

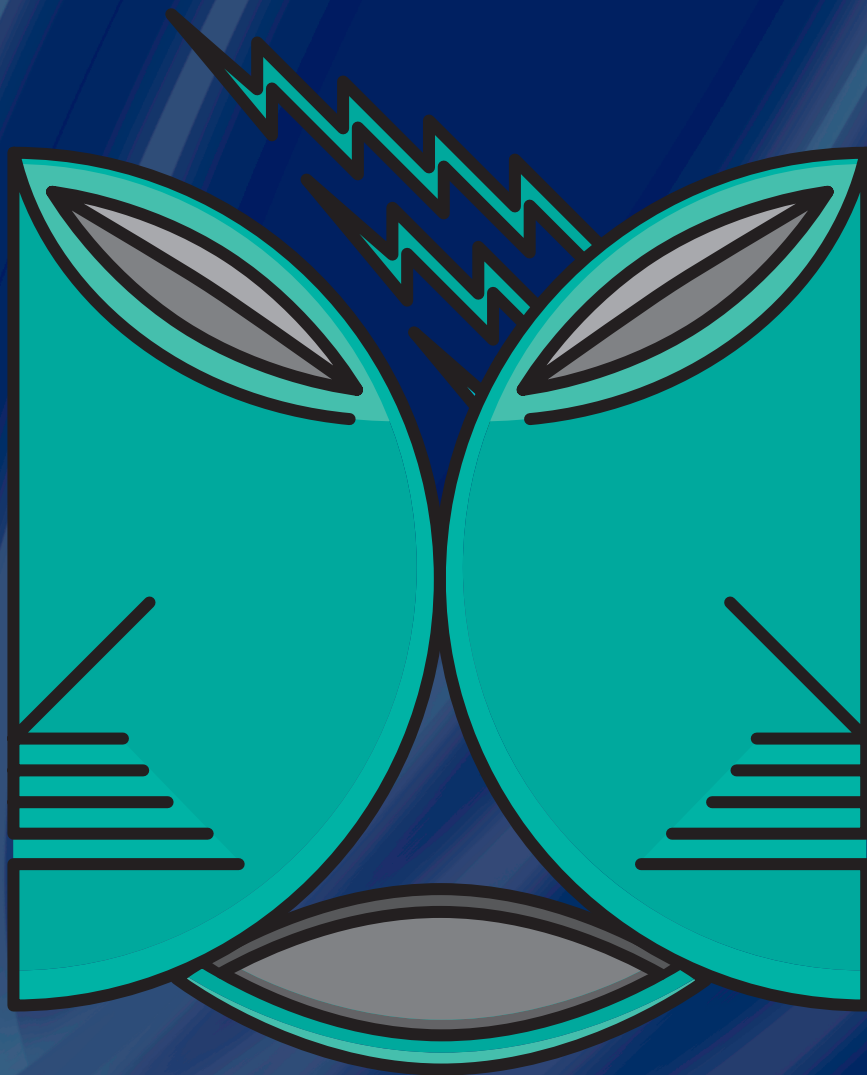
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CIVIL PARTNERSHIP

A framework for the legal recognition of same-sex couples

June 2003



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Foreword

Today there are thousands of same-sex couples living in stable and committed partnerships. These relationships span many years with couples looking after each other, caring for their loved ones and actively participating in society; in fact, living in exactly the same way as any other family. They are our families, our friends, our colleagues and our neighbours. Yet the law rarely recognises their relationship.

Many have been refused a hospital visit to see their seriously ill partner, or have been refused their rightful place at their partner's funeral. Others find themselves unable to access employment benefits reserved only for married partners. Couples who have supported each other financially throughout their working lives often have no way of gaining pension rights. Grieving partners can find themselves unable to stay in their shared home or to inherit the possessions they have shared for years when one partner dies suddenly without leaving a will. In so many areas, as far as the law is concerned, same-sex relationships simply do not exist.



That is not acceptable.

Since November 2001 Barbara Roche has had oversight of a major review of the policy and cost implications of a civil partnership registration scheme, supported by the Women and Equality Unit in the Department of Trade and Industry. In December 2002 she said that the Government saw a strong case for such a scheme and indicated that a consultation paper would be published in Summer 2003¹.

We are now taking forward Barbara's valuable work in this consultation paper, which contains the Government's proposals for a civil partnership registration scheme in England and Wales.

Briefly, the Government proposes to create a new legal status of civil registered partner for same-sex partners who register under the new scheme. As well as their commitment to each other being respected, registered partners would also gain rights and responsibilities, reflecting the integral roles they play in each other's lives.

Legislation can only take us so far. Culture change occurs not only by legal recognition but also by building on the significant and welcome change in attitudes towards lesbian, gay and bisexual people.

I believe there will be a day when same-sex couples don't have to struggle to have their partnerships and their families recognised.

I am confident that our plans for civil partnership registration will be an important step towards bringing that day closer.

Jacqui Smith, MP

Minister of State for Industry and the Regions and Deputy Minister for Women and Equality.

¹ The Independent, 6 December 2002, page 1

EXECUTIVE SUMMARY

CIVIL PARTNERSHIP REGISTRATION AT A GLANCE

- Same-sex couples face many problems in their day-to-day lives because there is no legal recognition of their relationship. In many areas, each partner in the couple is treated as a separate individual; they are denied rights and responsibilities that could help them to organise their lives together. Opposite-sex couples have the choice to marry and have their relationship recognised by law. Same-sex couples have no such choice.

What would a civil partnership registration scheme look like?

- The Government proposes to create a scheme under which same-sex couples in England and Wales would be able to register their partnership.
- The scheme would be for adult same-sex couples who are not in an existing registered partnership or marriage and are not closely related.
- Couples who register would have a new legal status as “registered civil partners”, and would acquire a package of rights and responsibilities.

How would people register?

- Couples would give notice of intention to register at a registry office, and could sign the civil partnerships register 15 days later.

How would people dissolve a partnership?

- The Government intends registered civil partnerships to be long-term, stable relationships, so there would be a formal, court-based process for dissolution. The partner applying for the partnership to be dissolved would have to show that it had broken down irretrievably.

What would the legal consequences of registering a civil partnership be?

- Couples would acquire rights and responsibilities that would reflect the commitment they had made and help them organise their lives together. These legal consequences would follow from registration.
- **Rights and responsibilities during the relationship might include:**
 - joint treatment for income-related benefits,
 - joint state pension benefits,
 - ability to gain parental responsibility for each other's children,
 - recognition for immigration purposes,
 - exemption from testifying against each other in court.
- **Rights and responsibilities on dissolution might include:**
 - fair arrangements for property division,
 - residence arrangements,
 - appropriate contact with children.
- **Rights and responsibilities following the death of one partner might include:**
 - right to register the death of a partner,
 - right to claim a survivor pension,
 - eligibility for bereavement benefits,
 - compensation for fatal accidents or criminal injuries,
 - recognition under inheritance and intestacy rules,
 - tenancy succession rights.

PART A - CREATION OF THE NEW LEGAL STATUS OF REGISTERED PARTNER

1. Introduction

- 1.1 For a same-sex couple, the denial of the opportunity to have their relationship recognised provides a number of day-to-day challenges when they attempt to organise their joint lives.
- 1.2 Civil partnership registration would be an important equality measure for same-sex couples in England and Wales who are unable to marry each other. It would provide for the legal recognition of same-sex partners and give legitimacy to those in, or wishing to enter into, interdependent, same-sex couple relationships that are intended to be permanent. Registration would provide a framework whereby same-sex couples could acknowledge their mutual responsibilities, manage their financial arrangements and achieve recognition as each other's partner. Committed same-sex relationships would be recognised and registered partners would gain rights and responsibilities which would reflect the significance of the roles they play in each other's lives. This in turn would encourage more stable family life.
- 1.3 It is a matter of public record that the Government has no plans to introduce same-sex marriage. This consultation document is about a civil partnership registration scheme.
- 1.4 We have considered the position of opposite-sex couples, many of whom now choose to cohabit instead of marrying, and other people who live together in a close supportive household environment. The Government believes that these situations are significantly different from that of same-sex couples who wish to formalise their relationships but currently are unable to do so.
- 1.5 Our plans for civil partnership registration would provide:
 - **Legal recognition** of same-sex relationships;
 - **Rights and responsibilities** for same-sex couples in a number of areas (see Part B);
 - **Culture change:** a new legal status would, of itself, affect attitudes² more widely and could make a real difference to the lives of same-sex partners.

² There is evidence that the Danish Registered Partnership Act passed in 1989 has changed attitudes towards lesbians, gay men and bisexual people in Denmark: "The Danish Registered Partnership Act, 1989: Has the Act Meant a Change in Attitudes?" Ingrid Lund-Andersen, in *Legal Recognition of Same-Sex Partnerships: a Study of National, European and International Law* (ed.) R. Wintemute and Mads Andenæs, Hart Publishing 2001.

Some every day situations which same-sex couples can face, when they are treated as two entirely separate individuals rather than as a couple, are:

Hospital visiting: there are many misconceptions about whether same-sex partners are currently recognised as "next of kin" when their partner is in hospital. There is no legal definition of "next of kin" and this can cause confusion for both patients and medical staff. Same-sex couples can face difficulties in being recognised as someone close to the patient, particularly if medical staff are unaware that the relationship exists or if there is a conflict between the views of the partner and the patient's relatives.

The creation of a new status of registered partnership would help here – if two people had registered a partnership then this would give a clear indication to medical staff that they had a close and committed relationship which should be taken into account when one partner fell ill.

Funeral arrangements: there have been many examples of the wishes of a long-term same-sex partner being ignored when funeral arrangements are made. This causes unnecessary upset and stress at an already painful time.

If the couple had registered a partnership the wishes of the surviving same-sex partner would be important in deciding the funeral arrangements of their partner.

- 1.6 Civil partnership registration is not a new idea; other countries, including a number of EU Member States as well as areas in the US and Canada, have introduced civil partnership registration schemes. Many of these partnership registration schemes are open only to same-sex couples, though some are also open to opposite-sex couples.
- 1.7 Partnership registration schemes have also been established in a variety of places in England and Wales including London, Bath, Birmingham, Brighton, Darlington, Devon, Dorset, Leeds, Liverpool, Manchester and Swansea. These registration schemes however have no legal status.
- 1.8 Partnership registration was also favoured by the Ten-Minute Rule Bill introduced by Jane Griffiths MP into the House of Commons in October 2001³ and the Private Member's Bill introduced by Lord Lester into the House of Lords introduced in January 2002⁴.

³ Hansard, 24th October 2001, Column 321

⁴ Hansard, 9th January 2002, Column 561

Table 1: Partnership Registration Schemes in EU Member States

| | Position | Introduced | Same-sex (SS)/ Opposite-sex (OS) | Qualifying Period | Next of Kin | Inheritance/ Tenancy/ Property | Social Security Rights | Tax Benefits | Adoption | Dissolution |
|-------------|--|------------|----------------------------------|---|-------------|--------------------------------|------------------------|------------------|----------|---|
| Netherlands | Registered Partnership | 1998 | Both | None | YES | YES | YES | YES | YES | By partners themselves |
| | Same-Sex Marriage | 2001 | SS only | None | YES | YES | YES | YES | YES | Only by courts |
| Denmark | Registered Partnership | 1989 | SS only | None | YES | YES | YES | YES (not abroad) | NO | As marriage |
| Sweden | Registered Partnership | 1994 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| Finland | Registered Partnership | 2001 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| Belgium | Cohabitation | 1998 | Both (inc. siblings) | None | NO | YES | NO | NO | NO | By partners themselves |
| | Same-sex marriage | 2002 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| Portugal | Partnership Rights | 2001 | Both | 2 years | YES | YES | YES | YES | NO | By partners themselves; by marriage |
| France | Civil Solidarity Pacts (PACS) | 1999 | Both | 3 years - only for tax/welfare benefits | YES | YES | YES | YES | NO | Immediately if agreed. At request of either party after 3 month delay |
| Germany | Partnership Registration | 2001 | SS only | None | YES | YES | NO | NO | NO | As marriage |
| Spain | Catalonia, Balearic Islands, Aragon and Navarra, all have partnership recognition, though limited to property and inheritance rights | | | | YES | YES | NO | NO | NO | Varies by region |
| Luxembourg | Legislation proposed (between PACS and SS marriage) | | | | | | | | | |
| Italy | No partnership recognition | | | | | | | | | |
| Greece | No partnership recognition | | | | | | | | | |
| Austria | No partnership recognition | | | | | | | | | |
| Ireland | No partnership recognition | | | | | | | | | |

Table 2: Partnership Registration Schemes in non-EU Countries

We are aware that this is not a comprehensive table of all partnership registration schemes and some schemes may not have been included. It is based on the best available information.

