation is implemented.

Information from the United Kingdom Government's Impact Assessment

34. The UK Government intends to extend civil partnership to mixed sex couples in England and Wales. In July 2019, the UK Government issued a document called "Implementing Opposite-Sex Civil Partnerships: Next Steps". This included an Impact Assessment²⁶.

²⁶ <https://www.gov.uk/government/consultations/civil-partnerships-next-steps-and-consultation-on-conversion>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

35. On page 5 of the Impact Assessment, the UK Government indicates that “the Netherland’s experience of OSCP’s (opposite sex civil partnerships) is one of low initial take-up, increasing strongly over time, with OSCP’s a growing proportion of opposite sex unions (marriage plus OSCP’s). This compares to New Zealand, which was rejected as a likely scenario given take-up of OSCP’s is incredibly low and remains flat. The OSCP’s survey results suggest England and Wales is unlikely to follow this experience.”.

36. The survey referred to is also available at footnote 23. It was carried out in September 2018 and has a total sample of 2,390 respondents “in a serious, opposite-sex relationship”. A key finding is that 15% of respondents were “very interested” in a civil partnership and 21% were “fairly interested” in a civil partnership. The Scottish Government recognises that those surveyed showed interest in entering into a civil partnership but, as page 8 of the Impact Assessment itself says “we do not expect all of those who have said they are ‘very interested’ in an OSCP to actually take-up the option – international evidence supports this view”.

37. A further difference between the assumptions in the UK Government Impact Assessment and the Scottish Government’s assumptions in this Financial Memorandum is that the forecast number of marriages in England and Wales in the Impact Assessment shows an increasing number of marriages between 2020 and 2029. As recorded in paragraph 26 above, the number of marriages in Scotland has been declining in recent years, and it seems reasonable to assume this will continue to be the case.

38. A further difference between England and Wales and Scotland which might perhaps reduce the number of mixed sex civil partnerships entered into in Scotland is that cohabitants have more rights in Scotland than they do in England and Wales.²⁷

²⁷ Please see, for example, section 28 of the Family Law (Scotland) Act 2006 [on financial provision where cohabitation ends otherwise than by death] and section 29 of the 2006 Act [on application to court by survivor for provision on intestacy]. The Scottish Law Commission has a current law reform project on cohabitants’ rights: <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/aspects-of-family-law/> The Scottish Government is not aware of any direct equivalent of the provisions in the 2006 Act south of the border.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

39. As indicated in paragraphs 25 and 26 above, the Scottish Government considers that New Zealand does have similar characteristics to Scotland in relation to mixed sex civil partnership and intends to base the calculations in this Financial Memorandum on New Zealand figures rather than Dutch figures. However, as indicated in paragraph 33 above, the figure on the number of couples wishing to enter a civil partnership is subject to high levels of uncertainty.

40. The UK Government Impact Assessment contains very useful information, some of which is used later on in this Financial Memorandum. In particular, the UK Government has some figures on the costs to private sector Defined Benefit pension schemes²⁸, which are used at paragraphs 100 to 104 below (Private sector occupational pension schemes are reserved).

41. In addition, the UK Government Impact Assessment says on page 8 that “the proportion of those that are ‘unlikely to marry’ and ‘very interested’ in forming an OSCP ‘within the next year’ (averaged over ‘next year’, and ‘between 1-2 years from now’) is 57% of total estimated demand for OSCPs. This proportion is carried forward in our ‘additional’ OSCPs take-up calculations”.

42. By “additional”, the UK Government Impact Assessment is referring to couples entering into a mixed sex civil partnership who would not have entered into marriage anyway. This figure is relevant for some financial calculations and, as no better estimate is available, is used where appropriate in this Financial Memorandum. Taking this percentage of 57% and applying it to the figure of 109 mixed sex civil partnerships at paragraph 33, gives **a figure for “additional” mixed sex civil partnerships in Scotland of 62.**

²⁸ In Defined Benefit pension schemes a specified amount of income in retirement is guaranteed by an employer, and any shortfall in funding is met by the employer.

