

## **EAST AYRSHIRE COUNCIL**

### **COMMUNITY SERVICES COMMITTEE - 12<sup>TH</sup> NOVEMBER 2003**

#### **CIVIL PARTNERSHIP REGISTRATION - CONSULTATION PAPER**

##### **Report by the Director of Community Services**

### **1. PURPOSE OF REPORT**

- 1.1 To agree on a response to the Scottish Executive's consultation paper on Civil Partnership Registration.

### **2. BACKGROUND**

- 2.1 On 30 June 2003 the UK Government published their consultation paper on civil partnership registration for same sex couples in England and Wales. On 10<sup>th</sup> September 2003, having considered the impact of these proposals in Scotland, Scottish Ministers announced that, in the event that the UK Parliament comes forward with legislation, they would seek the agreement of the Scottish Parliament to include Scottish provisions in a UK Civil Partnership Registration Bill.
- 2.2 The Scottish Executives proposals are similar to those expressed by the UK Government but reflect the detailed differences in Scots law and devolved policy. The intention is to use any Westminster Civil Partnership Registration Bill to legislate for Scotland so there is the need to prepare should an UK Bill be announced.
- 2.3 At present same-sex couples cannot gain legal recognition for their relationship. If they become "civil registered partners" they would be able to receive a survivor pension in the event of a partner's death. They would also have an obligation to mutually support one another financially and make provision for fair arrangements of property division in the event a partnership is dissolved.
- 2.4 Civil partnerships already take place in a number of EU member States as well as Canada and the USA. The EU Employment Directive (2000/78/EC) effectively bans discrimination in employment including sexual orientation. Since same sex couples cannot access some employment benefits, this could be perceived as discrimination. A civil registration scheme would alleviate this problem.
- 2.5 The consultation paper outlines the Scottish Executives proposals and includes a response proforma which asks the Council to comment on each of the proposals. The proforma and suggested responses are appended to this report for consideration.

### **3. CONSIDERATIONS**

- 3.1 It would not be advisable to allow an UK Government Bill on Civil partnership registration for England and Wales and not in Scotland as Scottish same-sex couples may raise a legal challenge on the grounds they would be discriminated against.
- 3.2 Since civil partnership registration involves both devolved and reserved powers it may be better to work through an UK Government Bill which would still be based on Scots Law. This is done by a process called a "Sewel motion" A list of the devolved and reserved aspects of civil partnership registration is included in the consultation paper. Scots couples then would have rights and responsibilities relating to both reserved and devolved aspects of civil partnership registration.
- 3.3 The Family Law consequences of the registration cover Parental Responsibility, Children-Residence and Contact, Aliment, property division on dissolution, intestacy, inheritance and damages, Adoption and Fostering and the Registering of the death of a partner.
- 3.4 Other aspects recognised in Scots Law relate to Council Tax, Local Government Elections, Family and Nearest Relative, Hospital Visiting and Medical Treatment, Prison Visiting, Survivor Pensions and Injury Benefits-Public Service Pension Schemes and Fatal accident Inquiry, Burial and Post Mortems, Organ Retention.
- 3.5 Details regarding paragraphs 3.3 and 3.4 above are outlined in the consultation paper.
- 3.6 The rights and responsibilities are similar to those in Marriage although the civil partnership registration process is a registration process and not a ceremony.

### **4. FINANCIAL IMPLICATIONS**

- 4.1 The consultation paper suggests a statutory fee for the provision of services based on existing fees for similar services. There may also be additional charges for outside venues or any other service above the basic "ceremony" This would result in additional income for the Registration service without additional expenditure.

### **5. LEGAL IMPLICATIONS**

- 5.1 The new UK Bill will allow provision for a civil partnership registration service within Scottish Law to govern the process.

### **6. POLICY IMPLICATIONS**

- 6.1 The principles involved would concur with the Council's Equal Opportunities policy.

## **7. RECOMMENDATIONS**

7.1 It is recommended that the Committee:-

- (i) approve the response to the Civil Partnership Ceremony consultation paper shown in Appendix One to the report; and
- (ii) otherwise note the contents of this report.

William Stafford  
**Director of Community Services**

WS/JAG/KH

24<sup>th</sup> October 2003

### **LIST OF BACKGROUND PAPERS**

1. Scottish Executive consultation paper "Civil Partnership Registration - A Legal Status For Committed Same Sex Couples In Scotland"

Any person wishing to inspect the background paper listed above should contact Donald McVicar, Local Office and Registration Manager on 01563 554332.

**Implementation Officer:** [john.griffiths@east-ayrshire.gov.uk](mailto:john.griffiths@east-ayrshire.gov.uk)

# CIVIL PARTNERSHIP REGISTRATION: A LEGAL STATUS FOR COMMITTED SAME-SEX COUPLES IN SCOTLAND

## CONSULTATION RESPONSE PROFORMA

Please use this form to complete your answers to the questions in the consultation paper. Upon completion, please send the document as an attachment in an email to:

***civilpartnershipregistration@scotland.gsi.gov.uk***

### Instructions for Completion

- *Use the 'tab' key to move to the next field on the form.*
- *To select a value from a drop-down list, click on the arrow beside the field*
- *To tick a box, please click once on it*
- *To type in text, just start typing. The box will expand to fit your comments.*
- *'Save' document when complete*

## Part 1 – Personal details

Please complete the details below as this will help ensure we handle your response appropriately.