Shaded boxes indicate where information is not currently available.

| | Position | Introduced | Same-sex (SS)/ Opposite-sex (OS) | Qualifying Period | Next of Kin | Inheritance/ Tenancy/ Property | Social Security Rights | Tax Benefits | Adoption | Dissolution |
|---|--|------------------------------------|----------------------------------|-------------------------------|------------------------|--------------------------------|----------------------------|--------------|----------|--|
| Norway | Registered Partnership | 1993 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| Iceland | Registered Partnership | 1996 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| Liechtenstein | Registered Partnership | 2002 | SS only | | | | | | | |
| Hungary | Registered Partnerships | 1996 | Both | | | | | | | |
| Zurich, Switzerland | Same-sex marriage | 2002 | Both | 6 months | | | | | | |
| Argentina: Buenos Aires City and Rio Negro Provinces only | Partnership registration | 2003 - not yet effective | Both | After 2 years cohabiting | Concept does not exist | YES | YES | YES | NO | Sign a declaration at Registry Office |
| Canada: Quebec | Registered Partnerships | 2002 | Both | None | YES | YES | YES | YES | | Sign an agreement at notary |
| Canada: British Columbia | Cohabitation Rights | | Both | After 2 years cohabiting | YES | YES | YES | YES | YES | Contract at onset to divide pension/property |
| Canada: Nova Scotia | Registered Partnership | 2001 | SS only | None | YES | YES | YES | YES | NO | As marriage |
| USA: California | Registered Partnerships | 2000 | SS-couples, OS above age 62+ | None, but couple must cohabit | YES | NO | YES (Health coverage only) | NO | | |
| USA: Hawaii | Registered Partnerships | 1997 | Both | | | | | | NO | |
| USA: Vermont | Registered Partnership | 2001 | SS only | None | YES | YES | YES | YES | YES | As marriage |
| Australia: i) Cap. Territory ii) NSW iii) Victoria | Cohabitation Rights (De facto partnership) | i) 1994 ii) 1999 iii) 2001 | Both | None | YES | YES | NO | YES | NO | |
| New Zealand | Civil Union | Under consideration for parliament | SS only | None | YES | YES | YES | YES review | Under | Under consideration |

2. The Government's Proposal

- 2.1 The Government believes that the most effective way to ensure legal recognition of same-sex relationships is by an opt-in civil partnership registration scheme. This would send a strong message about the seriousness of such a commitment and, in turn, promote and support stable relationships.
- 2.2 An opt-in scheme would enable people to make their own choices about how best to organise their lives. Couples with committed same-sex relationships who want a formal legal status and the attached rights and responsibilities could choose to enter the scheme. Those who do not want such an arrangement could decide not to register or to make such alternative joint arrangements as they deem necessary⁵.
- 2.3 The Government recognises that some people deliberately choose not to make formal commitments to each other, and/or to limit their liabilities in respect of each other⁶. An opt-in system would support individual choices, and would not impose responsibilities on those who do not want them. Equally, those who choose not to register would not benefit from the rights that may be attached to a registration scheme. There would be legal certainty about who had opted in and who had not, and when the legal relationship began and ended. This level of certainty would enable an accurate assessment of when liabilities began and ended.
- 2.4 Currently, there is very limited opportunity, if any, for same-sex relationships to be legally recognised. In recent years this anomaly has begun to be addressed in the courts, most notably in the area of housing and tenancy succession⁷. There remains however no standard protection for same-sex couples to be recognised in law in most areas.
- 2.5 Elsewhere in the European Union, many countries have introduced legal recognition for same-sex partnerships, with a range of rights and responsibilities (see tables on pages 15-16). In England and Wales there are several registration schemes without any legal status that have proved popular. The best known is the scheme introduced by the Greater London Authority. There is also a clear demand from lesbian, gay and bisexual groups in England and Wales for legal recognition of same-sex partnerships⁸.

⁵ For example, joint bank accounts, joint mortgages, wills, powers of attorney etc.

⁶ See, for example, responses on BBC website to Panorama programme on cohabitation, November 2002: <http://news.bbc.co.uk/1/hi/programmes/panorama/2528737.stm>

⁷ *Ghaidan v Mendoza* [2002] 4 All ER 1162 gave the Court of Appeal its first opportunity to consider the entitlement of a survivor of a long-term same-sex partnership to a tenancy under a provision of a Schedule to the Rent Act which, as drafted, applied only to spouses and unmarried opposite-sex couples 'living together as husband and wife'. The court relied on the Human Rights Act 1998 to interpret this phrase broadly so as to include someone in Mr Mendoza's position. Mr Mendoza had lived with his partner for thirty years, yet when his partner died his landlord refused to accept him as his partner. The Court held that references in this provision of the Rent Act 1977 to 'living together as his or her wife or husband' had to be read instead as 'living together as if they were his or her wife or husband'.

⁸ A Cabinet Office questionnaire (2002) amongst the lesbian, gay and bisexual (LGB) population showed overwhelming support for civil partnerships with 86% of the respondees indicating they would 'consider registering a relationship' under a scheme outlined in the questionnaire. Amongst LGB groups there is a clear demand embracing the following: Stonewall, Trades Union Congress, Unison, OutRage! (proposes a different type of scheme), the Lesbian and Gay Christian Movement and the Gay and Lesbian Humanist Association.

- 2.6 The Government recognises that unmarried opposite-sex couples share some of the problems faced by same-sex couples. Indeed, equality arguments may at first sight support making civil partnership registration available to opposite-sex couples. The creation of a new legal status that is open only to same-sex couples and not to opposite-sex couples would amount to a difference in treatment. However, the Government believes that this difference in treatment is justified because it would remedy an inequality that already exists between opposite-sex and same-sex couples.
- 2.7 Civil partnership registration would provide same-sex couples with a way of gaining a formal legal status for their relationships – which they cannot currently do. It would also help couples who are committed to spending their lives together to gain greater social recognition and acceptance of their partnership. The Government believes that opposite-sex couples do not have the same need for a civil partnership registration scheme. Opposite-sex couples already have the opportunity of obtaining legal (and socially recognised) status for their relationship by entering into a marriage, whether religious or civil. Some couples choose not to marry, and that is entirely a decision for them.
- 2.8 The Government recognises that some unmarried opposite-sex couples are under the mistaken impression that they already have a legally recognised status as "common-law" husband and wife⁹. There is however no such status in England and Wales. This misconception can lead to difficulties – for example, one partner might be left financially vulnerable after the breakdown of their relationship because the partners had not made any clear arrangements or agreements about ownership of their shared property or property bought with joint funds. While we recognise this problem, it is a different situation from that of same-sex couples who want to formalise their relationship and cannot. The Government does not believe that the solution for those opposite-sex couples who choose not to marry, is to offer them another way of entering into an equally formal kind of legal commitment to each other. This is an entirely separate issue from the legal recognition of same-sex partnerships.
- 2.9 The rights of other home-sharers (siblings, flatmates etc.) are a separate issue, and there are currently no plans for changes to the law in that area.

⁹ Two-thirds of people think it is acceptable for a couple to live together without being married, but many are confused about cohabitation and the law. More than half (57%) falsely believe there is something called 'common law marriage' which gives cohabiting couples the same rights as married ones: British Social Attitudes: *Public policy, social ties* (18th report: 2001-02 Edition).

3. Formal Requirements

- 3.1 Registered civil partnerships would be same-sex, interdependent, stable relationships that are intended to be permanent. Accordingly, the Government proposes that the following conditions would need to be met in order to register a civil partnership in England and Wales.

Age

- 3.2 Both parties to a civil partnership registration would have to be 16 years of age or above. Individuals aged 16 and 17 would have to obtain written consent to the partnership registration from their parent(s) or legal guardian(s).

Exclusivity of Partnerships

- 3.3 The Government believes that individuals should only be able to enter into one partnership arrangement at any given time. Any individual who was still in a registered partnership or in a marriage should not be able to register a partnership with another person until that partnership or marriage had been legally dissolved. If an individual had been in a previous registered partnership or marriage, they would be required to provide evidence of the termination of that partnership or marriage by death, nullity, divorce or dissolution.
- 3.4 The Government proposes to protect people from unwarily entering into relationships that are not exclusive. The couple would each be asked to declare that they were not:
- (i) entering into a civil partnership before an existing partnership had been ended;
 - (ii) entering into a civil partnership while married.
- 3.5 In this way, registered partners will not find themselves subject to various sets of competing legal obligations and the importance of interdependent, stable relationships would be upheld.
- 3.6 For this purpose, the Government proposes to introduce new offences of perjury akin to those in the Perjury Act 1911.
- 3.7 Similar protections would be extended to the registered partner of a person who married while in a registered partnership.

False Declarations

- 3.8 The new offences of perjury would cover the situation where a couple certified on notifying intent to register that there was no impediment to a partnership and it later transpired that there was such an impediment.
- 3.9 In cases where an offence of perjury had a direct bearing on a registered partnership's validity, the partnership would be void (see chapter 5 for further details).
- 3.10 There would be safeguards against registrations arranged for the sole purpose of evading statutory immigration controls.

Prohibited Degrees of Relationship

- 3.11 People wishing to register a same-sex civil partnership would be prohibited from doing so if they were related by close blood or half blood ties, adoption (in particular circumstances) or were related by degrees of affinity (relationships arising out of either their former marriages/registered partnerships or those former marriages/registered partnerships of certain relatives).

4. The Registration Process

- 4.1 The Government intends the procedures for registering a partnership to be limited to satisfying the formal requirements outlined in Chapter 3. Any additional ceremony would be for the couple to arrange.

Delivery of Civil Partnership Registration

- 4.2 The Government proposes to offer local delivery of civil partnership registration within a framework under new mandatory powers.
- 4.3 The Government believes that registration officers are best placed to deliver civil partnership registration. They have an excellent track record in delivering face-to-face services associated with a change of status. They also have a great deal of existing expertise in processing the formal requirements outlined in Chapter 3 and would bring an appropriate level of seriousness to the occasion. This would help to emphasise the stability and permanence of the partnership arrangement.
- 4.4 Such a scheme would also fit well with the new civil registration policy framework proposed in the White Paper 'Civil Registration: Vital Change' published in January 2002, whereby the provision of local registration services would become a duty of local authorities. The White Paper acknowledges that the local registration service is ideally placed to act as a focal point for information on services associated with key life events.
- 4.5 'Civil Registration: Vital Change' also sets out the Government's intention to computerise the records of births, deaths and marriages. It acknowledges that it is unrealistic to expect that all records will be electronically available initially and that there will need to be a period of transition. However, once the records are available in electronic format, certificates of births, deaths and marriages will be phased out and only produced for legal purposes, for example, production in court. If civil partnership registration were delivered by the local registration service, the records would be subject to the same arrangements and only available in electronic format except in certain circumstances.

Giving Notice of Registration

- 4.6 Couples would need to have a 7 day residence in England or Wales before being able to give notice to a registration officer. They could give notice either together or separately but must do so in person.
- 4.7 Couples would not be able to give notice of registration to the registration officer more than twelve months before the date of registration.

Waiting Period

- 4.8 The Government proposes a 15 day waiting period between giving notice and registration in order to give time to check compliance with the formal requirements set out in chapters 3 and 4.

Exceptions to the Waiting Period

- 4.9 The Government plans to make provision for the Registrar General to reduce the waiting period where, due to the exceptional circumstances of the case, a registration officer considers there are compelling reasons to do so. Such circumstances might include an urgent military posting or circumstances where one of the parties was seriously ill and not expected to recover.

Registration for those who are Housebound or Detained

- 4.10 Provision would be made for those who are housebound or detained to enter into a civil partnership registration at the place where they are housebound or detained rather than a place where registrations normally take place, for example, in prison or in hospital.

Cost

- 4.11 There would be a statutory set fee for giving notice to the registration officer and for the registration officer's attendance at a civil partnership registration.

Procedure

4.12 The Government proposes that the following steps should be taken to register a civil partnership:

Step 1: the couple gives notice to the registration officer of intention to register;

Step 2: the registration officer checks compliance with the formal requirements during which time the couple wait for a minimum of 15 days;

Step 3: a date is set for the partnership registration in consultation with the registration officer;

Step 4: on the day of registration, each member of the couple will sign the register in the presence of the registration officer and two witnesses;

Step 5: the couple may receive a certificate as evidence of the registration of their partnership (see paragraph 4.5).