An alternative approach to calculating the potential number of mixed sex civil partnerships using the methodology in the UK Government’s Impact Assessment.

43. Figure 3 of the UK Government’s Impact Assessment, on page 11²⁹, shows low, best and high estimates of “additional” mixed sex civil partnerships from 2020 to 2029. Information on assumptions behind these estimates are shown on page 8 of the Impact Assessment. Figure 3 relates to estimates of “additional” civil partnerships. As indicated above, this is estimated by the UK Government to be 57% of total demand for mixed sex civil partnership and relates to those entering into a mixed sex civil partnership who would not have married anyway.

44. To obtain information on actual estimates of mixed sex civil partnerships based on the UK Government’s approach, each figure needs to be divided by 57 and then multiplied by 100. (This reflects that the numbers given in figure 3 of page 11 of the UK Government’s Impact Assessment just relate to “additional” civil partnerships.)

45. The table below shows the low, best and high estimates of “additional” and actual mixed sex civil partnerships in England and Wales for the years 2020 to 2029; gives an average for the ten years and then applies 10% to that average to give an approximate annual take-up of mixed sex civil partnerships for Scotland using the methodology applied by the UK Government.

Table 5. Forecast “additional” and actual number of mixed sex civil partnerships in England and Wales, based on UK Government’s methodology (Source: UK Government and Scottish Government calculations).

	Low estimate		Best estimate		High estimate	
Year	Additional mixed sex CPs	Actual	Additional mixed sex CPs	Actual	Additional mixed sex CPs	Actual

²⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815743/Civil_Partnerships_Impact_Assessment.pdf

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

		mixed sex CPs		mixed sex CPs		mixed sex CPs
2020	2,698	4,733	26,614	46,691	83,959	147,296
2021	2,453	4,304	15,215	26,693	44,800	78,596
2022	2,211	3,879	12,822	22,495	37,252	65,354
2023	5,184	9,095	14,828	26,014	38,891	68,230
2024	12,795	22,447	22,487	39,451	40,542	71,126
2025	16,419	28,805	26,157	45,889	42,202	74,039
2026	19,465	34,149	29,249	51,314	43,872	76,968
2027	20,026	35,133	29,855	52,377	45,549	79,911
2028	19,253	33,777	29,125	51,096	47,233	82,865
2029	18,949	33,244	28,862	50,635	48,923	85,830
Average	11,945	20,957	23,521	41,266	47,322	83,022
10% of average (approx. figure for Scotland).	1,195	2,096	2,352	4,127	4,732	8,302

46. It can be seen from this table that using the UK Government methodology, which is based in part on data from the Netherlands, produces a much higher estimated figure of actual and “additional” mixed sex civil partnerships. However, as indicated at paragraphs 31 to 33

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

above, the Scottish Government prefers to base calculations on data from New Zealand. This produces, for Scotland, an estimated 109 mixed sex civil partnerships per year (paragraph 32) of which 62 are “additional” (i.e. couples who would not have married anyway) (paragraph 42).

Costs on the Scottish administration

Costs to National Records of Scotland (NRS)

47. Local authority registrars process notices of intention to enter a civil partnership. Once a civil partnership is registered, registrars add the details onto the civil partnership register. Registrars also carry out the registration of civil partnerships although this function can also be carried out by an approved celebrant. Costs to local authorities are outlined in paragraphs 64 to 67 below. Local authorities carry out their functions in this area under the direction of the Registrar General of Births, Deaths and Marriages for Scotland, the Chief Executive of NRS.

48. As outlined below, it is expected that day to day costs of registration once mixed sex civil partnership is available will be met by fees paid by couples entering the civil partnership. This is in line with the current practice for marriage and for same sex civil partnership. However, there will be set up costs which will not be recovered through registration fees.

49. NRS will need to update their IT system, known as Forward Electronic Register System “FER” (this system is also used by local authority registrars); update the registrars’ handbook; update forms; and organise training for NRS staff and for registrars. Mixed sex civil partnership will be registered on the existing civil partnership register and so there will be no need to create a new register. The amount of work needed in relation to new forms may be limited as civil partnerships are gender neutral at the moment (whereas in relation to marriage, the parties entering into the marriage may choose to use designations such as “bride” and “bridegroom”).

