JUSTICE 1 COMMITTEE

AGENDA

18th Meeting, 2004 (Session 2)

Wednesday 5 May 2004

The Committee will meet at 11.00 am in Committee Room 2.

1. Emergency Workers (Scotland) Bill: The Committee will take evidence from—

   Gery McLaughlin, Bill team leader, and Beth Staffell, Bill team member, Criminal
   Justice Division, and Alison Coull, Bill team solicitor, Legal and Parliamentary Services,
   Scottish Executive;

   Shona Barrie, Team Leader, Policy Group, Crown Office and Procurator Fiscal
   Service.

2. Subordinate legislation: The Committee will consider the following negative
   instruments—

   the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations
   2004 (SSI 2004/137);

   the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment)
   2004 (SSI 2004/149);

   the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court)
   (Amendment) 2004 (SSI 2004/152);

   the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court)
   (Amendment No.2) 2004 (SSI 2004/196).

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 1

Note by the Clerk (private paper) J1/S2/04/18/1
SPIcE briefing 04/31 Emergency Workers (Scotland) Bill J1/S2/04/18/2

Agenda item 2

Note by the Clerk J1/S2/04/18/3
Note by the Clerk J1/S2/04/18/4
Note by the Clerk J1/S2/04/18/5
Note by the Clerk J1/S2/04/18/6

Papers for information—

Civil Partnership Bill (UK legislation)—
Civil Partnership Bill (HL Bill 53) and explanatory notes J1/S2/04/18/7
(HL Bill 53–EN) (members only – available online at
http://www.publications.parliament.uk/pa/ld200304/ldbills/053/2004053.htm)
Sewel motion and Scottish Executive memorandum in respect
of the Civil Partnership Bill J1/S2/04/18/8
Correspondence from Minister for Justice J1/S2/04/18/9
Correspondence from the Communications Ministry J1/S2/04/18/10
Coordinator, Holy Trinity Metropolitan Community Church,
Edinburgh, regarding public petition PE737
EU documents of special importance J1/S2/04/18/11
Crime prevention in the European Union J1/S2/04/18/12
EU pre and post Council scrutiny – briefing paper from European
and External Relations Committee J1/S2/04/18/13

Documents not circulated—

Copies of the following have been provided to the Clerk:

- Scottish Executive Environment Group, Access to Environmental Information – A Consultation;
- HM Inspectorate of Prisons, Report on HM Prison Shotts;
- Scottish Legal Aid Board, Legal Aid Information Leaflet 6, Do I qualify financially for advice and assistance or civil legal aid?

A copy of these documents is available for consultation in room 3.11 CC. Additional copies may also be obtainable on request from the Document Supply Centre.

Forthcoming business—

Tuesday 11 May – joint meeting with the Justice 2 Committee, Committee Room 2;
Wednesday 12 May – Justice 1 Committee meeting, Committee Room 4;
Wednesday 26 May – Justice 1 Committee meeting, Committee Room 1.
Purpose of the draft instrument

1. This instrument designates a list of Scottish police stations as the only ones at which relevant sex offenders can give a notification on leaving the court after sentence or being released from prison or other term of detention, or give periodic notifications or alert the police to changes in his or her notifiable details.

Background

The Sexual Offences Act 2003

2. These Regulations form part of the implementation of the Sexual Offences Act 2003, approved by the Scottish Parliament through a Sewel Motion on 20 March 2003. They are to be made in exercise of the powers conferred by section 87 of the Act.

Provisions

3. The Regulations will replace the Sex Offenders (Notification Requirements) (Prescribed Police Stations) (Scotland) (No.2) Regulations 2001, made under the Sex Offenders Act 1997. They will prescribe the police stations in Scotland at which relevant sex offenders must attend to give a notification. This list forms the Schedule to the Regulations.

4. Four additional police stations in the Strathclyde Police area are to be included, reflecting Strathclyde Police’s wish to direct relevant sex offenders to those police offices where experienced officers are located and also to ensure a proper geographical spread of offices is available.

5. In the Lothian and Borders Police area, 14 previously designated police stations will be removed following a review of custody facilities and the provision to take fingerprints and photographs. Lothian and Borders Police consider that these changes will improve the service provided with better training for front counter staff. The biggest reduction is within the City of Edinburgh area where only two stations are now listed, St Leonard’s and Gayfield Square. The Executive states that both are 24 hour city centre units which should give easy access to offenders in the Edinburgh area. For geographical reasons, four stations are retained in the Scottish Borders, spread across the region.

6. In the Central Scotland Police area, Falkirk Police Station has not been included as it is currently being refurbished. The Scottish Executive intend to bring forward an amending set of Regulations to include this station once refurbishment is complete.
**Consultation**

7. The Association of Chief Police Officers in Scotland has been consulted on the Regulations. Police forces provided the Scottish Executive with the list of stations which they proposed to designate. This list forms the Schedule to the Regulations.

**Financial consequences**

8. The Scottish Executive’s note indicates that the instrument will have no financial consequences on Executive expenditure.

**Subordinate Legislation Committee**

9. The Subordinate Legislation Committee considered this instrument at its meeting on 30 March 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 13th Report, 2004 (Session 2)).

**Procedure**

10. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

11. The instrument was laid on 24 March 2004 and is subject to annulment under the Parliament’s Standing Orders until 18 May 2004.

12. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 1 May 2004.
Justice 1 Committee

18th Meeting 2004 (Session 2)

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2004

Note by the Clerk

Purpose of the draft instrument

1. This Act of Sederunt increases the fees payable to shorthand writers in the Sheriff Court by approximately 3.2%.

Background

Sheriff Courts (Scotland) Act 1907
2. This instrument is laid before Parliament under section 40 of the Sheriff Courts (Scotland) Act 1907, as amended.

Provisions
3. This Act of Sederunt increases the fees payable to shorthand writers in the Sheriff Court by approximately 3.2%. The last increase was effected by the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246) which increased fees by approximately 2.6%.

Financial consequences
4. The Scottish Executive’s note makes no reference to the financial consequences on Executive expenditure.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 20 April 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 14th Report, 2004 (Session 2)).

Procedure

6. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

7. The instrument was laid on 26 March 2004 and is subject to annulment under the Parliament’s Standing Orders until 20 May 2004.

8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 4 May 2004.
Purpose of the draft instrument

1. This Act of Sederunt makes amendments to the Table of Fees of solicitors in the Schedule to the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080)

Provisions

3. This Act of Sederunt increases the fees recoverable under the Table of Fees of solicitors by approximately 2.7%. The last increase to solicitors’ fees was effected by the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2003 (SSI 2003/162) which increased the fees payable by about 12%.

4. Paragraph 2(3) makes provision in the Table of Fees for Commercial Actions in the sheriff court, continued options hearings, other attendances not otherwise provided for and makes various minor amendments.

5. Paragraph 2(4) makes a minor amendment to the fee recoverable for formal letters.

6. Paragraph 3(2) amends the Act of Sederunt (Fees of Witnesses and Shorthand Writers in the Sheriff Court) 1992 (SI 1992/1878) with regard to fees payable to witnesses in managerial or executive positions. The amendment requires the court to grant a motion to pay such witness fees “not later than the time at which it awards expenses and the witness’s name is recorded in the interlocutor”.

Financial consequences

7. The Scottish Executive’s note makes no reference to the financial consequences on Executive expenditure.

Subordinate Legislation Committee

8. The Subordinate Legislation Committee considered this instrument at its meeting on 20 April 2004 and determined that the attention of the Parliament need not be drawn to it (Subordinate Legislation Committee, 14th Report, 2004 (Session 2)).
Procedure

9. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

10. The instrument was laid on 26 March 2004 and is subject to annulment under the Parliament’s Standing Orders until 20 May 2004.

11. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 4 May 2004.
Justice 1 Committee

18th Meeting 2004 (Session 2)

Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court)
(Amendment No.2) 2004

Note by the Clerk

Purpose of the draft instrument

1. This Act of Sederunt corrects an error in the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 (also being considered by the Committee at its meeting on 5 May – Note number J1/S2/04/18/5.

Background

Sheriff Courts (Scotland) Act 1907
2. This instrument is laid before Parliament under section 40 of the Sheriff Courts (Scotland) Act 1907, as amended.

Provisions
3. Paragraph 2(2) of this Act of Sederunt substitutes paragraph 3(e) of the Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2004 which omitted a provision for fees relating to “lodging and intimating or for considering note of the basis of preliminary plea”.

Financial consequences
4. The Scottish Executive’s note makes no reference to the financial consequences on Executive expenditure.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee will consider this instrument at its meeting on Tuesday 4 May 2004. As it is an amending instrument, the Committee is not expected to raise any substantive issues which need be drawn to the attention of Parliament. Clerks will update members on the decision of the Subordinate Legislation Committee prior to consideration of this instrument.

Procedure

6. This instrument is subject to negative procedure. Under Rule 10.4 of the Standing Orders, this means that it comes into force and remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

7. The instrument was laid on 23 April 2004 and is subject to annulment under the Parliament’s Standing Orders until 1 June 2004.
8. In terms of procedure, unless a motion for annulment is lodged, no further action is required by the Committee. The instrument is due to come into force on 3 May 2004.

9. Statutory instruments subject to annulment should be laid before the Parliament not less than 21 days before the instrument is due to come into force\(^1\). This instrument does not comply with that deadline. The Legal Secretary to the Lord President has explained that this is due to the need to correct the defective provisions in SSI 2004/152 before they come into force.

\(^1\) Article 10(2) Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999
SEWEL MOTION FOR THE CIVIL PARTNERSHIP BILL

S2M-1202 Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab) : Civil Partnership Bill - UK Legislation— That the Parliament endorses the principle of giving same sex couples in Scotland the opportunity to form a civil partnership and agrees that the provisions in the Civil Partnership Bill that relate to devolved matters should be based on Scots law and considered by the UK Parliament.

Supported by: Hugh Henry

Lodged on 26 April 2004
# SEWEL MEMORANDUM FOR THE CIVIL PARTNERSHIP BILL

## CONTENT

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td>1</td>
</tr>
<tr>
<td>Background</td>
<td>1</td>
</tr>
<tr>
<td>Consultation</td>
<td>1</td>
</tr>
<tr>
<td>Purpose of the Civil Partnership Bill</td>
<td>2</td>
</tr>
<tr>
<td>Why a UK Approach</td>
<td>3</td>
</tr>
<tr>
<td>Civil Partnership Bill: Provisions Affecting Scotland*</td>
<td>4</td>
</tr>
<tr>
<td>Part 1 Introduction</td>
<td>5</td>
</tr>
<tr>
<td>Part 3 Civil Partnerships: Scotland</td>
<td>5</td>
</tr>
<tr>
<td>Chapter 1 Constitution and Eligibility</td>
<td>5</td>
</tr>
<tr>
<td>Chapter 2 Registration</td>
<td>5</td>
</tr>
<tr>
<td>Chapter 3 Occupancy Rights and Tenancies</td>
<td>8</td>
</tr>
<tr>
<td>Chapter 4 Interdicts</td>
<td>11</td>
</tr>
<tr>
<td>Chapter 5 Dissolution, Separation and Nullity</td>
<td>12</td>
</tr>
<tr>
<td>Chapter 6 Miscellaneous and Interpretation</td>
<td>14</td>
</tr>
<tr>
<td>Part 5 Civil Partnerships Formed or Dissolved Abroad</td>
<td>16</td>
</tr>
<tr>
<td>Chapter 1 Registration outside UK under Order in Council</td>
<td>16</td>
</tr>
<tr>
<td>Chapter 2 Overseas relationships treated as civil partnerships</td>
<td>17</td>
</tr>
<tr>
<td>Chapter 3 Dissolution etc.: Jurisdiction and Recognition</td>
<td>19</td>
</tr>
<tr>
<td>Chapter 4 Miscellaneous and Supplementary</td>
<td>23</td>
</tr>
<tr>
<td>Part 6 Relationships Arising through Civil Partnerships</td>
<td>25</td>
</tr>
<tr>
<td>Part 8 Supplementary</td>
<td>25</td>
</tr>
<tr>
<td>Schedules</td>
<td></td>
</tr>
<tr>
<td>Schedule 10 Forbidden Degrees of Relationship: Scotland</td>
<td>26</td>
</tr>
<tr>
<td>Schedule 11 Financial Provision in Scotland from Overseas Proceedings</td>
<td>26</td>
</tr>
<tr>
<td>Schedule 21 Consequential Amendments: Scotland</td>
<td>27</td>
</tr>
<tr>
<td>Financial Consequences</td>
<td>29</td>
</tr>
</tbody>
</table>

* parts 2, 4 and 7 of the Bill do not affect Scotland
SEWEL MEMORANDUM FOR THE CIVIL PARTNERSHIP BILL

Motion
1. The Motion to be put to the Parliament is:

Civil Partnership Bill: That the Parliament endorses the principle of giving same-sex couples in Scotland the opportunity to form a civil partnership and agrees that the provisions in the Civil Partnership Bill that relate to devolved matters should be based on Scots law and considered by the UK Parliament.

Background
2. Same-sex couples face significant difficulties in their lives. They cannot gain full legal recognition for their relationship and do not have access to many of the rights and responsibilities necessary for a stable family life and appropriate to a long term relationship. This can cause problems in the event of the death or serious illness of one partner or at the end of the relationship.

3. The Civil Partnership Bill will create a new legal status for same-sex couples. Couples who register will be able to access a package of rights and responsibilities appropriate to committed long term same-sex relationships.

Consultation
4. The UK Government published a consultation paper in June 2003¹ on proposals for civil partnership registration in England and Wales. Scottish Ministers considered the consequences for Scotland of the introduction of such a scheme and concluded that:

- Same-sex couples should be able to form their partnership in Scotland in order to trigger access to a comprehensive package of rights and responsibilities in both reserved and devolved areas

- To ensure a comprehensive package of rights and responsibilities that takes account of the reserved and devolved elements of this new status, the Scottish Parliament should be asked to agree a Sewel motion so that Scottish provisions are included in a UK Bill.

¹ The DTI’s consultation document – “Civil Partnership: a framework for the legal recognition of same-sex couples” is available from www.womenandequalityunit.gov.uk
5. The Scottish Executive published a consultation paper in September 2003\(^2\). Officials also met with key faith groups and LGBT\(^3\) stakeholders. The results were analysed by an external contractor. The key points from consultation are:

- 323 responses were received, including 222 from individuals and 101 from organizations, including LGBT organisations, religious organisations, local authorities, registrars, legal sector, NHS bodies and others.

- 279 respondents (86% of all responses) agreed in principle with the proposed introduction of civil partnerships which it was considered would promote equality through addressing disadvantage experienced by same-sex couples and support and promote long-term, stable relationships.

- 74% of responses agreed with the proposal to include Scottish provisions in a UK Bill and to ask the Parliament to agree a Sewel motion. Respondents’ support for this approach was based on pragmatism and speed of legislation, while those opposing it emphasised the need for detailed scrutiny and debate of the proposed legislation in the Scottish Parliament.

6. In February 2004, Scottish Ministers published an analysis of the responses and announced their intention to seek the agreement of the Scottish Parliament to the inclusion of Scottish provisions in a UK Civil Partnership Bill\(^4\).

7. The Civil Partnership Bill was introduced in the House of Lords on 30 March 2004 and published on 31 March 2004\(^5\).

**Purpose of the Civil Partnership Bill**

8. The purpose of the Civil Partnership Bill is to enable same-sex couples to obtain legal recognition of their relationship by registering as civil partners, provided:

- They are of the same sex;
- They are not already in an existing civil partnership or lawfully married;
- They are not within the prohibited degrees of relationships
- They are both aged sixteen years or over in Scotland. (In England, Wales and Northern Ireland, they both must be over the age of eighteen or over sixteen and have consent of the appropriate people or bodies).

9. Registering a civil partnership will have legal consequences. The civil partners will assume legal rights and responsibilities with regard to each other and to third parties, including the State. Currently same-sex couples have no means of obtaining legal recognition.

---

\(^2\) The Scottish Executive’s consultation document – “Civil Partnership Registration: A legal status for committed same-sex couples in Scotland” is available from [www.scotland.gov.uk/consultations/justice/cprs-00.asp](http://www.scotland.gov.uk/consultations/justice/cprs-00.asp)

\(^3\) LGBT means Lesbian, Gay, Bisexual or Transgender


\(^5\) The Civil Partnership Bill is located at [www.publications.parliament.uk/pa/pabills.htm](http://www.publications.parliament.uk/pa/pabills.htm).
Why a UK approach

10. The Scottish Executive believes that a UK approach offers a pragmatic and timely way forward for a number of reasons. First and foremost, the creation of this new legal status combines reserved and devolved policy areas as detailed in the table below. In order to develop a coherent package of rights and responsibilities and to avoid difficult cross border issues, parity across the UK is essential. This can only be guaranteed through an integrated, comprehensive UK Bill.

<table>
<thead>
<tr>
<th>Devolved Policy Areas</th>
<th>Reserved Policy Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation of the new status and eligibility</td>
<td>Pensions</td>
</tr>
<tr>
<td>Registration law and process</td>
<td>Benefits</td>
</tr>
<tr>
<td>Family law: occupancy rights, tenancies, interdicts,</td>
<td>Immigration</td>
</tr>
<tr>
<td>dissolution</td>
<td>Taxation (these provisions will be taken forward in</td>
</tr>
<tr>
<td>Recognition in Scotland of civil partnerships formed</td>
<td>the next available Finance Bill)</td>
</tr>
<tr>
<td>in England, Wales and Northern Ireland</td>
<td>Recognition elsewhere in the UK of civil partnerships</td>
</tr>
<tr>
<td>Recognition in Scotland of overseas relationships</td>
<td>formed in Scotland</td>
</tr>
<tr>
<td>Various consequential amendments</td>
<td>Recognition elsewhere in the UK of overseas relationships</td>
</tr>
<tr>
<td></td>
<td>Various consequential amendments</td>
</tr>
</tbody>
</table>

11. The Scottish Parliament could of course, legislate for the devolved policy aspects. However, if the Scottish civil partnership scheme materially differed from that developed by the UK Government, for example, by the inclusion of opposite sex couples, then this could create significant cross border difficulties. For example, would the UK government recognise a Scottish Civil Partnership for reserved purposes or would a couple also need to register in England and Wales? It could cause confusion in the minds of the public, including those most affected by the provisions, if the Scottish and UK Parliaments were to be legislating for the reserved and devolved dimensions of civil partnerships at different times.

