

This document relates to the Civil Partnership (Scotland) Bill as amended at Stage 2 (SP Bill 57A)

Civil Partnership (Scotland) Bill

[As Amended at Stage 2]

Supplementary Financial Memorandum

Introduction

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this supplementary Financial Memorandum is published to accompany the Civil Partnership (Scotland) Bill, (introduced in the Scottish Parliament on 30 September 2019) as amended at Stage 2.
2. This Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.

Stage 2 amendments with anticipated or potential cost implications (1)

Section 3A: changing marriages to civil partnerships

4. The focus of this Supplementary Financial Memorandum is section 3A to the Bill, inserted at Stage 2. This confers on the Scottish Ministers the power to make regulations that will make it possible for married couples, if they wish, to change their marriage to a civil partnership.
5. The Scottish Government's expectation is that provision on changing marriages to civil partnerships might follow similar provision already in place to change civil partnerships to marriages. There are two ways by

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which a civil partnership can change to marriage: by going through a marriage along the same lines as any other marriage ceremony or by using an administrative route run by local authority registrars. In both cases, the effect is the civil partnership becomes a marriage.

Changing civil partnerships to marriages: the current position

6. The cost for changing a civil partnership to a marriage via the administrative route is set at the same level as the fee for submitting a notice of intention to marry. This is currently £30, plus £10 for a copy of the marriage certificate. This is likely to increase to £45 later this year, with the £10 marriage certificate cost remaining the same. This change would be effected by Scottish Statutory Instrument. This Financial Memorandum refers throughout to the current £30 fee to avoid confusion.

7. Total costs for the ceremonial route can vary depending on the type of ceremony chosen by the couple. Information on statutory costs in relation to marriage ceremonies is available on National Records of Scotland's website¹.

8. The Scottish Government's understanding is that most civil partnerships which change to a marriage do so via the administrative route.

Uptake of changes of marriage to civil partnership

9. Costs for changing marriages to civil partnerships will, to some extent, be driven by uptake. However, there is little evidence on demand for changing marriages to civil partnerships in Scotland. When the Scottish Government consulted on the future of civil partnership in Scotland² in 2018 a small number of respondents (fewer than ten) who are or were married indicated they would have preferred to have had a civil partnership. The Scottish Government has also received a small number of letters (around ten) which set out similar views.

10. As part of consideration of demand for changing marriages to civil partnerships, the Scottish Government has taken into account demand for

¹ <https://www.nrscotland.gov.uk/files//registration/rm1b-leaflet.pdf>

² <https://consult.gov.scot/family-law/the-future-of-civil-partnership-in-scotland/>

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changing civil partnerships to marriages. National Records of Scotland has provided the figures on changes below.

Year	Civil partnership registered in Scotland	Civil partnership registered outside Scotland	Total
2014	359	0	359
2015	934	2	936
2016	156	17	173
2017	112	15	127
2018	53	10	63
Total	1614	44	1658

11. 5,670 civil partnerships have been registered in Scotland³ from 5 December 2005 to 2018. The table above shows that 28% of these have changed to a marriage.

12. There is a much larger body of married couples in Scotland, with 396,726 mixed sex marriages taking place in the same period specified in paragraph 11⁴.

13. However, mixed sex couples are generally accepted by society, as is marriage. Same sex marriage secured that same societal acceptance and validation for same sex couples. Accordingly, the Scottish Government's view is that the uptake of changing civil partnership to marriage is not indicative of the likely uptake of changing marriage to civil partnership.

14. That said, it is clear from responses to the Scottish Government's 2018 consultation on the future of civil partnership, and written and oral evidence taken by the Equalities and Human Rights Committee at Stage 1⁵ that there is demand for mixed sex civil partnership generally, and it is

³<https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/marriages-and-civil-partnerships/marriages-and-civil-partnership-time-series-data>

⁴ Ibid.

⁵

<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113376.aspx>

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reasonable to assume that this may include some demand from couples who have already chosen to marry.

15. However, the Scottish Government expects numbers to be low. In New Zealand it is possible to change a marriage into a civil partnership (and vice-versa)⁶ but numbers do appear to be low. Figures published by Stats New Zealand show that in New Zealand in 2019⁷ “15 couples (both same-sex and opposite-sex) transferred between a civil union and a marriage.”

16. The number of transfers of marriages to civil unions in New Zealand has seemed consistently low. Civil unions, for both mixed sex and same sex couples, were introduced in April 2005. Statistics New Zealand reported that “At 31 December 2005, civil union registrations totalled 278. These comprised 227 same-sex unions (113 male and 114 female), 49 opposite-sex unions and 2 transfers from marriage”⁸.