Privacy Issues

4.13 The Government recognises that some same-sex couples may want the fact of their registration to remain private, for fear of homophobic attacks. The London, Manchester and Liverpool schemes all operate private registers for this reason.

4.14 Fear of homophobic assaults is an understandable concern and the Government is committed to combating homophobic hate crimes. The Crown Prosecution Service is working with the lesbian, gay and bisexual community to send a strong message that homophobic behaviour is not acceptable, that incidents should be reported and that suspects should be prosecuted as appropriate.

- 4.15 However, the new legal status of registered partner would bring with it rights and responsibilities. It would not be desirable to operate a private register where registration confers rights and responsibilities that flow between the couple and the state and between the couple and third parties such as employers. The Government believes that civil partnership registration represents so significant a commitment that it should be a matter of public record. Other formal arrangements for changes of legal status are a matter of public record. This will also strengthen the legitimacy of civil partnership registration in the wider culture.
- 4.16 Similarly, the Government believes that limited details of forthcoming civil partnership registrations should be made public. Anyone who knows, for example, of an impediment to a forthcoming civil partnership registration should have the same opportunity to raise an objection as he or she would have in relation to other formal changes of legal status.
- 4.17 Registration information is currently available to anyone, in the form of a certificate, on payment of the appropriate fee. Under the proposed changes in the Government's White Paper 'Civil Registration: Vital Change', the record would still be available to the public but certain information (addresses and occupations) would be restricted. If civil partnership registration were delivered by the local registration service, the public record of such events would be subject to the same arrangements.

Are there other measures that could be taken to further ensure the safe registration of same-sex couples while meeting the need for a public register?

Recognition Elsewhere in the UK of a Civil Partnership Registered in England and Wales

- 4.18 Any similar new civil status in Scotland is a devolved matter for the Scottish Parliament and Executive. Many areas which might be affected by a new status are also devolved, such as family and property law. However, a number of the rights and responsibilities that might flow from registering a civil partnership arise in areas reserved to the UK Parliament under the Scotland Act 1998. Examples are immigration, social security benefits and pensions, child support, some public service pension schemes, injury benefit schemes and life insurance.
- 4.19 It is for Scottish Ministers to consider the issue of civil partnership registration in Scotland. However, as indicated above, a number of the possible rights and responsibilities of registered partners relate to reserved matters. The Government attaches importance to maintaining integrity of treatment across Great Britain in relation to reserved matters. Therefore, the Government believes that people who register a civil partnership in England and Wales and subsequently move to Scotland should continue to be entitled to all the rights and responsibilities in reserved areas that flow from registration.

The Government would be grateful for comments on this way of proceeding.

- 4.20 Similarly, some of the rights and responsibilities flowing from registration of a civil partnership in England and Wales involve matters that are excepted or reserved under the Northern Ireland Act 1998. Unlike Scotland, social security, pensions and child support are transferred matters in Northern Ireland but there is an expectation of parity under section 87 of the 1998 Act. The schemes function as if they were a single UK scheme. The UK Government believes that people who register a civil partnership in England and Wales and subsequently move to Northern Ireland should continue to be entitled to those rights, and accept those responsibilities, flowing from excepted and reserved areas. The Government will also seek ways to protect rights in transferred areas to which registered partners would be entitled if they remained in England and Wales. Beyond that, no decision has yet been taken as to whether a parallel civil partnership registration scheme might be introduced in Northern Ireland.

Recognition in England and Wales of Partnership Registration Schemes Operating in Other Countries

4.21 The Government is considering whether civil partnership registration schemes in operation in other countries should be recognised in England and Wales and what form any recognition might take.

Other Local Partnership Registration Schemes

4.22 Since September 2001, the Greater London Authority (GLA) has offered couples (same-sex or opposite-sex) the opportunity to register their partnership. The GLA imposes criteria (age, residence, no subsisting legal relationship etc) and charges a fee for the service. The GLA offers a mechanism, by means of an entry in a register, through which couples can formally acknowledge their commitment to one another. The registration does not confer legal status on the partnership and is not accompanied by any rights or responsibilities. Some local authorities have followed this approach and offer similar partnership registration services.

4.23 The Government recognises that some same-sex couples who have registered under one of the non-statutory schemes operated by the GLA or some other local authorities, may wish to have that partnership registration automatically converted to the Government's proposed scheme.

4.24 However, whilst such a "conversion" may be superficially attractive, it raises issues about the comparison of the criteria for the initial registration. The Government's proposed scheme imposes strict formal requirements (see chapter 3) that may not have been met by all the same-sex couples who have chosen to register under the non-statutory schemes.

4.25 The Government believes that couples should make a specific choice about entry into the new legal status.

5. The Dissolution Process

Dissolution Procedure

- 5.1 The Government intends registered civil partnerships to be long-term, stable relationships and believes, therefore, that an appropriate degree of formality should be required to bring a registered civil partnership to an end. Registered partnerships should balance the rights of the legal partners and their responsibilities; towards each other, towards their children and towards those they treat as children of the partnership.
- 5.2 The Government proposes that the arrangements for dissolution of a registered partnership should be broadly similar to those required to bring a marriage to an end by a decree of divorce.
- 5.3 The Government believes that the procedure for dissolution of a registered partnership should be court based and that partners should have to make a formal application to the court to commence proceedings. The partner applying for dissolution of the partnership should be required to show that it had broken down irretrievably before the court would make an order for dissolution of the partnership.

Grounds for Dissolution

- 5.4 In order to show that the partnership had broken down irretrievably it would be necessary to produce evidence of unreasonable behaviour, that is behaviour of such a kind¹⁰ that the applicant could not reasonably be expected to continue living with their partner, or the fact that the parties had been separated for a period of either two years (with the consent of the other party) or five years (without such consent).
- 5.5 If at any stage it appeared that the partners might be able to be reconciled, the court would be able to adjourn the proceedings for such a period as it thought fit to allow them to attempt a reconciliation.

¹⁰ The test will be similar to that used currently in relation to a petition for divorce. The applicant would have to satisfy the court that their partner had behaved in such a way that the applicant could not reasonably be expected to live with him or her. When the court looks at the behaviour complained of it would have to look at all the circumstances of the case and the effect the behaviour has had on the applicant. The question the court would have to ask itself is - does this particular applicant find the behaviour by their partner intolerable? This test therefore would have a subjective element. It is proposed that the court would apply an 'objective' test. This would involve the court considering 'would any right thinking person come to the conclusion that this person had behaved in such a way that the applicant could no longer be expected to live with him or her taking into account the whole of the circumstances, and the character and the personality of the partners'.

- 5.6 It would be necessary to produce evidence of one or more of these grounds for dissolution, and the court would be required to inquire as far as was possible into the facts alleged by the partner applying for dissolution and into any facts alleged by the other partner. If the court were satisfied on the evidence that the partnership had broken down, a provisional order for dissolution of the partnership would be granted. After a period of six weeks an application could be made to make the order substantive.
- 5.7 In accordance with the Government's intention of supporting stable relationships, no application for an order for dissolution of a partnership would be accepted until at least one year had passed since the partnership was originally registered, although a subsequent application for an order for dissolution might rely on evidence from that period.

Void and Voidable Registered Partnerships

- 5.8 There are certain circumstances where a registered partnership might be void (having never been valid) or voidable (able to be declared invalid on the application of one of the parties). It is proposed that a partnership should be **void** if:
- I. It was not a valid partnership because:
 - (i) the parties were within prohibited degrees of relationship;
 - (ii) either party was under the age of 16;
 - (iii) the parties had disregarded the requirements for registration of the partnership;
 - II. That at the time of registration either party was already lawfully married or was a party to another civil partnership.
- 5.9 The effect of an order that a partnership had never been valid would be to make the partnership void.

- 5.10 It is proposed that a partnership should be **voidable** if either of the parties did not validly consent to the registration of the civil partnership as a result of:
- (i) duress;
 - (ii) mistake;
 - (iii) one partner being pregnant by a third party without the other's knowledge; or
 - (iv) lack of mental capacity to consent to registration.
- 5.11 The effect of an order that the partnership is voidable would be to bring the partnership to an end from the date the order was made absolute. It would be necessary for the partner who wished to have the partnership brought to an end to apply to the court for the order to be made absolute. The partnership would be treated as having been valid up until the date of that order.
- 5.12 Property relief would be available following an order that a partnership was void or voidable.

Order for Separation

- 5.13 Where parties had fulfilled the requirements for an order for dissolution of a partnership, they could apply for an order for separation. This order would recognise the separation of the couple but would not allow the parties to register a new civil partnership or to marry. A party could subsequently use the evidence used to support an application for an order for separation to apply for an order for dissolution of the partnership.

PART B - RIGHTS AND RESPONSIBILITIES

6. Introduction

- 6.1 A same-sex couple who register a civil partnership would be making a very strong commitment to each other. They would be agreeing to support each other financially and emotionally, throughout their lives. In light of this commitment, the Government believes that registered partners should gain rights and responsibilities to reflect the roles they play in each other's lives.
- 6.2 Many rights and responsibilities stem from the fact that registered partners would be expected to share their financial resources, and should therefore be treated as a single family unit. They would be under an obligation to support each other, which would continue while the partnership existed, and would be taken into account when arrangements were made for the division of property and resources on dissolution.
- 6.3 In some areas, the creation of the new status of registered partner would, in itself, be enough to bring about changes. For example, it could help registered partners to be recognised as "next of kin" – a term with no legal definition - when their partner is in hospital.
- 6.4 However, there are some areas where legislation already affords particular rights and responsibilities to couples in legally-recognised relationships. Beyond simply setting up the partnership registration scheme, changes to the relevant legislation would be needed to give recognition to registered partners in these areas.
- 6.5 The following chapters set out the rights and responsibilities that the Government proposes for registered partners. It is important to recognise that these rights and responsibilities come together as a package – it would not be appropriate to give registered partners rights in some areas but not others, unless there was a good reason, or to pick and choose rights without the attendant responsibilities.
- 6.6 The Government recognises that there would be implications for the tax system from any civil partnership registration scheme that is introduced. To ensure fairness, the Government believes that the tax system should, wherever possible, adapt to reflect changes in society. It will therefore consider the implications for the tax system of any scheme that is introduced following the outcome of this consultation and, as is usual for tax matters, in the context of the Budget process.

7. During the Relationship

Immigration

7.1 The Immigration Rules set out the existing conditions under which people can apply for leave to enter or remain in the UK. The same-sex partner of someone present and settled in the UK can apply for leave to enter the UK and then limited leave to remain here provided that:

(i) they have been living together in a relationship akin to marriage for two years or more; and

(ii) any previous marriage or similar relationship by either partner has permanently broken down;

(iii) they can maintain and accommodate themselves and any dependant without recourse to public funds in accommodation which they own or occupy exclusively; and

(iv) they intend to live together permanently in the UK.

At the end of a two-year probationary period the partner can apply for indefinite leave to remain.

7.2 The requirement for two years' cohabitation prior to the application for leave to enter and limited leave to remain is designed to ensure that the partners are in a long-term, committed relationship, and that the Immigration Rules are not being abused. Married couples are not required to cohabit for two years prior to applying for leave to enter or to remain here, because their marriage is taken as evidence of the permanent nature of their relationship. However, married couples, like all other couples, are still subject to the rest of the eligibility requirements ((ii)-(iv)).

The Government proposes that the Immigration Rules should be changed to remove the two years' prior cohabitation requirement for registered partners. The two-year probationary period will continue.

7.3 Different rules apply if a couple, married or unmarried, have been living together abroad for more than 4 years. They can apply for entry clearance to come to the UK for immediate settlement (which entitles them to enter the UK and stay there indefinitely). Such applications can only be made from abroad. No changes are proposed to the rules for these couples.

Elections

- 7.4 There are numerous rights and responsibilities relating to the procedures for voting in elections that are specifically restricted to spouses, because they have a legally recognised relationship to each other. These range through the whole electoral process and include such areas as maintaining the electoral register, issues relating to voting by proxy, assisting certain voters to cast their vote and the rights of a candidate's spouse to attend certain electoral activities.

The Government proposes that where electoral legislation refers specifically to spouses it should be amended to include registered civil partners.

The Government would be grateful for comments on this way of proceeding from any individual or organisation involved in the electoral process.

Giving Evidence in Court

7.5 Section 80 of the Police & Criminal Evidence Act 1984 deals with the situation where someone may be called on to give evidence against a spouse. The law says that a person usually has a right to refuse to give evidence against his or her spouse. There are two exceptions to this rule, which are cases where the spouse is charged with:

- (i) personal violence against the other spouse or against a child under 16; or
- (ii) a sexual offence against a child under 16.

