



## FACULTY OF ADVOCATES

### **Response from the Faculty of Advocates to the Consultation on the review of Civil Partnership**

#### Introduction

The Faculty of Advocates welcomes the opportunity to comment on the Scottish Government consultation on the review of Civil Partnership.

#### General Comments

We note that three options are offered namely (i) no change, (ii) no new civil partnerships to be entered into from a date in the future and (iii) introducing opposite sex civil partnerships.

Issues of policy are matters for the Scottish Government and the Scottish Parliament. The Faculty proposes therefore only to offer advice and opinions on issues of law.

We note that from a legal perspective, there is no material difference between marriage and civil partnership as far as Scots law is concerned. There may potentially be material differences, however, in relation to cross border and international issues.

We are concerned that there may not be enough information available to make decisions on proposals of the nature proposed by the review. We consider that the pace of change may be too fast and that now is not the most appropriate point in time to be seeking to make the changes considered by the review. The provisions of the Marriage and Civil Partnership (Scotland) Act 2014 have very recently come into force. It is not known yet what, if any, demand there will continue to be for civil partnership in the months and years to come. It would be helpful if there was an opportunity for the practical effect and impact of the introduction of the 2014 Act to be assessed before any further legislative change is introduced in the area.

In relation in particular to the third option considered by the review, that of introducing civil partnerships for opposite sex couples, we note that this would affect not only the couple concerned but also their whole family including their

parents and children. It may also affect issues relating to succession. The potential change would require to be looked at in a much broader context than simply considering the impact it would have on couples themselves.

We note that there are also related issues to consider in an international context. We know of three European measures which have recently been passed or are about to be passed which include complex issues which may affect status and the related legal landscape:

- The Succession Regulation: Regulation (EU) No 650/2012 came into force on 17 August 2015. The UK chose not to opt in but some citizens are likely to be affected, e.g., if a person dies habitually resident but not domiciled in Scotland, with property elsewhere in Europe the succession regime relating to his or her property is not yet clear. Uncertainty about legal relationships will complicate matters further.
- The matrimonial property/partnership property regimes: Europe is moving towards a final version of two regulations, one concerning matrimonial property regimes (COM/2011/126 final – CNS2011/0059) and the other concerning equivalent property consequences of registered partnerships (COM(2011)127 – CNS 2011/0058). Broadly speaking, and within certain constraints, these Regulations will allow spouses to choose the law applicable to their property regime. Again, the UK chose not to opt in but the full effect and consequences of the Regulations are unknown. A status that may be recognised in Scotland,

but not in other European jurisdictions will complicate the financial positions of the parties, their families and creditors.

- The recasting of Brussels IIa (EC No 2201/2003) is currently being considered, which will impact on jurisdiction in relation to dissolution including dissolution of marriage and civil partnership. If there are to be changes in the status of couples it would be as well to wait to ensure that these couples are not left without recourse to legal remedies because there is no court with jurisdiction, or jurisdiction is unclear.

In the circumstances we would suggest that Scotland is not well placed just now to appreciate the full effect of the changes for international couples.

We are also of the view that a much broader consultation would be required in order to arrive at balanced and informed conclusions on the matters proposed by the review. For example, we note that the Business and Regulatory Impact Assessment is rather limited in its terms, with only three face to face interviews having been carried out, one with a luxury wedding provider, one with a lawyer and one with a registrar.

In conclusion, we are of the view that more and better evidence is required in relation to the current lay of the land following the introduction of the 2014 Act and the ongoing recent developments in the related international field, as well as more detailed impact assessments, before a fully informed and considered

view can fairly be taken on the important changes proposed by the review which have such wide-ranging implications. We agree therefore that there should be no change to the law at present, and furthermore, that it would be preferable to wait for at least a five year period, before reviewing the issue again.

Questions 1 and 2: Please provide any additional arguments you wish to make in favour of, or against, the no change option.

We are of the view that inadequate time and consideration has been given to the potential implications of further change at this stage. We are therefore of the view that for the present there should be no change and that it would be prudent to wait until the impact on civil partnerships of the introduction of same sex marriage can be assessed. We agree that a five year moratorium from the implementation of the 2014 Act would be reasonable.

Question 3 and 4: Please provide any additional arguments you wish to make in favour of, or against, the option of no new civil partnerships being entered into from a date in the future.

- The proposed change is a matter of policy on which the Faculty is unable to comment. In relation to the potential legal consequences, please see our concerns about timing and inadequate information set out above.

Question 5: Do you have any comments on the Government's view that there are insufficient reasons for introducing opposite sex civil partnership in Scotland? If yes, please outline these comments.

Please see our general comments section above. We note, in particular here, our concerns in relation to the impact of the international changes.

Question 6: Please provide any comments you have on the partial Business and Regulatory Impact Assessment (BRIA), on the partial Equality Impact Assessment (EQIA) and on the screening report for the Child Rights and Wellbeing Impact Assessment (CRWIA).

We note that all the assessments seem somewhat limited. None of the assessments appear to contain the sort of detailed consideration that we would expect when dealing with a review that proposes to make changes that affect status with such wide-ranging implications.

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