17. This low number seems to be a consistent pattern over the years. The table below provides details of transfers to a civil union from a marriage in New Zealand since 2005:

Year	Number of transfers of marriages to civil unions in New Zealand	Comments
2005	2	Civil Unions introduced in New Zealand in April 2005
2006	0	Source: 2006 NZ stats (please see fourth page)

⁶ <https://www.govt.nz/browse/family-and-whanau/getting-married/civil-unions/change-a-civil-union-to-a-marriage/>

⁷ <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2019>

⁸ http://archive.stats.govt.nz/browse_for_stats/people_and_communities/marriages-civil-unions-and-divorces/MarriagesCivilUnionsandDivorces_HOTPYeDec05.aspx#gsc.tab=0 (please see page 4 in document “Hot off the Press”)

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		in “Hot off the press”)
2007	0	Source: 2007 NZ stats
2008	0	Source: 2008 NZ stats
2009	2	Source: 2009 NZ stats (please see fifth page in “Hot off the press”)
2010	Information not available.	Source: 2010 NZ stats
2011	Information not available.	Source: 2011 NZ stats
2012	Information not available.	Source: 2012 NZ stats
2013	Information not available.	Source: 2013 NZ stats Same sex marriage introduced in New Zealand in August 2013. 100 transfers of civil unions to marriages in 2013.
2014	Information not available.	Source: 2014 NZ stats 121 couples transferred their civil union to a marriage. Most (about 9 out of 10) were same-sex couples.
2015	In 2015, there were 57 couples (both same sex and mixed sex) who	Source: 2015 NZ stats

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	transferred between their marriage and civil union.	
2016	In 2016, 42 couples (both same sex and mixed sex) transferred from a civil union to a marriage or vice versa.	Source: 2016 NZ stats
2017	In 2017, 30 couples (both same sex and mixed sex) transferred from a civil union to a marriage or vice versa.	Source: 2017 NZ stats
2018	In 2018, 24 couples (both same sex and mixed sex) transferred between a civil union and a marriage.	Source: 2018 NZ stats
2019	In 2019, 15 couples (both same sex and mixed sex) transferred between a civil union and a marriage.	Source: 2019 NZ stats

18. Following the introduction of same sex marriage in Scotland, there was an initial demand from couples to change their civil partnership to marriage: as the table at paragraph 10 shows, this demand has now decreased. The number of changes of marriages to civil partnership taking place year on year may also decrease as more couples are able to choose between mixed sex marriage and mixed sex civil partnership when they first decide to enter a legally recognised relationship.

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19. It is very difficult to estimate potential take up of changes of marriages to civil partnership in Scotland. However, as outlined in paragraphs 31 and 32 of the Financial Memorandum:

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

32. This suggests, therefore, that (same sex) civil partnership is more popular in Scotland than (same sex) civil unions in New Zealand. Without further evidence on drivers for mixed sex unions, it seems reasonable to assume that the same pattern would be true for mixed sex relationships. Comparing the two percentages in the previous paragraph produces a factor of 2.06.”

20. Taking the same factor of 2.06 and applying this to the figure of 15 who transferred between marriage and civil union in New Zealand in 2019 produces a figure for Scotland of 31. This may, in fact, be an over-estimate as the New Zealand figure covers both changes of civil partnership to marriage and changes of marriage to civil partnership. However, a figure of 31 seems broadly in line with the correspondence received by the Scottish Government on changing marriages to civil partnerships. In addition, as indicated above, it is reasonable to assume that the demand for changing marriages to civil partnerships will be higher in the initial years.

21. There is an alternative way of considering this issue. It appears to be the case generally that changing relationships is less common in New Zealand than in Scotland.

22. As indicated above, when same sex marriage was introduced in Scotland in December 2014, there were 359 changes of civil partnerships to marriages in 2014 and 936 in 2015. By contrast, when New Zealand introduced same sex marriage in August 2013, there were just 100 changes of civil unions to marriages in 2013 and 121 in 2014. In addition, these figures include mixed sex couples changing their civil union to marriage which, of course, is not currently available in Scotland.