12. Scotland could of course choose to do nothing at all with respect to civil partnerships neither including Scottish provisions in a UK Bill nor separately legislating for the devolved aspects in the Scottish Parliament. This would mean that while a registered same-sex couple in England and Wales would access a comprehensive package of rights and responsibilities, a same-sex couple in Scotland would have no means of accessing those rights and responsibilities which are within the devolved competence of the Scottish Parliament and could only access reserved rights by travelling to England or Wales, assuming residence for several weeks (or one week and two trips) and registering there. This could be especially difficult for couples living in remote areas, or with a low income or a disability. It would discriminate against same-sex couples in Scotland.

13. The Scottish Executive believes that a UK Bill is the only sensible way forward on civil partnerships and will ensure a consistent UK approach and avoid discrimination against same-sex couples in Scotland and unduly complex legislation and cross border difficulties.
Scottish Provisions in the Civil Partnership Bill

14. The Scottish provisions contained within the Civil Partnership Bill are based on Scots law. This ensures that while the scheme that is proposed is consistent across the UK, it does not import English law into devolved Scottish areas. This means that there are some differences in the Bill, for example the age at which a civil partnership can be entered into. Across the UK a person must be at least sixteen years of age in order to enter a civil partnership. However, in England, Wales and Northern Ireland any sixteen or seventeen year old must also have the consent of the appropriate person or bodies. This requirement does not exist in Scotland because at sixteen an individual is assumed to have legal capacity and thus can enter a civil partnership.

15. The Bill is in 8 parts as follows:

- Part 1 introduces civil partnership
- Part 2 sets out the arrangements for civil partnerships in England and Wales
- Part 3 sets out the arrangements for civil partnerships in Scotland
- Part 4 makes provision for civil partnerships in Northern Ireland
- Part 5 deals with civil partnerships formed or dissolved abroad
- Part 6 deals with relationships arising through civil partnership
- Part 7 contains miscellaneous provisions
- Part 8 contains supplementary material such as consequential amendments and repeals.

16. Provisions dealing with matters that are devolved to the Scottish Parliament are contained within Parts 1, 3, 5, 6 and 8 and these are explained in detail below.

17. In broad terms, the Bill establishes arrangements for the registration of same-sex couples and confers upon such couples registered in Scotland a coherent set of legal rights and responsibilities in relation to the dissolution of such partnerships, the handling of succession, property and financial arrangements, occupation of the family home and tenancy matters, exclusion from the family home, and matters relating to the recognition of partnerships established in other jurisdictions. Such couples will also benefit from the Bill’s provisions on reserved matters such as pensions, social security, child support and tax credits: these, together with the rights in devolved areas, form an integrated package.

18. In relation to parental responsibilities and rights, the Children (Scotland) Act 1995 already enables the court, where it judges it in the child’s interest, to confer these on adults other than the child’s natural parents. No changes are proposed to these arrangements or to the other safeguards in that Act for the interests of children.
Part 1 – Introduction

Clause 1: Civil Partnership

19. This clause establishes civil partnership as a legal relationship between two people of the same sex. Subsection (1) provides for a civil partnership to be formed in either of two ways. The first is when two people register as civil partners of each other, either in the United Kingdom (under the relevant Part of the Bill) or under an Order in Council made under clause 150 or 151 (which allow for registration overseas at British consulates or by armed forces personnel). The second is where the couple register an “overseas relationship” which is treated as a civil partnership under Chapter 2 of Part 5. Subsection (3) provides that a civil partnership only ends on death, dissolution or annulment. The criteria for what constitutes an “overseas relationship” are set out in clauses 152 to 154.

Part 3 - Civil Partnerships: Scotland

20. The clauses in this part (Part 3) of the Civil Partnership Bill extend only to Scotland (see clause 194(2)).

Chapter 1 - Constitution and Eligibility

Clause 81: Formation of civil partnership by registration

21. This clause provides that a civil partnership is formed when both persons sign the completed Civil Partnership Schedule before two witnesses aged 16 years or over and an authorised registrar (all being present). Registering as civil partners of each other creates the legal relationship between the two persons, but registration cannot take place unless both persons are eligible to be registered.

Clause 82: Eligibility

22. This clause provides that a couple are not eligible to register as civil partners if they are not of the same sex, or if either one of them is already in a subsisting civil partnership or marriage, or either of them is under 16 or is incapable of understanding the nature of civil partnership. Provision is made that a couple are not eligible to register as civil partners if they are connected within the prohibited degrees of relationship as set out in Schedule 10 to the Bill, with certain exceptions depending on the degree of relationship by affinity and the requirements specified in subsections (3) and (4) being met. Subsections (5) to (7) apply the provisions of this section and Schedule 10, with appropriate modifications, to the case of a person wishing to form a civil partnership in his acquired gender under the Gender Recognition Bill.

Chapter 2 - Registration

23. The UK has three Registrars General covering Scotland, Northern Ireland and England and Wales. The law concerning registration in Scotland is devolved to the Scottish Parliament. There is separate legislation covering the functions of the Registrar General for Scotland. Consequently, the provisions on Civil Partnerships reflect (and are internally consistent with) the legislation and procedures that apply in Scotland.

Clause 83: Appointment of authorised registrars

24. This clause empowers the Registrar General for Scotland, for the purpose of affording reasonable facilities throughout Scotland for registration as civil partners, to appoint such number of district registrars as he thinks necessary, and for any district, one or more assistant registrars, as persons who may carry out such registration.
Clause 84: Notice of proposed civil partnership
25. This clause provides procedures for the completion, by each party, of the notice of proposed civil partnership and for the submission, with the prescribed fee, of the notice to the district registrar. The content of the notice may be prescribed by regulations made by the Registrar General for Scotland with the approval of the Scottish Ministers.

Clause 85: Civil partnership notice book
26. This clause requires the district registrar to enter into “the civil partnership book” such particulars from the notice of proposed civil partnership or the civil partnership certificate as may be prescribed by the Registrar General for Scotland. The Registrar General is to prescribe the form and content of the book.

Clause 86: Publicisation
27. This clause concerns making public the intention to form a civil partnership. The public have a right to know of and be able to object to a proposed civil partnership. The clause provides that the district registrar and the Registrar General must publicise the relevant information (names of intended civil partners and date of intended registration) as soon as practicable. The manner in which the information is to be publicised will be prescribed by the Registrar General. Subject to clause 87, the date on which it is intended to sign the civil partnership document should be a date more than 14 days after publicisation by the district registrar.

Clause 87: Early registration
28. This clause enables an authorised registrar, provided he is authorised to do so by the Registrar General, on receipt of a written request from one or both of the intended civil partners to fix the date for registering as civil partners at a date earlier than 14 days after the publicisation of the intended date of signing the civil partnership register. It is anticipated that this power will be exercised in similar circumstances to its equivalent under the Marriage (Scotland) Act 1977, typically where one of the proposed civil partners is seriously ill and not expected to recover.

Clause 88: Objections to registration
29. This clause provides procedures for any person to make an objection in writing to the district registrar to the issue of a civil partnership schedule to prevent the registration as civil partners. The objection must relate to a lawful impediment.

Clause 89: Place of registration
30. This clause provides that a civil partnership document may be signed at a registration office or at any place which the intended civil partners and the local registration authority agree. However, the place must not be one where people meet for public worship or be known or regarded by persons of a religious faith as a place of reverence.

Clause 90: The Civil Partnership Schedule
31. This clause provides for the completion by the district registrar of the Civil Partnership Schedule. This may be done providing the relevant district registrar has no concerns over the capacity of the couple to enter into the civil partnership, that there are no outstanding objections and that the required period of publicisation has expired.
Clause 91: Further provision as to registration
32. This clause requires the persons who intend to form a civil partnership to confirm that (to the best of their knowledge) the particulars set out in the Civil Partnership Schedule are correct.

33. This clause also requires the authorised registrar, as soon as practicable after the Schedule has been signed, to cause the particulars to be entered into the “civil partnership register”. The form and content of the register will be prescribed by the Registrar General for Scotland. A prescribed fee will also be paid by the intended civil partners for the registration of their relationship.

Clause 92: Civil partnership with former spouse
34. This clause provides for the signing of a civil partnership schedule to take place quickly, where the couple were previously married to each other, one of them has changed gender under the provisions of the Gender Recognition Bill and the marriage has subsequently ended, and the couple wish to recreate their legal status with each other by entering into a civil partnership. The aim is to minimise, as much as possible, the time between the end of the marriage, a pre-requisite for securing full legal recognition in the acquired gender, and the creation of the civil partnership.

35. The clause sets out the procedure for effecting the signature of the civil partnership document in the circumstances described above. The signing of the civil partnership schedule can take place on the same day that both notices of proposed civil partnerships are given, or if they are given on different days, on the day the second notice is given.

Clause 93: Certificates of no impediment for Part 2 purposes
36. This clause applies where 2 people intend to register as civil partners of each other and one (“A”) resides in Scotland and the other (“B”) resides in England or Wales. The clause would allow “A” to submit notice in Scotland under the clause 84 provisions. If the district registrar is satisfied that there is no impediment to “A” registering as “B’s” civil partner, the district registrar must issue a certificate that there is not known to be any impediment. The certificate is not to be issued earlier than 14 days after receipt of the notice, except in circumstances relating to clause 92(1) and “A” elects for the certificate to be issued as soon as possible. The form of the certificate is to be prescribed by the Registrar General. The clause also allows for objection to be made to the district registrar in writing by any person before a certificate is issued. The district registrar is obliged to take into account any objection when he is deciding whether he is satisfied that there is no legal impediment to the registration as civil partners.

Clause 94: Application of certain sections of 1965 Act to civil partnership register
37. This clause provides that certain provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 apply to the civil partnership register as they apply in relation to registers of births, deaths and marriages. These provisions enable the examination of the civil partnership register by district examiners, the searching of indexes kept by registrars or the Registrar General for Scotland and the application to the register of the process of correction provided by section 44 of the 1965 Act (Register of Corrections etc.).
Clause 95: Correction of errors in civil partnership register
38. This clause provides that no alteration may be made to the civil partnership register except as authorised by or under an Act (including an Act of the Scottish Parliament). It enables the district registrar to correct a clerical error or an error of a kind prescribed by the Registrar General for Scotland. The Registrar General may also authorise district examiners to correct any specified errors which they discover during an examination under section 34 of the 1965 Act.

Clause 96: Offences
39. This clause provides for certain offences in relation to civil partnerships. Subsections (1) and (2) set out the offences a person, if they act knowingly, may possibly commit under civil partnership proceedings. Subsection (3) sets out the maximum penalties that may be imposed on a person found guilty under Subsection (1) or (2). Subsection (4) confirms the time limit during which a prosecution may commence.

Chapter 3 – Occupancy Rights and Tenancies

Clause 97: Occupancy Rights
40. This clause sets out the rights that civil partners have to occupy the family home of the civil partnership. The clause applies where one of the civil partners is either entitled to occupy the family home, or permitted to do so by a third party, and the other civil partner has no such entitlement or permission. An example of this would be where the family home is owned or leased in the name of one civil partner only. The civil partner who is entitled to occupancy or permitted occupancy by a third party is called the “entitled partner”. The civil partner who is not entitled to occupancy or permitted occupancy by a third party is called the “non-entitled partner”.

41. Subsection (1) sets out that non-entitled partners have the right to continue to occupy the family home (if they are already doing so), or have the right to enter and occupy the family home (if they are not already doing so). If the entitled partner has occupancy rights by virtue of permission of a third party, the non-entitled partner does not require the permission of the third party to exercise the rights conferred by Subsection (1).

42. Subsection (2) means that this right also extends to any child of the family.

43. Subsection (3) covers a situation whereby the entitled partner shares a right of occupancy with another person who is not the civil partner. In this situation, the rights explained in Subsection (1) only apply if that other person waives their right to occupy the family home in favour of the entitled partner.

44. Subsection (4) provides recourse to the court, if the entitled partner refuses to let their civil partner enter the home. The latter can apply to the court for an order, as explained in clause 99.

45. Subsection (5) allows the non-entitled partner to renounce their rights under this clause in writing in certain circumstances. Subsection (6) provides that such a statement must be made before a notary public and made without coercion.

46. Subsection (7) provides definitions of “child of the family” and “family” and Subsection (8) defines what a notary public is.
Clause 98: Occupancy: subsidiary and consequential rights

47. This clause sets out the rights ancillary to the occupancy rights of a non-entitled partner in relation to the family home. Subsection (1)(a) to (f) list the duties that a non-entitled partner can undertake without the permission of the entitled partner. Subsection (2) details the circumstances in which if an obligation has been performed or enforced by a non-entitled partner, it will be treated in the same way as if it had been made by the entitled partner.

48. Subsection (3) provides that, where there is an entitled and non-entitled partner, the court may make an order apportioning costs incurred or to be incurred by either civil partner if they carry out any of the duties in Subsection (1)(a) to (d) without the consent of the other civil partner, or perform any other activity in respect of the family home with the consent of the other civil partner.

49. Subsection (4) sets out the situation as it applies to civil partners where both are entitled or permitted by a third party to occupy a family home. This Subsection sets out what each civil partner can do and the restrictions on the court in making an order.

50. Subsection (5) covers the situation where one civil partner owns or hires goods such as furniture in a family home. This Subsection sets out what the other civil partner may do in connection with these goods. It also sets out how the court can treat such goods if making an order to apportion expenditure in respect of these goods.

51. Subsections (6) to (9) specify additional criteria relevant to previous Subsections of this clause.

Clause 99: Regulation by court of rights of occupancy of family home

52. This clause sets out the regulation by the court of rights of occupancy of the family home. Subsections (1) and (2) detail the type of order a civil partner may apply for from the court in connection with occupancy of the family or possession or use of goods owned or hired by one of the civil partners.

53. Subsection (3) sets out the factors that the court will consider in determining an application for an order. Subsection (4) gives the court power to make an interim order under certain circumstances. Subsection (5) prevents the court from making an order, if the effect of that order would be to exclude the non-applicant civil partner from the family home.

54. Subsection (6) allows the court, on the granting of an order under Subsections (3) or (4), to grant a warrant allowing a messenger-at-arms or sheriff officer to enter the family home or other premises to search for and take possession of the item required to be delivered and to deliver the item in accordance with the order that is granted. Subsection (7) provides that such a warrant be executed only after the end of a period specified in the order for delivery.

55. Subsection (8) provides that the court can order one civil partner to pay compensation to the other if its appears to the court that the latter has suffered a loss of occupancy rights, impaired occupation of the family home or impaired use of the items in the civil partner’s possession as a consequence of any act or default on the part of the other civil partner.
56. **Subsection (9)** provides for a civil partner to renounce rights to apply under **Subsection (2)** for the possession or use of any item as detailed in that **Subsection**.

**Clause 100: Exclusion orders**

57. This clause provides that either civil partner in the family home can apply to the court for an order which suspends the occupancy rights of the other civil partner in a family home. **Subsection (2)** sets out that the court is to make an exclusion order if it appears necessary to protect the applicant or any child of the family from the conduct of the other civil partner. This is subject to **Subsection (3)** which sets out where it would appear unjustified or unreasonable to make an exclusion order.

58. **Subsection (4)** sets out the types of exclusion order that the court can grant, where this is necessary. **Subsection (5)** sets out further directions that the court may attach when making an exclusion order. **Subsection (6)** gives the court power to make an interim order and sets out that **Subsections (4) and (5)** will apply in the same way to an interim order as to an exclusion order. **Subsection (7)** sets out that an interim order can only be made if the non-applicant partner has been given an opportunity to be heard or represented before the court.

59. If both civil partners are permitted by a third party to occupy the family home, **Subsection (8)** makes it incompetent for one civil partner to bring an action to eject the other from the family home. This is without prejudice to **Subsections (1) and (6)**.

**Clause 101: Duration of orders under sections 99 and 100**

60. This clause sets out the duration of orders made under clauses 99 and 100. **Subsection (1)** gives the court the power to vary or cancel an order made under these clauses, at the request of one of the civil partners. **Subsection (2)** sets out the circumstances where such an order (unless varied or cancelled) will cease to have effect. In addition, **Subsection (3)** provides that where an order has been granted under clause 99(3) or (4), which grants possession of use or items, that this will cease if a third party revokes permission for these possessions to be retained in the family home.

**Clause 102: Continued exercise of occupancy rights after dealing**

61. This clause sets out the occupancy rights in relation to dealings with third parties. **Subsection (1)** provides protection for the non-entitled partner with occupancy rights in relation to the entitled partner’s dealings with third parties. **Subsection (2)** provides a definition of dealing for the purposes of **Subsection (1)**. **Subsection (2)** also provides that a civil partner is not an entitled partner where they are only entitled to occupy the family home by virtue of permission from a third party, or they share entitlement to occupy along with a person who is not the other civil partner, irrespective of whether that person has waived their rights. **Subsections (3) and (4)** deal with the circumstances in which this clause does not apply.
Clause 103: Dispensation with civil partner’s consent to dealing
62. This clause allows the court to dispense with the non-entitled partner’s consent to a dealing which has taken place or is proposed in certain circumstances. Subsection (1) sets out the circumstances under which this can occur. Subsection (2) defines when a non-entitled partner is to be regarded as having unreasonably withheld consent. Subsection (3) places an onus on the court to consider all the circumstances of the case in considering whether to make an order. Subsection (4) provides that where the entitled partner makes an application to the court for an order under this clause and the non-entitled partner has brought proceedings in court for enforcement of occupancy rights, the non-entitled partner’s proceedings will not be decided until the conclusion of the application by the entitled partner.