The Government proposes that people in a registered partnership should not be compellable to give evidence against their partners, except where the partner is charged with:

- (i) personal violence against the other partner or against a child under 16; or**
- (ii) a sexual offence against a child under 16.**

Making Financial Decisions on Behalf of Adults with Mental Incapacity

- 7.6 The Enduring Power of Attorney Act 1985 provides for an adult (known as a 'donor'), who currently has capacity, to appoint another person (known as the 'attorney') to make financial decisions on his or her behalf should he or she subsequently lose capacity. The donor chooses the person(s) he or she wishes to act as the attorney(s). This can be a friend, relative or a member of the professions, such as a solicitor.
- 7.7 If an adult has not made an enduring power of attorney, owns property or extensive assets, and subsequently loses mental capacity to manage his or her own financial affairs, an application must be made to the Court of Protection¹¹ for a receiver to be appointed under the Court of Protection Rules 2001.
- 7.8 The current Act and Rules do not differentiate between married and unmarried partners except in relation to service of some documents.

The Government proposes to ensure that any necessary changes to existing legislation will be made so that there are no significant differences between married and registered partners.

- 7.9 The Government is currently considering changes to the legislation on decision-making for incapacitated adults.

The Government proposes to ensure that all partners, whether married, registered or neither, will have the same rights under the proposals for new legislation.

¹¹ The Court of Protection protects and manages the property and financial affairs of people with impaired mental capacity. The Public Guardianship Office is the administrative office that supports the Court of Protection.

Prison Visiting

- 7.10 The Assisted Prison Visits Scheme (APVS) provides assistance with the cost of visiting prisoners to close family members and partners (of either sex) who have a low income. Unmarried partners who apply for assistance under the APVS are required to provide proof of the relationship.

The Government proposes that registered partners should be treated on the same basis as married partners in terms of the information required as proof of relationship.

- 7.11 Prisoners who have a close relative in prison are eligible to apply for inter-prison visits. This policy has been amended to include same-sex partners who were living as a couple immediately prior to imprisonment within the definition of 'close relative', thereby achieving equality of treatment with that of opposite-sex partners. The introduction of a civil partnership registration scheme would require a further amendment to policy on inter-prisons visits to bring registered partners within the definition of close relative.

The Government proposes that all registered partners should be treated as close relatives, irrespective of whether their relationship subsisted prior to imprisonment.

Protection from Domestic Violence

7.12 The Government is currently consulting on possible changes to the legislation on domestic violence. The consultation paper, "Safety and Justice" is available from the Home Office website (www.homeoffice.gov.uk).

The Government proposes to ensure that registered partners have the same protection as spouses from domestic violence.

Adoption

- 7.13 Under the existing Adoption Act 1976, single people may apply to adopt on their own but only married couples may apply to adopt jointly. It is open for one unmarried partner (regardless of sexual orientation) to apply to adopt a child and for the other to obtain parental responsibility (discussed below) by applying for a residence order in respect of the child.
- 7.14 The Adoption and Children Act 2002, which overhauls the existing adoption legislation, introduces provisions to enable unmarried couples (opposite-sex and same-sex) to apply to adopt a child jointly. The Government will ensure that the provisions relating to assessment of suitability to adopt take account of the new status of "registered partnership", but there will not be a requirement for same-sex couples to register a partnership before they can apply to adopt. Any couple wishing to adopt, whether they are a married couple, a registered same-sex couple, an unmarried opposite-sex couple, or an unregistered same-sex couple will have to be assessed as to their suitability to adopt.

Adoption – The Facts

- **No-one has a right to adopt.**
- **Anyone who wishes to adopt must be assessed on their suitability to do so.**
- **Currently, single people may apply to adopt on their own but only married couples may apply to adopt jointly.** This means that one partner of an unmarried (opposite-sex or same-sex) couple has to apply to adopt as a single person; the couple would not be able to adopt the child jointly.
- **The new law, passed by Parliament last year, will change this.** Once the new Act has been implemented, all couples, whether same-sex or opposite-sex, will be able to request to be assessed as suitable to adopt jointly. This means that, subject to being assessed and approved to adopt and obtaining an adoption order, both partners will be treated as the child's legal parents.
- **All couples, whether married, in a registered partnership or otherwise, will have to be able to demonstrate the stability and permanence of their relationship.** The stability and permanence of the relationship is one of the factors that will be taken into account when assessing suitability of a person or persons to adopt.

The Government proposes to ensure that the provisions relating to assessment of suitability to adopt take account of the new status of registered civil partnership.

Parental Responsibility

- 7.15 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 acquire parental responsibility. For example, mothers and fathers who are married to the mother automatically have parental responsibility but unmarried fathers may or may not have it, depending on the circumstances. Adoptive parents acquire parental responsibility when they adopt a child.
- 7.16 If an individual marries or registers a partnership with someone who already has children, he or she may well play a significant role in the children's upbringing. The new Adoption and Children Act recognised this situation for marriage, and changed the law on parental responsibility so that step-parents will be able to acquire parental responsibility for a step-child by applying to the court for a parental responsibility order or making a parental responsibility agreement with the child's parents.

The Government proposes that registered partners should be able to apply to the court to gain parental responsibility for their partners' children in the same way as step-parents.

Hospital Visiting and Medical Treatment

7.17 Many same-sex couples have written to the Government with concerns about their rights when one partner is in hospital or needs medical treatment. There are many misconceptions about the law in this area.

Hospital Visiting and Medical Treatment – The Facts

- **There is no legal definition of "next of kin" in this context.** It is a term used by hospitals on admission forms to identify the person to contact in an emergency. There is nothing to prevent same-sex partners acting as "next of kin".
- **There is no law governing who can visit a patient in hospital** – it is for the medical staff, following NHS guidance, to make the appropriate decision in each individual case.
- **No person has the right to consent to medical treatment on behalf of another adult.** If the patient is not in a position to give consent to a medical intervention, a married or unmarried partner, or others in a close relationship with the patient may be asked to advise on the patient's likely best interests, but the decision ultimately rests with the doctors.

7.18 The Government believes that the creation of the status of "registered partner" will help to bring about a culture change and to remove the difficulties currently faced by same-sex couples when one partner becomes ill. The Government will ensure that guidance given to medical staff adequately addresses the situation of registered and unregistered same-sex partners.

Income-related Benefits

7.19 Income-related benefits¹² are safety-net benefits, which take into account the needs of the individual and, if they have one, their family. The two members of an opposite-sex couple are presumed to be financially interdependent and mutually supporting. They are therefore treated as a single household or family unit whose resources and needs are combined for income-related purposes. Same-sex partners are currently treated as individuals. The Government believes that registered partners should be treated as a family unit, since they would be assumed to be financially interdependent.

The Government proposes that registered partners should be treated as a single family unit for income-related benefits purposes.

7.20 Unmarried opposite-sex couples are treated in the same way as married couples because otherwise they would benefit financially from choosing not to formalise their relationship. It could be argued that unregistered same-sex couples should be treated in the same way as unmarried opposite-sex couples for income-related benefit purposes. (As with all social security benefits, income-related benefits extend across Great Britain. Any changes to the treatment of unregistered same-sex couples would therefore affect couples in Scotland as well as England and Wales.)

The Government would be grateful for comments on this way of proceeding.

7.21 When one spouse claims an income-related benefit¹³ the other spouse may be required to make payments which offset some or all of the benefit paid until the marriage ends. If they are able to pay but fail to do so they may be prosecuted, although this is extremely rare.

The Government proposes that registered partners should be liable to maintain each other in the same way as married couples are.

¹² The income-related benefits are: Income Support; Pension Credit which replaces the Minimum Income Guarantee (income support for those aged 60 and over) from October 2003; Income-based Jobseeker's Allowance, includes Joint Claims for Jobseeker's Allowance Housing Benefit and Council Tax Benefit.

¹³ These rules are not included in the Pension Credit legislation.

Dependency Increases

7.22 Adult Dependency Increases¹⁴ for social security benefits are payable for spouses, subject to earnings, including either a separated spouse who is being maintained by the claimant or another person who is looking after the claimant's children (which could include a same-sex or opposite-sex partner).

The Government proposes that Adult Dependency Increases should be payable for registered partners, depending on earnings, in the same way as they are for spouses.

¹⁴ Adult Dependency Increases are payable with Incapacity Benefit (Short term and Long term); Maternity Allowance; Carer's Allowance (Invalid Care Allowance before 1 April 2003); Severe Disablement Allowance; Widowed Parent's Allowance; Retirement Pension (cat A or cat B); and Unemployability Supplement. Please note that the introduction of the new Child Tax Credit in April 2003 means that Child Dependency Increases are no longer payable for new claims for Retirement Pension, Widowed Parent's Allowance, Carer's Allowance and Incapacity Benefit.

State Pensions

- 7.23 Today's state pension system was founded over fifty years ago. Since then many changes have been made to the pension system to adapt to society's changing needs and to extend the ways in which people can prepare for retirement. Because of the need to give sufficient warning to enable people to plan ahead, it can take many years for changes in pension systems to reach maturity.
- 7.24 The Government's decisions on the way in which state pensions might take account of registered civil partnerships will be affected by a forthcoming change. From 2010, the state pension age for men and women will begin to be equalised over a 10-year period. In 2010 also, derived pension rights for spouses and some other pension benefits will begin to be available on equal terms to men and women. It is thus not until 2020 that the state pension scheme will provide fully equal rights, at the same age, to people who are married.
- 7.25 Against this background, it would not be possible before 2010 to introduce state pension rights for registered partners which are both similar to those of married couples and treat all-male and all-female couples equally. Introducing changes before this time would create new inequalities within the state pension system. These considerations do not affect private pension schemes, which must already provide rights equally to men and women.
- 7.26 The main state pension rights that married couples get today are:
- (i) category BL pension – a married woman who does not have enough National Insurance contributions to earn a basic state pension of her own can use her husband's contribution record to get a Category BL pension, as long as he has reached state pension age and claimed his pension. This could give the wife a pension of up to 60% of the full basic state pension. At the moment, a husband cannot receive a category BL pension based on his wife's contributions;
 - (ii) category B pensions - when a husband dies his wife can inherit a state pension at the rate the husband was entitled to (to top up her own pension) plus a proportion of his additional pension (SERPS). In limited circumstances a husband can inherit his late wife's pension; and
 - (iii) pensions on divorce - on divorce either spouse can "substitute" the other's contribution record for his or her own if the spouse's record is better than his or hers.

These rights are derived from a spouse's national insurance contributions.

- 7.27 In 2010 category BL pensions will become equally available to men and women but it is not until state pension age is fully equalised in 2020 that pension rights will be the same, and accessed at the same age, for both sexes.
- 7.28 The Government published a Green Paper on pensions in December 2002, entitled "Simplicity, Security and Choice: Working and Saving for Retirement", which set out its proposals for reforming the UK pension system and included a number of measures affecting the state pension scheme. The Government is now considering the responses to that consultation and will ensure that its proposals fit with the possible introduction of a civil partnership registration scheme.

The Government proposes that registered partners should be given the same state pension rights as married couples once entitlement for both husbands and wives has been equalised in 2010.

- 7.29 A husband can also receive a dependency increase for his wife if he is over state pension age and she has not yet reached her state pension age, provided she does not earn more than a specified amount. In most circumstances a wife cannot get a dependency addition for her husband. In 2010 dependency increases will be equally available to men and women. The Government believes that registered partners should also have these rights, although there would be practical difficulties extending them before 2010.

The Government proposes that registered partners should be eligible for dependency increases, depending on their earnings, when entitlement for both husbands and wives has been equalised in 2010.

Life Insurance

7.30 A person who is intended to benefit from a life insurance policy must have an insurable interest in the life that is insured. Married couples are presumed, as a matter of law, to have an unlimited insurable interest in each other's lives and therefore do not have to prove the existence of an actual interest. As a result, a husband could, for example, insure his own life for his wife's benefit because the fact that they have entered that legally-recognised relationship indicates that she has an insurable interest in his life. The Government believes that registered partners should benefit from an equivalent presumption that they have an unlimited insurable interest in each other's lives.

The Government proposes that registered partners should be presumed to have an unlimited insurable interest in each other's lives.

8. When a Partnership is Dissolved

- 8.1 A couple in a registered civil partnership would have a wide range of obligations towards each other, which need to be reflected in the arrangements for dissolution. They would have been sharing their resources, and may have been bringing up children together. This chapter contains proposals for the framework that should be put in place to ensure that a fair settlement can be reached when two registered partners decide to dissolve their partnership.