50. The Scottish Government is not planning a publicity campaign on mixed sex civil partnership. There was no such campaign when same sex marriage was introduced. However, the Scottish Government does recognise the need to provide information to mixed sex couples intending to enter a registered relationship on matters such as the eligibility criteria for mixed sex civil partnership, rights and responsibilities and overseas recognition.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

51. Therefore, the Scottish Government will work with NRS to provide information for couples (e.g. information material on a website) about mixed sex civil partnership. This information could also be used by registrars when dealing with enquiries from couples. Costs in relation to providing this information will be low, as no publicity campaign is planned, and are covered by the set-up costs mentioned in the next paragraph.

52. Based on experience with same sex marriage, the Scottish Government estimates that set-up costs for NRS in relation to registration will be £200,000 in total [£0.2 million]. This is a one-off cost and will be incurred in 2020/21.

53. These costs arise regardless of the take-up of mixed sex civil partnership.

Costs to devolved public service pension schemes

54. Occupational pensions policy is a reserved matter for the UK Government, although there are some executively devolved public service pension schemes in Scotland³⁰.

55. Following the UK Supreme Court decision in 2017 in *Walker v Innospec*³¹, changes are being introduced to public service pension schemes. These changes will align pensions paid for survivors of same sex marriages and civil partnerships with those paid to widows (i.e. female survivors of mixed sex marriages): in these cases, the member's full service is used to determine entitlement. The existing restriction of only using service from 1988 onwards for widowers (i.e. male survivors of mixed sex marriages) continues to apply. The UK Government has announced that it intends to align survivor benefits for mixed sex civil partners with those that are available for survivors of mixed sex marriages³².

³⁰ More details are on the Scottish Public Pension Agency website: <https://pensions.gov.scot/>

³¹ The UK Supreme Court decision in *Walker v Innospec* is at <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

³² Please see paragraph 78 of the UK Government's "Next Steps" document: <https://www.gov.uk/government/consultations/civil-partnerships-next-steps-and-consultation-on-conversion>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

56. Total survivor benefits in the five devolved public sector schemes are around £190 million a year. This is based on the following estimates of survivor benefits:

NHS: £56 million (in 2013/14)

Local Government: £52 million (in 2013/14)

Teachers: £44 million (in 2013/14)

Police: £29 million a year

Fire: £6 million a year

57. This gives a total of £190 million (rounded up).

58. As indicated in paragraph 42 above, the Scottish Government estimates that there will be an “additional” 62 mixed sex civil partnerships a year (“additional” in this context refers to couples who would not otherwise have married). There were 27,590 marriages and civil partnerships in 2018 (27,525 marriages and 65 civil partnerships)³³. An additional 62 registered relationships would be an additional 0.22%. This suggests that, in due course, the devolved public sector pension schemes could face additional costs in relation to survivor benefits of £418,000 a year [£0.4 million]. [£190 million x 0.22% gives £418,000]. Clearly, costs could be higher if take up of mixed sex civil partnership should be higher.

59. Regardless of take-up, the devolved public service schemes often already provide benefits for mixed sex cohabitants conditional on meeting certain conditions such as financial interdependency, cohabiting and being free to marry although the last condition has been subject to a recent Court of Appeal decision³⁴. In short, cohabitants who would enter into a mixed sex civil partnership may, in some circumstances, already be entitled to pension benefits under the scheme rules, as unmarried partners.

³³ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2018/section-7-marriages>

³⁴ <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1271.html>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

60. Therefore, some people who would be likely to receive benefits as mixed sex civil partners would also be likely to receive the benefits as unmarried partners even if mixed sex civil partnership were not introduced.

61. As a result, the cost of their benefits could be a displaced existing cost rather than a new additional cost.

62. Not all the costs will occur at the same time. People marry or enter a civil partnership, retire and die at different ages. Therefore, any additional costs would occur at different times, be spread over different periods and be for the longer term.

63. Regular scheme valuations identify both the on-going costs of the schemes and the contributions required to meet scheme liabilities going forward. It is estimated that introducing mixed sex civil partnership would not have a material impact on either the costs of the scheme or contribution rates.

