The Committee will meet at 10.00 am in the Hub, Castlehill, Edinburgh.

1. **Items in private:** The Committee will consider whether to take item 3 in private and whether to consider in private, at forthcoming meetings, a draft report in respect of motion S2M-1202 on the Civil Partnership Bill – UK legislation.

2. **Civil Partnership Bill – UK legislation:** The Committee will take evidence from—

   Morag Driscoll, Convener, and John Fotheringham, Vice Convener, Family Law Sub-committee, and Michael Clancy, Director, and Sarah Fleming, Head of International Relations, Law Reform Department, the Law Society of Scotland;

   Professor Kenneth Norrie, Head of the Law School, University of Strathclyde;

   Hugh Henry, Deputy Minister for Justice; Claire Monaghan, Head of Family Law Team, Kirsty Finlay, Senior Principal Legal Officer, and Louise Miller, Head of Private International Law Branch, Scottish Executive, and Paul Parr, Deputy Registrar General, General Register Office For Scotland.

3. **Civil Partnership Bill – UK legislation:** The Committee will consider its approach to its draft report in respect of the motion on the Bill.
Papers for the meeting—

Agenda item 2

Note by the Clerk (private paper) J1/S2/04/20/1
Correspondence from the Equality Network J1/S2/04/20/2
Correspondence from the Deputy Minister for Justice (to follow) J1/S2/04/20/3

Members should have with them copies of the following papers, distributed for information in advance of the Committee’s 18th meeting on 5 May 2004—

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 Coordinator, Holy Trinity Metropolitan Community Church, Edinburgh, regarding public petition PE737 J1/S2/04/18/10

Forthcoming business—

Wednesday 26 May – Justice 1 Committee meeting, Committee Room 1;
Wednesday 2 June – Justice 1 Committee meeting, Committee Room 3;
Wednesday 9 June – Justice 1 Committee meeting, Committee Room 4.
Civil Partnership Bill

Submission to the Justice 1 Committee
6th May 2004

Equality Network, 22 Forth Street, Edinburgh, EH1 3LH
Tel: 07020 933 952
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The Equality Network is a network of lesbian, gay, bisexual and transgender (LGBT) organisations and individuals in Scotland working for LGBT equality.

We welcome the opportunity to comment to the Justice 1 Committee on the Civil Partnership Bill. The Equality Network conducted wide consultation within the LGBT communities in Scotland, between 2000 and 2002, on the law applying to same-sex couples. The clear consensus that emerged was that civil partnership should be introduced as soon as possible, with similar legal obligations, protections and rights to marriage.

To a large extent, that is what the Scottish Executive’s consultation paper on civil partnership, published in autumn 2003, proposed to do, and that is what the Civil Partnership Bill implements. We therefore welcome the bill. We also welcome the work that the Scottish Executive has done in drafting the devolved provisions in the bill to match Scots marriage and family law.

We do however have a number of concerns about the bill, and in this submission we have commented in turn on:

- areas where we believe that the devolved provisions in the bill require some amendment;
- the use of a Sewel motion;
- the issues of mixed-sex civil partnership and same-sex marriage;
- and, briefly for the Committee’s information, on our concerns about one of the reserved provisions in the bill.
Comments on devolved provisions in the bill

Registering a civil partnership

Registration is dealt with by Chapter 3 of Part 3 of the bill. The arrangements are based on those for civil marriage. The registration is performed by a district registrar, and can be performed in a wide range of places, with the agreement of the local registration authority (ie the local council), but places of religious worship or reverence are explicitly excluded.

Clause 89 of the bill deals with places of registration. The policy intention is similar to that of the Marriage (Approval of Places) (Scotland) Regulations 2002, issued under the Marriage (Scotland) Act 2002, which allows civil marriages to be conducted in places other than registry offices.

However the wording of clause 89 is completely different from the wording of the Marriage (Approval of Places) Regulations. As clause 89 stands, it is unclear whether local registration authorities will approve the same places for civil partnership ceremonies as they approve for civil marriage ceremonies.

The exclusion of places of religious significance is also worded differently from the civil marriage regulations. Clause 89(2) excludes places where persons are known to meet for public worship, and places known to be regarded by persons of a religious faith as a place of reverence.