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23. This might reflect the lower number of civil unions in New Zealand when compared with Scotland. Before the introduction of same sex marriage in Scotland, around 500 civil partnerships a year took place here. Stats New Zealand reported in relation to 2013, when same sex marriage was introduced there, that “Same-sex civil unions nearly halved in 2013, following the introduction of same-sex marriages in August. Resident same-sex couples registered 121 civil unions in 2013, down from 235 in 2012. The number of opposite-sex couples registering a civil union in 2013 (66) was similar to the annual average for 2006–2012 (70).”

24. It is difficult to establish exactly how much more common it is for changes of relationships to take place in Scotland than in New Zealand generally given that New Zealand already has mixed sex civil unions and the introduction of same sex marriage and the possibility of changing a same sex civil partnership to marriage took place at different times of the year.

25. However, what does seem clear is, as indicated above, the number of marriages changing to civil partnerships is low. The statistics show that from 2005 to 2009, the number of marriages changing to civil partnerships in New Zealand was either 0 or 2.

26. Comparing the total number of changes of relationship in New Zealand in 2018 (24) with the total number of changes in Scotland in 2018 (63) produces a factor of 2.6. Multiplying this against 2 (the number of marriages changing to civil partnerships in New Zealand in 2005 and 2009) produces a figure of 5.

27. It seems preferable to stick with the figure of 31 for Scotland, especially as there might be some pent-up demand from couples to change their marriage to civil partnership given that they cannot do this now.

28. Of course, the Scottish Government recognises that the Equalities and Human Rights Committee received evidence at Stage 1 of the Bill suggesting that the number of mixed sex civil partnerships registered in Scotland might be higher than calculations based on New Zealand figures suggest. Similarly, the number of people changing their marriage to a civil partnership might be higher in Scotland than in New Zealand. However, New Zealand is a good model to consider because its system [marriage and civil partnership open to mixed sex and same sex couples, with

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changes of relationship either way being possible] is very similar to what the position in Scotland will be if the Bill is enacted.

Types of cost

29. For mixed sex civil partnership in general, there are two types of cost: one-off set-up costs, and ongoing costs.

Costs on the Scottish administration

30. The introduction of mixed sex civil partnership will have an impact on National Records of Scotland (NRS) generally. These are explored in detail in paragraphs 47 to 53 of the Financial Memorandum⁹ produced to accompany the Bill when introduced. These are one-off costs which will relate to training, guidance and IT changes.

31. Changing marriages to civil partnerships will form part of the implementation of mixed sex civil partnership generally. This means that it will not be necessary to develop training or guidance, or make IT changes that are wholly specific to changing marriages to civil partnerships. Rather, this can be included in the training, guidance and IT changes already required to implement mixed sex civil partnership. It is not anticipated that the any additional material in training or guidance, or any new IT changes required as consequence of changing marriages to civil partnerships will substantively change the set-up costs of mixed sex civil partnership for NRS. The Financial Memorandum estimated that these set-up costs would be around £200,000 for NRS, and this estimate remains unchanged.

Costs on local authorities

One-off costs

32. The introduction of mixed sex civil partnership will have an impact on local registrars, who will handle paper work relating to registering a civil partnership. These one-off costs are explored in detail in paragraph 63 to 67 of the Financial Memorandum.

33. As is the case with NRS, changing marriages to civil partnerships will form part of the implementation of mixed sex civil partnership generally for

⁹<https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/civil-partnership-scotland-bill/introduced/financial-memorandum-civil-partnership-scotland-bill.pdf>

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local registrars. This means that it will not be necessary to develop training or guidance, or make IT changes that are wholly specific to changing marriages to civil partnerships. Rather, this can be included in the training, guidance and IT changes already required to implement mixed sex civil partnership. The Scottish Government does not expect that the any additional material in training or guidance, or any new IT changes required as consequence of changing marriages to civil partnerships will substantively change the set-up costs of mixed sex civil partnership for local registrars, estimated in the Financial Memorandum to be around £200,000.

34. When same sex marriage was introduced, for the first year no fees were charged for same sex civil partnerships changing to a marriage via the administrative route. The £10 fee for an extract marriage certificate remained in place. The Scottish Government estimates that the amount of fees foregone by local registrars as a result was around £40,000.

35. A similar fee waiver could be put in place for changing marriages to civil partnerships via an administrative route for the first year.

36. As indicated above, the Scottish Government has estimated that 31 married couples could change their relationship to a civil partnership each year. If no fees are charged for changing a marriage to a civil partnership through an administrative route that would suggest a cost of around £1,000. [31 x £30 is £930].