Costs on local authorities

64. Local authorities charge fees in relation to civil partnership registration and these fees will be the same for those intending to enter a mixed sex civil partnership³⁵. The intention is that the costs of registering a mixed sex civil partnership will be met by the fees paid by the couple. Registration costs to couples are outlined in paragraphs 96 and 97 below.

65. It is also possible to change a civil partnership to a marriage and this will be extended so that mixed sex couples in a civil partnership will also be able to change their relationship to marriage. Couples in a civil partnership registered in Scotland³⁶ can either have a marriage ceremony to change their relationship to marriage and pay the usual fees payable for marriage

³⁵ The current fees for registering a civil partnership are at <https://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf> These fees are subject to change.

³⁶ Including couples who entered a civil partnership through HM armed forces or HM consuls and elected Scotland as the relevant part of the United Kingdom.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

ceremonies³⁷ or they can change through an administrative route³⁸. Couples in a civil partnership registered outwith Scotland can have a marriage ceremony to change their relationship to marriage³⁹.

66. The costs of registering a relationship changing from civil partnership to marriage will be met by the fees paid by the couple. Registration costs to couples are outlined in paragraphs 98 and 99 below. The Scottish Government expects the number of changes of mixed sex civil partnerships to marriages will be low, given that mixed sex couples have long been able to marry.

67. Although it is expected that day to day costs of registration once mixed sex civil partnership is available will be met by fees paid by couples entering the civil partnership, there will be set up costs which will not be recovered through registration fees. Based on experience with same sex marriage, the Scottish Government estimates that there will be one-off costs to local authorities of £200,000 [£0.2m] in total for familiarisation and training. These will be one-off costs and they will be incurred in 2020/21. These costs will be incurred regardless of the take-up of mixed sex civil partnership.

Costs on other bodies, individuals and businesses United Kingdom Government

68. As indicated above, the UK Government is taking steps to extend civil partnership to mixed sex couples in England and Wales and in July 2019

³⁷ The current registration fees for marriage ceremonies are at <https://www.nrscotland.gov.uk/files//registration/rm1b-leaflet.pdf>

³⁸ The current fees for changing a civil partnership to a marriage through the administrative route are <https://www.nrscotland.gov.uk/files//registration/guidance-notes-to-change-a-scottish-civil-partnership-into-a-to-marriage.pdf>

³⁹ Guidance on changing a civil partnership registered outwith Scotland to a marriage in Scotland is at <https://www.nrscotland.gov.uk/files//registration/guidance-notes-to-change-a-non-scottish-civil-partnership-into-a-marriage.pdf>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

issued a document called “Implementing Opposite-Sex Civil Partnerships: Next Steps”⁴⁰.

69. Pages 16 to 18 of the “Next Steps” document discusses Financial Entitlements for mixed sex civil partners. The areas mentioned are generally reserved: Bereavement Support Payment; the Marriage Allowance in taxation; the State Pension; (private sector) occupational pension schemes and public service pension schemes.⁴¹ Reserved costs to the public sector have not yet been calculated by the UK Government.⁴² Costs in relation to private sector occupational pension schemes have been calculated by the UK Government and are considered later in this Financial Memorandum, under “costs to business”.

Marriage Allowance

70. The Scottish Government has considered if the Marriage Allowance (which also extends to civil partners)⁴³ would have any impact on net income tax receipts for the Scottish Budget.

71. Under the terms of the Fiscal Framework⁴⁴ Scotland’s net spending position from income tax is determined by growth in per head tax receipts relative to per head growth in tax receipts in the rest of the United Kingdom⁴⁵. In relation to the Marriage Allowance and the extension of civil

⁴⁰ <https://www.gov.uk/government/consultations/civil-partnerships-next-steps-and-consultation-on-conversion>

⁴¹ The Scottish Government does have devolved responsibilities for some public service pension schemes and costs to these are outlined earlier on in this Financial Memorandum.