In contrast, regulation 7(2)(b) of the Marriage (Approval of Places) Regulations excludes places “with a recent or continuing connection with any religion or religious practice which would be incompatible with the use of that place for the solemnisation of civil marriages”. The last part of this, shown in bold, is significant. It would appear for example to allow civil marriage on hilltops on which pagan ceremonies are held, which would probably be excluded for civil partnership by clause 89(2). Regulation 7(2)(b) might also allow registrars to conduct civil marriage registration in buildings used for religious worship, if there was no incompatibility, for example where the religious organisation wished this to happen. Clause 89 would exclude that possibility for civil partnership.
These issues are particularly important to LGBT people of faith, many of whom feel that the Civil Partnership Bill discriminates against them. They point out that golf fans could ask the local registration authority to approve the registration of their civil partnership at a golf course, but that people of faith are uniquely excluded from having their civil partnership registered at the most significant place for them.

The Metropolitan Community Church (MCC) has submitted a petition to the Scottish Parliament’s Public Petitions Committee, calling for support for an amendment to the bill to allow religious celebrants, authorised to conduct religious marriage under the Marriage (Scotland) Act 1977, to be authorised to conduct civil partnerships also.

Failing that, the MCC would like clause 89 of the bill to be amended to allow registrars to conduct civil partnership registration in places of religious worship, where the religious organisation concerned approves and asks for that to be done. This would allow same-sex couples of faith to have a religious blessing of their relationship, immediately preceded or followed by the legal registration of a civil partnership, at the same place. This solution is also being promoted by the Lesbian and Gay Christian Movement, for England and Wales, as well as Scotland, and was discussed during the House of Lords second reading debate on the bill.

It would not undermine the civil nature of civil partnership to allow registrations to be conducted by district registrars at places of religious worship, where that is agreed by the religious organisation concerned. It would simply be removing a special restriction on place of registration that applies only to places of religious significance. The restriction makes sense for civil marriage, to retain the distinction between civil marriage by registrars and religious marriage by religious celebrants, but is not necessary or reasonable for civil partnership which is only carried out by registrars.

In summary, we believe that clause 89 of the bill should be amended, to ensure that the places currently approved for conducting civil marriage are also approved for civil partnership, and to allow district registrars to conduct civil
partnerships in places of religious worship, but only where the religious organisation itself has approved and requests that registration take place there.

Legal rights in succession

Part 1 of Schedule 21 to the bill amends the Succession (Scotland) Act 1964 to extend the prior rights in succession of a spouse, to a civil partner. However, spouses also have legal rights in succession (jus relictue/relictus) in common law, and the bill does not at present make equivalent succession rights available to civil partners. Prior rights apply in cases where there is no will; legal rights apply more generally. Without an equivalent of legal rights, civil partners will be significantly disadvantaged in succession law, compared to married couples, contrary to the policy intention of the bill. We assume that the omission of these succession rights from the bill is accidental.

The bill should be amended to grant civil partners the equivalent to spouses’ common law legal rights in succession.

Cohabitation

The bill has some consequential effects for cohabiting same-sex couples who have not registered a civil partnership. In many places, for reserved as well as for some devolved matters, where the bill makes a consequential amendment to an existing legal obligation or right which applies both to spouses and to unmarried cohabiting mixed-sex couples, it extends that obligation or right to registered civil partners and to unregistered cohabiting same-sex couples. Examples include the reserved legislation on benefits in Schedule 17 (see for example paragraphs 3, 5, 37 and 39 of that Schedule), and the devolved amendments to the Damages (Scotland) Act 1976 in paragraph 35 of Schedule 21.

However, this has not been done consistently with respect to devolved legislation. For example, paragraph 38 of Schedule 21 extends the rules in the Administration of Justice Act 1982 concerning damages for personal injuries, which currently apply to spouses and mixed-sex cohabitants, to apply to civil partners, but
not to same-sex cohabitants. It is inconsistent to amend the Damages (Scotland) Act in a way that includes same-sex cohabitants but not the Administration of Justice Act.