Clause 104: Interests of heritable creditors
63. This clause explains the rights that a heritable creditor has where there is an interest in the family home. Subsection (1) provides the grounds under which a creditor, who has an interest in the family home, can seek an order from the court for the non-entitled partner to make a payment, where such a payment is due. Subsections (2) to (4) attach conditions and exceptions to this situation.

Clause 105: Provisions where both civil partners have title
64. This clause covers the situation where both civil partners have title of the property and are entitled to occupy the family home.

Clause 106: Rights of occupancy in relation to division and sale
65. This clause explains the circumstances that the court must take into account where a civil partner brings an action for the division and sale of a family home owned jointly with the other civil partner. The clause allows the court to refuse to grant a decree, to postpone granting a decree or granting a decree with certain conditions applied.

Clause 107: Adjudication
66. This clause protects the interests and rights of a civil partner where a decree of adjudication has been pronounced by the court on property or furnishing belonging to the other civil partner, which the former uses.

Clause 108: Transfer of tenancy
67. This clause allows the court to make an order to transfer the tenancy of a family home to the non-entitled partner and provides for the non-entitled partner to make an appropriate payment to the entitled partner in compensation. Subsections within the clause set out the circumstances under which this can apply and the consideration that the court should give.

Chapter 4 - Interdicts

Clause 109: Civil partners: competency of interdict
68. This clause means that the Court of Session or the sheriff court can grant a relevant interdict in respect of a couple living together in a civil partnership. A relevant interdict for these purposes and for the purposes of clause 108, is an interdict which is designed to prevent any inappropriate conduct on the part of one civil partner towards the other or a child of the family, or to prevent a civil partner from returning to the family home or its vicinity.
Clause 110: Attachment of powers of arrest to relevant interdicts
69. This clause allows the court to attach a power of arrest to any relevant interdict on the application of a civil partner. The Subsections within the clause set out the conditions which apply to this power.

Clause 111: Police powers after arrest
70. This clause sets out the action that the police may take where a non-applicant civil partner has been arrested as set out in Subsection (4) of clause 110. It also provides that the facts and circumstances that gave rise to the arrest will be reported to the procurator fiscal who will determine whether criminal proceedings should follow.

Clause 112: Procedure after arrest
71. This clause covers the procedure that arises where the non-applicant civil partner is not released after arrest, but where the procurator fiscal decides that no criminal proceedings should follow.

Chapter 5 – Dissolution, Separation and Nullity

Clause 113: Dissolution
72. This clause provides that an action for the dissolution of a civil partnership can be brought in the Court of Session or in the sheriff court. It sets out the terms under which a court may grant a decree, and when the irretrievable breakdown of a civil partnership is taken to be established.

Clause 114: Encouragement of reconciliation
73. This clause provides that if it seems to the court that it is likely that the civil partners could reconcile, the court must continue the action for as long as it thinks is necessary to enable the couple to attempt reconciliation. It also provides at Subsection (2) that where a couple still wish to dissolve their civil partnership after a period of living together again (during the court action), that that period will not be taken into account for the purposes of the action.

Clause 115: Effect of resumption of cohabitation in certain actions
74. This clause, at Subsection (1) provides that the irretrievable breakdown of a civil partnership on grounds of desertion for a continuous two year period will not be taken to be established if, at the end of that two year period, the parties start living together again and do so at any time after the end of the three months which begin from the date the parties resumed living together. Subsection (2) applies clause 114(2) to Subsection (1).

75. Subsection (3) makes provision that where dissolution of a civil partnership is sought on the basis of desertion or non-cohabitation for periods of time as provided for in clause 113(3)(b) to (d), the court should not take account of any resumption of cohabitation within the periods provided for in clause 113(3)(b) to (d) so long as that resumption amounts in total to less than six months. The resumption of cohabitation can be for one period of up to six months, or more than one period totalling up to six months. But any such resumption of cohabitation within the periods provided for in clause 113(3)(b) to (d) will be excluded from calculation of the periods of non-cohabitation for the purposes of clause 113(3).
Clause 116: Separation
76. This clause provides that the civil partners in a civil partnership may apply to the Court of Session or the sheriff court for a decree of separation. The court may grant such a decree if satisfied that there are grounds justifying such separation.

Clause 117 - Dissolution following on decree of separation
77. If a couple that has a decree of separation subsequently decide to dissolve their civil partnership, this clause provides that they may apply to the court giving the same evidence upon which a decree of separation was based. The court can treat a decree of separation as proof of the facts under which the decree was granted. However, this does not entitle a court to grant a decree of dissolution of a civil partnership without receiving evidence from the civil partner seeking the dissolution.

Clause 118: Registration of dissolution of civil partnership
78. This clause requires the Registrar General for Scotland to maintain a register of decrees of dissolution of civil partnership (Register of Dissolutions of Civil Partnership). The Registrar General is also required to make and keep an alphabetical index of entries to this register. The form of the register is to be prescribed. On payment of the prescribed fee to the Registrar General, the index to the register may be searched and an extract of any entry provided. An extract of an entry in the register is sufficient evidence of the decree of dissolution to which it relates. The Registrar General may also delete, amend or substitute an entry in the register.

Clause 119: Nullity
79. This clause sets out that if a couple register as civil partners in Scotland despite not meeting the eligibility criteria detail in clause 82, the civil partnership will be void, meaning that it will be treated as never having taken place. Either of the couple or another interested person may bring an action in the Court of Session to have the civil partnership declared void.

Clause 120: Validity of civil partnerships registered outside Scotland
80. This clause determines the rules to be applied when determining whether, under the law of Scotland, a civil partnership which was not formed in Scotland is void or voidable. If the civil partnership is void or voidable, a court in Scotland which has jurisdiction under clauses 159 to 164 may make a declarator of nullity in respect of the civil partnership under the inherent declaratory power held by the Court of Session.

81. Subsection (1) ensures that a civil partnership which was registered in England and Wales is void or voidable for the purposes of the law of Scotland if that is the effect of the English provisions in clauses 48 and 49 of the Bill.

82. Subsection (2) ensures that a civil partnership which was registered in Northern Ireland is void or voidable for the purposes of the law of Scotland if that is the effect of the provisions applicable in Northern Ireland.
83. **Subsection (4)** deals with the formation of civil partnerships outside the United Kingdom under an Order in Council made under clause 150 or 151. Orders in Council made under those clauses will include provision for determining the relevant part of the United Kingdom for certain purposes. Paragraphs (a)(i) and (b) of **subsection (4)** ensure that questions of nullity are then dealt with in exactly the same way as would apply under Scottish law if the civil partnership had actually been formed in that part of the United Kingdom.

84. In addition the civil partnership will be void if the condition in clause 150(2)(a) or 151(2)(a) (whichever is relevant) was not met. For a partnership formed at a British consulate etc., the condition is that one party must be a United Kingdom national as defined in clause 180. For a partnership formed in the armed services, the condition is that one of the proposed civil partners is a member of the armed forces serving in the country or territory where the partnership is formed, or falls within certain other related categories as set out in clause 151(2)(a).

85. Finally the civil partnership will also be void if there is a breach of a requirement of the Order in Council which is prescribed for this purpose by the Order itself (this power will be used to define in the Order those requirements which are mandatory in order to ensure the validity of the civil partnership).

86. **Subsection (8)** sets out the rules to be applied in relation to an apparent or alleged overseas relationship. An overseas relationship can be treated as a civil partnership under Chapter 2 of Part 5. But the civil partnership will be void if it transpires that the relationship is in fact not an overseas relationship as defined in clauses 152 to 154, or if one of the requirements for the overseas relationship to be treated as a civil partnership under clauses 155 to 158 is not met. For example the civil partnership will be void if, under the law of the country where the overseas relationship was registered, the formalities necessary to enter into the overseas relationship were not fulfilled or there was no capacity to enter into the overseas relationship (see clause 155(1)). It is also voidable if that is the effect of the law of the country where the registration took place (see the definition of “the relevant law” in **subsection (9)**).

**Clause 121: Financial provision after overseas dissolution, annulment or separation**

87. This clause introduces Schedule 11, which relates to applications for financial provision in Scotland after a civil partnership has been dissolved or annulled, or civil partners have been legally separated, in a country outside the British Islands. “British Islands” is defined in the Interpretation Act 1978 (c. 30) as comprising the United Kingdom, the Channel Islands and the Isle of Man.

**Chapter 6 – Miscellaneous and Interpretation**

**Clause 122: Regulations**

88. This clause provides that, in Chapters 2 and 5 of the Act, “prescribed” means prescribed in regulations made by the Registrar General for Scotland with the approval of the Scottish Ministers. A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the Scottish Parliament. This conforms to the process which is provided in other legislation pertaining to registration, such as the 1965 Act.
Clause 123: Attachment
89. This clause protects the interests and rights of a civil partner where an attachment has been made on property or furnishing belonging to the other civil partner, which the former uses.

Clause 124 - Promise of agreement to enter into a civil partnership
90. This clause sets out that if a couple make an agreement to register their civil partnership, it will not confer any rights or obligations under Scots law. If the promise or agreement to form a civil partnership is broken, no action can be brought in a court in Scotland and this is irrespective of the law applicable to the promise of agreement.

Clause 125: Lord Advocate as party to action for nullity or dissolution of civil partnership
91. This clause makes provision for intimation on the Lord Advocate of proceedings for either declarator of nullity or dissolution of a civil partnership. Subsection (1) provides that the Lord Advocate can become a party to either of these kinds of proceedings, and conduct his case in such manner as he considers appropriate. Subsection (2) allows the court to intimate these proceedings on the Lord Advocate if the court thinks it necessary to assist in the determination of the proceedings. Subsection (3) provides that, in any case where the Lord Advocate does become a party to the proceedings, no expenses can be claimed against him.

Clause 126: Civil partner of accused a competent witness
92. This clause provides that the civil partner of an accused person may be called as a witness by the accused, a co-accused, or the prosecutor. If a civil partner of an accused is called as a witness, they cannot be forced to give evidence by the co-accused or the prosecutor, and cannot be forced to reveal communications between the civil partners while the civil partnership continues. If a civil partner of an accused person does not give evidence, neither the defence nor the prosecutor can take advantage of this in any submissions to the court.

Clause 127: Assurance policies: Scotland
93. This clause ensures that civil partners are recognised in terms of assurance policies in the same way that spouses are at present.

Clause 128: General provisions as to fees
94. This clause enables a district registrar to refuse to comply with any application made under Part 3 until the appropriate fee has been paid to him. For example, this reflects section 19(2) of the 1977 Act which provides that an authorised registrar should not solemnise a marriage unless the prescribed fee has been paid. The clause also enables the Registrar General to remit fees in cases of hardship. That provision follows what is provided in section 54 of the 1965 Act.

Clause 129: Interpretation of this Part
95. This clause defines certain expressions used in Part 3 Civil Partnerships: Scotland.
Clause 130: The expression “relative” in the 1965 Act

96. This clause provides that the definition of “relative” in section 56(1) of the 1965 Act should include “a civil partner and anyone related to the civil partner of the person”. In practical terms, this would (for instance) enable a civil partner or a relative of a civil partner to act as the informant for the registration of a death under section 23 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965.

Part 5 – Civil partnerships formed or dissolved abroad etc.

Introduction

97. The clauses in this part (Part 5) of the Civil Partnership Bill extend to the whole of the United Kingdom, with the exception of clauses 160 to 164 which extend only to England and Wales, and clauses 165 to 167 which extend only to Scotland (see clause 194(4)). Clauses 160 to 164 are excluded from this Sewel Memorandum.

Chapter 1 – Registration outside UK under Order in Council

Clause 150: Registration at British consulates etc.

98. This clause confers power to make subordinate legislation by Order in Council to make provision for two people to register as civil partners of each other in countries or territories outside the United Kingdom in the presence of an officer of Her Majesty’s Diplomatic Service. The officers in whose presence the parties may register as civil partners, and the countries or territories where this may take place, will be set out in the Order in Council (see the definition of “prescribed” in clause 179(5)). This power will be used to make provisions for civil partnership corresponding to the provisions of the Foreign Marriage Act 1892 (c.23). Under that Act it is possible for UK nationals to marry in accordance with UK law at a diplomatic post overseas in certain circumstances, so this power will enable civil partnerships likewise to be registered at diplomatic posts overseas.

99. Subsection (2) sets out the four conditions which the Diplomatic Service officer must be satisfied are met. These are that at least one of the proposed civil partners is a United Kingdom national, that the civil partners would have been eligible to register in the relevant part of the United Kingdom as determined according to the provisions of the Order in Council, that the authorities in the country or territory in question will not object to the registration, and that there are insufficient facilities for them to enter into an overseas relationship under that country’s law. In addition, by subsection (3), the officer is not required to allow the couple to register as civil partners if in his opinion to do so would be inconsistent with international law or the comity of nations, although the Order may include provision for an appeal against any such refusal. “United Kingdom national” is defined in clause 180. The criteria for what constitutes an “overseas relationship” are set out in clauses 152 to 154.
Clause 151: Registration by armed forces personnel

100. This clause enables provision to be made by Order in Council for two people to register as civil partners of each other in countries or territories outside the United Kingdom where one of them is a member of Her Majesty’s forces serving in the country or territory in question or falls within certain connected categories set out in subsection (2). The countries or territories where such persons may register will be set out in the Order in Council (see the definition of “prescribed” in clause 179(5)). “Her Majesty’s forces” is defined in clause 180(2).

101. This power will be used to make provisions for civil partnership corresponding to section 22 of the Foreign Marriage Act 1892 (c.23). Under that section, members of the armed forces and certain civilians accompanying them can be married outside the UK by a forces chaplain or an officer authorised by the commanding officer. This clause allows similar provision to be made by Order in Council for civil partnership registration outside the UK, in the presence of one of the officers responsible for the recording of births, deaths and marriages (and, in future, civil partnerships) among the Service community.

Chapter 2 – Overseas relationships treated as civil partnerships

Clause 152: Meaning of “overseas relationship”

102. This clause defines the overseas relationships which are capable of being treated as civil partnerships if the other requirements of this Chapter are met. An overseas relationship must be either a “specified relationship” (see clause 153 and Schedule 14) or must meet the “general conditions” (see clause 154). In addition the relationship must have been registered in a country or territory outside the UK by two people who are of the same sex under the relevant law, and (as a matter of relevant law within the UK) are not already in a civil partnership or lawfully married. (They are also required to be of the same sex as a matter of relevant law within the UK – see clause 156). The overseas relationship may have been registered before the enactment or commencement of the Civil Partnership Bill (but, in such cases, clause 155 ensures that the couple will be treated as having formed a civil partnership only at the time when this Chapter of the Bill comes into force). “The relevant law” is defined in subsection (2) as the law of the country or territory where the overseas relationship is registered, including its rules of private international law.

Clause 153: Specified relationships

103. This clause introduces Schedule 14, which lists the relationships which are “specified relationships” for the purposes of clause 152. The Schedule lists various types of relationship which exist in other countries, such as civil union in Vermont in the United States of America, registered partnership in Denmark, and so on. It also includes marriage in Belgium and the Netherlands (both countries where marriage is available to same-sex partners). Relationships falling within the descriptions in Schedule 14 can be treated as civil partnerships as set out in clauses 155 to 158, if the other requirements of those clauses and clause 152 are met. For example, a marriage in Belgium or the Netherlands could be treated as a civil partnership only if it is between two people of the same sex, and who are not already in a civil partnership or lawfully married.
104. Subsections (2) to (6) enable the Schedule to be amended by order made by the Secretary of State. This is subject to the affirmative resolution procedure if the amendments have the effect of removing a description of a relationship from Schedule 14, or amending such a description, but to the negative resolution procedure if the amendments add additional relationships to the list. No order may be made without the consent of the Scottish Ministers or the Department of Finance and Personnel in Northern Ireland.

Clause 154: The general conditions
105. If a relationship is not a “specified relationship” listed in Schedule 14, it is nonetheless an “overseas relationship” if it meets the general conditions set out in this clause, provided the other requirements of clause 152 are also met.

106. The general conditions relate to the following issues:

- exclusivity – it must be a requirement of the relevant law that the relationship cannot be entered into if either of the parties is already in a relationship of that kind or is lawfully married;
- duration – it must be a requirement of the relevant law that the relationship is indeterminate in duration (this would exclude an arrangement whereby the parties agreed to live together for a fixed period of time);
- effect – the effect of entering into the relationship must be that the parties are either treated as a couple under the relevant law, or are treated as married;
- registration – the relationship must be registered with a responsible authority in the relevant country or territory.

Clause 155: Overseas relationships: the general rule
107. Subsection (1) provides that two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if under the relevant law they had capacity to enter into the relationship, and met all requirements necessary for formal validity under that law. “The relevant law” is defined in clause 152 as the law of the country or territory where the overseas relationship is registered, including its rules of private international law. Clause 155 is subject to clauses 156 to 158.

108. Subsection (2) provides that the civil partnership is treated as having been formed at the time when the overseas relationship is registered as having been entered into. However if the relationship was registered before this Chapter of the Bill comes into force, then subsection (3) provides that the civil partnership is treated as having been formed only at the date when this Chapter comes into force.

Clause 156: The same-sex requirement
109. Subsection (1) provides that both members of the couple must be of the same sex, at the critical time, if the overseas relationship is to be treated as a civil partnership in the UK. “The critical time” is defined in subsection (5) to refer back to clause 155(2) or (3) (i.e. depending on whether the relationship was entered into before or after the commencement of the Chapter).
110. **Subsections (2) to (4)** provide an exception where the couple was regarded as a same-sex couple under the relevant law because one of the parties was regarded as having changed gender under that law. In this situation the relationship will be treated as a civil partnership once the party who has changed gender under the relevant law has also acquired a full gender recognition certificate under the Gender Recognition Bill. But the parties will only be regarded as having formed a civil partnership if no marriage or civil partnership has been entered into in the interim. These provisions are analogous to provisions contained in the Gender Recognition Bill, in relation to overseas marriages.