Children – Residence and Contact

- 8.2 The Government proposes that the existing law should be applied to the settlement of arrangements for the children of the partners and any children treated by the partners as dependants or as children of the family during the partnership. In some cases partners will have children before they enter into their partnership and these children will continue to have contact with parents outside the partnership. This will not be affected either by one of their parents entering into a registered civil partnership or by the breakdown of that partnership.
- 8.3 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. The court would be required to consider whether it should exercise its powers under the Children Act in respect of any children before the order for dissolution of the partnership is made substantive. Registered partners will be entitled to make an application for a contact or a residence order in respect of a child of the partnership under Section 8 of the Children Act 1989. Children will have a right to continued contact with the former partner following the dissolution of the partnership.

The Government proposes that registered partners should be able to apply to the court for a contact or a residence order under the provisions of Section 8 of the Children Act 1989.

Child Support

Liability to Pay Child Support

- 8.4 As a result of changes introduced by the Adoption and Children Act 2002 it will be possible for same-sex couples to apply to adopt a child. Section 26 of the Child Support Act 1991 includes provision for the liability to pay child support maintenance that arises as a result of adoption. Any adoptive parent, formerly a member of a same-sex couple who have adopted a child or children, who becomes a non-resident parent, will have a liability for child support maintenance payments. Civil partnership registration would not alter these recent changes.

Assessment of Liability for Child Support

- 8.5 People in same-sex relationships are not currently treated as members of a couple under child support legislation. This can disadvantage them, so that people in such relationships can pay more child support maintenance than if they were members of an unmarried opposite-sex couple. If a civil partnership registration scheme were introduced, registered same-sex couples would be treated as couples for the purposes of child support. As with income-related benefits, it could be argued that unregistered same-sex couples should be treated in the same way as unmarried opposite-sex couples. (See paragraph 7.20).

The Government would be grateful for comments on this way of proceeding.

- 8.6 When calculating child support liability, an allowance may be made for any children living in the non-resident parent's new household. This would apply whether the non-resident parent is part of a registered same-sex couple, or of an opposite-sex couple (whether married or unmarried). It may also apply where the non-resident parent is part of an unregistered same-sex couple, if they are treated in the same way as unmarried opposite-sex couples.

The Government proposes that registered partners should be assessed in the same way as spouses for the purposes of child support.

Maintenance for Partners and for Children of the Family

- 8.7 The Government views the establishment of a registered civil partnership as a serious matter, which will involve significant commitments between the parties. It is therefore proposed that in appropriate circumstances one partner should be able to apply to a magistrates' court for an order that their partner has not provided reasonable maintenance for them. The court should then have power to make an order for a lump sum payment or periodical payments in respect of maintenance.
- 8.8 The duty on parents to maintain their children will of course continue and will not be affected by a parent entering into a civil partnership. There will be occasions where one or both partners have children. It is clearly desirable that the children should be a part of the new family. However, this cannot be allowed to alter the responsibilities of the children's parents for their maintenance. Accordingly, entering into a registered civil partnership will neither:
- (i) end liability under the Child Support Act 1991 (as amended by the Child Support, Pensions and Social Security Act 2000) to pay child support maintenance applying to a parent entering such a civil partnership; nor
 - (ii) end the liability under the Child Support Act 1991 (as amended by the Child Support, Pensions and Social Security Act 2000) to pay child support maintenance applying to a parent, where the other parent enters a civil partnership.
- 8.9 The child support arrangements have primacy, but there are also legislative provisions in place, in the Domestic Proceedings and Magistrates' Courts Act 1978 and the Children Act 1989, for a court to order a step-parent to make provision for a step-child. If a registered civil partnership breaks down, where there have been children regarded as part of that family, there may be justification for a non-resident registered partner of a parent to have a liability to make provision for the child. However, this should not jeopardise the clear principles now established by the child support legislation. The courts will have to take account of the existence of the child support system in any decisions that they might make over liability for maintenance of a registered partner who is not the parent of the child.

The Government proposes that there should be a duty on one partner to provide reasonable maintenance for the other, and this duty should be enforceable through a magistrates' court.

The Government proposes that the courts should, while respecting arrangements made under the Child Support Acts, 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 magistrates' court.

Property Division on Dissolution of a Civil Partnership

- 8.10 The Government believes that registered partners should have the important legal protection of provisions for division of property on the dissolution of the partnership. These should take account of the needs of the partners, their children and any children who have been treated as dependants by the partners during the partnership. This will provide partners with the property rights appropriate to family relationships.
- 8.11 The Government proposes that when, or after, the court grants an order for dissolution of a partnership or an order that a partnership is void or an order for separation, it should be able to exercise a new discretionary power to order that property should be transferred:
- from one party to the other;
 - to a child treated as a dependant by the partners; or
 - to another person for the benefit of a child of the family.

The court will also have the power to order the making of periodical payments, to order the sale of property, to make some orders in respect of pensions and so on. The Government believes that courts should have discretion as to what orders to make in any particular case, so as to meet the demands of that case according to its particular circumstances.

The Government proposes that the courts should have the power to make orders regarding the division of property on dissolution of a registered civil partnership.

Public Funding for Dissolution

- 8.12 When registered partners are dissolving a partnership, they may need legal advice or assistance. For many types of court proceedings, people may be entitled to public funding (formerly called legal aid), depending on their means and the merits of their case. It is likely that dissolution proceedings would come within the current definition of "family proceedings" for which public funding is available. However, the Government may need to make slight changes to the Funding Code, which sets out the way public funding operates, to reflect the details of dissolution.
- 8.13 Public funding is means-tested. In assessing an applicant's means, the means of his or her spouse or partner, whether same-sex or opposite-sex, are taken into account, so no changes would be needed to the assessment procedure for public funding.

The Government proposes that public funding should be available, where appropriate, for legal advice during the dissolution process.

9. When One Partner Dies

- 9.1 The status of registered partnership would be recognised not only during the relationship but also after the death of one of the partners. The Government recognises that some people have faced particular difficulties after the death of a same-sex partner, either due to social attitudes or because the relationship was not recognised in law. Civil partnership registration would help to remedy this, ensuring that registered partners were legally recognised as close family members. The Government proposes that a number of legislative changes should be made to ensure that the status of registered civil partners is recognised following the death of one partner. These changes are described in this chapter.

Registering the Death of a Partner

- 9.2 There are only certain categories of people who can register a death, including a relative or someone present at the death. The current categories, set out in legislation, for the registration of a death do not include "partner" unless they are qualified in some other way, such as being present at the death.
- 9.3 The Government has announced its intention, in the White Paper 'Civil Registration: Vital Change' published in January 2002, to add "partner" to the list of those who can register a death. If a civil partnership registration scheme were introduced, this list should be amended again to specifically include registered partners.

The Government proposes that registered partners should be added to the list of those who can register a death.

Inquests and Burial

9.4 For the purposes of inquests and the jurisdiction of the coroner's court, married partners have certain rights. These rights are:

- to be notified of the date, place and time of the inquest or the resumption of an adjourned inquest;
- to question witnesses at the inquest, in person or through a legal representative.

The Government proposes that the rights to be notified about the inquest and to question witnesses should be extended to registered partners.

9.5 Coroner legislation gives other rights to those who are considered by the coroner to be properly interested persons, for example in relation to access to relevant records and documents.

The Government proposes that registered partners will be treated as properly interested persons.

9.6 Certain categories of people also have rights in relation to burial, exhumation and cremation. The law here mainly refers to relatives and personal representatives rather than more specific relationships.

The Government proposes that, where necessary, the definition of "relative" should be revised to ensure that registered partners have rights in relation to burial, exhumation and cremation.

Post Mortems and Organ Retention

- 9.7 The Government has recently published a Code of Practice on "Families and Post Mortems", which gives guidance to medical professionals involved in talking to families and loved-ones about consent for post mortems and organ retention. The code suggests that identifying the most appropriate person to give consent may not be straightforward and should not be based on assumptions. A copy of the code can be obtained from the NHS response line on 08701 555 455.
- 9.8 The Department of Health issued a consultation document, "Human Bodies, Human Choices - The Law on Human Organs and Tissue in England and Wales" in July 2002. In the report issues relating to next of kin were addressed. The responses to the document are currently being considered pending changes to future legislation, and the Government will address issues in relation to nearest relative or person closest to the deceased in any new legislation.

Bereavement Benefits

- 9.9 Bereavement benefits are primarily paid to people of working age following the death of a spouse. They cannot be paid if the surviving spouse is living with someone else as husband and wife. They are only available to married partners.
- 9.10 Bereavement Benefits were introduced in 2001 and include the following:
- (i) Bereavement Payment - a lump sum payment of £2,000 payable immediately to help with costs arising on bereavement;
 - (ii) Bereavement Allowance - a weekly benefit payable to widows and widowers aged 45 and over without dependant children for up to 52 weeks following the date of death;
 - (iii) Widowed Parent's Allowance – a weekly benefit that is payable to widows and widowers with dependent children.

The Government proposes that registered partners should be entitled to bereavement benefits, subject to the standard eligibility conditions, if one partner dies.

Survivor Pensions - Private Pension Schemes

9.11 Most private pension provision is provided through occupational pension schemes which can be:

- Defined Benefit - where the pension payable depends on the length of service and the salary (usually the final salary) earned by the employee; or
- Defined Contribution - where the contributions are invested to provide a pot of money on retirement, which is used to buy an annuity.

Personal pensions and stakeholder pensions, which are other types of private pension provision, are defined contribution arrangements between providers and individuals.

9.12 Employers providing defined benefit pension schemes that are used to contract their employees out of the State Second Pension (formerly SERPS) are required to pay a survivor pension to the surviving spouse of a scheme member. In practice, many private sector schemes make payments to others, including opposite-sex and same-sex partners if scheme rules allow trustees to do this, but there is no legal requirement for them to do so. Members of defined contribution occupational schemes and personal pension schemes that are contracted out of the State Second Pension, are required to provide for a survivor pension for their spouse but only on that part of the pension derived from the National Insurance contribution rebate and its investment return (the protected rights).

The Government proposes that the conditions for contracting out should be amended to include a requirement for survivor benefits to be paid to registered partners.

Survivor Pensions - Public Service Pension Schemes

9.13 Public service pension schemes provide occupational pension benefits to members and their eligible survivors. Eligible survivors include any children and the married spouse of the member. Most public service schemes do not provide survivor pensions to unmarried partners, although death lump sum benefits may be provided to unmarried partners in some schemes where members are able to nominate them.

The Government proposes that members of public service pension schemes will earn entitlement to survivor benefits, including a survivor pension, for registered partners in the same way as for married partners.

9.14 The Government's policy is that if the membership of a public service scheme wants to extend eligibility for survivor pensions to unmarried partners and is prepared to meet the additional costs, the Government is prepared to consider how practicable arrangements could be devised for achieving this. The Civil Service has introduced a new scheme, which includes unmarried partner benefits on this basis. There is no change to the Government's policy regarding partners who are neither married nor registered. A number of public service schemes, however, are conducting reviews on whether and how to introduce unmarried partner benefits, among other reforms.

Injury Benefits

9.15 Some public service employment groups – namely the armed forces, the Civil Service, the Fire Service, Local Government, the National Health Service and the police forces - have injury benefit schemes, allowing the payment of benefits to family members following the death of an employee. The payment of injury allowances to family members is consequential upon arrangements in pension schemes for surviving spouses and dependants' pensions. The policy on injury benefits therefore follows the policy on public service pensions.

The Government proposes that registered partners should be entitled to injury benefits on the same basis as married partners.

Fatal Accidents Compensation

9.16 Section 1A(2) of the Fatal Accidents Act enables an award of bereavement damages to be made to certain categories of person in respect of a death which occurs as a result of another person's negligence. Bereavement damages constitute a token payment in acknowledgement of grief and are not intended to reflect in any way the value of the deceased's life. The sum currently payable as bereavement damages is £10,000. At present, only a spouse can claim bereavement damages.

The Government proposes that registered partners should be able to claim bereavement damages in respect of a death that occurs as a result of another person's negligence.

9.17 Section 1(3) of the Fatal Accidents Act allows claims for financial loss suffered by certain categories of people who are dependent on the deceased. These include spouses; former spouses; opposite-sex cohabitants of at least two years' duration, and a number of other people.

9.18 The Government proposes that registered partners should be added to the statutory list of people able to claim. This would enable registered partners and former registered partners to be treated in the same way as spouses and former spouses are under the Act.