It is also likely that to fail to extend legislation applying to mixed-sex cohabitants to apply equally to same-sex cohabitants is a breach of the ECHR. The rulings of the English Court of Appeal in Mendoza v Ghaidan\(^1\), and of the European Court of Human Rights in Karner v Austria\(^2\) confirm this – see also the discussion in Appendix 3 of the Scottish Law Commission’s discussion paper\(^3\) on the Damages (Scotland) Act 1976.

There is therefore an ECHR imperative on the Scottish Executive to provide consistent consequential amendments for same-sex cohabitants in the Civil Partnership Bill. As noted above, the bill already does this for some devolved legislation, such as the Damages (Scotland) Act 1976, but not for other devolved legislation. It should also be noted that for some existing devolved legislation, such as the Housing (Scotland) Act 2001 and a number of other Acts, same-sex cohabitants are already included.

**Both for reasons of consistency and of ECHR compliance, where the bill extends legislation which currently applies to spouses and mixed-sex cohabitants, to apply it to civil partners, and the legislation does not already cover same-sex cohabitants, the bill should extend it to do so.**

**Lack of true consent to civil partnership**

The rules on lack of true consent to marriage are based in common law – for example a marriage may be void if entered under duress (force and fear). Equivalent rules are not included in the Civil Partnership Bill. The Scottish Executive’s current consultation paper ‘Family Matters – improving family law in Scotland’ proposes (page 56) to set out in statute, in the forthcoming Family Law (Scotland) Bill, the present common law


\(^2\) Application number 40016/98, judgement issued 24\(^{th}\) July 2003

\(^3\) Discussion Paper on Title to Sue for Non-Patrimonial Loss, Scottish Law Commission Discussion Paper No. 116, 2001
rules that apply for consent to marriage. That bill should apply the same statutory rules to consent to civil partnership.

However, unless the Family Law Bill is passed before the likely commencement date of civil partnership (probably late 2005), there will be no clear rules on lack of true consent to civil partnership when civil partnerships begin.

Therefore, unless the forthcoming Family Law (Scotland) Bill is likely to be passed before the end of 2005, we suggest that the Civil Partnership Bill should be amended to set out the rules on lack of true consent to civil partnership.

Forbidden degrees

The rules on forbidden degrees are set out in clause 82 and Schedule 10 to the bill. These are based on the forbidden degrees for marriage, with the necessary amendments to reflect that civil partnership is a same-sex relationship. However, the forbidden degree rules for marriage explicitly include half-blood relationships (eg half-brother, half-sister), and adoptive relationships (eg parent and adopted child). In our view, these relationships should be included in the forbidden degrees for civil partnership, and this may require explicit provision in the bill.

In clause 82(3) and (4), the reference to subsection (1) should be to subsection (1)(b), to avoid disapplying other paragraphs of subsection (1) (such as subsection (1)(d) and (e)) in the cases to which subsections (3) and (4) apply.

Validity of civil partnership

Section 23A of the Marriage (Scotland) Act 1977 provides that a marriage is not void because of failure to comply with certain procedural requirements. The Civil Partnership Bill contains no similar rule for civil partners, which means that it will be easier to challenge a civil partnership than a marriage. In our view the same rule as in section 23A should apply to civil partnership and should be added to the bill.
Defences to criminal offences

There are two sexual offences to which marriage is a defence. These are offences under section 3 of the Sexual Offences (Amendment) Act 2000, and under section 313 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Civil partnership should also be a defence to these offences. Paragraphs 75 and 76 of schedule 20 make such a change for the equivalent offences in England and Wales, but this is missing from the bill, for Scotland.

Civil partnership a bar to marriage

The Civil Partnership Bill does not amend sections 3 and 5(4) of the Marriage (Scotland) Act 1977 to make existing civil partnership a bar to marriage. This will need to be done, so that a person already in a civil partnership cannot enter into a marriage (just as a person who is already married cannot enter into a civil partnership, under clause 82(1) of the bill).

Use of a Sewel motion

The Equality Network had significant concerns arising from the Scottish Executive’s announcement on 10th September 2003 of the intention to use a Sewel motion to introduce civil partnership legislation for Scotland. Our concerns were:

- That the devolved Scottish parts of the Civil Partnership Bill should be drafted to match Scots family law, and should not be shoehorned into the very different English family law model.