⁴² Page 2 of the UK Government’s Impact Assessment notes that “These reforms will also have costs to the public sector from DB [Defined Benefit] public sector pension schemes and from other tax impacts (e.g. married tax allowance). The GEO [Government Equalities Office] are currently working with HMT, DWP and other departments to assess the overall impact of OSCP’s [opposite sex civil partnerships] on public expenditure.

⁴³ Information on the Marriage Allowance is at <https://www.gov.uk/marriage-allowance>

⁴⁴ The Fiscal Framework is at <https://www.gov.scot/publications/fiscal-framework-factsheet/>

⁴⁵ Some Income Tax powers were devolved to Wales from 2019-20. Therefore, it will be growth in income tax revenues per head relative to growth per head in England and Northern Ireland in future.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

partnership to mixed sex couples, paragraph 42 of this Financial Memorandum estimates that there will be 62 “additional” civil partnerships (i.e. couples that would not have married anyway) as a result of this legislation.

72. On the assumption that 62 additional couples are eligible for the Marriage Allowance and that there are no additional civil partnerships in the rest of the UK (so a disproportionate Scottish impact) then the loss to Scottish revenues would be under £100,000 around in 2020-21, which is very small relative to a tax that is forecast to raise in advance of £10 billion in revenues per annum.

73. These figures are not included in this Financial Memorandum. First of all, the figures above assume that all of the couples are eligible for the Marriage Allowance in full, and claim the tax relief, which is unlikely to be the case.

74. Secondly, this loss to Scottish revenue would only arise if there would be a disproportionate increase in the number of mixed sex civil partnerships in Scotland when compared with the rest of the UK. Clearly, there is some uncertainty in relation to the potential introduction of mixed sex civil partnership in Northern Ireland⁴⁶. However, Northern Ireland has only some 2.9% of the UK population. The UK Government has confirmed that for England and Wales, it intends to introduce mixed sex civil partnerships by the end of this year, further reducing the chance of a disproportionate impact in Scotland.

75. The Scottish Government does not consider there is evidence to suggest there would be a disproportionate increase in the number of mixed sex civil partnerships in Scotland when compared with the rest of the UK. Furthermore, given the relatively small number of additional cases per year, it does not appear there would be a material loss to Scottish revenue as a

⁴⁶ Section 8 of the Northern Ireland (Executive Formation etc) Act 2019 <http://www.legislation.gov.uk/ukpga/2019/22/section/8/enacted> requires the Secretary of State to make regulations to introduce mixed sex civil partnership (and same sex marriage) in Northern Ireland. The section comes into effect on 22 October 2019 if a Northern Ireland Executive is not restored by 21 October 2019. The regulations, which would be subject to the negative resolution procedure at Westminster, must be in force on or before 13 January 2020.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

result of mixed sex civil partners claiming the Marriage Allowance. In addition, Scotland does have “tourist” marriages and civil partnerships. In around 20% of marriages and civil partnerships celebrated in Scotland, neither party is resident here. However, where the couple in a mixed sex civil partnership registered in Scotland then lives in England and Wales, the marriage allowance would be claimed in England and Wales rather than Scotland.

Costs to the Scottish Courts and Tribunals Service (SCTS)

76. There could be costs to the SCTS and, as indicated below, to the legal aid budget in relation to an increase in the number of dissolutions of civil partnerships as a result of the introduction of mixed sex civil partnership.

77. There were 27,525 marriages in 2018 in Scotland and there were around 9,500 divorce cases in the courts in 2017/18.⁴⁷ Therefore, around one in three marriages end in divorce in Scotland. We assume the dissolution rate for mixed sex civil partnerships would be about the same.