*Clause 157: Person domiciled in a part of the United Kingdom*

111. This clause ensures that, where an overseas relationship is registered by a person who is domiciled in England and Wales, Scotland or Northern Ireland, it cannot be treated as a civil partnership unless the couple would have been eligible to register as civil partners of each other in that part of the United Kingdom. Thus the overseas relationship will not be treated as a civil partnership if either party was under 16 at the time of registration, or if the parties are within the prohibited degrees of relationship applicable in the relevant part of the United Kingdom. Where either party was domiciled in Scotland, the overseas relationship will also not be treated as a civil partnership if either party was incapable of understanding the nature of civil partnership. These requirements are additional to the requirements that neither party is already a civil partner or lawfully married and that both parties are of the same sex (see clauses 152 and 156), which apply even where neither party was domiciled in the United Kingdom.

*Clause 158: The public policy exception*

112. This clause provides that two people cannot be treated as having formed a civil partnership as a result of their overseas relationship if it would be manifestly contrary to public policy to recognise the capacity of either or both of them to enter into the relationship under the relevant law.

**Chapter 3 - Dissolution etc.: Jurisdiction and Recognition**

*Clause 159: Power to make provision corresponding to EC Regulation 2201/2003*

113. **Subsections (1), (2) and (3)** provide powers for the Lord Chancellor or Scottish Ministers to make regulations concerning:

a) the jurisdiction of the courts in England and Wales or Scotland in relation to the dissolution or annulment of civil partnerships or the legal separation of civil partners, where one of them is a resident or national of a member State or is domiciled in a part of the United Kingdom; and

b) the recognition and enforcement of equivalent judgments from other member States, in cases where the corresponding rules for dissolution, annulment or legal separation in matrimonial matters will be governed by EC Regulation 2201/2003. This Regulation will come into force on 1 March 2005.

114. **Subsection (4)** allows the regulations to define “member State” for the purposes of this Part of the Bill and for the purposes of the regulations.
115. Under subsection (6) equivalent regulations for Scotland must be made by statutory instrument under the affirmative resolution procedure in the Scottish Parliament.

**Clause 165: Jurisdiction of Scottish Courts**

116. Clauses 165 – 167 extend only to Scotland. **Subsections (1) and (2)** of clause 165 provide the rules on the basis of which the Scottish courts will be able to exercise jurisdiction in an action for dissolution of a civil partnership or separation of civil partners. Any Scottish regulations to be made under clause 159 will have primacy. Subject to this, the Scottish courts will have jurisdiction where either civil partner is domiciled in Scotland when proceedings commence. Where an action is raised in the sheriff court then an additional test of 40 days residence in the sheriffdom will require to be satisfied. The Court of Session alone will also have jurisdiction where the parties registered as civil partners in Scotland, no court has jurisdiction under any Scottish regulations made under clause 159 unless the court is satisfied that it is in the interests of justice to assume jurisdiction.

117. Under subsection (3), the Court of Session will have jurisdiction in an action for declarator of nullity of a civil partnership in circumstances largely corresponding to those in subsection (1), but with additional provision where one of the purported civil partners has died. **Subsection (4)** makes provision for proceedings parallel to an action already raised.

**Clause 166: Sisting of proceedings**

118. This clause permits rules of court to make provision for suspending of proceedings before a Scottish court in respect of a civil partnership where an action in relation to the same civil partnership is ongoing elsewhere, and for information to be supplied to the court about such an action.

**Clause 167: Scottish ancillary and collateral orders**

119. This clause confers jurisdiction on any Scottish court to deal with an application relating to children, aliment (maintenance), financial provision or expenses which is ancillary or collateral to an action for dissolution, separation or declarator of nullity. The only exception is where such jurisdiction would conflict with regulations made under clause 159. Section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966 (c.19) confers power on sheriffs to vary or recall particular types of order made by the Court of Session, provided no party objects. Where clause 167 enables the Court of Session to hear an application for variation or recall of one of its own orders, and the order is one to which section 8 (as amended by this Bill) applies, clause 167(4) ensures that the sheriff will also have power to hear the application under the section 8 procedure.

**Clause 168: Effect of dissolution, annulment or separation obtained in the UK**

120. **Subsection (1)** provides that no dissolution or annulment of a civil partnership obtained in one part of the United Kingdom can be effective in any part of the United Kingdom unless it has been obtained from a court of civil jurisdiction. The parts of the United Kingdom, for the purposes of clauses 168-173 are England and Wales, Scotland, and Northern Ireland (see clause 172(5)). **Subsection (2)** provides for any dissolution or annulment of a civil partnership or legal separation of civil partners, obtained from a court of civil jurisdiction in one part of the United Kingdom, to be recognised throughout the United Kingdom, subject to subsections (3) and (4).
121. Subsection (3) provides that such dissolution or annulment can be refused recognition if the dissolution, annulment or separation was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in the other part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in the other part.

122. Subsection (4) provides that, in relation to a dissolution or legal separation, recognition can be refused if the dissolution or separation was obtained at a time when, according to the law of the other part, there was no civil partnership in existence.

Clause 169: Recognition in the UK of overseas dissolution, annulment or separation

123. This clause provides that the validity of an overseas dissolution, annulment or legal separation is to be recognised in the United Kingdom if it is entitled to recognition either pursuant to regulations made under clause 159 or pursuant to clauses 170 to 172. An overseas dissolution etc is defined as a dissolution etc obtained outside the United Kingdom.

Clause 170: Grounds for recognition

124. Subsection (1) provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained by proceedings if:

(a) it is effective under the law of the country where it was obtained, and
(b) at the relevant date (which is defined by subsection (3)) either civil partner was habitually resident or domiciled there or was a national of that country.

125. Subsection (2) provides for recognition of the validity of an overseas dissolution, annulment or legal separation obtained otherwise than by proceedings if:

(a) it is effective under the law of the country where it was obtained,
(b) at the relevant date:
   - both civil partners were domiciled there; or
   - either civil partner was domiciled there and the other was domiciled in a country under the law of which the dissolution etc. is recognised as valid, and
(c) neither civil partner was habitually resident in the United Kingdom for the year immediately before the relevant date.

126. Subsection (3) defines the “relevant date” as regards overseas dissolutions etc. obtained by proceedings as being the date the proceedings commenced, and for those obtained otherwise than by proceedings as being the date it was obtained.

Clause 171: Refusal of recognition

127. Subsection (1) provides for the refusal of recognition of the validity of an overseas dissolution, annulment or legal separation in any part of the United Kingdom if it was obtained at a time when it was irreconcilable with an earlier decision on the existence or validity of the civil partnership, either given by a civil court in that part of the United Kingdom, or given by a court elsewhere and recognised or entitled to be recognised in that part.

128. Subsection (2) provides for the refusal of recognition of the validity of an overseas dissolution or legal separation in any part of the United Kingdom if it was obtained at a time when according to the law of that part there was at that time no civil partnership in existence.
129. Subsection (3) provides for the refusal of recognition of the validity of an overseas dissolution, annulment or separation if, in relation to proceedings, steps as to notice were not taken or one of the civil partners was for any reason not given a reasonable opportunity to take part in the proceedings; or in the absence of proceedings, if there is no official documentation regarding the effectiveness and validity of the dissolution etc in the country where it was obtained.

130. Recognition may also be refused in either case if recognition of the dissolution etc. would be manifestly contrary to public policy.

131. Subsection (4) defines the meaning of “official” in relation to the documents referred to in subsection (3) and “the relevant date” in relation to the domicile of a civil partner also referred to in that subsection. “Proceedings” is defined in clause 172(5) as meaning judicial or other proceedings.

Clause 172: Supplementary provisions relating to recognition of dissolution etc.

132. Subsection (1) provides, for the purposes of clauses 170 and 171, that a civil partner is to be treated as domiciled in a country if he was domiciled in that country either according the law of that country in family matters or according to the law of the part of the United Kingdom where the question of recognition arises.

133. Subsection (2) gives Scottish Ministers (along with the Lord Chancellor) the power to make regulations concerning recognition of the validity of overseas annulments where there are cross-proceedings, for example where the validity of an order is contested, and with respect to cases where a separation is converted into a dissolution effective under the law of the country where it is obtained. They may also make regulations about proof of findings of fact in proceedings outside the UK and applying clauses 170 and 171 with modifications for countries with territories with different systems of law for dissolution etc.

134. Subsections (3) and (4) provide that this power is exercisable by statutory instrument, subject to the negative resolution procedure in the Scottish Parliament.

135. Subsection (5) defines the meanings of “annulment”, “part of the United Kingdom”, and “proceedings”, in clauses 168 to 173.

136. Subsection (6) states that nothing in this Chapter requires recognition of any finding of fault made in dissolution etc proceedings or recognition of any maintenance, custody or other ancillary order made in those proceedings.

Clause 173: Non-recognition of overseas dissolution etc. not a bar

137. Under this clause, when a court in any part of the United Kingdom has granted a dissolution or annulment of a civil partnership, or a dissolution or annulment has been recognised as valid by virtue of this Chapter, the fact that the dissolution or annulment would not be recognised outside the United Kingdom does not prevent either party from entering a later marriage or civil partnership in that part of the United Kingdom or make the later marriage or civil partnership invalid in that part.
Chapter 4 – Miscellaneous and Supplementary

Clause 174: Commanding officers’ certificates for Part 2 purposes
138. This clause allows provision to be made by Order in Council for the situation where a couple, one of whom is a member of the armed forces serving outside the United Kingdom and the other resident in England and Wales, wish to register as civil partners in England and Wales. Under such an Order, the member of the armed forces could give notice of the proposed civil partnership to his commanding officer, who could then issue a certificate of no impediment. A civil partnership schedule could be issued in England and Wales under clause 20 on production of the certificate, without the need for the member of the armed forces to give notice in England and Wales. The clause follows the approach taken in the Marriage Act 1949 (c.76) in relation to persons serving in a naval vessel at sea, but extends this approach to all the armed forces.

Clause 175: Certificates of no impediment to overseas relationships
139. This clause permits the making of an Order in Council to allow for the issue of certificates of no impediment where a United Kingdom national (or a Commonwealth national if prescribed in the Order in Council) intends to enter into an overseas relationship with a person who is neither a United Kingdom national nor a Commonwealth national. The Order in Council will also prescribe the countries or territories which are covered. This power will be used to make provision corresponding to the provisions of section 1(1) of the Marriage with Foreigners Act 1906 (c.40). “United Kingdom national” is defined in clause 180. The criteria for what constitutes an “overseas relationship” are set out in clauses 152 to 154.

Clause 176: Transmission of certificates of overseas relationships etc.
140. This clause permits the making of an Order in Council to provide for the transmission to UK Registrars General of foreign certificates in relation to overseas relationships, for the issue of certified copies by the Registrar General, and for these to be received in evidence. This clause will be used to make provision for civil partnerships corresponding to the provisions of section 18(2) of the Foreign Marriage Act 1892 (c.23). It is envisaged that a separate Order in Council would be made for Scotland under this provision.

Clause 177: Power to make provision relating to certain Commonwealth forces
141. This clause permits the making of an Order in Council to ensure that, where the law of certain Commonwealth countries makes provision corresponding to clause 151 of this Bill (allowing for registration by armed forces personnel serving abroad), relationships formed under such provisions can be recognised in the UK. This will enable provision to be made, if necessary, equivalent to that which can be made under section 3(2) of the Foreign Marriage Act 1947 (c.33).

Clause 178: Fees
142. Subsections (2) and (3) provide power for the Registrar General for Scotland, with the approval of the Scottish Ministers, to make regulations prescribing fees in respect of things done by virtue of an Order in Council under Part 5 of the Bill.
Clause 179: Orders in Council: supplementary

143. This clause contains supplementary provisions in relation to the powers to make an Order in Council contained in clauses 150, 151, 174, 175, 176 and 177. Statutory instruments containing an Order in Council under those clauses are to be subject to the negative resolution procedure, including where other provisions are included which are made by Order in Council under existing legislation on foreign marriages, such as the Foreign Marriage Act 1892. This clause also provides that Orders in Council under those clauses may make different provision for different cases. This may be necessary, for example, to take account of differing local conditions in different countries. They may in addition include, for example, supplementary, consequential and transitional provisions and subsection (2) makes clear that such provisions may correspond to provision made under this Bill or under any Act relating to marriage outside the UK.

Clause 180: Interpretation

144. This clause defines the terms “United Kingdom national” and “Her Majesty’s forces” for the purposes of this Part of the Bill.

Part 6 – Relationships arising through civil partnerships

Introduction

145. The clauses in this Part of the Bill relate to the interpretation of references to certain familial relationships in legislation including legislation made by the Scottish Parliament and Northern Ireland legislation.

Clause 181: Interpretation of statutory references to stepchildren etc.

146. This clause provides that references to “step” relationships and “in-laws”, in any provision to which the clause applies, are to be read as including relationships arising through civil partnership.


147. This clause applies clause 181 to any provision of a future Act (including Acts of the Scottish Parliament) or future subordinate legislation (subject to any indication to the contrary) and to references in existing legislation as listed in Schedule 15. In addition, this clause provides an order-making power to amend Schedule 15 and to apply clause 181 to provisions of existing subordinate legislation.

Part 8 – Supplementary

Clause 190: Regulations and orders

148. This section provides that powers conferred by the Bill to make regulations or orders (except orders by a court) may be exercised so as to make different provision for different purposes and to make ancillary provision.
Clause 191: Power to make further provision in connection with civil partnership

149. Subsection (1) confers power (which is not restricted by any other provision of the Bill (see subsection (5))) to make, by order, supplementary, incidental, consequential, transitory, transitional or saving provision considered appropriate for the general purposes of the Bill, for any particular purpose of the Bill, or in consequence of any provision by or under the Bill or for giving effect to such a provision.

150. This power is exercisable by a Minister of the Crown, by the Scottish Ministers in relation to a provision within the legislative competence of the Scottish Parliament and by the National Assembly for Wales in relation to matters with respect to which functions are exercisable by the Assembly (except in relation to a provision made by virtue of subsection (3)).

151. By subsection (3) this includes the power to amend or repeal primary legislation (or Scottish primary legislation) and it includes the power to repeal or amend provisions conferring a power to make subordinate legislation whose exercise is currently limited to cases of marriage. An order may also amend, repeal or revoke Church legislation (subsection (3)(b)).

152. By subsection (4) an order may provide for provisions of the Bill to come into force with modifications until other provisions are commenced. An order may amend or revoke subordinate legislation (subsection (4)(b)), including subordinate legislation made by the Scottish Ministers.

153. The power is exercisable by statutory instrument and is subject to the negative procedure unless it contains any provision made by virtue of subsection (3) in which case it is subject to the affirmative procedure.

Clause 192: Community obligations and civil partners

154. This power allows Ministers to make parallel provision to any made under section 2(2) of the European Communities Act 1972 which relates to persons who are or have been married (or whose marriage was void) where it does not relate to persons who are or have been civil partners (or whose civil partnership was void).

Clause 193: Consequential amendments, repeals etc.

155. This clause introduces Schedule 20 (which makes minor and consequential amendments to other Acts arising from the provisions of the Bill), Schedule 21 (which makes minor and consequential amendments to enactments relating to Scotland), and Schedule 22 (which contains repeals of provisions of existing legislation).

Clause 194: Extent

156. The Bill makes provision in relation to England, Wales, Scotland and Northern Ireland. Part 2 and related Schedules extend only to England and Wales, Part 3 and related Schedules to Scotland only and Part 4 and related Schedules to Northern Ireland only. Certain other clauses and Schedules are also limited in extent. Amendments and repeals have the same extent as the provisions amended or repealed.
Clause 195: Commencement
157. This clause provides for the coming into force of the provisions of the Bill. All substantive provisions of the Act are to come into force by commencement orders. These orders will be made by the Secretary of State, except for the Scottish provisions which will be made by the Scottish Ministers and the Northern Ireland provisions which will be made by the Department of Finance and Personnel, both after consulting the Secretary of State. The Secretary of State must also consult the Scottish Ministers or the Department of Finance and Personnel before commencing certain other provisions.

Clause 196: Short title
158. The short title will be the Civil Partnership Act 2004.

Schedules

Schedule 10 – Forbidden degrees of relationship: Scotland

159. Paragraph 1 of Schedule 10 lists the relationships connecting people that absolutely forbid the registration of a civil partnership between them. Paragraphs 2 and 3 list the relationships connecting people that forbid the registration of a civil partnership between them, unless the requirements specified in clause 84 are met.

160. The prohibitions in Schedule 10 closely follow those that are set out in the Marriage (Scotland) Act 1977.

Schedule 11 – Financial provision in Scotland after overseas proceedings

161. This Schedule explains the circumstances under which a Scottish court may consider an application for financial provision following the dissolution or annulment of a civil partnership overseas.

Part 1- Introductory

162. This Part states that the provisions of Schedule 11 will apply wherever a civil partnership has been dissolved or annulled after judicial or other proceedings overseas, and the dissolution or annulment is entitled to recognition in Scotland. Dissolutions or annulments granted before the commencement of Schedule 11 are included. “Overseas” is defined as meaning outside the British Islands.