Title:	Mr
First name:	William
Surname:	Stafford
Job Title:	Director of Community Services
Organisation:	East Ayrshire Council
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Town/City:	Kilmarnock
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For the purpose of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire.	<b>Local authority</b>
Do you agree to your response being made public (in SE library and/or on SE website)?	<b>Yes</b>
Where confidentiality is not requested, we will publish your full response including your name (and address, where provided). <b><i>If you do not wish for these personal details to be published, please check this box</i></b>	<input type="checkbox"/>
Are you content for the Scottish Executive Civil Law Division to contact you again in the future for consultation purposes?	<b>Yes</b>

## Part 2 – Consultation points

1. We propose that Scottish same-sex couples should be able to register their partnership in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas. (paragraphs 3.1 to 3.11)

Please provide any comments.

**Agreed - in terms of fairness and equity**

2. If we are to introduce civil partnership registration for same-sex couples, we propose asking the Scottish Parliament to agree to a Sewel motion so that Scottish provisions can be included in any Westminster Bill. (paragraphs 4.1 to 4.7)

Please provide any comments.

**Agreed - on practical grounds noting it is still within Scottish Law**

### ***Principles***

We propose seven underlying principles through which a civil partnership registration scheme can be understood. Each of these is described below.

3. We believe that Scottish same-sex couples should be able to register their partnership in Scotland rather than having to travel to England or Wales. (paragraph 5.2)

Do you support this principle? **Yes**

Please provide any additional comments

**This action could potentially improve the present legal situation of a sizeable minority by simply bringing the existing law in England and Wales and Scotland into line with the relevant European Union Directive.**

4. We believe that the UK Government should recognise partnerships registered by same-sex couples in Scotland for reserved purposes. (paragraph 5.3)

Do you support this principle? **Yes**

Please provide any additional comments

**Same as point 3 above**

5. We believe that partnerships registered by same-sex couples in Scotland should trigger access to a comprehensive package of rights and responsibilities in devolved areas that largely mirrors those available to civil registered partners in England and Wales. (paragraph 5.4)

Do you support this principle? **Yes**

Please provide any additional comments

**Bearing in mind any elements that may only be relevant in Scotland**

6. We believe that devolved aspects of civil partnership registration should be based on Scots law. (paragraph 5.5)

Do you support this principle? **Yes**

Please provide any additional comments

**It is difficult to see how this proposal could effectively work in practice, if not fully in accordance with Scots Law.**

7. We believe that in order to achieve a comprehensive package of rights and responsibilities in reserved and devolved areas, and to avoid difficult cross border issues, that Westminster is best placed to legislate for civil partnership registration in Scotland through a UK Civil Partnership Registration Bill. (paragraph 5.6)

Do you support this principle? **Yes**

Please provide any additional comments

**This proposal would ensure consistency of approach throughout the legislative programme as well as within the terms of the proposed legislation and should also avoid duplication of effort and resources.**

8. We recognise the role that marriage has in Scottish society and do not seek to undermine marriage by extending civil partnership registration to cohabiting couples. (paragraph 5.7)

Do you support this principle? **Yes**

Please provide any additional comments

**Providing, as stated in the consultation paper, that consideration of cohabiting couples rights and responsibilities will take place.**

9. We do not seek to open up marriage to same-sex couples. Instead we are creating a new legal status of civil registered partner for same-sex couples. (paragraph 5.8)

Do you support this principle? **Yes**

Please provide any additional comments

**Registration recognises the legal status of a partner, which is the main thrust of the legislation. It is also important to encourage the continuation of the institution of Marriage as the symbol of commitment for men and women.**

### ***Scottish Civil Partnership Registration Scheme***

10. We propose that there are set formal requirements to be met by those wishing to register a partnership. These are explained in paragraphs 6.6 to 6.10.

Do you support the formal requirements that we propose? **Yes**

Please provide any additional comments

**This is required in order to give the process propriety within a legal context**

11. We propose that there be a set process for the registration of a civil partnership, the dissolution of a civil partnership and that a civil registered partner be able to inform the registrar of the death of a partner. These are explained in paragraphs 6.11 to 6.35.

Do you support the process aspects of registration that we propose?

**Yes**

Please provide any additional comments

**There is still some confusion about the status of the process. Other registrations do not require witnesses. If the witnesses relate to the legal aspects of the process then that should be emphasised as the only reason for having them. Also, if it is a registration process as distinct from a ceremony perhaps it is appropriate that it normally be carried out in a registration office with the exception of people who are unable to travel.**

12. We propose that civil registered partners are recognised in Scots family law. This covers, parental responsibility, children (residence and contact on dissolution), aliment, property division of dissolution, intestacy, inheritance and damages. Our proposals are explained in paragraphs 6.36 to 6.42.

Do you support this proposal?

**Yes**

Please provide any additional comments

**It is considered logical and consistent with the basic driving principle of equality that civil registered partnerships should so far as practicable give rise to the same legal relationships and consequences as marriage. Further, continuing developments within the medical field support the argument that provision should be made for children "born" of same sex relationships in terms of their legal rights, responsibilities and relationships vis-à-vis their "parents"**

13. We propose that civil registered partners are recognised consequentially in other aspects of Scots Law. This includes council tax, local government elections, making financial decisions on behalf of adults with incapacity, hospital visiting and medical treatment, prison visiting, survivor pensions and injury benefits from public service pension schemes, fatal accident inquiry, burial, post mortems and organ retention. Our proposals are explained in paragraphs 6.43 to 6.53.

Do you support this proposal?

**Yes**

Please provide any additional comments

**The first sentence at 12 above also refers.**