78. The vast majority (over 99%) of divorces and dissolutions are dealt with in the local Sheriff Court⁴⁸. Typically, around 60% of these are handled through the simplified procedure⁴⁹, which can be used where there are no children under 16 and no financial issues to be sorted out between the spouses or civil partners.⁵⁰

79. As indicated in paragraph 42 above, the Scottish Government estimates that there will be 62 “additional” civil partnerships a year (i.e. couples entering a mixed sex civil partnership who would not have married). Applying the assumption outlined above that 1 in 3 of these civil partnerships will dissolve, that suggests there will be an additional 21 dissolutions a year in the courts, from around 2023 onwards. Of these,

⁴⁷ <https://www.gov.scot/publications/civil-justice-statistics-scotland-2017-18/> (see table 5)

⁴⁸ Ibid (See tables 6 and 7)

⁴⁹ Ibid (see tables 9 and 10)

⁵⁰ Guidance on the simplified procedures for divorce and dissolution can be found on the SCTS website: <http://www.scotcourts.gov.uk/taking-action/divorce-and-dissolution-of-civil-partnership>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

around 13 would be simplified and 8 would be ordinary. It is likely that all of them would be in the Sheriff Court.

80. This level of dissolution would have no real impact on SCTS resources. However, the SCTS have indicated that there could be a financial impact on them if the take up of mixed sex civil partnership (and the subsequent number of dissolutions should be higher.

Costs to the Scottish Legal Aid Board

81. As indicated above, there could be additional 21 dissolutions a year in the courts, from around 2023 onwards. Of these, around 13 would be simplified and 8 would be ordinary. It is likely that all of them would be in the Sheriff Court.

82. The simplified procedure has few legal aid implications. The simplified procedure is designed to be used without the parties needing to be represented in court. As a result, civil legal aid, which can help pay for legal representation in court, is not available for the simplified procedure.

83. However, advice and assistance (A&A)⁵¹ is available to give general help on the simplified procedures. The Scottish Legal Aid Board (“the Board”) rarely grant increases in funding under A&A for this work so the cost will tend to be no more than the standard limit for A&A of £95.

84. The Board estimates that around half of cases going to court could involve parties who are **both** in receipt of legal aid. So using the figure of 13, would suggest 20 grants of A&A. In 6 cases only one of the parties would be eligible for legal aid and in the other 7 both parties would be. As a result, costs to the Board from an increase in the number of simplified dissolutions might be $20 \times £95 = £1,900$ a year.

85. The remaining 8 dissolutions a year may have more implications for legal aid.

86. The Board estimates that the mean (average) cost to the legal aid fund of supporting one party going through a divorce under the ordinary

⁵¹ Advice and assistance (A&A) can help with the costs of getting legal advice from a solicitor, like information on rights and options or help with negotiations and paperwork.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

procedure is £1,385. The Scottish Government and the Board would expect the mean (average) cost to the legal aid fund of supporting one party going through a dissolution under the ordinary procedure would also be £1,385.

87. The Board estimates that around half of cases going to court could involve parties who are **both** in receipt of legal aid. So using the figure of 8, would suggest 12 grants of legal aid. In 4 cases only one of the parties would be eligible for legal aid and in the other 4 both parties would be.

88. This suggests potential costs to civil legal aid of £17,000 (£0.017 million) a year from 2023 onwards (12 x £1,385). Adding in the costs of £1,900 a year from an increase in the number of simplified dissolutions gives an estimated cost (rounded up) of £20,000 a year (£0.02 million). Clearly, costs could be higher if take up of mixed sex civil partnership should be higher.

89. Regardless of take-up, there are some matters which could have an impact on the calculations:

- There is no certainty on what future dissolution rates will be.
- Scotland has a marriage and civil partnership tourism business⁵². Therefore, if mixed sex civil partnership were introduced, a number of the mixed sex civil partners may not remain in Scotland and will not access legal aid.
- Not everybody is eligible for legal aid.

Section 122 of the Anti-social behaviour, Crime and Policing Act 2014: (offence of forced marriage: Scotland)

90. Section 11 of the Bill extends the offence in section 122 of the Anti-social behaviour, Crime and Policing Act 2014 to forced civil partnerships. The Scottish Government has considered if costs could arise as a result of this.

91. There are no recorded court proceedings for this offence up to and including 2017-18. Therefore, it seems unlikely that there would be

⁵² Between 2005 and 2018 there were 5,670 civil partnerships registered in Scotland. In 1,137 (20.1%) of these neither of the parties was resident in Scotland. [Information provided to the Scottish Government by NRS].