Part 2- Circumstances in which court may entertain application for financial provision

163. This Part provides that the Scottish court may entertain an application by one of the former (or former ostensible) civil partners following the overseas dissolution or annulment if the criteria specified in paragraphs 2(2) and (3) are satisfied. The application must be made by the party who did not initiate the overseas proceedings, and must be made within five years of the overseas dissolution or annulment taking effect. Both former partners must be alive when the application is made. The other criteria are designed to ensure a substantial connection between the civil partnership and Scotland, and between the parties and both Scotland and the jurisdiction of the relevant court. Paragraph 2(4) gives priority to the jurisdictional standards set out in Part 1 of the Civil Jurisdiction and Judgements Act 1982 and in Council Regulation (EC) No 44/2001, which will supersede the criteria in paragraph 2(2) where they apply.
Part 3 - Disposal of Applications

164. Under this Part, Scots law will generally apply to the disposal of the application. In particular, the court is to endeavour to place the parties in the position they would have been in had the application for financial provision been disposed of by the Scottish court as part of a Scottish action for dissolution or annulment and on the date when the overseas dissolution or annulment took effect. The court is to have regard to the resources of the parties and to any order for financial provision already made overseas in or in connection with the foreign dissolution or annulment proceedings. An interim periodical allowance may be ordered where appropriate to relieve hardship. However, where the Scottish court’s jurisdiction is based solely on the presence of a former family home of the parties in which the respondent has an interest, any order made must relate to the family home, its contents or their capital value.

Part 4 - The expression “order for financial provision”

165. This Part defines the term “order for financial provision” with reference to section 8(1) of the Family Law (Scotland) Act 1985 (as amended by this Bill), and to clause 107.

Schedule 21 – Consequential amendments: Scotland

166. This Schedule sets out consequential amendments that will be required to Scottish primary legislation to take account of the new status of civil partners. The amendments pick up instances where spouses have a particular right or responsibility and where it is appropriate that this also apply to civil partners.

Part 1 – Amendments of the Succession (Scotland) Act 1964 (c. 41)

167. The Succession (Scotland) Act 1964 sets out the rights that spouses have under the law of succession (i.e. the law which governs how property is, on the death of its owner, handed over to those who succeed to it). This clause amends references to spouses throughout the Succession (Scotland) Act 1964 to include reference to civil partners. This has the effect of providing civil partners with the same rights of succession as spouses.

Part 2 – Amendments of the Family Law (Scotland) Act 1985 (c. 37)

168. This clause addresses the financial provision which should be made when a civil partnership ends. It makes amendments to the Family Law (Scotland) Act 1985 to include reference to civil partners. The amendments mean that civil partners should be treated in the same way as spouses in determining the rights and responsibilities to financial provision following dissolution of a civil partnership. It further provides that any child brought up in a civil partnership as a child of the family can be financially provided for following the breakdown of the civil partnership. This part of the Bill is easiest read in conjunction with the Family Law (Scotland) Act 1985.

Part 3 – Amendments of the Bankruptcy (Scotland) Act 1985 (c. 66)

169. This clause amends the Bankruptcy (Scotland) Act 1985 to ensure that civil partners are recognised in the same way as spouses.

Part 4 – Miscellaneous amendments

170. This part amends various pieces of primary legislation to include civil partners as appropriate.
Financial Consequences

171. A Regulatory Impact Assessment has been published with the Bill. This sets out the costs and benefits of the Civil Partnership Bill across the UK and, with contributions from the devolved administrations, takes account of costs in devolved areas.

172. In devolved areas, we consider that the principal costs will come from the creation and dissolution of civil partnerships. The key areas affected are likely to be the registration service, the Scottish Court Service and legal aid. These costs are expected to be minimal and for the registration service should be covered by the fees prescribed under Part 3 of the Bill.

173. In most cases where there is a financial consequence of registering a civil partnership, it will fall in a reserved area such as benefits and pensions. The following provides more detail about the assumptions that have been made and the costs that have been estimated in devolved areas.

Take-Up Assumptions

174. While no exact data is available, a wide range of research suggests that lesbian, gay and bisexual people constitute 5-7% of the total adult population. Scotland’s total adult population in 2002 was 4.1 million; therefore a 5-7% range would be 200,000 to 290,000 people. The 5% figure has been used in calculations.

175. It is very difficult to predict the likely take-up of civil partnership, since it is a new institution. The UK Government has looked at other European partnership registration schemes to inform take up assumptions for civil partnerships and has identified the Civil Partnership Registration Schemes in Sweden, Norway, Denmark and the Netherlands as suitable comparators. This is provided in detail in Annex A of the Regulatory Impact Assessment, but the key points are:

- We expect there will be an initial influx of new civil partnerships in the first year following the introduction of civil partnerships since lesbian, gay and bisexual people who have been unable to take advantage of such an institution before. Some may prefer to wait until such a new institution is proven and well known before feeling comfortable enough with the notion of this form of permanent relationship.

- The assumption has been made that by 2050 the proportion of the heterosexual population who are married will be around one-third. This is a modelling assumption based upon projections produced by the UK Government’s Actuary’s Department. It is not a prediction or a planned outcome, but simply enables an illustration of the possible scale of the financial impact of the new status. It does not reflect the UK Government’s or the Scottish Executive’s views or intentions with regard to marriage.

- The assumption has been made that the proportion of the LGB population who are in a registered Civil Partnership in 2050 will be 5% (under the low scenario) or 10% (under the high scenario) of the proportion of the heterosexual population who are married.

---

6 The sources used to estimate a 5-7% range are detailed in the Regulatory Impact Assessment (page 13, footnote 13).
176. These assumptions have been used to estimate the likely take up of civil partnerships in Great Britain, which are detailed in the Regulatory Impact Assessment.

**Take up in Scotland**

177. To take a 10% share of the UK figures for Scotland is too crude. We have instead used population projections for Scotland and applied the same methodology used by the UK Government. Our projections do not extend to 2050. The latest period for which we have projected population data is 2018. The estimated take up figures for Scotland are detailed below:

<table>
<thead>
<tr>
<th></th>
<th>Low take up scenario</th>
<th>High take up scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Population aged 15+</td>
<td></td>
</tr>
<tr>
<td></td>
<td>in Scotland*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LGB population -</td>
<td></td>
</tr>
<tr>
<td></td>
<td>taking as 5% of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>population aged 15+</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proportion of LGB</td>
<td></td>
</tr>
<tr>
<td></td>
<td>population in a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>registered civil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>partnership</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of LGB people</td>
<td></td>
</tr>
<tr>
<td></td>
<td>in civil partnerships</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proportion of LGB</td>
<td></td>
</tr>
<tr>
<td></td>
<td>population in a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>registered civil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>partnership</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number of LGB people</td>
<td></td>
</tr>
<tr>
<td></td>
<td>in civil partnerships</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>4,204,200</td>
<td>210,210</td>
</tr>
<tr>
<td></td>
<td>0.33%</td>
<td>694</td>
</tr>
<tr>
<td></td>
<td>0.66%</td>
<td>1387</td>
</tr>
<tr>
<td>2013</td>
<td>4,219,100</td>
<td>210,955</td>
</tr>
<tr>
<td></td>
<td>0.62%</td>
<td>1308</td>
</tr>
<tr>
<td></td>
<td>1.25%</td>
<td>2637</td>
</tr>
<tr>
<td>2018</td>
<td>4,222,700</td>
<td>211,135</td>
</tr>
<tr>
<td></td>
<td>0.84%</td>
<td>1774</td>
</tr>
<tr>
<td></td>
<td>1.69%</td>
<td>3568</td>
</tr>
</tbody>
</table>

* Although the population is taken for 15+, only those of 16 years and over will be able to enter a civil partnership. This is as close as we can get to a Scottish figure.

**Costs to the civil registration service**

178. A computerised system is already in place and therefore set-up costs are expected to be minimal and can be met from within existing resources. The prescribed fees for registering couples will meet costs to local registration authorities.

**Costs to the Scottish Court Service**

179. The Scottish Court Service does not envisage a major increase in costs and will meet any costs out of existing resources.

**Costs to registering couples**

180. The fees for registration of a Civil Partnership in Scotland would be prescribed by the Registrar General for Scotland – as currently happens for marriage. It is envisaged that the fees for civil partnership will be broadly similar to those for marriage. These will be set at a level to recover costs.

181. There would also be costs associated with dissolution. Couples might need legal advice on both registration and dissolution, which would result in costs to them – it is very difficult to meaningfully assess the likely costs to couples associated with dissolution due to a lack of appropriate information but advice under the legal aid scheme would be available to those who met the statutory test.
Costs to the Scottish Legal Aid Board

182. Advice and assistance may be available for advice in connection with the simplified procedure for dissolution and legal aid may be available for court proceedings if the simplified procedure is not appropriate. In either case, the usual statutory tests would apply. We expect that costs will be minimal and able to be met out of existing resources.

Scottish Executive
April 2004
CIVIL PARTNERSHIP BILL

In my letter of 5 February I reaffirmed our intention to seek the Scottish Parliament’s agreement to include Scottish provisions in a UK Civil Partnership Bill when one is brought forward. The Civil Partnership Bill was introduced in the House of Lords yesterday afternoon and published today. The Bill and Explanatory Notes are available online at: www.publications.parliament.uk/pa/pabills.htm.

Now that the Bill has been introduced it is my intention to lay a Sewel motion and memorandum as soon as possible. The Sewel motion and memorandum are currently being finalised. I do not think it appropriate to lay the Sewel during the Easter Recess so I will offer it shortly after Easter Recess. In the meantime, I attach a summary of issues relating to the Civil Partnership Bill.

I look forward to continuing to work with the Parliament on this issue.
CIVIL PARTNERSHIP BILL: SUMMARY OF ISSUES

Policy Objective
The Civil Partnership Bill will create a new legal status for same-sex couples. Couples who register will be able to access a comprehensive package of rights and responsibilities appropriate to committed long term relationships.

Why Civil Partnerships?
Same-sex couples cannot gain legal recognition for their relationship and do not have access to many of the rights and responsibilities necessary for a stable family life and appropriate to a long term relationship. This can cause problems in the event of the death or serious illness of one partner or at the end of the relationship.

What Provisions are in the Bill?
The Bill provides for:
- eligibility to enter a civil partnership;
- the process of registering and dissolving a partnership;
- the obligations of each partner to the other; and
- consequential amendments to existing legislation.

Extent of the Bill
The package of rights and responsibilities relevant to committed couples spans devolved and reserved policy areas. A UK consistent approach requires that these be integrated in a UK Bill. Different legislation north and south of the border at different times would give rise to a fragmented piecemeal approach which would lead to confusion and uncertainty and cross-border difficulties. A UK approach offers a sensible and timely way forward. The Bill extends to England, Wales, Scotland and Northern Ireland. The Scottish Parliament will be invited to agree a Sewel motion in due course.

Consultation
The Scottish Executive published a consultation paper on these proposals in September 2003. 86% of respondents agreed with the introduction of civil partnerships and 74% agreed with the proposed inclusion of Scottish provisions in a UK Bill and the use of a Sewel motion.

Why only Same-Sex Couples?
Civil partnerships will not extend to opposite sex couples because it is about creating a legal status for the small group of people who cannot marry. It is not the intention to create an alternative to marriage for those who can marry in a civil or religious ceremony.

Basis of Scottish Provisions in the Bill
The Scottish provisions within the Civil Partnership Bill are based on Scots law. This ensures that while the policy is consistent across the UK, it does not necessitate the importation of English law into devolved Scottish areas.
Structure of the Bill
The Bill is structured in 8 parts. Provisions dealing with matters that are devolved to the Scottish Parliament are contained within Parts 1, 3, 5, 6 and 8.

- Part 1 introduces civil partnership
- Part 2 sets out the arrangements for civil partnerships in England and Wales
- Part 3 sets out the arrangements for civil partnerships in Scotland
- Part 4 makes provision for civil partnerships in Northern Ireland
- Part 5 deals with civil partnerships formed or dissolved abroad
- Part 6 deals with relationships arising through civil partnership
- Part 7 contains miscellaneous provisions
- Part 8 contains supplementary material such as consequential amendments and repeals.

Full details of the Scottish provisions will be detailed in the Sewel motion and memorandum which will be laid after Easter recess.
Ms Pauline McNeill MSP
Convenor, Justice 1 Committee
The Scottish Parliament
Edinburgh
EH99 1SP

26 April 2004

Dear Ms McNeill

Civil Partnerships Bill
Petition to allow religious involvement in Civil Partnership Ceremonies

I refer to the Civil Partnerships Bill, currently before the House of Lords, which will shortly be considered by the Justice 1 Committee in respect of a potential Sewell motion.

Our Church warmly welcomes this long overdue Bill but seeks changes to reflect the position of lesbians, gay men and bisexuals for whom their religious faith is an important component of their lives.

I attach a copy of a petition signed by members, friends and attenders of our Church seeking the right for people of faith to have their Civil Partnership conducted in a religious context which was submitted to the Public Petitions Committee of the Scottish Parliament on 19 April 2004.

You will see that we seek that a minister of religion should have the right (although not the obligation) to officiate at a Civil Partnership on behalf of the State in a similar way that he or she may currently do for mixed-sex marriage. From the position of the State, every marriage is a "civil" marriage (ie one governed solely by the Marriage (Scotland) Act 1997) albeit that the civil status can be created by a ceremony conducted by either an authorised minister of religion or a State appointed Registrar. The religious consequences of a marriage vary from religion to religion (some, for example, will not allow re-marriage of divorcees, others will allow polygamy in certain circumstances) while the civil concept is defined solely by law.

Unless this change is made Churches will be in the unfortunate position where they can solemnise the committed relationships of their members in mixed-sex relationships but not those in same-sex relationships. This denies a same-sex couple the right to manifest their religion in the creation of their civil status in the same way that is open to mixed sex couple and this denial is, it is submitted, contrary to the European Convention on Human Rights. Further it denies the importance of faith to many same-sex couples and appears to accept the incorrect view of the religious right that you can not be lesbian, gay or bisexual and have a faith commitment.

We would be happy to discuss this further with you or the Committee should this prove useful to you in your consideration of this matter.

Yours sincerely

Stephen Harte
Communications Ministry Coordinator
European and External Relations Committee

Committee Convener
Parliamentary Headquarters
George IV Bridge
Edinburgh, EH99 1SP

30/04/2004

Dear Convener,

SUBJECT: European documents of Special Importance

During the European and External Relations Committee Meeting of 27 April 2004, European document(s) of special importance were highlighted in the “Sift” document as being of particular relevance to your Committee.

Please find attached a copy of the document, along with a copy of the Special Importance page of the “Sift” document, which gives details of the document and explains why it was selected.

I also attach a copy of the relevant accompanying Explanatory Memorandum (EM), which is produced by the lead Whitehall department. If no EM is attached, then we have not yet received it. A copy will be sent to you as soon as it has arrived in the Parliament.

If you have any queries regarding the documents, then the Committee’s staff would be very happy to advise you further. Please contact, in the first instance, Ruth MacLeod, tel 85191.

Yours sincerely,

Richard Lochhead MSP
Convener

cc Committee Clerk
# Documents of Special Importance

<table>
<thead>
<tr>
<th>Subject Committee</th>
<th>SP Ref</th>
<th>EU Ref</th>
<th>Document Title</th>
<th>Explanatory Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice 1 and 2 Committees</td>
<td>970</td>
<td>COM (2004) 165</td>
<td>Communication from the Commission to the Council and the European Parliament: crime prevention in the European Union</td>
<td>May be of interest to the Justice Committees and worth noting. The document follows up previous documents and work in the area of crime prevention at an EU level. The draft constitution reconfirmed, in Article III 173, the need for the EU to continue to pay attention to crime prevention. This states that European law or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention. The document limits itself to the prevention of non-organised crime. The document seeks to avoid duplication of efforts and to focus on using resources more efficiently by developing further cooperation on crime prevention methods at an EU level. UK Government Explanatory Memorandum available on request.</td>
</tr>
</tbody>
</table>

c/o Room 5.15/5.16, Parliamentary Headquarters, George IV Bridge, Edinburgh, EH99 1SP
Tel: +44 (0)131 348 5234, Fax: +44 (0)131 348 5088, E-mail: richard.lochhead.msp@scottish.parliament.uk
COVER NOTE

from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director
date of receipt: 15 March 2004
to: Mr Javier SOLANA, Secretary-General/High Representative
Subject: Communication from the Commission to the Council and the European Parliament: crime prevention in the European Union


Encl.: COM(2004) 165 final
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

CRIME PREVENTION IN THE EUROPEAN UNION
# TABLE OF CONTENTS

1. CONTEXT AND DEFINITIONS .................................................................................................................. 3  
   1.1. The legal and political context ........................................................................................................ 3  
   1.2. Definitions ...................................................................................................................................... 4  
       1.2.1. The concept of volume crime .................................................................................................. 4  
       1.2.2. The concept of crime prevention ............................................................................................. 5  
   1.3. General crime trends ....................................................................................................................... 7  
   1.4. Trends in selected crime areas ....................................................................................................... 8  
   1.5. Public opinion on crime ................................................................................................................ 8  
   1.6. Expected future crime trends ........................................................................................................ 9  
2. DEVELOPMENTS AT EU LEVEL ............................................................................................................... 9  
   2.1. Achievements in the Member States ............................................................................................... 10  
   2.2. Achievements at EU-level ............................................................................................................. 11  
       2.2.1. The European Crime Prevention Network ........................................................................... 11  
       2.2.2. The Hippokrates and AGIS programmes ............................................................................. 13  
   2.3. The European Crime Prevention Award ....................................................................................... 13  
3. CONCLUSIONS AND RECOMMENDED ACTIONS ............................................................................... 14  
   3.1. Essential conditions in the Member States ..................................................................................... 14  
   3.2. Essential conditions at EU level .................................................................................................... 15
1. CONTEXT AND DEFINITIONS

1.1. The legal and political context

The Treaty of Amsterdam, in force since May 1999, established a legal basis for crime prevention activities at EU level. Article 29 states that the “Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice”. It lists the prevention of crime, “organised or otherwise”, as one of the means towards the attainment of this goal.

Until the entry into force of the Treaty of Amsterdam in May 1999, attention for crime prevention policies at EU level had mostly been limited to the prevention of organised crime. The Action Plan to Combat Organised Crime of 1997 identified some priority areas to prevent organised crime and the Vienna Action Plan of December 1998 also included specific measures in this respect.

The European Council of Tampere of October 1999 confirmed the importance of effective crime prevention policies in the Union through its conclusions, which call for:

- the integration of crime prevention aspects into actions against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation;

- the exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this co-operation could be juvenile, urban and drug-related crime."