- That Scottish Parliament Committees should be able to scrutinise the devolved parts of the bill, and take evidence on them, before the Sewel motion debate in the Scottish Parliament.

- What would happen if the Scottish Parliament approves the devolved parts of the bill in the Sewel motion debate, and then those parts of the bill are significantly changed by the House of
Lords or House of Commons? Would the Scottish Parliament be able to consider the changes?

We are happy that the first of these concerns has been addressed by the drafting by the Executive of the devolved parts of the Civil Partnership Bill to match Scots family and marriage law, not English.

We are also happy that the Justice 1 Committee is able to take evidence on the bill and report to the Parliament before the Sewel motion debate. We feel that the amount of time available to the Committee is limited however, considering that the bill contains over 50 clauses and several schedules of devolved legislation.

We remain concerned at the possibility of significant amendments, unwelcome to the Scottish Parliament, being made at Westminster to the devolved provisions in the bill.

We would have preferred civil partnerships to be progressed by a bill in the Scottish Parliament for the devolved provisions, coordinated with a parallel bill at Westminster for England, Wales and Northern Ireland, and covering reserved issues for Scotland. We recognise that that would have required significantly more Parliamentary time.

However, with the provisos noted in this submission, we welcome the Civil Partnership Bill. The bill will make a huge improvement in the lives of many same-sex couples – an improvement which is long overdue and is urgent.

We therefore support the use of a Sewel motion for this bill, so long as there is a commitment to bring back to the Scottish Parliament for a further Sewel motion any significant amendment to the devolved parts of the bill which falls outside the general principle that civil partnership should parallel the legal effects of marriage in Scotland.

Mixed-sex civil partnership

The consensus that emerged from our consultation with LGBT communities on this issue was that civil partnership should be
available to mixed-sex as well as same-sex couples. The reasons for this are:

- There is a minority of mixed-sex couples who, for a variety of reasons, do not wish to marry, but would enter a civil partnership, even though the legal effects of civil partnership and marriage are very similar.

- Restricting civil partnership to same-sex couples creates a ‘separate but equal’ status, separating out same-sex relationships and marking them as fundamentally different from mixed-sex relationships.

- Same-sex only civil partnership creates difficulties for transsexual people who re-register their legal gender under the Gender Recognition Bill currently before Westminster – a transsexual person who is a partner in a same-sex civil partnership will be forced to dissolve the partnership (and potentially then marry their partner) on re-registering gender, because the civil partnership would otherwise become a (disallowed) mixed-sex civil partnership.

We recognise that it is not possible to extend the current Civil Partnership Bill to include mixed-sex civil partnership, because of the constraints of operating with a Westminster bill.

We call on the Executive to consult in Scotland on the opening up of civil partnership to mixed-sex couples, which could be achieved, for devolved areas of law at least, in a short piece of legislation in a Scottish Parliament bill.

**Same-sex marriage**

The Civil Partnership Bill will make a great difference to the lives of LGBT people, eliminating major discrimination from the law affecting same-sex couples. For many same-sex couples, civil partnership is exactly the solution they have been seeking.

However, a significant proportion of LGBT people feel that, for them, civil partnership does not provide equality with the treatment of mixed-sex couples. Their view is that civil partnership is separate from marriage, with a different name, and is not therefore
truly equal. For them, equality means the opening up of marriage to same-sex couples.

As noted above, the Equality Network believes that civil partnership should be open to mixed-sex, as well as same-sex couples. In the longer term, we would like to see Scotland have a similar arrangement to the Netherlands, where both civil partnership and marriage are available to mixed-sex and to same-sex couples. This would provide completely equal treatment, and the same choices for all.

Pensions (reserved issue)

Although it is outwith the Committee’s formal remit, we would like to highlight one significant problem with the reserved parts of the bill. We understand that under the bill the statutory rules providing for a person to inherit benefits from their spouse’s pension scheme (if that scheme is contracted out from the State Second Pension) will apply to civil partners, but will only apply to that portion of the pension benefits that accrues from pension contributions paid after the date of commencement of the Civil Partnership Act.