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

significant costs in relation to prosecutions, court proceedings and legal aid and nothing is included in this Financial Memorandum.

Gender Recognition Panel: potential costs of more applications through civil partners staying in the relationship

92. The Bill makes provision so that civil partners can obtain a full Gender Recognition Certificate (GRC) and stay in their civil partnership. At the moment, this is only possible if both civil partners obtain gender recognition on the same day. In other cases, the civil partners have to change their relationship to marriage or have to dissolve the civil partnership.

93. The Scottish Government has considered if there are costs arising from civil partners obtaining gender recognition and staying in their civil partnership. In particular, there could be costs for the Gender Recognition Panel.⁵³ However, the number of GRCs issued to married applicants is low: between 30 to 40 a year across the UK in recent years⁵⁴. Given this, it seems unlikely there will be significant numbers of applications to the Gender Recognition Panel from civil partners seeking to obtain a full GRC and stay in their civil partnership. As a result, costs are expected to be negligible.

94. Removing the requirement to change their relationship to marriage or having to dissolve their civil partnership will bring benefits to some civil partners seeking gender recognition and their partners. There could also be some cost savings to them.⁵⁵ However, as indicated above, numbers here are expected to be low and so the overall savings are not recorded in this Financial Memorandum.

⁵³ Applications for gender recognition are dealt with by the Gender Recognition Panel: <https://www.gov.uk/apply-gender-recognition-certificate>

⁵⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808151/Main_Tables_Q4_2018-19.ods Please see table GRP 4

⁵⁵ The current costs of changing a civil partnership to marriage are outlined at <https://www.nrscotland.gov.uk/registration/i-want-to-change-my-civil-partnership-into-a-marriage-how-do-i-go-about-it>

Costs to individuals

95. Local authorities charge fees (subject to change) in relation to the registration of same sex civil partnership⁵⁶. The intention is that the fees for those seeking to enter a mixed sex civil partnership will be at the same level as the fees charged for those seeking to enter a same sex civil partnership. The aim is that the costs of registration are met by the fees paid by the couple.

96. At the moment, a couple can give notice of civil partnership registration (£30 each notice); have a civil partnership registered by the registrar in a registration office (£55) and have one extract of the register entry (their “civil partnership certificate”) (£10) for a total in statutory fees of £125. As indicated in paragraph 42, the Scottish Government considers that there could be 62 “additional” (i.e. couples who would not have married anyway) mixed sex civil partnerships a year in Scotland. This suggests a total of £7,750 (£0.008 million) in registration fees for couples.

97. Couples may pay more if they seek larger accommodation from the local authority or if the registration occurs at a place other the registration office. Couples may also choose to have their civil partnership registered by a religious or belief celebrant in which case the costs of the registration would depend on what is charged by the celebrant.

98. It is possible to change a same sex civil partnership to a marriage and this will be extended so that mixed sex couples in a civil partnership will also be able to change their relationship to marriage. Couples in a civil partnership registered in Scotland⁵⁷ can either have a marriage ceremony to change their relationship to marriage and pay the usual fees payable for marriage ceremonies⁵⁸ or they can change through an administrative

⁵⁶ The current fees for registering a civil partnership are at <https://www.nrscotland.gov.uk/files//registration/cp-new-fees-16-12-2014.pdf>

⁵⁷ Including couples who entered a civil partnership through HM armed forces or HM consuls and elected Scotland as the relevant part of the United Kingdom.

⁵⁸ The current registration fees for marriage ceremonies are at <https://www.nrscotland.gov.uk/files//registration/rm1b-leaflet.pdf>

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

route⁵⁹. Couples in a civil partnership registered outwith Scotland can have a marriage ceremony to change their relationship to marriage⁶⁰.

99. The Scottish Government expects that the number of changes of mixed sex civil partnerships to marriages will be low, given that mixed sex couples (unlike same sex couples) have long been able to marry. As a result, registration costs in this area are expected to be negligible.

Costs to business

100. The main impact on business relates to a reserved matter – survivor benefits in private sector occupational pension schemes. The UK Government Impact Assessment⁶¹ considers the issue in some depth.