On 29 November 2000 the Commission submitted a Communication to the Council and the European Parliament "The prevention of crime in the European Union: Reflection on common guidelines and proposals for Community financial support". This Communication was the first step from the Commission to identify priority areas in crime prevention at EU level and to contribute to developing an effective EU strategy. Following this Communication, important developments have taken place, such as the creation of the European Forum for the Prevention of Organised Crime, the establishment of the European Crime Prevention Network and the adoption of a Council Decision creating the Hippokrates program to co-fund co-operation projects between Member States.

---

5 The establishment of the Forum was foreseen in the Commission Communication mentioned in footnote 1. A first plenary meeting of the Forum took place on 17th and 18th May 2001.
In addition, a specific research topic on crime prevention has been introduced in the 6th EU Framework Programme RTD (Research and Technological Development). This will inter alia help defining common instruments for measuring the extent and the nature of volume crime, evaluating crime reduction strategies and analysing long-term threats.

Like the 2000 Communication, the current Communication also underlines the primary responsibility of the Member States in the field of prevention, since juvenile, urban and drug-related crime occur at the local level. In order to effectively support prevention activities in the Member States, to avoid duplication of efforts and to use resources more efficiently, certain co-operation activities need to be taken at EU level.

The draft Constitutional Treaty prepared by the Convention on the future of Europe reconfirms the need to continue to pay adequate attention to crime prevention with its Article III 173. This states that European laws or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention (except the approximation of legislative and regulatory provisions).

1.2. Definitions

1.2.1. The concept of volume crime

This Communication limits itself to the prevention of non-organised crime. The Commission is of the opinion that these types of crime can best be defined as volume crime because this type of crime comprises all ranges of crime, which are committed frequently and where victims are easily identifiable. Volume crime is the number one cause of concern for European citizens. Offences are typically committed against property and do often involve physical violence. Examples are domestic burglary, theft from vehicles, common assault, street robbery, etc. These types of crime are covered by the three broad priority areas identified by the Tampere European Council: juvenile, urban and drug-related crime. An important feature of volume crime is that it shows the contours of normal victimisation against households and citizens. This has implications for preventive policies, especially those concerned more with alleviating the commonplace nuisance of these types of crime than with reducing the number of 'headline' offences that more often are committed in the field of organised crime.

However, its importance in terms of causing financial costs to society should also not be underestimated, while taking into account that cost estimates vary between Member States. And, studies have shown that such crime is often the first step for young people to

---

11 The most sophisticated national estimates of the costs are available for England and Wales, where the Home Office has published a well researched and analysed report showing the annual costs of crime to be £60 billion or the equivalent of € 1,700 per citizen in 2000. These costs included the costs of anticipatory measures such as private security (about 9%); consequences, such as the impact on victims of loss, suffering and community decay (about 71%); and responses, such as operating expenditures on
get involved in more serious forms of crime, including organised crime. Investing in volume crime prevention would therefore also contribute to curbing more serious criminality.\(^{12}\)

\subsection{1.2.2. The concept of crime prevention}

For the purpose of this Communication, the Commission proposes to use the definition of crime prevention presented in the Council Decision of May 2001 establishing the European Crime Prevention Network (EUCPN). According to that definition, “… crime prevention shall cover all measures that are intended to reduce or otherwise contribute to reducing crime and citizens' feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime. It includes work by government, competent authorities, criminal justice agencies, local authorities, specialist associations, the private and voluntary sectors, researchers and the public, supported by the media”.\(^{13}\)

Preventive measures should thus not only address crime \textit{stricto sensu}, but also cover “anti-social behaviour”, which forms, so to speak, a sort of 'pre-stage' of crime. Examples of such behaviour are noisy neighbourhoods, neighbourhoods characterised by teenagers hanging around, drunk or rowdy people, rubbish or litter lying around, deteriorated environments and housing. Such conditions can affect the regeneration of disadvantaged areas, creating an environment in which crime can take hold. Anti-social behaviour undermines the sense of security and responsibility that is needed for people to participate in their community. From a prevention perspective, it is therefore also an important area to concentrate upon.

Prevention should also address the issue of fear of crime, since research\(^{14}\) shows that such fear can often be as harmful as crime itself. Fear of crime can lead to withdrawal from social life and loss of trust in police and the rule of law.

There is general agreement with the relevant authorities in the Member States that the prevention of crime constitutes a necessary complement to repressive measures. Experience shows that an unbalanced focus on repressive measures leads to ever increasing costs for the criminal justice system, growing prison populations and recidivism rates. If well conceived and implemented, preventive measures can, to varying degrees, contribute to a considerable reduction of crime. That crime prevention can indeed work is illustrated by the following examples\(^{15}\).

\begin{thebibliography}{99}
\item During the last years a number of overviews have proven evidence that crime prevention measures offer effective ways of getting or driving crime down:
\end{thebibliography}
• The risk of domestic burglary can be reduced significantly by taking a number of relatively simple prevention measures, such as the ones described in the Police Population Monitoring Programme, a large Dutch victimisation survey. Such research\textsuperscript{16} shows that when five of such prevention measures are taken, the risk of burglaries is reduced dramatically (keeping a light on when leaving out; extra locks on doors and windows; extra outside lighting; burglar alarm and/or dog).

• Evidence from well-researched and evaluated initiatives for juveniles in the 10-16 age group strongly suggests that significant long-term benefits will accrue from effective developmental and early intervention programs. 16 years later participants were found to be much less likely arrested than their counterparts in the control group\textsuperscript{17}.

• Although it may sound simple, enhanced street lighting is a crime prevention measure that has been proven to work. A systematic review of 13 separate studies shows that enhanced street lighting reduces crime by about 20%.\textsuperscript{18} It revealed that areas with enhanced lighting at night also experience less crime during daylight hours. The installation of new lighting may have given a signal to potential offenders that there is increased community investment in the area, greater pride, cohesiveness and informal control, 24 hours a day.

• An important example which should also be mentioned, a landmark case in prevention policy, is the Perry Pre-school program. This initiative, started in the United States in the 1970’s, provides pre-school enrichment classes for small children (3 and 4 years old) of low income families, combined with weekly home visits by program staff. Long-term follow-ups revealed that program participants have significantly lower juvenile and adult arrest rates, but also significantly higher rates of high school completion, tertiary education, employment and earnings. In addition to its proven effectiveness the program has passed a cost/benefit analysis positively. Total benefits have been estimated at three times the program costs.

The EU Youth Programme\textsuperscript{19}, which started at the end of the 1980s, focuses on the well-being, inclusion and political respect of young people in society. Through its activities the Programme has important prevention effects.

---


\textsuperscript{17} Center for the Study and Prevention of Violence / CSPV (2003). Model programs and promising programs. \url{http://www.colorado.edu/cspv/blueprints/default.htm}


\textsuperscript{19} \url{http://europa.eu.int/comm/youth/index_en.html}
Finally it should be mentioned that education in prison and in the crucial post-release period can play a vital part in helping offenders to make the difficult transition back into the social mainstream and to reduce the recidivism. Grundtvig, the adult education action within the EU education programme Socrates, supports projects and learning partnerships which have a remarkable impact on the participating institutions and beyond. Volume crime most often occurs locally, in cities and towns. This means that effective policies can only be implemented at these levels, while adjusting them to the specific local or regional conditions. It is therefore the responsibility of Member States to ensure the implementation of effective crime prevention policies at all levels on their territory. As a consequence of the local emphasis, there is a need to develop preventative action as close as possible to the grass-roots level and to involve many different kinds of actors. A typical characteristic of prevention measures is therefore also the necessary involvement of a variety of actors, including public (e.g. police, local governments, social work, all these with a particular focus on youth) and private (business associations, insurance companies, citizens' organisations).

1.3. General crime trends

Information regarding crime trends and the public opinion on crime is necessary to get a better understanding of the implication for society if preventive action is not taken, and how crime prevention efforts can reduce tangible and non-tangible costs for victims of crime and recidivism among offender populations. The nature and volume of crime at the EU-level can be measured by two main sources: (1) official crime statistics registered by the police and (2) the International Crime Victims Survey (ICVS). As regards the first source it is not possible to compare absolute and relative numbers between Member States because of the many differences between Member States in legislation and the different ways official crime statistics are produced. However, for trends in time, these data can be useful.

When looking at the total number of crime recorded by the police the following picture at EU-level emerges. The development in the crime level from 1950 to 1970 shows a steady, though not disquieting, increase. However, since 1970 crime levels accelerated, with a climax in the mid-nineteen-eighties. Since 1990 the total amount of registered crime has remained fairly stable in the 15 Member States. The average annual percentage increase between 1991 and 2001 is around one percent.

The second source that can be used to give a picture of the nature and volume of crime at EU-level is the ICVS. This survey is the most far-reaching program of fully standardised sample surveys looking at householders' experience of crime in different countries. An estimate of

---

20 A broader European network has been launched, and support provided for the European Prison Education Association to consolidate and extend its activities. The training of prison educators (and of prison officers, whose role in creating a positive learning environment is vital) requires particular attention in this regard.


22 See [http://www.unicri.it/international_crime_victim_survey.htm](http://www.unicri.it/international_crime_victim_survey.htm).
absolute levels of crime can be obtained from the ICVS relating to victims' experience of crime. Generally speaking, the ICVS suggests that crime rose between 1988 and 1991, or fell in 1995, and then fell back more in 1999. Comparison with data on crime recorded by the police suggests that the trends from the victimisation survey data are similar to those from the police data.

1.4. Trends in selected crime areas

In addition to the total number of crimes, two specific types of crime recorded by the police are briefly dealt with: domestic burglary (defined as gaining access to a dwelling by the use of force to steal goods) and violent crime (defined as violence against the person, robbery and sexual offences). These crimes are selected since they are, from the victims’ point of view, the most serious and costly types of crime, which cause great concern among urban population and occur frequently in all Member States.

There is a remarkably sharp decrease of domestic burglary in many EU Member States. One of the main reasons for this spectacular fall is probably the influence of increased preventive behaviour among the population. According to the latest outcomes of the International Crime Victims Survey the use of crime preventive measures among the population is increasing in most countries. The proportion of homes with special door locks has generally increased since 1992. Average alarm ownership increased from 8% in 1992 to 14% in 2000, but the problem still exists. Domestic burglary implies a violation of one’s personal space. In these cases the negative effects of victimisation are greater than just the damage in material terms.

In the year 2000 the police in the 15 Member States recorded a total number of 1.511.000 domestic burglary cases. This means an average of 4.140 cases per day, 172 per hour and almost 3 cases every minute.

Statistics unfortunately indicate an increase in the level of violent crime at the EU-level. This seems to hold particularly for violence among juveniles. When comparing the trends in violent crimes recorded by the police over the years 1995 to 2000, an increase in violence is observed in twelve of the Member States. Spain, France and the Netherlands show the sharpest increase (+ 50 - + 41 %).

In the year 2000 the police in the 15 Member States recorded a total number of 1.770.000 cases of violent crime. This means an average of 4.850 cases per day, 202 per hour and more than 3 cases every minute.

1.5. Public opinion on crime

Next to statistics derived from police sources and victimisation surveys, public opinion surveys on crime also serve as important tools to measure the fear of crime, risk perception of victimisation, and opinions on crime and crime prevention.

These show that the feeling of insecurity has increased slowly but steadily across the EU as a whole between 1996 and 2002. In autumn 2002, women and the elderly are the demographic groups who are most likely to feel insecure. The level of contact with drug-related problems

---

in the area of residence also increased across the EU over the same period. Younger respondents were most likely to report such contact. In all Member States, over half of all respondents felt that better policing would help reduce crime. Across the EU, respondents were significantly more likely to think that young people would be more effectively deterred from crime by targeted crime prevention programmes than by tougher sentencing. A majority of respondents also thought that poverty and unemployment and lack of discipline were factors that could encourage youth to commit crime.

1.6. Expected future crime trends

Crime is changing continuously. Offenders adapt to countermeasures. Offenders misappropriate, mistreat or misuse new products, services and systems, and misbehave in newly created environments. This means that the authorities should be permanently scanning for new threats and developments on the crime market. In this way large-scale crime preventive effects can be achieved. However, many past efforts have shown that some developments were entirely unexpected. On the basis of a number of recent initiatives that looked ahead to identify new crime threats and developments, a number of major developments from social, technological or economic change can be assessed.

In general, society will be more diverse, networked, better educated, more prosperous and better informed, but with potentially more people at risk. The increased movement of people, services, goods and new technologies brings enormous opportunities for prosperity and growth, but it can also provide new opportunities to commit crimes. Some groups remain excluded from the trends of prosperity and learning: one-parent families, drug and alcohol abusers, people living anonymously alone in households and marginalised areas, immigrants, and second and third-generation migrants. New technology might create more opportunity for crime by: providing easier access to systems, premises, goods and information; removing geographical obstacles to crime; increasing the scale of potential rewards; and increasing anonymity in committing crime or consuming its proceeds.

Due to these developments, the authorities need to prevent and respond to more specialised crimes, such as electronic theft, whose scale and speed may be increased by new technologies. In the years to come governments will need to develop prevention policies to adapt to societal changes and to emerging crime patterns. National crime prevention policies need to be able to respond in an innovative way to the challenges that such developments bring.

2. DEVELOPMENTS AT EU LEVEL

Due to the fact that volume crime occurs at the local level, effective policies can only be taken at that level, with support from the national one. Certain co-operation activities need to be taken at EU level, however, in order to effectively support activities at national level, to avoid duplication of efforts and to use resources more efficiently.

2.1. Achievements in the Member States

Different Member States have had varying degrees of success in the field of volume crime prevention\(^\text{26}\).

Despite the positive developments in a majority of Member States there are still a number of obstacles, which hinder the effective prevention of volume crime. These can be briefly described as follows.

*Implementation difficulties*

There is growing evidence that successful crime prevention measures do exist and can be applied to many forms of delinquent behaviour. However, the challenge is how to put this knowledge into practice. Often, existing good or best practices are not used in official crime prevention policies and practices. There seems to be a gap between the results from research and crime prevention policies and practices, which can be explained by the following.

There are many different partners and organisations operating in the crime prevention field, which often do not operate in a co-ordinated manner as would be desired. Another difficulty is related to insufficient inter-linkage between information of the many authorities and organisations involved in crime prevention (police, youth workers, chambers of commerce, municipal social services departments, etc.). The limited use of the large amount of information contributes to the measures taken not being in accordance with the actual problem.

There is still not very much knowledge for quantitative and qualitative methods of analysis and of all possible preventive measures, their relevance, limitations and successes.

There are ample cases of crime prevention still getting limited attention compared with the other chains of the criminal justice system. The limited means and human resources lead to the fact that necessary long-term planning is often replaced by a short-term approach and that insufficient attention is paid to the proper implementation of prevention projects.

*How to bridge the gap*

A number of measures can remove the above obstacles. Descriptions of best and good practices should be more user friendly particularly for those working in daily practice. In case of the recruiting, selection and promotion of management staff and personnel implementing the crime prevention policy, greater importance should be attached to the knowledge of professional literature and analysing methods and their application in crime prevention practice. Subsidising authorities should draw the attention of those implementing prevention programs to existing best and good practices and to the possibilities of making use of them. Adequate process and impact evaluation should be a standard condition for agreement with or support of any crime prevention scheme. The exchange of information between various partners should be rewarded. There are Member States which place obligations on local authorities, the police, police authorities, health authorities and probation committees (amongst others) to co-operate in the

---

\(^{26}\) Over the last years a majority of them has developed crime prevention policies. Determining factors behind successful policies are usually a political commitment at the highest level, making available adequate resources for prevention, guidance to local and regional governments, and a close co-operation between public authorities and society, including the private sector. It is important to note that these factors are included in the United Nations Guidelines for the Prevention of Crime of 2002 (see also footnote no.33).
development and implementation of a strategy for tackling crime and disorder in their area (including exchanging information). These organisations have to consider changed working practices, internal priorities and their relationships both with other agencies and with the wider community.

Properly implemented schemes that fail in terms of product target, but contribute to the knowledge of the causes of this failure should be rewarded as successes. Governments should set up dedicated professional units that take the responsibility for leadership on crime prevention and for the application and implementation of evidence-based crime prevention interventions. Crime prevention measures need time to be implemented and require a number of years to fully develop and be evaluated. Because many of today's crime problems require solutions that extend beyond traditional criminal justice boundaries, new system wide responses must be encouraged by government having the same political status as other chains in the criminal justice system.

If European crime prevention policies want to improve justice and security, the implementation and application of successful and evidence-based crime prevention is an absolute pre-condition.

2.2. Achievements at EU-level

Following the November 2000 Communication, the Union has adopted important instruments to contribute to more effective crime prevention throughout the Union, such as the European Crime Prevention Network and the Hippokrates and AGIS funding programmes.

2.2.1. The European Crime Prevention Network

On 28 May 2001, the Council adopted a Decision establishing the European Crime Prevention Network (EUCPN). The objectives of the network are to contribute to developing the various aspects of crime prevention at Union level and to support crime prevention activities at local and national level. Although covering all types of criminality, the Network shall pay particular attention to the fields of juvenile, urban and drug-related crime. In this respect the Network should facilitate co-operation, contacts and exchanges of information and experience between Member States, national organisations, the Commission and other networks specialising in crime prevention matters. Another important task of the Network is the collection and analysis of information on existing crime prevention activities.

Achievements so far

The Network has achieved good results since its beginning in 2001. For the first time ever, Member States representatives and experts have begun meeting regularly to exchange experiences, set a common strategy and priorities for action and research on the basis of annual programs. A beginning has been made to inventory prevention policies which have proven to be effective (good practices). The first conference for the exchange of good practices on the issues of youth crime/ethnic minorities, domestic burglaries and drug-related robberies was organised on 7-8 October 2002 in Denmark with co-funding from the Hippokrates programme. A second conference held in Rome on 11-12 November 2003 represented a further important step in building up an EU-wide body of good prevention practices.