Ongoing costs

37. Unless a fee waiver is granted for the first year, the couple changing a marriage to a civil partnership will pay registration fees in the usual way. The current cost of changing a civil partnership to marriage through the administrative route, which is the most commonly used, is £30. This contributes to processing costs for local registrars.

Costs on other bodies, individuals and businesses

38. Costs on other bodies or businesses are not expected as a consequence of regulations on changing marriages to civil partnerships. This is because any existing processes and practices in place which relate to a couple being married should be capable of applying to marriages changed from a civil partnership without any need for amendment.

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39. As indicated above, couples who wish to change their marriage to a civil partnership will be required to pay statutory fees unless a waiver is granted for the first year in relation to an administrative route for changing a marriage to a civil partnership. At present the fee for changing a civil partnership to a marriage through the administrative route is £30, plus an additional £10 for an extract.

Stage 2 amendments with anticipated or potential cost implications (2)

Schedule 2, paragraph 6(4): jurisdiction of Scottish Courts

40. The Scottish Government does not expect any costs or savings to emerge from the other amendments passed at Stage 2. However, in theory, there could be savings from changing the jurisdiction of the courts so that the Sheriff Court, as well as the Court of Session, can deal with applications for declarators of nullity. In practice, though, declarators of nullity are very rare so any savings are theoretical rather than real.

41. At present, only the Court of Session has jurisdiction to entertain actions for declarators of nullity of civil partnership. It is possible to obtain such a declarator of nullity of civil partnership to declare a relationship to have been void from the outset. This might be issued if, for example:

- One or both of the civil partners was not eligible to enter the relationship;
- They were eligible but either party did not consent to the formation of the relationship; or
- At the time of registration one of them who was capable of consenting to formation did so only because of duress or error.

42. Civil justice statistics show that no more than two declarators of nullity of marriage or civil partnership have been granted per year in recent years¹⁰. It is likely that these relate to nullity of marriage rather than of civil partnership.

¹⁰ <https://www.gov.scot/publications/civil-justice-statistics-scotland-2018-19/pages/12/>

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43. Amendments passed at Stage 2 modify section 225¹¹ of the Civil Partnership Act 2004 to provide that a sheriff court has jurisdiction to entertain an action for declarator of nullity of a civil partnership provided that:

- The Court of Session would have jurisdiction to hear the same case based on the parties' domicile or habitual residence; and
- Either party was resident in the Sheriffdom for a period of 40 days ending with the date when the court action is begun, or had been resident in the Sheriffdom for a period of not less than 40 days ending not more than 40 days before that date and has no known residence in Scotland at that date.

44. These provisions are in line with when the sheriff court has jurisdiction in similar cases, such as divorce, dissolution and declarator of nullity of marriage.

Costs on the Scottish administration

45. There may be savings for the Scottish Courts and Tribunals Service (SCTS), given that actions in the Court of Session are more costly to administer than those in the Sheriff Court. However, given that declarators of nullity of civil partnership are very rare, these savings are not likely to crystallise in a substantive way. Anticipated uptake of mixed sex civil partnership is not expected to be in numbers sufficient to suggest increased demand for declarators of nullity. Furthermore, the introduction of the forced civil partnership offence in the Bill could act as a deterrent against entering into a civil partnership under duress, meaning that it is less likely that declarators of nullity due to the relationship being entered into under duress would actually be sought.

Costs on other bodies, individuals and businesses

46. It is possible in principle that the extension of jurisdiction to entertain actions of declarators of nullity of civil partnership could create savings for the Scottish Legal Aid Board (SLAB) as the costs of raising and defending actions are higher in the Court of Session than in the Sheriff Court. It is possible that a person who raises, or defends, a court action for a declarator of nullity of civil partnership could be eligible for support for the legal costs from SLAB. However, the same points made above on the

¹¹ <http://www.legislation.gov.uk/ukpga/2004/33/section/225>

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possible savings for the SCTS also apply to the possibility of saving for SLAB: such savings may not materialise in practice given the rarity of declarators of nullity.

47. Similarly, there could be savings for an individual privately funding (or defending) an action for declarator of nullity. Costs could be higher for individuals for actions in the Court of Session given the need to employ counsel as well as a solicitor. In addition, fees could be higher in the Court of Session¹² than in the Sheriff Court¹³. However, any overall savings would be very low, given the rarity of these actions.

¹² <https://scotcourts.gov.uk/rules-and-practice/fees/court-of-session-fees>

¹³ <https://scotcourts.gov.uk/rules-and-practice/fees/sheriff-court-fees>

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