The Government proposes that registered partners should be able to claim financial loss for the death of a partner.

Criminal Injuries Compensation

- 9.19 The Criminal Injuries Compensation Scheme provides payment at the taxpayers' expense to blameless victims of crimes of violence and those injured in trying to apprehend criminals or prevent crime.
- 9.20 In March 2001, the scheme was amended to allow same-sex partners to make a fatal injury application in the event of a partner's death. Partners can make an application if they were living together with the deceased as a same-sex partner in the same household immediately prior to the date of death and had been so living throughout the two years immediately before that date.
- 9.21 The requirement for two years' cohabitation is designed to safeguard taxpayers' money and ensure that payments are only made to those who were in a long-term, committed relationship. However, married partners only need to provide their marriage certificate as proof of their relationship to the deceased. The Government believes that the registration of a partnership would demonstrate that the couple were in a long-term, committed relationship, so there should be no need of a two year cohabitation requirement for registered partners.

The Government proposes that there should be no two-year cohabitation requirement for registered partners who make a fatal injury application under the Criminal Injuries Compensation Scheme.

Intestacy

- 9.22 If someone dies without leaving a will, the intestacy provisions in the Administration of Estates Act 1925 (as amended) set out what will happen to the estate. These provisions are designed to reflect the wishes of the average person, by dividing up the estate among close relatives. Same-sex partners do not currently have any rights under the intestacy rules.
- 9.23 If two people register a civil partnership, that relationship would have a legal status and should be recognised under the intestacy provisions. The share inherited by a registered partner would depend on the other circumstances, as set out in the Administration of Estates Act 1925, such as whether the deceased had children, brothers and sisters or surviving parents.

The Government proposes that registered partners should be able to inherit under the Administration of Estates Act 1925 in the same way as spouses.

- 9.24 As well as setting out who will inherit the estate, the intestacy provisions also give the order of priority of those persons who are entitled to administer the estate where the deceased dies wholly intestate (by applying for a grant of administration). The order of priority is set out in Rule 22(1) of the Non-Contentious Probate Rules 1987, and is headed by "the surviving husband or wife" followed in order by the children or grandchildren of the deceased, the father and mother of the deceased, and so on to include other relatives.

The Government proposes that registered partners should be expressly included in Rule 22(1), giving them the same priority as spouses in applications for a grant of administration.

Inheritance

- 9.25 If a partner has made a will, then the terms of the will should set out what will happen to his or her estate in the event of his or her death. However, the Inheritance (Provision for Family and Dependants) 1975 Act allows certain people to claim provision from the deceased's estate or assets by making an application to the Court if they feel that the will or rules of intestacy do not make adequate provision for them. The Court can order payment from the deceased's assets or the transfer of property if the applicant's claim is accepted. Same-sex partners can already make a claim under the 1975 Act, but they need to prove that they were dependent on (or maintained by) the deceased, whereas spouses do not. The Government believes that applications under the 1975 Act made by registered partners should be treated on the same basis as an application made by a spouse.
- 9.26 If a child has been brought up by the couple as "a child of the family" (so that the child has been treated as part of the family by both parties), that child could make a claim on the estate of the deceased under the 1975 Act. This would apply, for example, to a child of the surviving registered partner who had been brought up by the couple.

The Government proposes that registered partners and former registered partners should be expressly added to the categories of people who can make claims under the Inheritance (Provision for Family and Dependants) Act 1975, and their applications treated on the same basis as applications made by spouses.

Tenancy Succession

- 9.27 If someone who holds a tenancy dies and his or her same-sex partner was living in the property, the partner may be able to inherit or succeed to the tenancy, depending on the circumstances. There are three types of housing tenancies which have full security of tenure: Rent Act tenancies, statutory tenancies and secure tenancies.
- 9.28 As a result of the decision of the Court of Appeal handed down on 5 November 2002 in the case of *Ghaidan v Mendoza* [2002] 4 All ER 1162, same-sex partners can now succeed to Rent Act tenancies. The Government's view is that same-sex couples should have the same right as unmarried opposite-sex couples in all types of rental housing. In its Housing Policy statement, "Quality and Choice", the Government made a commitment to equalise the rights of same-sex couples and unmarried opposite-sex couples to succeed to a tenancy. The Government is actively working towards this aim.
- 9.29 The Government also believes that the law should reflect the fact that registered partners would have a legally recognised relationship. Registered partners should therefore be given the same rights as married partners in relation to tenancy succession and the other minor areas of tenancy law in which married partners are treated differently from unmarried partners.

The Government proposes that registered partners should be given the same rights as married partners in relation to tenancies, including the right to succeed.

- 9.30 The Agricultural Holdings Act 1986 governs who can succeed to an agricultural tenancy. Under this Act, where a tenancy was granted before 12 July 1984, an "eligible" person, including a spouse but not an unmarried partner, may apply to the Agricultural Land Tribunal for a direction to succeed to a tenancy on the death or retirement of the previous tenant. Only those with a tenancy governed by the 1986 Act, granted before 12 July 1984, are eligible for statutory succession. This means that the statutory succession provisions are, in effect, "spent legislation" and the number of tenants who succeed to tenancies is limited. The Tenancy Reform Industry Group (TRIG) is currently considering a number of areas for reform of agricultural tenancy legislation.

The Government proposes that the definition of "eligible" person in the Agricultural Holdings Act 1986 should be amended to include registered partners, allowing them to succeed to agricultural tenancies.

10. Questions

Are there other measures that could be taken to further ensure the safe registration of same-sex couples while meeting the need for a public register?

Do you wish to comment on the proposed recognition arrangements in paragraph 4.19?

Do you wish to comment on the proposed arrangements for the electoral process in paragraph 7.4?

Do you wish to comment on the possible arrangements for unregistered same-sex couples in relation to income-related benefits in paragraph 7.20?

Do you wish to comment on the proposed arrangements for for unregistered same-sex couples in relation to child support in paragraph 8.5?

Are there any other rights and responsibilities not discussed above that you think should be given to registered partners?

What do you think of the term "civil partnership registration"? Is there a term that you would prefer?

Is there a more attractive term to use than "registered partner"? (Feel free to be creative!)

Do you have any other comments?

11. How to Respond

We would welcome responses to the questions which we have asked in this consultation paper. Please send your comments to:

England: Civil Partnerships and Sexual Orientation Team
Women and Equality Unit, DTI
2nd Floor
35 Great Smith Street
London
SW1P 3BQ
E-mail: civil.partnerships@dti.gsi.gov.uk

Wales: Equality Policy Unit
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ
E-mail: civil.partnerships@wales.gsi.gov.uk

If you have any queries about how to respond please contact Guy Horsington in the Women and Equality Unit on 0207 276 2291.

The consultation period will end on 30th September 2003.

Annex A - Regulatory Impact Assessment

1. Intended effect

- To give same sex couples in England and Wales the opportunity of gaining a legal status for their relationships through a civil partnership registration scheme. Couples who enter into this new status will gain a package of rights and responsibilities.

2. Risks – reasons for action

2.1 Lack of legal recognition for same-sex couples

- Same-sex couples currently have no way of gaining a legally-recognised status for their relationships. This lack of legal status can lead to difficulties in gaining recognition as a couple in many areas of life, from social situations to hospital visits.
- The current unavailability of a legal status for same-sex couples means that they are denied access to some of the rights or responsibilities that are given to married couples to reflect the commitment they have made to each other. These can include survivor pensions in some occupational pension schemes, state pension benefits, insurable interest in each other's lives and rights to inherit if one partner dies without making a will.

3. Options for action

3.1 No action

- This option would fail to address any of the problems described above.

3.2 Tackle individual problems one by one

- Tackling individual issues one-by-one would involve a range of approaches, from issuing guidance to legislative changes. However, the absence of any mechanism through which same-sex couples could declare their status as a couple in a long-term, committed relationship would mean that it would be difficult to determine which couples should be entitled to rights and responsibilities and when these should begin to accrue.
- There would be a danger of imposing rights and responsibilities on couples who did not want them (that is those who prefer to arrange their lives separately and would not choose to make a formal legally-recognised commitment to each other, in a comparable way to those opposite-sex couples who choose not to marry).

- Such an approach would take a long time to provide equal treatment for same-sex partners, particularly if a number of different legislative vehicles were needed.
- Dealing with issues in a piecemeal fashion would fail to provide legal recognition of same-sex relationships, which of itself can bring about culture change.

3.3 Civil partnership registration scheme

- A civil partnership registration scheme with an attached package of rights and responsibilities would provide legal recognition for those same-sex couples who choose to make such a commitment to each other. Couples who register will have many of the rights and responsibilities currently denied them. The opt-in nature of the scheme will provide clarity about when those rights and responsibilities begin.

4. Who would be affected?

4.1 Users of the registration scheme

- Those directly affected by the introduction of a civil partnership registration scheme would be the potential users - same-sex couples in England and Wales. Stonewall estimates that lesbian, gay and bisexual people constitute 5-7%¹⁵ of the total adult population.
- It is very difficult to predict the likely take-up of civil partnership registration, since there is little reliable data about the lesbian, gay and bisexual population. Partnership registration schemes in other countries have not been in operation for long enough to provide useful benchmarks. The Government has therefore based all estimates on two possible take-up rates (details in Annex A(1)). Initial take-up figures from comparable partnership registration schemes within the EU suggest that the lower take-up rate is far more likely.

4.2 Providers of the registration service

- There would be an impact on the civil registration service in England and Wales, which would operate the partnership registration system.

¹⁵ There is very little reliable data about the size of the LGB population. This figure is based on the findings in a number of different studies. The National Survey of Sexual Attitudes and Lifestyles (NATSAL 2000) of 16-44 year olds, found that 5.4% of men and 4.9% of women had ever had a same-sex partner compared to just 2.6% of both genders who had had recent experience in Johnson et al, Sexual behaviour in Britain: Partnerships, Practices and HIV Risk Behaviours, The Lancet, Volume 358, Number 9296, Dec 1, 2001, pp 1835-42. About 5% of those questioned in exit polls identified themselves as 'gay' in US Voter News Service exit polls 1996 and 2000. Plug, E and Berkhout, P (2001) found that about 5% of their Dutch sample had gay, lesbian or bisexual sexual preferences in Effects of Sexual Preferences on Earnings in the Netherlands. About 6% of a national sample of Americans identified as gay or lesbian in Yankelovich Monitor Research (1994). Laumann et al found the incidence of homosexual desire was just over 7% of both men and women in the USA. Janus and Janus (1993) found that 9% of men and 5% of women identified as gay or lesbian. Some studies have found higher estimates, such as Kinsey (1948) and Sell et al (1995), whilst others using estimates of cohabiting same-sex couples have found much lower estimates, for example the LFS finds just 0.2% of UK households consist of same-sex couples.

4.3 Taking account of the new status

- There would be an impact on all employers, both private and public sector, in terms of employment benefits and occupational pension rights for registered partners.
- Changes to the tax and benefits systems would involve administrative changes for Government and Local Authorities.
- The new status would have an impact on practice for treating patients and their families within the National Health Service.
- The creation of the new status would affect any other area in which family status is taken into account. Organisations might need to consider changing their policies and practice, any guidance and any forms on which people are asked to declare their status.

5. Overall Benefits

- This section covers the benefits arising from the creation of the new legal status itself. Financial benefits and costs arising from the additional rights and responsibilities that might be afforded to registered couples are discussed in sections 7 and 8 below.

5.1 Stable relationships

- Civil partnership registration would bring increased security and stability to those same-sex couples who register, and to their children. The Cabinet Office Life Satisfaction¹⁶ survey, published in December 2002, found that marriage increases people's life satisfaction and happiness by an amount equivalent to an additional annual income of £72,000. Civil partnership registration could provide similar social and psychological benefits to same-sex couples, equivalent to an increase in collective annual income of £6.1 billion to £61.2 billion, depending on take-up.
- Civil partnership registration would encourage stable relationships, which are an important asset to the community as a whole. It would reduce the likelihood of relationship breakdown, which has a proven link to both physical and mental ill-health. As the Government said in its 1998 consultation document *Supporting Families*, "Strong and stable families provide the best basis for raising children and for building strong and supportive communities". Strengthening adult couple relationships not only benefits the couples themselves, but also other relatives they support and care for, and, in particular, their children, as they grow up and become the couples, parents and carers of tomorrow.

¹⁶ Available from www.strategy.gov.uk/2001/futures/attachments/ls/paper.pdf

- Stable relationships also benefit the economy. It is expected that registered couples would share their resources and support each other financially, reducing demand for support from the State and, overall, consuming fewer resources. Increased stability would help to reduce the burden on the State in terms of family breakdown, which cost the taxpayer an estimated £5 billion in 1999.