---

27 http://www.homeoffice.gov.uk/docs/cdaindex.html
Progress has been achieved in the development of a common methodology to prepare, implement and monitor prevention projects. The establishment of expert groups has enabled progress as for example in tackling the problem of theft of mobile phones as a serious form of street crime, and improving co-operation between the public and the private sector. Expert meetings have also led to a better view on gaps in research and ways to fill these. In this context the Network Secretary is currently preparing the implementation of five studies on subjects like juvenile violence, car-theft index, fear of crime, bullying in schools and the costs and benefits of crime prevention.

Considerable work has been done in collecting, describing and improving the quality and comparability of Member States criminal justice statistics. The EUCPN Subgroup on Crime and Victimisation established an inventory of the information available on national and cross-national crime statistics to provide easy reference for policymakers in the Member States. The group focused on (street) robbery, domestic burglary and car theft. In May 2003 it produced a report recommending how to improve and apply cross-national statistics in prevention policies.

The website of the EUCPN has become an effective tool for providing information, both to practitioners and the general public, on Member States' prevention policies, the activities of the EUCPN. The Network has established co-operation links with the European Monitoring Centre for Drugs and Drug Addiction in Lisbon and with Europol.

Good progress was achieved also as regards the development of a common methodology to prepare, implement and evaluate concrete crime prevention projects. Such a methodology is necessary to improve the quality of prevention projects wherever carried out in the Union and to enable a standardised comparison between countries. The discussions in the EUCPN focused on the so-called '5 I's approach. The 5 'I's refer to the five steps to be taken in the description and evaluation of each crime prevention project/measure. 30 The EUCPN plans to have agreement on the 5 I's approach between the Member States in the next few months. It is important to formalise such agreement so that its effective application is ensured.

**Difficulties faced by the EUCPN**

The Council Decision establishing the Network calls for an evaluation of its activities in the three years following the adoption of the Decision31, i.e. before the end of 2004. In order to assist the Council in making its evaluation next year the Commission considers it necessary that the institutional structure of the EUCPN needs to be subject of a thorough assessment. Despite the results achieved so far, the functioning of the Network needs to be improved considerably. Major difficulties stem from the facts that the network does not have any

---

29 The expert meeting on mobile phone theft has led to a meeting between the Commission, manufacturers, providers and interested Member States in June 2003 to clarify actions that should be taken at national and EU level. Discussions are continuing, on the basis of a questionnaire, to determine, normally before the end of 2003, which actions are most effective at each level and who should take concrete initiatives.

30 Ekblom, Paul (2003). The 5IS Framework (the Five 'I's refer to: 1) Intelligence: gathering and analysing information. 2) Intervention: blocking, disrupting or weakening the causes of crime. 3) Implementation: converting the intervention principles into practical methods. 4) Involvement: mobilising other agencies, companies and individuals to play their part in implementing the intervention or acting in partnership. 5) Impact and process evaluation.

institutional structure, that the budget is not adequate and no clear financial rules exist. In addition the Secretariat with a staff of 1,5 person is too small to fulfil its tasks properly, also in view of the fact that the Network will comprise 25 full members from 1 May 2004 onwards. The Commission therefore strongly believes that in order to become fully effective the EUCPN should profit from the Community budget, possess financial rules, which stipulate clearly how the budget should be used and a Secretariat staffed with an adequate number of persons. Options in this respect are either to give the Network legal personality or to incorporate the Network into the Commission services.

Another problem is that the full potential of the Network can not be realised as long as not all Member States have committed themselves to formally adopting and implementing national general crime prevention policies. As long as not all Member States have such policies, there is the risk that the activities of the Network, however useful they may be in themselves, will take place in partial isolation, without an adequate follow-up in the national crime prevention practice in the Member States.

2.2.2. The Hippokrates and AGIS programmes

Following the November 2000 Communication on crime prevention, the Union has adopted two instruments to co-fund co-operation projects between Member States in the field of crime prevention, Hippokrates in 2001 and AGIS in 2002.

The “Hippokrates”-programme aims at encouraging co-operation between all the public and private organisations in the Member States involved in the prevention of crime. It was established for a period of two years, 2001 and 2002. The priorities for general crime prevention were based on the three main issues identified by the Tampere European Council and the work programme of the EUCPN, namely juvenile-, urban- and drugs-related crime. In 2001 23 projects out of 60 project proposals were funded. In 2002 the programme received 44 projects of which 14 got financial support. Examples of successful project proposals were co-operation between the public and the private sector in crime prevention, football hooliganism and designing out of crime.

At the proposal of the Commission the Council, on 22 July 2002, adopted a framework programme to co-fund co-operation projects in police and judicial co-operation in criminal matters, the AGIS programme which inter alia replaced the Hippokrates programme.

In 2003 30 out of 54 crime prevention projects were co-funded. Examples of successful proposal include the design of secure urban environments, the exchange of best practices on juvenile and urban crime as well as costs of crime and their distribution.

2.3. The European Crime Prevention Award

The European Crime Prevention Award (ECPA) is an initiative from the Netherlands, Belgium and the UK from 1997. The idea behind it was to give an incentive to crime prevention actors by selecting for the European award, on a yearly basis, the two best crime prevention projects. The projects had to be chosen on the basis of established criteria, such as their repeatability, respect for local conditions, and effectiveness in actually reducing crime.

---

Since then, six other Member States have joined the ECPA, which was born as an initiative from six Member States (Denmark, France, Sweden, Portugal, Greece, and Finland).

The objectives of the Award are to contribute to the reduction of crime and the fear of crime, the sharing of good practices on an international level and the further encouragement of crime prevention activities. The Award offers a unique possibility to raise awareness of crime prevention in a very broad context including field workers as well as official representatives from both Member States and Candidate Countries.

In order to make the ECPA better known and hopefully accepted by all Member States, the EU has co-financed the initiative through the Hippokrates programme. Thanks to this financial aid, the ECPA of 2002 was not only limited to the presentation of best and most promising practices, but also comprised an in-depth discussion on the implementation and the evaluation of the participating projects. The Commission is considering that, in order to provide for better coherence and stability, in the future the ECPA should become an integral part of the EUCPN and include all EU Member States.

3. CONCLUSIONS AND RECOMMENDED ACTIONS

Volume crime prevention is a relatively new, but potentially effective, policy instrument to reduce crime. It should therefore constitute a policy area in its own right within the European Union. In order to ensure more effective crime prevention throughout the Union, the Commission considers it essential that the following conditions are fulfilled, both in the Member States and at EU level.

3.1. Essential conditions in the Member States

Local authorities first

Volume crime typically occurs at local level. Thus the authorities at those level are first of all responsible for addressing the problem, ideally supported by the national level. Co-operation at EU level can provide an important facilitating and supporting role, without, however, substituting national policies of the Member States.

National crime prevention policies are key

The majority of Member States has developed volume crime prevention policies, but a considerable minority of them not yet. The Commission therefore proposes that all Member States formally declare their commitment to establishing effective volume crime prevention policies.

Following internationally agreed standards is important

Achievement of successful crime prevention policies requires a number of essential conditions. Many of them figure on the list of the United Nations Guidelines for the Prevention of Crime\(^{35}\). These include *inter alia* the existence of a political commitment at the highest level, adequate resources including funding for structures and activities, guidance

from the national level to local level as well as efficient public-private partnership. Crime prevention strategies should also, when appropriate, pay due regard to the different needs of men and women and consider the special needs of vulnerable members of society. Differentiation is also important to both in relation to offenders and victims. The Commission is of the opinion that, in the interest of effective crime prevention, throughout the Union, it is necessary to incorporate the UN crime prevention principles into Member States’ national prevention policies.

3.2. Essential conditions at EU level

In order to effectively support activities at national level, to avoid duplication of efforts and use resources more efficiently, co-operation activities regarding volume crime prevention need to be taken at EU level also.

In the Commission’s view, the main tasks and activities to be performed at the EU level are: exchange of experience between policy makers and experts in prevention; define and agree priorities for action; agree on crime prevention policies/measures which have proven to work (good practices); agree on uniform methodologies to prepare, implement and evaluate prevention policies; enhance awareness throughout the Union on the relevance of general crime prevention; agree on joint research to be undertaken to fill research gaps; undertake joint prevention projects; monitor and evaluate national prevention policies; improve the comparability of national statistics to identify differences in the level of crime (so as to be able to identify causes for successful/unsuccessful policies).

These tasks and activities would benefit from the support of the Member States, while keeping in mind that the activities which the Member States undertake jointly in the context of the EUCPN can never substitute concrete national crime prevention activities.

In order to enable the EUCPN to function more effectively and to address the difficulties explained in section 2.2.1, the Commission intends to submit a formal proposal regarding the future institutional structure of the Network following its evaluation in 2004.

The Commission proposes that in the next few years Member States and the Commission, in the context of the EUCPN, focus in particular on the following five main areas for priority action, in order to achieve concrete progress more rapidly:

Priority types of crime

First of all there is a need to identify and find formal agreement on the exact types of volume crime on which the Member States should focus their attention. The European Council conclusions of Tampere and the Council Decision establishing the EUCPN have selected juvenile, urban and drugs related crime as priority areas. These are too broad categories, however. The Commission therefore proposes to subdivide them, exhaustively, into all the various types of crime which fall under these three categories (e.g. street robberies, theft from vehicles, burglaries,). On the basis of that list priority types of crime should be selected for particular attention.

Good practices inventory

Secondly and in parallel, an inventory should be made and agreed upon of all existing good practices to tackle each of the selected types of crime. Member States should subsequently
agree on which of the good practices are most effective and then commit themselves to begin implementing each of the good practices for the relevant type of crime

**A common methodology – the 5 I’s approach**

A third priority area is to find agreement on a common methodology to prepare, implement and evaluate concrete crime prevention projects. This is necessary to improve the quality of prevention projects and to enable a standardised comparison between countries. The Commission proposes to build on the good progress that has been achieved in this area in the past few years in the Union as regards the so-called '5 I's approach and to find formal agreement in the next few months.

**Monitoring and evaluation**

An important activity to be undertaken at EU level is also the regular monitoring and evaluation of Member States' general crime prevention policies. Experiences with the joint evaluation mechanism established under the Joint Action of 5 December 1997 in the area of organised crime have shown that this can play a useful role in monitoring progress, comparing experiences, drawing policy conclusions and informing the European citizen. Such a solution should therefore be proposed regarding volume crime prevention as well.

**Statistics**

Finally, European co-operation is hindered by differences in definition, recording procedures and the structure of crime and criminal justice statistics. Member States need to have sound statistics on the occurrence of priority types of crime. Only an increase in the comparability of statistical data on crime can help to identify differences between the level and type of crimes at national, regional and city-level and to identify effective measures for targeted interventions and policies at EU-level.

**Final remarks**

On the basis of a discussion of this Communication with the European Parliament and the Council and taking into account the conclusions of the EUCPN evaluation to be carried out by the Council in mid-2004, the Commission intends to put forward by the end of 2004 proposals to implement the above recommendations in order to achieve quicker and more tangible progress regarding the prevention of volume crime in the Union.

---

36 OJ L 344 of 15.12.1997, p. 7-9. In the Joint Action the Member States agree on a mechanism for a regular peer evaluation of the application at national levels of legislative instruments in the fight against organised crime.
EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

BRIEFING PAPER

“Pre- and post-Council of the EU analysis and scrutiny”

Introduction

1 One of the core scrutiny tasks that the European and External Relations Committee conducts is the analysis of information received from the Scottish Executive on meetings of the various Council of the EU formations (formerly known as the Council of Ministers).

2 Two types of information are shared with the Committee under the agreement between the previous Committee and the Executive. First, a few weeks in advance of a Council meeting, the Committee is provided with an annotated agenda of the Council. This sets out the nature of the agenda and the Executive’s views on the items in question where it has a competence. The Executive’s views tend to be italicised so as to stand out for the reader. Members should be aware that often the agenda is a ‘best guess’ and second, the views provided are designed not to prejudice the UK’s negotiating position whilst still providing sufficient information for Members to have an understanding of the subject.

3 Second, following the meeting of the Council, within a few weeks, the Executive provides the Committee with a post-Council report, detailing attendance and the discussions that took place.

4 These two types of information give rise to the shorthand terminology of ‘pre- and post-Council scrutiny’ for this particular task of the Committee. In scrutinising the material, the Committee has a range of options:
   - note the material having placed it into the public domain for others to use
   - ask for more written information from the Executive
   - invite the relevant minister to attend the next committee meeting for further discussions

5 The nature of the scrutiny to be undertaken by Members should be focusing on two distinct areas. As a first priority, the Committee should aim to focus on the Council agenda items that make reference to early,
formative discussions (e.g. on Green Papers, White Papers, Commission Communications, orientation debates etc.) in the Council. This is an indication that the decision-making process for these agenda items in the Council is at an early stage. It is here that the Committee might best influence the minister’s thinking early on.

6 As a second priority, to be used perhaps only occasionally, the Committee may choose to focus upon agenda items nearing final decisions.

7 In a new development for session two of the Parliament, the relevant sectoral information is being sent directly by the relevant minister to other subject committees. This means, for example, that in addition to this Committee receiving fisheries information, the Environment and Rural Development Committee is simultaneously in receipt of the same information.

8 What this means for this Committee is that any further dialogue with the Executive is best done in co-ordination and co-operation with the dialogue that another committee may choose to undertake. Members should note that such as system does not preclude the European and External Relations Committee from engaging with all the material and information received. On occasions, it may be that an issue is pressing, but a subject committee has no time in which to deal with it and therefore this Committee may tackle the issue. This system requires good communication between conveners and between clerks, and close co-operation between the clerks and officials in the Executive.

This paper

9 Based on experience from session one of the Parliament, these papers are best sub-divided into two sections. Annex A contains a summary table, with the Convener’s recommendation(s) for each Council agenda/report. Annex B contains the full information provided by the Executive for each of the Councils being considered at today’s meeting.

Action requested

10 Members are requested to consider the recommendations set out in the table in Annex A in light of the information provided by the Executive, set out in Annex B.

Richard Lochhead MSP
Convener
Tel: 0131 348 5234
Email: europe@scottish.parliament.uk
SUMMARY TABLE OF CONVENER’S RECOMMENDATIONS

<table>
<thead>
<tr>
<th>Council</th>
<th>Did Executive meet deadline for sending information?</th>
<th>Notes and recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-Council scrutiny</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture and Fisheries Council, 26-27 April 2004</td>
<td>Yes</td>
<td>To welcome information provided and note developments on animal welfare and on fisheries issues (TACs etc)</td>
</tr>
<tr>
<td>General Affairs and External Relations Council, 26-27 April 2004</td>
<td>Yes</td>
<td>To welcome information provided and ask that the subsequent post-Council report focuses on feedback in relation to the discussions on the draft constitution and the new financial framework for 2007-13</td>
</tr>
<tr>
<td>Justice and Home Affairs Council, 29-30 April 2004</td>
<td>Yes</td>
<td>To welcome information provided and note developments on the European Enforcement Order which will have implications on Court rules in Scotland</td>
</tr>
<tr>
<td>ECOFIN Council, 11 May 2004</td>
<td>Due 20.4.04</td>
<td></td>
</tr>
<tr>
<td>Competitiveness Council, 17-18 May 2004</td>
<td>Due 26.4.04</td>
<td></td>
</tr>
<tr>
<td>General Affairs and External Relations Council, 17-18 May 2004</td>
<td>Due 26.4.04</td>
<td></td>
</tr>
<tr>
<td><strong>Post-Council scrutiny</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport and Telecommunications Council, 8-9 March 2004</td>
<td>Yes</td>
<td>To welcome information provided and note progress with the proposals for a ‘eurovignette’</td>
</tr>
<tr>
<td>ECOFIN Council, 9 March 2004</td>
<td>Yes</td>
<td>To welcome information provided</td>
</tr>
<tr>
<td>Competitiveness Council, 11 March 2004</td>
<td>Yes</td>
<td>To welcome information provided and note developments on the REACH proposals (chemicals legislation)</td>
</tr>
<tr>
<td>Agriculture and Fisheries Council, 22-23 March 2004</td>
<td>Due 13.4.04</td>
<td></td>
</tr>
<tr>
<td>General Affairs and External Relations Council, 22-23 March 2004</td>
<td>Yes</td>
<td>To welcome information provided</td>
</tr>
<tr>
<td>Justice and Home Affairs Council, 30 March 2004</td>
<td>Due 20.4.04</td>
<td></td>
</tr>
</tbody>
</table>
Pre-Council Report – Agriculture and Fisheries Council, 26-27 April 2004

NB – The agenda for this Council is not yet available. The following has been prepared on the basis of what we consider might feature on the agenda.

Agriculture

Key discussion on Welfare of Animals during Transport is expected based on Commission proposals and a Presidency compromise text to accommodate serious concerns amongst Member States. A political agreement may be achieved.

*This is an important issue for Scottish interests having regard to the distances between many rural areas and the main markets. The Presidency compromise, which deals primarily with travel/rest cycles and stocking densities, appears to offer a more acceptable balance of business considerations and animal welfare considerations.*

Fisheries

Commission will bring forward amendments to the TACs and Quotas regulations agreed at December Council.

*The Executive strongly supports these amendments, which will contain important alterations to the North Sea haddock management scheme established at December Council.*

Commission is expected to bring forward a regulation to fix maximum annual fishing effort in Western waters

*The new Western Waters regulations have been subject to lengthy negotiation within the EU, with a number of amendments and compromises reached on earlier proposals that we regard as helpful. We are content with the outcome of the negotiations.*

Commission is expected to bring forward a proposal for a Council Decision on a Community financial contribution towards Member States’ fisheries control programmes.

*The Executive supports these proposals, which are intended in part to help new Member States upgrade their fisheries control programmes in line with Community standards.*
Pre-Council Report – General Affairs and External Relations Council, 26-27 April 2004

Session on General Affairs

1. Progress of work in other Council configurations

The Council will discuss a report from the Presidency on work underway in the Council’s other configurations, covering meetings held since the last report on 22 March.