This ‘non-retrospective’ rule discriminates very badly against civil partners, and will continue to do so for several decades. A person whose spouse dies having paid 40 years of pension contributions (whether before or after the date of the marriage) will receive a pension based on all those contributions. A person whose civil partner dies in similar circumstances will receive a far smaller pension, based only on the contributions made after the end of 2005 – the earlier contributions to the pension scheme will be lost.

This is inconsistent with the UK Government’s 2003 consultation paper on its civil partnership proposals, which stated that survivor benefits would be paid to civil partners, without any indication that this would be at a much lower rate than for spouses. LGBT organisations are pressing the UK Government to amend the bill so that civil partners are treated the same as spouses for statutory pension benefits, by allowing pension contributions made before the date of commencement of the civil partnership legislation to contribute towards a civil partner’s survivor’s pension.
I attach the following papers:

**Agenda item 2**

Correspondence from the Minister for Justice – ‘Civil Partnership Bill: Government Amendments’

11 May 2004

Tony Reilly
CIVIL PARTNERSHIP BILL: GOVERNMENT AMENDMENTS

When my officials met Committee members on Wednesday 5 May to brief them on the Civil Partnership Bill, they indicated that I would write to let you know the Government amendments that were being laid for the Scottish provisions.

I attach a copy of the Government amendments as laid and a note to explain the purpose of these amendments. They are minor technical and consequential amendments and serve to tighten the comprehensiveness of the Bill.

As my officials mentioned, there will be a further amendment required in the area of succession law. While the Bill includes amendment to the Succession (Scotland) Act 1964 to extend prior rights to civil partners, it does not yet take account of legal rights which are provided under Scots common law. This is a complex area of law and careful consideration needs to be given to how the provisions in common law can best be represented in the Bill for civil partners. An amendment will be developed in the coming weeks. Regrettably, it will not be possible for this amendment to be laid in the current Lords Grand Committee phase of the Bill’s consideration but we are seeking to have it ready for Report or Third Reading in the House of Lords. I will write to you setting out the amendment when it is ready.

I look forward to continuing to work with you on the Civil Partnership Bill.
AMENDMENTS TO BE MOVED
IN GRAND COMMITTEE

[5 May 2004 4:30 pm]

Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

1 Page 38, line 1, leave out “Subsection (1) does not apply to”

Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

2 Page 38, line 2, leave out “to”

Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

3 Page 38, line 3, after “paragraph,” insert “are not related in a forbidden degree”

Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

4 Page 38, line 8, leave out “Subsection (1) does not apply to”
Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

5 Page 38, line 9, leave out “to”

Clause 82

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

6 Page 38, line 10, after “paragraph,” insert “are not related in a forbidden degree”

After Clause 127

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

7 Insert the following new Clause—

“Council Tax: liability of civil partners

After section 77 of the Local Government Finance Act 1992 (c. 14), insert—

“77A Liability of civil partners

(1) Where—

(a) a person who is liable to pay council tax in respect of any chargeable dwelling and any day is in civil partnership with another person or living with another person in a relationship which has the characteristics of the relationship between civil partners; and

(b) that other person is also a resident of the dwelling on that day but would not, apart from this section, be so liable, those persons shall be jointly and severally liable to pay the council tax payable in respect of that dwelling and that day.

(2) Subsection (1) above shall not apply as respects any day on which the other person there mentioned falls to be disregarded for the purposes of discount—

(a) by virtue of paragraph 2 of Schedule 1 to this Act (the severely mentally impaired); or

(b) being a student, by virtue of paragraph 4 of that Schedule.”

Schedule 21

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

8 Page 245, line 10, leave out “ailment” and insert “aliment”
Schedule 21

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

Page 249, line 34, leave out “ailment” and insert “aliment”

Schedule 21

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

Page 249, line 37, at end insert—

“(...) in paragraph (b), after “separation” insert “(whether of the parties to a marriage or the civil partners in a civil partnership)”,”

Schedule 21

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

Page 252, line 16, at end insert—

“Marriage (Scotland) Act 1977 (c. 15)

Amend section 3 (notice of intention to marry) as follows—

(a) in subsection (1), after paragraph (a) insert—

“(aa) if he has previously been in civil partnership and the civil partnership has been dissolved, a copy of the decree of dissolution or annulment;”, and

(b) in subsection (2), after “paragraph (a)” insert “, (aa)”.