5.2 Social Attitudes

- A 1999 survey¹⁷ found that over two-thirds of lesbian, gay and bisexual people had been the victim of homophobic incidents such as threats, intimidation, verbal abuse or physical assault. The creation of a new legal status for same-sex couples would play an important role in increasing social acceptance of same-sex relationships, reducing homophobia and discrimination and building a safer and more tolerant society.

6. Costs of registration system

This section covers the costs of setting up and running the registration system. Costs associated with the additional rights and responsibilities that might be afforded to registering couples are covered in sections 7 and 8 below.

6.1 Costs to civil registration service

- The impact on the civil registration service of setting up a civil partnership registration scheme is likely to be low. Systems already in place for civil marriage can be adapted for civil partnership registration, although registrars may need some additional training to raise awareness and sensitivity to lesbian, gay and bisexual issues. The number of couples expected to register is relatively low (a few thousand per year) and costs would be recovered from registering couples.

6.2 Costs to registering couples

- There would also be costs associated with dissolution. Couples might need legal advice and assistance, which could result in costs to them of around £3,000.

6.3 Costs to Court Service

- The numbers of civil partnership dissolutions taken through the courts are likely to be small even at the higher take-up rate; approximately 826 (individuals) per year by 2030 at the lower take-up rate and 7,500 (individuals) per year by 2030 at the higher take-up rate. There would, therefore, be few running costs other than that of additional training and guidance to the court service of extending their services to include the dissolution of civil partnerships. However, there would be a one-off start up cost in the region of £5m to amend the Court Service's "FamilyMan" IT system.

¹⁷ Breaking the Chain of Hate: a National Survey Examining Levels of Homophobic Crime and Community Confidence towards the Police Service' - National Advisory Group (1999).

6.4 Costs to Community Legal Service Fund

- Some of the couples dissolving partnerships would be eligible for public funding (formerly legal aid). Initially this cost would be very low given the few civil partnerships likely to be registered and the unlikelihood of those partnerships dissolving quickly. The long-term annual cost of public funding for dissolution is estimated to be between £1 million and £10 million.

6.5 Equity and fairness

- Couples would cover the cost of their partnership registration through nationally set statutory fees. This would cover the cost of giving notice to the registration officer and the registration officer's attendance at a civil partnership registration. There would also be a fee for removing their names from the register on dissolution.
- Some court costs would also be recovered from registering couples though court fees (likely to be in the region of £200).

7. Employment

- Employers would need to adapt their policies to recognise registered partners in some areas where they currently recognise other forms of legal status such as marriage. The key area for change would be the survivor benefits provided by defined-benefit, occupational pension schemes.

7.1 Benefits to individuals

- Some registered partners would benefit from access to survivor pensions to which they would not previously have been entitled. Some private pension providers already pay survivor pensions to long-term partners (including same-sex partners), but this is often done on a discretionary basis and the partners may have to meet criteria such as a set period of cohabitation or proof of financial interdependence.

7.2 Benefits to business

- It is hoped that businesses would see improvements in recruitment and retention from offering equal employee benefits to same-sex partners in a registered partnership. Recent research by Stonewall into the attitudes of lesbian, gay and bisexual graduates found that equality of terms, conditions and benefits was one of the key factors for organisations to focus on if they were to attract high calibre lesbian, gay and bisexual employees. The Government estimates there to be between 1.5 and 2 million lesbian, gay and bisexual people in the labour force¹⁸. However, the Government does not attempt to quantify these benefits.

¹⁸ The total labour force is about 29.315 million. We, therefore, estimate there to be between $29.315m \times 0.05 = 1.466$ million and $29.315m \times 0.07 = 2.052$ million lesbians, gay men and bisexual people in the labour force.

7.3 Impact on business

- The Government's initial assessment is that the administrative impact of introducing a civil partnership registration scheme on businesses (private pension providers) would be negligible as private pension schemes already have systems in place to make payments to married dependants which could be extended to registered civil partners.
- There would be additional costs for those employers providing defined benefit pension schemes who currently offer survivor benefits to married partners. The Government estimates that to provide survivor pensions for registered partners the percentage increase in annual contributions to defined benefit schemes would be between 0.013% and 0.125%, depending on the take-up rate of partnership registration. This would result in total additional costs of £2.5m - £20m per year. The cost impact on individual employers would therefore be low. This would be a transfer, since it would result in a benefit to individuals.
- Where defined benefit schemes calculate survivor pensions on the entire length of the registered partner's service (rather than pensionable service from the date of introduction of civil partnership registration only), employers would also face additional one-off costs, between £100m and £1bn, depending on take-up. This is a very small proportion of the total private sector defined benefit scheme assets or liabilities (which are in excess of £500bn). Again, this would be a transfer to individuals.
- Annex A(2) contains further notes about the costs in this area and details of the assumptions used.

7.4 Impact on Government as an employer

- Public service pension schemes already have systems in place to pay survivor pensions and injury benefits to married dependants of scheme members, so the administrative impact on them would be low.
- There would be additional costs to the Government and other employers in public service pension schemes from extending survivor benefits to include registered partners as well as married partners. We estimate that the additional employer contributions required to cover the accrual of this extra provision in respect of the future service of scheme members would be between 0.008% and 0.08% of pensionable pay costs, or £7m to £70m per year, depending on take-up of registration amongst scheme members. This would be a transfer to individuals. These are figures for the impact on employer costs; the profile of payments from schemes to beneficiaries would be different, starting from a low level and building over time. The extreme high case would mean almost half of public servants who retire unmarried registering a same-sex partnership. This scenario is included for consistency with other costings in this assessment, rather than as an indication of a likely outcome.

- Improvements to benefits in public service pension schemes are usually made in respect of future service of active members from a given date. If survivor pensions for registered partners were based on the earlier service of scheme members, there would be a further one-off cost arising from recognition of that past service. This cost is highly sensitive to the assumptions on take-up, and would also depend on whether the past service of all members, or only active members, or only past service since a particular date were reckonable. For illustration, if all past service of all scheme members were reckonable, the one-off cost would range from £150m to £1.5bn on assumptions consistent with those used elsewhere. If these costs were spread over a future period in line with standard actuarial practice to calculate the impact on employer contributions required to balance the schemes, the addition to pensionable pay costs of employers would be in the range of 0.02% to 0.16%; or £15m to £150m per year.

8. Recognition for state pensions and benefits

8.1 Benefits to individuals

- Registered couples would benefit from increased financial security, through arrangements designed to reflect more accurately their situation. Partners may become entitled to state or occupational pension rights, as well as state bereavement benefits, based on the contributions of the other partner.

8.2 Savings to Government

- There may be some savings associated with recognising same sex partners in the income related benefits. However, as there is only limited information about the population who are living together as partners in same-sex relationships and the likelihood of their claiming income related benefits, savings are difficult to assess.

8.3 Costs to Government

- Changes would result in a net increase in annual costs to Government from state pensions and bereavement benefits, set out in the table in section 11. Costs are calculated on the assumption that changes in these areas come into effect in 2010, due to practical considerations. Rights and responsibilities in many other areas could, however, be afforded to couples before 2010.

9. Impact on Small Businesses

- The impact on small businesses of the additional costs to defined benefit pension schemes will be minimal as very few small employers operate this type of pension scheme.

The Government would be grateful for comments on the likely impact on small employers.

10. Competition

- No market has been identified where these proposals would have an adverse impact on competition.

11. Summary

- The greatest impact of the proposals would be on central and local Government. These costs are considered to be justified by the social policy reasons for introducing a civil partnership registration scheme for same-sex couples.
- There would be minor costs and substantial benefits for the individuals who chose to register a partnership.
- The impact on business would be very low, except for a minor cost increase for defined-benefit occupational pension providers and a small increase in demand for the hospitality industry.
- There would be no direct impact on charities and voluntary organisations other than their own responsibilities as employers.

Table 3: Total Annual Costs to Government (£m)

| | State Pension and Bereavement Benefits ¹⁹ | Public Service Pensions | Public Funding for Dissolution | TOTAL |
|------------------------------|--|-------------------------------|--------------------------------------|-------|
| HIGH TAKE-UP SCENARIO | | | | |
| 2010 | 3 | 70 | 2 | 75 |
| 2020 | 41 | 70 | 5 | 116 |
| 2030 | 67 | 70 | 7 | 144 |
| 2040 | 95 | 70 | 9 | 174 |
| 2050 | 160 | 70 | 10 | 240 |
| LOW TAKE-UP SCENARIO | | | | |
| 2010 | 0 | 7 | 0 | 7 |
| 2020 | 3 | 7 | 0 | 10 |
| 2030 | 6 | 7 | 1 | 14 |
| 2040 | 10 | 7 | 1 | 18 |
| 2050 | 17 | 7 | 1 | 25 |

Table 4: Total Annual Costs to Private Sector Employers

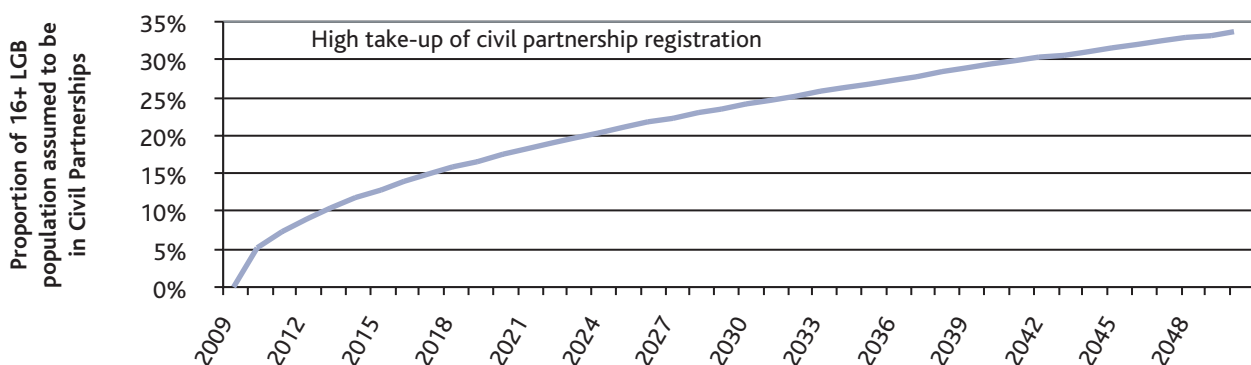
| COSTS TO PRIVATE PENSION DEFINED BENEFIT SCHEMES | | Annual Costs (Benefits accrue from date of implementation) | |
|---|--------------|---|---------------------------------------|
| Eligible population | | Annual cost increase as % of contributions | Total annual cost increase (£m) |
| Dependents in all same-sex couples who have registered a civil partnership | High take-up | 0.125% | £20m |
| | Low take-up | 0.013% | £2.5m |

¹⁹ Costings are based on rights derived from Bereavement Benefits (from lump sum Bereavement Payment and from Bereavement Allowance paid for up to 52 weeks) and Retirement Pension (inherited rights from Additional Pension or State Second Pension), using April 2003 benefit rates.

Annex A(1): Projected Take-Up

- There is little reliable data in relation to the lesbian, gay and bisexual population so the Government has had to make a number of assumptions in calculating the likely take-up of civil partnership registration in England and Wales. An assumption about take-up is necessary to produce estimates of the costs and benefits for different business sectors of the introduction of a civil partnership registration scheme.
- Costings for pensions and benefits have been based on the assumption that **5% of the GB²⁰ population over 16 is lesbian, gay or bisexual²¹**.
- Since there is no reliable information about relationships within the lesbian, gay and bisexual population, costs have been calculated on the basis of both high and low take-up rates of civil partnerships.
- Calculations have assumed that benefits and pension rights associated with civil partnerships will start from 2010.
- For the **high take-up scenario**, the projections produced by the Government Actuary's Department for the marriage rate in 2020 were extrapolated to 2050²² and it was assumed that the proportion of civil partnership registration in the lesbian, gay and bisexual population would be the same as the proportion of marriages in the heterosexual population (33%).
- Under the **higher take-up scenario** we can assume that take-up increases quite sharply in the early years and then slows down to approach the incidence of marriage by 2050²³.

Figure 1: High take-up of civil partnership registration



Source: DWP estimates

²⁰ Estimates cover Great Britain rather than England and Wales because the pensions and social security benefits schemes are GB-wide.