2. (Poss.) Follow up to the Spring European Council

The Council will discuss the main issues arising from the 25-26 March Spring European Council. The main issues due to be discussed at that meeting were:

- combating terrorism in the light of the Madrid attacks
- assessing the prospects for progress in the Intergovernmental Conference on the draft EU Constitutional Treaty
- agreeing procedure for preparation of the EU’s financial perspective for 2007-13
- review progress on the Lisbon Agenda.

3. (Poss.) Enlargement / Accession

Enlargement is due to take place on May 1 with the accession of ten new states. This will be an update on the process of joining.

4. (Poss.) New Financial Perspective

This agenda item will discuss the EU’s new financial perspective for 2007-13.

Session on External Relations

This section relates to reserved issues

1. EU-Africa (including follow up to the EU-AU Troika meeting)

2. EU-Russia: Preparation for Summit

3. Middle East Peace Process

4. Western Balkans

5. Development issues
   - Follow-up to Monterrey
   - ACP-EU relations
   - UNCTAD XI
   - Land Reform
Possible "A" items

This section relates to reserved issues

– Temporary reception of Palestinians: Review of Common Position 02/400 of 19.5.2003

– Burma/Myanmar: prorogation of Common Position 03/297 of 28.4.2003

– Switzerland: EU position for the ongoing bilateral negotiations

– Indonesia: adoption of Council Conclusions

– Staff regulations applicable to officials and other servants of the European Communities: adoption

– Establishment of EU position for the Association Council with Morocco

– Establishment of EU position for the 21st EEA Council

In the margins of the Council

– Russia Permanent Partnership Council

– EEA Council

– Association Council with Morocco

Please note that this Pre Council Report is based on a provisional agenda set in January 2004. The agenda may be subject to substantial change. We expect this Council to be dominated by Asylum and Immigration issues and we also expect the Home Secretary to attend.

Asylum and Immigration

Directive on the conditions of entry and residence of third country nationals for the purpose of study, vocational training or voluntary service

(pos) Directive on the conditions of entry and residence of third country nationals for the purpose of research.

Directive on the obligation of carriers to communicate passenger data

Proposal for a Council Regulation establishing a European agency for the management of operational co-operation at the external borders

Proposal for a Council Regulation laying down the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third-country nationals when they cross the external borders of the Member States and amending the Convention implementing the Schengen agreement and the common manual to this end.

(pos) Decision establishing a European return programme and return fund

(pos) Regulation restructuring the Common Manual on External Borders

The Executive has a co-ordination role with regard to the provision of services for asylum seekers and refugees. Any changes to operations in Scotland will be for the Home Office to implement.

POLICE CO-OPERATION

Europol Budget, work programme, financing plan etc

No substantive issues for Scotland.

CRIMINAL AND JUDICIAL CO-OPERATION

Proposal for a Council Directive to provide minimum standard of compensation to victims of violent crime throughout the community

There has been real difficulty over the legal base of this Commission proposal and at present there is no agreement between Member States on allowing States to reduce or limit compensation. The proposal fulfils a remit from the Tampere conclusions to create minimum standards of access to justice and compensation rights for victims. It complements the 2001 Framework Decision on the standing of victims in criminal proceedings. The proposal requires Member States to pay minimum levels of state compensation to victims, linked to
the levels of compensation awarded by civil courts in personal injury cases. It applies to Member States’ nationals and other legal residents who suffer personal injury from an international crime committed on the territory of a Member State. Discussed at the 30 March Council where the Presidency concluded that, subject to the UK and one other Member State’s Parliamentary Scrutiny Reserves, a general approach had been reached on the Presidency’s compromise which will remove the criteria for minimum standards but does require Member States to establish compensation schemes for victims.

(poss) Communication on the fight against terrorism and a proposal for a Framework Decision on the exchange of information on terrorism.

Following events in Madrid the EU has appointed a Counter-Terrorism Co-ordinator (Gijs de Vries). The EU has also adopted a European Council declaration on terrorism.

Civil and Judicial Co-operation

Proposal for a Council Regulation creating a European Enforcement Order for uncontested claims

This dossier was agreed by the European Parliament on 30 March 04 and will go to Council for Minister’s formal agreement. Executive officials have been involved in Working Group discussions on the dossier which will impact on Court rules. The purpose of the proposal is to enable uncontested judgements of the court, and equivalent instruments to be enforced in other Member States without any intermediate scrutiny or procedure.
Pre-Council Report - ECOFIN Council, 11 May 2004

Awaiting information from the Executive.
Pre-Council Report – Competitiveness Council, 17-18 May 2004

Awaiting information from the Executive.

Awaiting information from the Executive.
Transport

This minute provides a summary of the EU Transport Council meeting in Brussels on 8 March. The UK’s interest was represented by Alistair Darling, Secretary of State for Transport.

Third Railway Package

The Council took note of the 4 new legislative proposals contained in the ‘Third Railway Package’, namely:

- A Directive concerning the opening up of the international rail passenger transport market;
- A Regulation on quality requirements for rail freight services;
- A Directive on the certification of train drivers operating on the Community’s rail network; and
- A Regulation on international rail passengers’ rights and obligations.

Infrastructure Charging: ‘Eurovignette’

Some progress was achieved on the draft Directive amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (Eurovignette). A main obstacle to reaching agreement, however, was the principle of hypothecation ie the re-use of revenues from tolls for road infrastructure, in relation to which the Commission, although very flexible with regard to the compromise proposal as a whole, and a number of delegations held differing views.

The Council invited the Permanent Representatives Committee to examine the forthcoming first reading opinion of the European Parliament with a view to preparing a text for political agreement at a future session of the Council.

GALILEO

The Council welcomed the decisive progress achieved in the negotiations with the USA on compatibility and interoperability between the European GALILEO and the US GPS systems on 24-25 February, which resulted in a mutually agreed text on all issues of substance. The Council was confident that the agreement can be signed by June 2004 together with a jointly elaborated associated document on mutually acceptable national security compatibility criteria.

EU/US Negotiations for an Air Transport Agreement

The Council took note of information from the Commission regarding the third round of EU/US negotiations on an Air Transport Agreement, which took place in Washington from 17-19 February. The Presidency concluded that it would not be possible to conclude an agreement with the USA this year that would deliver the full objectives of an Open Aviation Area, as set out in the negotiating mandate. The proposals for an initial agreement this year,
including a movement by the USA to 49% foreign ownership of its airlines, would, in principle, be acceptable only if a tangible improvement could be made to bring about a better balance of the interests between the EU and the USA, and if both sides were committed to further negotiations within a specified timeframe on achieving the full Open Aviation Area concept. The Council invited the Commission to continue the negotiations and to come back to this issue at its next meeting in June 2004.

**Telecoms**

**Summary**

1. Stephen Timms, Minister of State for Energy, E-commerce & Postal Services, represented the UK’s interest. Council conclusions regarding the eEurope midterm review were adopted. The Council concluded additional actions are needed to complement existing EC law and combat unsolicited communications.

**eEurope midterm review**

2. The Council conclusions on the 2005 midterm review were adopted. The review identifies areas for adjustment, such as the reinforcing of the pan-European dimension in all eEurope areas and the move to a demand driven approach that emphasises service delivery, end user value for all and functionality while continuing to stimulate access to the network for end-users. The council also noted that the 2005 targets remain valid and that the Action Plan had acted as a stimulus to many national and regional efforts.


**Situation Of The Electronic Communications Sector In Europe**

4. The Council welcomed The Communication from the Commission on Connecting Europe at high speed and recognised the importance of commitment to the objectives of the eEurope 2005 Action Plan and support for the midterm review process.

5. Member states were invited to prepare and implement national broadband strategies and to focus on stimulating demand for broadband to increase coverage and take-up.

6. The Council welcomed the Commission’s intention to publish a Communication to the Council and the European Parliament on national broadband strategies in May 2004; this should help identify actions on outstanding issues that could be addressed at EU-level, in order to accelerate and facilitate the implementation of these strategies.

**Unsolicited Communications For Direct Marketing Purposes Or “SPAM”**

7. The Council concluded that additional co-ordinated actions are needed, in order to complement the existing EC law provisions for the benefit of citizens, consumers and businesses in the European Union.
8. Member states were invited to continue to develop international co-operation in the fight against “spam”, taking into account the ongoing work at the Organisation for Economic Co-operation and Development (OECD) and the Declaration and Action Plan adopted at the first session of the United Nations World Summit on the Information Society (WSIS, Geneva 2003).

9. The Council welcomed the Commission’s intentions to evaluate the effectiveness of actions taken by relevant parties to address “spam” and to assess, by the end of 2004, whether additional action is required.

10. The Commission was invited to explore whether funding possibilities would be available under current or future Community funding programmes to support actions in the fight against “spam”.

UK Participant: John Grant, Ambassador

ITEMS APPROVED WITHOUT DEBATE

BUDGET
- Follow-up report on 2001 financial year.

EXTERNAL RELATIONS
- Relations with Canada: preparation for Ottawa summit on 18th March.
- Bulgaria, Romania, and Turkey: directives to enable Commission to negotiate adaptations to EU’s agreements with these countries, taking account of EU enlargement.
- Special reports by Court of Auditors about PHARE and ISPA funding of environmental projects in candidate countries, and about Twinning in candidate countries.

DEVELOPMENT COOPERATION
- Implementation of operations under 6th, 7th and 8th EDFs.

ITEMS DEBATED

PREPARATION FOR EUROPEAN COUNCIL ON 25TH AND 26TH MARCH
Council adopted key issues paper: key message is that a sharper focus is needed on implementation of Lisbon strategy (which aims to increase rate of sustainable economic growth and enable Europe to become the most dynamic knowledge-based economy in the world).

Council adopted conclusions on national contributions to European Growth Initiative.

STABILITY AND GROWTH PACT
Council examined stability programmes of Belgium, Germany, Spain and Portugal. The aim of these programmes is to show how MS intend to meet objectives of the Stability and Growth Pact, in particular the medium-term goal of a budget close to balance or in surplus, and how they have complied with recommendations of the Broad Economic Policy Guidelines.

SAVINGS TAX DIRECTIVE
Council welcomed framework for negotiation of a monetary agreement with Andorra.

Council heard report on negotiations for savings tax agreement with British and Dutch dependent/associated territories, and with European 3rd countries (Andorra, Liechtenstein, Monaco, San Marino, Switzerland).

VAT: REDUCED RATES
Brief discussion of possibility of MS having more autonomy to apply lower VAT rates.

COMMUNITY BUDGET
Council adopted recommendation for discharge to be given to Commission to implement 2002 budget. This procedure enables Council to have regular overview of how Community funds have been spent.
Council adopted conclusions which should be taken into account by Commission when preparing draft budget for 2005. Council’s conclusions underline importance of maintaining overall budget discipline, including applying the same degree of budgetary constraint as exercised by MS.

**OTHER BUSINESS**
Council discussed impact of Eurostat decision on classification of certain pension schemes where government is involved as manager of contributions and benefits or as guarantor for risk of default on payment of pensions; government schemes for civil servants are not involved.

Council discussed the impact of regulation on economic performance, in particular the possibility of reducing the burden on enterprises.

Summary

Targeted conclusions agreed on competitiveness as input to Spring Council. Services liberalisation proposals broadly welcomed. First reading deal prepared on consumer enforcement.

Contribution to Spring European Council

Council had an in-depth policy debate based on a wide range of issues affecting competitiveness at European level. Following discussions Council approved the "Key Issues and Priorities Paper" as its contribution to the Spring European Council. Council’s priorities set as: improved market functioning; regulatory reform; research and innovation; specific industrial challenges; and review of the Lisbon process. The Commission welcomed the conclusion, especially the emphasis on better regulation.

Stimulating Entrepreneurship

Council conclusions on entrepreneurship agreed. Council welcomed the fact that the Commission’s communication "Action Plan: The European agenda for Entrepreneurship" identifies principal areas where the environment for entrepreneurship needs to be improved, as well as a range of actions to create a more favourable environment for and to give a strong impetus to entrepreneurship by raising its general profile and also welcomed the progress achieved in implementing the European Charter for small enterprises.

REACH (Registration, Evaluation, Authorisation and Restricting of Chemicals)

The main goals of the Community’s chemicals policy are to avoid chemical contamination of air, water, soil and buildings to prevent damage to biodiversity and to improve the health and safety of workers and the general public. It is aimed at preserving a sensitive balance between the environmental benefits of REACH and its effects on the competitiveness of European industry.

Council noted Presidency progress report on REACH and that the ad hoc Working Party will continue to meet and will now begin examination of the text. The Competitiveness Council and the Environment Council will hold policy debates on REACH at their May and June Councils.

Temporary Defence Mechanism for Shipbuilding

Council approved by qualified majority.

Regulation on Consumer Protection Cooperation

The Regulation aims to link up national enforcement authorities (the Office of Fair Trading and their counterparts) through an obligation to provide mutual assistance against cross-border scams.

Council took note of a progress report as well as of interventions made by some delegations
on the state of play on the draft Regulation. Council invited the Permanent Representatives Committee to continue examining this file with a view to reaching a first-reading agreement with the European Parliament.

**Community Patent**

Council held extensive discussions on a limited number of questions still outstanding. No agreement reached on the issues. Presidency concluded that it would reflect on how to proceed.

**Directive on Services in the Internal Market**

Council stressed the importance of the proposed Directive to which it will give high priority with a view to making speedy progress. This was the first opportunity for Ministers to discuss the Commission’s new proposal. The Directive would cover most of the sectors of an economic nature. Its aim is to reduce red tape, modernise administrative procedures and improve cross-border provision of services by imposing a country of origin regime (businesses that operate legally in their home country should be allowed to operate without further regulation in the whole of the EU). Most delegations welcomed the Directive although a number listed particular sensitivities.

**Enforcement of intellectual property rights directive**

This directive harmonises minimum standards for enforcement of all types of intellectual property rights through civil procedures. The Presidency announced that the European Parliament had accepted the Council's amendments to the directive and that the directive would soon be adopted by written procedure.

**Europe and Basic Research**

Council welcomed the fact that the Commission, in its Communication "Europe and Basic research", examines the impact of basic research on the competitiveness, growth and quality of life in Europe and puts forward suggestions for exploring the means of strengthening Europe's performance in basic research. Following an exchange of views it was agreed to return to this issue following further input from the Commission.
Post-Council Report – Agriculture and Fisheries Council, 22-23 March 2004

Awaiting information from the Executive.

The Foreign Secretary represented the UK at the General Affairs and External Relations Council (GAERC) in Brussels on 22 March 2004.

Conclusions were agreed on the strategic partnership for the Middle East, the assassination of Sheikh Yassin, Iran, Western Balkans, UN Commission on Human Rights, Afghanistan, EU military rapid response, EU ACP partnership – water facility, and protection of EU seafarers in third countries – The Tasman Spirit.

GENERAL AFFAIRS SESSION

PROGRESS OF WORK IN OTHER COUNCIL CONFIGURATIONS

The Council took note of a progress report from the Presidency on work under way in the Council’s other configurations (Economic and Financial Affairs; Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Environment; and Education, Youth and Culture).

PREPARATION FOR THE SPRING EUROPEAN COUNCIL

The GAERC finalised an annotated draft agenda and draft conclusions prepared by the Presidency for the 25 -26 March European Council in Brussels.

The European Council will examine a package of measures presented by the Presidency with the aim of giving a renewed impulse to efforts to combat terrorism following the 11 March terrorist attacks in Madrid. It will review the international situation and assess the prospects for progress in the Intergovernmental Conference on the draft EU Constitutional Treaty. The European Council is also expected to agree on the procedure to be followed for preparation of the EU's financial perspective for 2007–13 and (as is customary at Spring Councils) it will pursue work on the structural reform strategy that it laid down at Lisbon in March 2000.

COMBATING TERRORISM

The GAERC examined a package of measures (prepared by a 19 March Justice and Home Affairs Council) aimed at giving a renewed impulse to efforts to combat terrorism following the 11 March terrorist attacks in Madrid. The GAERC agreed to forward the measures to the European Council for approval.

EXTERNAL RELATIONS SESSION

This section relates to reserved issues.

WESTERN BALKANS

The Council discussed Kosovo following recent events in the region and adopted Conclusions calling for an immediate and definitive end to the violence and condemning all acts of ethnically motivated violence. There were also Conclusions on Serbia and
Montenegro, where the Council expressed readiness to co-operate with the newly formed government but made clear that further progress towards European Integration is contingent on concrete action to implement political and economic reforms. And there were short Conclusions on Macedonia’s presentation of its application to join the EU.

ASEM

The Council took stock of preparations for the 17-18 April Asia–Europe Foreign Ministers Meeting (ASEM) at Kildare. It examined how to approach the issue of Burma’s request to participate at the fifth ASEM summit at Hanoi on 8-9 October. The Presidency will continue consultations in order to find a solution on this issue.

STRATEGIC PARTNERSHIP WITH THE MEDITERRANEAN AND THE MIDDLE EAST

The Council welcomed the Presidency’s interim report on the Strategic Partnership with the Mediterranean and the Middle East and looked forward to the June European Council when it will be able to consider the final article.

Short conclusions condemning the killing of Sheikh Ahmed Yassin were also adopted.

IRAN

Conclusions were adopted on the Iranian nuclear programme in light of the 8-13 March meeting of the International Atomic Energy Agency’s Board of Governors. The Conclusions called on Iran to comply fully with the provisions set out in 13 March Board of Governors’ resolution and welcomed Iran’s decision to extend the scope of its suspension of enrichment-related and reprocessing activities.

AOB: RUSSIA

The Council had a brief discussion on the extension of the EU-Russia Partnership and Co-operation Agreement (PCA) to the new EU Member States. The GAERC noted that contacts were ongoing to ensure that the extension was in place by 1 May.

Awaiting information from the Executive.