In section 5(4)(b) (ground on which there is a legal impediment to a marriage), at the end insert “or in civil partnership”.”

Schedule 21

THE BARONESS SCOTLAND OF ASTHAL
THE LORD EVANS OF TEMPLE GUITING

Page 253, line 33, at end insert—

“Family Law Act 1986 (c. 55)

In section 8 (jurisdiction of Scottish courts in independent proceedings), after “proceedings” insert “or civil partnership proceedings”.

In section 9 (habitual residence), after “proceedings” insert “or civil partnership proceedings”.

In section 10 (presence of child), after “proceedings” insert “or civil partnership proceedings”.

(1) Amend section 11 (provisions supplementary to sections 9 and 10) as follows.
(4)

(2) In subsection (1)—
   (a) after “proceedings” insert “or civil partnership proceedings”, and
   (b) at the end insert “or as the case may be in respect of the civil partnership which constitutes the family as a child of which he has been accepted”.

(3) In subsection (2), after “proceedings” insert “or civil partnership proceedings”.

(1) Amend section 13 (ancillary jurisdiction) as follows.

(2) In each of subsections (1) and (2), after “proceedings” insert “or civil partnership proceedings”.

(3) In subsection (3), after “concerned” insert “, or as the case may be for dissolution or declarator of nullity in respect of the civil partnership concerned,.”.

(4) In subsection (4)—
   (a) after “proceedings” (in the first place) insert “or civil partnership proceedings”, and
   (b) after “concerned” insert “, or as the case may be civil partnership proceedings in respect of the civil partnership concerned.”.

(5) In subsection (6), after “proceedings” insert “or civil partnership proceedings”.

(6) In the heading to section 13, at the end insert “or civil partnership proceedings”.

(1) Amend section 17 (orders for delivery of child) as follows.

(2) In subsection (3), the existing words “by one party to a marriage for an order for the delivery of the child concerned from the other party where the child, although not a child of both parties to the marriage, is a child of the family of those parties” become paragraph (a) and after that paragraph insert—
   “(b) by one civil partner in a civil partnership for an order for the delivery of the child concerned from the other civil partner where the child concerned was a child of the family constituted by the civil partnership,.”.

(3) In subsection (4)—
   (a) after “parties” (in the first place) insert “to the marriage or as the case may be by both civil partners”, and
   (b) after “parties” (in the second place) insert “or civil partners”.

In section 18(1) (interpretation), after the definition of “child” insert—
   ““civil partnership proceedings” means proceedings for dissolution or declarator of nullity of a civil partnership or separation of civil partners;”.

In section 42(3) (interpretation), after “proceedings” (in the first place) insert “or civil partnership proceedings (“civil partnership proceedings” having the same meaning as in Chapter 3)”.”
Page 255, line 13, at end insert—

“In section 54(2) (reference to the Principal Reporter by court), after paragraph (a) insert—

“(aa) an action for dissolution or declarator of nullity of a civil partnership or separation of civil partners;”.”

“Sexual Offences (Amendment) Act 2000 (c. 44)

In section 3(2)(c) (abuse of position of trust: defence), after “to” insert “, or in civil partnership with,”.”

Page 255, line 36, at end insert—

“Criminal Justice (Scotland) Act 2003 (asp 7)

(1) Amend section 14 (victim statements) as follows.

(2) In subsection (10)(a), at the end insert “or civil partner”.

(3) For subsection (11) substitute—

“(11) In subsection (10)(b), “cohabitee” means a person who has lived with the victim—

(a) as if in a married relationship; or
(b) in a relationship which had the characteristics of the relationship between civil partners,

for at least six months and was so living immediately before the offence (or apparent offence) was perpetrated.””

Page 256, line 4, at end insert—

“In section 313(5)(a)(ii) (defence in respect of sexual offence), after “spouse” insert “or civil partner”.”
EXPLANATION OF SCOTTISH AMENDMENTS LAID

Clause 82: In subsection 82(3) and 82(4) a reference to subsection (1) was made in error. The amendments to this clause correct the intention for this clause.

