

Equality Commission

FOR NORTHERN IRELAND

Response to consultation by the Office of Law Reform on proposals for a civil partnership registration scheme which would give a legal status, with consequent rights and responsibilities, to same-sex partners who register their partnership

Civil Partnership: A legal status for committed same-sex couples in Northern Ireland

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Judith Cross
Policy & Research Team
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 500 568
Textphone: 028 90 500 589
Fax: 028 90 331 544
Email: jcross@equalityni.org

**Equality Commission for Northern Ireland Response to
Civil Partnership: A Legal Status for Committed Same–Sex
Couples in Northern Ireland
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1. Introduction

- 1.1 The Equality Commission for Northern Ireland (“the Commission”) has responsibility for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations.
- 1.2 The Commission welcomes the opportunity to comment on civil registration for same sex partners as we recognize the many difficult issues that same sex couples face in their day to day lives.
- 1.3 The Commission previously responded to the Women and Equality Unit’s consultation for GB on this issue and called for the introduction of similar legislation in Northern Ireland at the same time. We therefore fully support a single UK wide Civil Partnerships Bill, taking into account the distinct nature of Section 75 of the Northern Ireland Act. It is imperative that the status, rights and responsibilities of same-sex couples in Northern Ireland are the same as people in all other parts of the United Kingdom.
- 1.4 The recommendations contained in this response generally mirror our recommendations for the Single Equality Act.
- 1.5 Generally the Commission supports many of the rights and responsibilities put forward, however we have a number of comments to make in relation to, the civil registration process, private institutions, pensions and income related benefits, opposite sex couples and other issues.

2. The Civil Registration Process

- 2.1 The Commission welcomes the proposals for the registration of same-sex couples but has a number of observations to make. Firstly we are concerned that the term 'committed' is used exclusively for same-sex couples and does not apply to any other category, for example opposite-sex couples are not asked to demonstrate any level of commitment prior to marriage. The Commission is concerned that differing standards will lead to differing treatment and possibly discrimination on the grounds of civil partnership.
- 2.2 Secondly we note that same-sex partnerships will be required to 'give notice' to the local registrar, with details being entered into the 'notice book' which can be inspected by the public in case of objection. We have concerns over this process.
- 2.3 Same-sex couples may not wish to 'go public' for fear of homophobic harassment and attacks as a result of making their sexuality known in their local communities. It is essential therefore that the registration process does not highlight same-sex registrations.
- 2.4 The Commission recommends that the information is standardised to satisfy the requirement to give notice for both same-sex and opposite-sex couples who are marrying; for example by using only initials and surname. This will ensure that a couple's sexuality cannot be identified. This is vitally important for same-sex couples living in rural areas and small communities.
- 2.5 The Commission also recommends that all registrars are statutorily bound to implement civil registration schemes in their areas. All staff involved in the registration process should receive awareness training.

3. Private Institutions

- 3.1 The Commission strongly recommends making discrimination unlawful against same sex couples by service providers.
- 3.2 Private institutions such as hospitals, nursing homes, pension and insurance providers could continue to ignore the relationship, whether registered or not. It would be unacceptable if despite civil partnership registration many same sex couples continued to face serious social disadvantage. Therefore the Commission recommends that this is addressed as it may lead to inconsistencies and possibly discrimination.

4. Pensions and Income Related Benefits

Private Pensions

- 4.1 The Commission feels that the proposals surrounding private pension schemes are unclear. The Commission understands that Trustees, under the proposed Bill, still hold the power of 'discretion'. The Commission recommends that this 'discretionary' element must be removed to ensure equal treatment for civil partners.
- 4.2 It is also unclear whether or not trustees of occupational or private pensions are to treat registered same-sex couples in the same way as spouses. We acknowledge that the level of pension may not be the same due to differing life expectancies of men and women. From an actuarial point this may be justified in some circumstances, but there should be no further different treatment. The Commission would welcome further clarification on this issue.

Public Service Pension Schemes

- 4.3 The Commission welcomes the proposal that public service pension schemes rights will be extended to civil partners but would also welcome further clarification on some issues in relation to public service pensions. It is not clear if the

surviving partner of a registered same-sex couple will have access to the total benefit accrued to the member of the public service pension scheme, rather than benefits accrued after the implementation of the Civil Partnership Act.

Income Related Benefits

- 4.4 The Commission welcomes the proposal that registered same-sex partners are treated as a single family unit for benefit purposes. We have some concerns over the intention to treat unregistered same-sex partnerships the same as opposite sex co-habitees for the purposes of defining household income and access to certain social security benefits.
- 4.5 It is important that safeguards are introduced to ensure that claimants suspected of same-sex co-habitation, who are simply sharing accommodation, are not subject to unnecessary investigations which may leave them at risk.

5. Opposite Sex Couples

- 5.1 The Commission previously recommended that co-habiting couples should also be afforded the same rights as married people and is disappointed that this opportunity has not been used to extend the civil registration process to heterosexual co-habiting couples.
- 5.2 We have difficulty in accepting that the option of civil marriage is the same as civil registration as the Government has clearly stated that that civil registration for same sex couples is not marriage. We fail to understand the reasoning behind excluding opposite sex couples from availing of this process as several other European countries provide civil registration for both same sex and opposite sex couples.
- 5.3 The recent annual report from the Registrar General 2002 show a growing trend of parents who are choosing to co-habit as just under 34% of all live births occur outside marriage with 69% of these births being jointly registered.

- 5.4 The recent Census also shows that this trend is on the increase in that nearly 8% of all persons living in as a couple were co-habiting in Northern Ireland, and almost 40% of these couples have dependent children.
- 5.5 It is also worthwhile to note that Section 75 of the Northern Ireland Act promotes equality of opportunity between those with dependents and persons without and persons of different marital status. Therefore due regard in this instance needs to be given to these categories.
- 5.6 The Commission understands that the Department of Constitutional Affairs is leading a cross-government working group to explore how best to raise public awareness about the rights and responsibilities of opposite sex cohabitants and to dispel the myths around 'common law marriage'. In the absence of civil registration for opposite sex couples, the Commission would recommend, that Northern Ireland is included in any proposals that may emerge from this working group, given the suspension of the Northern Ireland Assembly.

6. Other Issues

- 6.1 The Commission previously argued in its submission to the Housing Bill that the definition, 'living together as husband and wife' be amended to include same-sex couples. We are therefore pleased to see that this has been recognized. However we recommend that this is explicit in any definition of the 'meaning of ones family' in keeping with responsibilities under Section 75 of the Northern Ireland Act 1998 which includes sexual orientation. We suggest wording such as, "...or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex."
- 6.2 While a wide range of rights and responsibilities are set out in the Consultation Document, two sets of issues are left

undisturbed. First, in relation to adoption, the Commission welcomes the proposed review of adoption law in Northern Ireland. It can see certain difficulties, particularly over parental responsibility for children on dissolution of a civil partnership, which could be alleviated if the Adoption and Children Act 2002 applied in Northern Ireland as it applies in England and Wales.

- 6.3 Secondly, it is noted that basic provisions on taxation are excluded from the proposals. If there is to be genuine equality of treatment towards same-sex partnerships, it is essential that civil partnerships enjoy the same rights and privileges in relation to matters such as income tax and capital transfer tax as are enjoyed by opposite-sex couples.