101. Page 12 of the UK Government Impact Assessment says:

“The primary identified additional costs to business arise from the expansion of survivor benefits for private sector DB (Defined Benefit) pension schemes to previously unmarried couples, where these couples would not have got married but would form an OSCP (opposite sex civil partnership). In this event, the surviving civil partner will be entitled to survivor benefits from their partner’s DB pension scheme.

Defined Contribution (DC) schemes are out of scope of this impact assessment, as the vast majority of DC schemes allow for the nomination of any individual to receive the pension’s benefits in the event of the pension holder’s death. Unlike DB pensions – where a specified amount of income in retirement is guaranteed by an

⁵⁹ The current fees for changing a civil partnership to a marriage through the administrative route are

<https://www.nrscotland.gov.uk/files//registration/guidance-notes-to-change-a-scottish-civil-partnership-into-a-to-marriage.pdf>

⁶⁰ Guidance on changing a civil partnership registered outwith Scotland to a marriage in Scotland is at

<https://www.nrscotland.gov.uk/files//registration/guidance-notes-to-change-a-non-scottish-civil-partnership-into-a-marriage.pdf>

⁶¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815743/Civil_Partnerships_Impact_Assessment.pdf

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

employer, and any shortfall in funding is met by the employer – DC pensions transfer this ‘investment risk’ to individuals, where a pot of money is built up over a working life, and any shortfall in funding falls to the individual. As such, no additional liability will be placed on employers from the creation of ‘additional’ OSCP’s where individuals are members of DC pension schemes. The second cost to business covers familiarisation with the new requirements placed on them in legislation.”

102. The UK Government has estimated that there is a one-off familiarisation cost to business arising from the introduction of mixed sex civil partnership. This is a familiarisation cost for the chairs of Defined Benefit private sector pension funds’ board of trustees. The UK Government have estimated this one-off cost as £400,000 (£0.4 million) (page 12 of the Impact Assessment) which, assuming 10% for Scotland, would equate to £40,000 (£0.04 million) for Scotland⁶².

103. The UK Government Impact Assessment has also calculated estimates for the provision of survivor benefits for mixed sex civil partners in private sector defined benefit pension schemes.

104. Table 14 in the UK Government Impact Assessment, on page 20, gives low, best and high estimates for the additional cost of providing these survivor benefits. Taking the best estimates, the average per year is £1,000,000 (£1 million). That suggests around £100,000 for Scotland (£0.1 million). This figure is included in this Financial Memorandum but may be on the high side as the Scottish Government’s calculations (earlier in this Memorandum) on estimated numbers of mixed sex civil partnerships produce lower numbers than the UK Government’s calculations.

Summary of costs

105. The table below summarises the costs outlined in this Financial Memorandum.

⁶² The methodology for the UK Government’s calculations is on page 14 of the UK Government Impact Assessment.

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Table 6: summary of costs in £m

Nature of cost	Falling on	One-off (£m) [Year: 2020/21]	Annual (£m) [Years: 2021/22 onwards]
Set-up registration costs	NRS	0.2	- (Registration costs will be met by fees paid by couples seeking to enter into mixed sex civil partnership).
Devolved public sector pension schemes – survivor benefits	SPPA	-	0.4
Familiarisation and training	Local authorities	0.2	-
Costs to UK Government	Bereavement Support Payment; Marriage Allowance in taxation; State Pension; reserved public service pension schemes	Not yet calculated by UK Government	Not yet calculated by UK Government
Dissolution cases in court	SCTS	-	Negligible
Legal aid (for dissolutions)	SLAB	-	0.02

This document relates to the Civil Partnership (Scotland) Bill as introduced in the Scottish Parliament on 30 September 2019

Increased number of applications for gender recognition.	GRP	-	Negligible
Registration costs for couples entering mixed sex civil partnerships	Couples		0.008
Familiarisation cost	Private sector defined benefit pension schemes	0.04	-
Additional survivor benefits	Private sector defined benefit pension schemes	-	0.1
Total		0.44	0.528

This document relates to the Civil Partnership (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 30 September 2019

Civil Partnership (Scotland) Bill

Financial Memorandum

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