Clause 127: An amendment is required to the Local Government Finance Act 1992. In section 77 to the Act, subsection (1) provides for married couples to be jointly and severally liable for payment of council tax on a property. We require provision to the effect that civil partners are to be treated in exactly the same way as spouses for the purposes of section 77 (1) of the 1992 Act. Section 77(3) of the 1992 Act provides that for the purposes of this section two persons are married to each other if they are a man and a woman who are married or are living together as if husband and wife. We require provision to the effect that for the purposes of this section two persons are to be regarded as civil partners if they are in fact civil partners or living together as if they were civil partners.

Clause 165: This amendment provides the same residual ground of jurisdiction for nullity cases at 165(3) as is at clause 165(1)(c) to provide that only the Court of Session has jurisdiction in declarator of nullity proceedings, to ensure the provisions in marriage law are mirrored.

Schedule 21 (Page 245, line 10 and page 249, line 34): These amendments correct the spelling of “aliment”.

Schedule 21 (Page 249, line 37): This amendment adds a further amendment to the Family Law (Scotland) Act 1985 to account for the separation of civil partners.

Schedule 21 (Page 252, line 16): This adds a new paragraph to amend the Marriage (Scotland) Act 1977 to provide that there is a legal impediment to a marriage if one or both parties to the marriage is, or are in a civil partnership and to specify the further documentation required if a person whom wishes to marry has previously been in a civil partnership.

Schedule 21 (Page 252, lines 18 and 19): This amendment provides a similar residual ground of jurisdiction as exists in the Presumption of Death Act 1977 for the Court of Session to entertain an action for declarator of death where the pursuer in the action is the civil partner of the missing person and the civil partnership was registered in Scotland, no other court has or is recognised as having jurisdiction to entertain an action for declarator of death and it appears to the court to be in the interests of justice to assume jurisdiction in the case.

Schedule 21 (Page 253, line 33): This amendment seeks to include an amendment in the Bill to amend the Family Law Act 1986. Chapter 3 of the Family Law Act 1986 deals with the jurisdiction of courts in Scotland in relation to the residence, custody, care or control of a child, (defined in section 1 of the Act as Part 1 orders). The amendment here seeks to provide that any Part 1 Orders made within the context of civil partnership proceedings (as provided for in the amendment to the Children (Scotland) Act 1995 in paragraph 50 of Schedule 21 to the Bill) will be treated in the same way as Part 1 orders made within the context of matrimonial proceedings.
Schedule 21 (Page 255, line 13): This seeks to amend section 54(2) of the Children (Scotland) Act 1995 to the effect that actions for dissolution, separation or declarator of nullity of a civil partnership are to be regarded as relevant proceedings for the purposes of section 54(1) of that Act.

Schedule 21 (Page 255, line 13): Section 3 of the Sexual Offences (Amendment) Act 2000 provides at subsection 2(c) that it shall be a defence to a person charged with having unlawful sexual intercourse with another person for that person to prove that he or she was married to the second person. This amendment makes provision to the effect that it shall also be a defence if the person charged with having unlawful sexual intercourse can prove that he or she was in a civil partnership with the alleged victim of the crime.

Schedule 21 (Page 255, line 36): Section 14(10) of the Criminal Justice (Scotland) Act 2003 details those persons who may be afforded the opportunity to provide a statement in respect of a victim of a crime for consideration by a court in determining the sentence of the convicted perpetrator of a crime. This amendment makes provision for civil partners to be included in the list of qualifying persons in section 14(10). It is important that a civil partner is listed after reference to spouse to ensure the same privileges as are afforded to spouses are given to civil partners under this Act.

Schedule 21 (Page 256, line 4): Section 313 of the Mental Health (Care and Treatment) Act 2003 provides at subsection 3(a)(i) that where a person is charged with unlawful sexual intercourse towards a mentally disordered person, it shall be a defence to such act if that person can prove he or she was the spouse of the mentally disordered person. This amendment makes provision to the effect that it shall also be a defence to such action if the accused can prove he or she was the civil partner of the mentally disordered person.