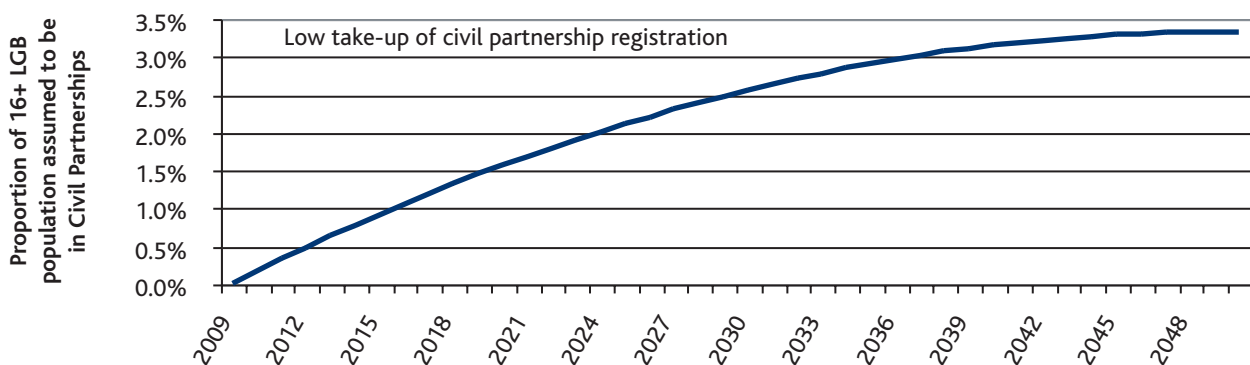
²¹ This estimate is consistent with findings from a range of sources including the National Survey of Sexual Attitudes and Lifestyles 2000, which was carried out by the National Centre for Social Research, Royal Free and University College London Medical School and the London School of Hygiene and Tropical Medicine.

²² This is an illustrative modelling assumption only and in no way reflects the views or intentions of the Government with regard to marriage.

²³ An artificial take-up function has been used so that the number of civil registered partnerships increases rapidly at first, and then tapers off to reach 1/3 of the entire LGB population by 2050.

- For the **low take-up scenario**, existing evidence from the take-up rates of schemes in the EU²⁴ and schemes without legal status in England and Wales make it reasonable to assume that the rate of civil partnership registration in the lesbian, gay and bisexual population is more likely to be 10% of the marriage rate in the heterosexual population.

Figure 2: Low take-up of civil partnership registration



Source: DWP estimates

Table 5: Underlying figures for assumptions of take up of civil partnership registration amongst LGB population

| Year | Population aged 16+ | LGB population (5% of population aged 16+) | Low take up | | High take up | |
|------|---------------------|---|--|--|--|--|
| | | | Proportion of LGB population in a registered civil partnership | Number of LGB people in civil partnerships (approaches 10% of marriage rate by 2050) | Proportion of LGB population in a registered civil partnership | Number of LGB people in registered civil partnerships (approaches marriage rate by 2050) |
| | a | b=a x 0.05 | c | d = b x c | e | f=b x e |
| | Thousands | Thousands | % | Thousands | % | Thousands |
| 2010 | 47,900 | 2,390 | 0.2% | 4.2 | 5.2% | 124.0 |
| 2015 | 48,900 | 2,440 | 0.9% | 22.2 | 12.7% | 310.0 |
| 2020 | 49,600 | 2,480 | 1.6% | 38.6 | 17.2% | 426.1 |
| 2025 | 50,300 | 2,510 | 2.1% | 52.9 | 20.7% | 520.7 |
| 2030 | 50,800 | 2,540 | 2.6% | 64.7 | 23.7% | 602.9 |
| 2035 | 51,200 | 2,560 | 2.9% | 74.0 | 26.4% | 676.2 |
| 2040 | 51,400 | 2,570 | 3.1% | 80.6 | 28.8% | 741.8 |
| 2045 | 51,500 | 2,570 | 3.3% | 84.3 | 31.1% | 799.8 |
| 2050 | 51,300 | 2,570 | 3.3% | 85.1 | 33.2% | 851.2 |

Source: DWP estimates

Notes: Figures in table have been rounded and so it is not possible to accurately replicate the column calculations from the figures above, which have been calculated using unrounded estimates.

²⁴ This estimate is based on the average rate of take-up in European member states (Denmark, Sweden, Norway and Netherlands) with similar schemes.

Annex A(2): Defined Benefit Private Pension Schemes - Assumptions and Notes

- Under the high take-up scenario, the Government Actuary's Department assumes that, by 2050, 60% of the lesbian, gay and bisexual population who are retired²⁵ with occupational pensions will be in civil registered partnerships.
- Data from the 2000 Government Actuary's Department survey of occupational pension schemes suggest that it would be reasonable to assume that 3/4 of private sector defined benefit schemes already offer benefits to same sex couples, albeit at the trustees' discretion. Using this assumption, the annual costs for future accrual are based on the additional contributions that would need to be paid.
- The additional one-off costs assume that existing deferred pensioners and pensioners in receipt of pension would be included as well as the past service of active members of the scheme. The cost of meeting this increase to past liabilities would be over and above the increase in contributions required to meet the extra costs of accruals from the date of implementation onwards (though the increase is very small in terms of the size of defined benefit scheme assets and liabilities).

²⁵ The figure of 60% is at ages around age 70 (a key driver in determining the cost of benefits to spouses/partners on death) and is broadly consistent with the assumption that, overall, an average of 33% of the lesbian, gay and bisexual population aged 16 and over will be in registered civil partnerships, which is based, in turn, on the same percentage of heterosexual population aged 16 and over being married.

Annex B:

Policy Appraisal for Equal Treatment

- The Government's proposals for civil partnership registration are designed to address the current difference in treatment between same-sex and opposite-sex couples. At the moment, same-sex couples have no way of gaining a legal status for their relationship, and are consequently denied access to many of the rights and responsibilities that might flow from such a status.
- In exploring a civil partnership registration scheme, the Government considered carefully whether its proposals would disadvantage any groups of people. These considerations are summarised here.

Eligibility

- Although restricting the availability of civil partnership registration to same-sex couples introduces a further difference in treatment between same-sex and opposite-sex couples, the Government believes that this difference is justified. Opposite-sex couples can marry and thereby obtain a formal legal status for their relationship.

Arrangements for Registration

- The Government believes that the delivery of a scheme through the national framework of registration officers would ensure adequate coverage for people living in all parts of England and Wales.
- The Government proposes that the Registrar General should be able to authorise special arrangements for registration in cases where he or she considers there to be exceptional circumstances eg. where a member of the forces is being posted on active service and needs to register a civil partnership quickly, where one of the couple is dying, or at the residence of someone who is housebound or detained in prison.
- Under the 2002 White Paper 'Civil Registration: Vital Change', it is proposed that the provision of local registration services will become a duty of local authorities. Civil partnership registration would therefore be the responsibility of local authorities which are under an obligation to ensure access to services for people with disabilities. Arrangements will be made so that people with disabilities have access to, and use of, relevant documents and the public register.
- In line with its legal duty to promote race equality, the Government is considering the need for the translation of registration guidance, documents and the public register into languages other than English and Welsh.

- The Government has considered whether or not same-sex couples should be allowed to keep their forthcoming registration private for fear of homophobic attack. While recognising the genuine concern that gives rise to these fears, the Government believes that civil partnership registration represents so significant a commitment that it should be a matter of public record.

Summary

- The Government is content that the proposed arrangements for civil partnership registration are consistent with the principle of equal treatment.

The Government would be grateful for comments on the equality impact of civil partnership registration.

Annex C: List of Consultees

Association of Electoral Administrators (AEA)
Affinity Trust - also Alzheimer's Society
Age Concern
Age Concern Cymru
Al-Fatiha UK
Amnesty International
An-Nisa Society
Armed Forces Lesbian and Gay Association
Asian Family Counselling Service
Association of Business Recovery Professionals
Association of Chief Police Officers (ACPO)
Association of District Judges
Association of Lawyers for Children
Association of London Government (ALG)
Bankruptcy Association
Bar Lesbian and Gay Group (BLAGG)
British Bankers Association
British Chambers of Commerce
British Humanist Association
Building Societies Association
Children and Family Courts Advisory and Support Services (CAFCASS)
Campaign for Homosexual Equality
CARE
Confederation of British Industry CBI
Childline
The Christian Institute
Church Commissioners
Church of England
Church in Wales
Citizenship 21 Project
Commission for Racial Equality
Confederation of NHS Trusts
Consortium of Lesbian, Gay & Bisexual Voluntary and Community Organisations

Criminal injuries Compensation Authority
Criminal injuries Compensation Appeals Panel
Discrimination Law Association
Disability Rights Commission (DRC)
Electoral Commission
Electoral Matters Panel
Equal Opportunities Commission (EOC)
Families Need Fathers
Family Division of the High Court
Family Law Association
Family Law Bar Association
Family & Probate Service Group
Family Welfare Association
Federation of Small Businesses
Families and Friends of Lesbians & Gays (FFLAG)
Forum Against Islamophobia & Racism (FAIR)
Free Churches Council
Gay and Lesbian Association of Doctors and Dentists
Gay & Lesbian Humanist Association
Gendys Network
Greater London Authority (GLA)
Greater London Association
Help the Aged
Home Office, Justice, Victims & Witnesses Unit
Immigration Advisory Service
Immigration Law Practitioners Association
Inner London Family Proceedings Court
Interfaith Network
Institute of Credit Management
Institute of Population Registration
Institute of Directors
Institute of Public Policy Research (IPPR)
Jewish Lesbian and Gay Group
Jewish Marriage Council
Kenric
Local Authorities Co-ordinating Office on Regulatory Services (LACORS)

Lesbian & Gay Lawyers Association (LAGLA)
Law Commission
Law Society
Legal Services Commission
Lesbian & Gay Foundation
Lesbian and Gay Christian Movement
Lesbian and Gay Employment Rights
Gay & Lesbian Arts & Media (GLAM)
Lesbian and Gay Police Association
Lesbian Information Service
Lesbian Line
Lesbian, Gay & Bisexual Consortium for Voluntary & Community Organisations
LGB Forum Cymru
Liberty
Local Government Association
Local Government Management Board
London Friend
London Marriage Guidance
Magistrates' Association, Family Proceedings Committee
Marriage Care
Metropolitan Community Church
Muslim College
Muslim Council of Britain
Muslim Women's Helpline
National Association of Citizens Advice Bureaux
National Association of Pension Funds
National Council for One Parent Families
National Family Mediation
National Family and Parenting Institute
National Secular Society
Navajo Group
Naz Project London
National Children's Homes (NCH)
Northern Older Lesbian Network
Nuffield Foundation
National Union of Teachers Lesbian and Gay Commission

Occupational Pension Schemes Joint Working Group
Odysseus Trust
Official Solicitor of the Supreme Court
OutRage!
One Plus One
PACE
Parenting Education and Support Forum
Parentline Plus
Public and Commercial Services Union (PCS) - Proud
Public and Commercial Services Union (PCS) - Wales
Pensions Commission
Polari
Press for Change
Principal Registry of the Family Division
Public & Commercial Services Union
Quaker Lesbian and Gay Fellowship
Refuge
REGARD
RELATE
Representatives of the judiciary dealing with family work:
 The Honourable Mr Justice Coleridge
 The Honourable Mr Justice Hedley
 Her Honour Judge Pearlman
 The Honourable Mr Justice Sumner
 The Right Honourable Lord Justice Thorpe
 The Honourable Mr Justice Wall
Safra Project
Schools Out
Small Business Service
Social Market Foundation
Social Security Advisory Committee
Society of Local Authority Chief Executives (SOLACE)
Society of Registration Officers
Society of Trust and Estate Practitioners
Southall Black Sisters
Stonewall

Stonewall Cymru
Tavistock Marital Studies
Trades Union Congress (TUC)
Trades Union Congress - Lesbian and Gay Section
2 as 1
UK Advocacy Network
UK bi community
UK College of Family Mediators
Union of Muslim Organisations
UNISON
UNISON - Lesbian and Gay Section
Women's Aid
Women's National Commission

Annex D: The Consultation Criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address

<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

COMMENTS OR COMPLAINTS

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to **Philip Martin, DTI Consultation Co-ordinator, Room 725, 1 Victoria Street, London SW1H 0ET** or telephone him on **020 7215 6206** or mail to: **Philip.Martin@dti.gsi.gov.uk**

PUBLICATION OF RESPONSES

Under the Code of Practice on Open Government, any response will be made available to the public on request, unless respondents indicate that they wish their views to remain confidential. If you do wish your response to remain confidential, please indicate so.



Llywodraeth Cynulliad Cymru
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