

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM THE EQUALITY AND HUMAN RIGHTS COMMISSION

4. How would you characterise your views on the Bill in general?

We welcome the proposals put forward by the Scottish Government. The Commission believes in the principle of equality of access for all to marriage and to civil partnership.

5. How would you characterise your views on the introduction of same sex marriage, so that same sex couples can marry each other?

We welcome the proposals put forward by the Scottish Government. The Commission believes in the principle of equality of access for all to marriage and to civil partnership.

6. How would you characterise your views on putting belief celebrants on the same footing as religious celebrants?

We agree with the Government's proposals.

7. How would you characterise your views on the arrangements for authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)?

Subject to the following, we welcome the proposals for an opt-in procedure authorising religious and belief celebrants who wish to solemnise same sex marriage.

It appears to be the intention of this Bill that ministers who do not wish to conduct or otherwise be involved in same sex marriages, could not be required by their religious organisation to do so. Section 10 (1D) (d) provides that "nothing in subsection (1B)(a) or (1C)(a) imposes a duty on any person who is an approved celebrant in relation to marriages between persons of the same sex to solemnise such marriages."

However, it could possibly be argued that any restriction on a religious organisations' right to require a minister of theirs to take steps in relation to same sex marriage, for example requiring a minister to agree to apply to be an approved celebrant, may potentially amount to an unlawful interference with the freedom of religious organisations to enforce their religious doctrines within their organisation, contrary to Article 9 ECHR. Such matters, relating as they do to the freedom of religious organisations to ensure their employees and officials act in accordance with their ethos, may not fall within the remit of this Bill. It is however an area in which further clarification from government may be useful.

8. How would you characterise your views on civil partnerships changing to marriage?

Given that the principle of same sex marriage has been established, we believe that it would be helpful to enable civil partners to convert their relationship to that of marriage if they so choose.

9. How would you characterise your views on allowing civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and registrar?

We support the Governments proposals to permit opposite sex and same sex civil marriage ceremonies to take place anywhere agreed between the registrar and the couple, other than religious premises.

10. How would you characterise your views on allowing the religious and belief registration of civil partnerships?

We believe that civil partnerships should be able to be registered through religious and belief ceremonies. Where celebrants and religious organisations wish to register civil partnerships, we see no reason to prevent such ceremonies. We would however be opposed to any requirement on religious organisations to register civil partnerships.

11. How would you characterise your views on allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate, which provides legal recognition in the acquired gender?

We believe that the principle of allowing transgender people in a relationship to stay together when obtaining a full Gender Recognition Certificate (GRC) is right. We welcome the proposals which would mean that it is no longer always necessary to divorce for married people to stay married when obtaining a full GRC, if the spouse consents.

It would be helpful if it is made clearer how the procedures which are set up under schedule 2 sit with the Regulations which could be made under section 27 : a clearer explanation of “renewed marriage” and “re-solemnisation”, when each would arise and the effect each would have; clarification that (as we understand it) re-solemnisation is intended to be an optional procedure; and clarification as to what the effect of the proposed procedures would be on a marriage which has been solemnised by a religious body which does not support same sex marriage.

12. Would you like to comment on the wider issue of protections for those in society who may have concerns about same sex marriage?

13. Would you like to comment on the wider issue of freedom of speech?

We welcome the Lord Advocate’s guidelines on this matter published in June. These concise guidelines provide a useful statement of the proportionate approach to the issue which will be required.

14. Would you like to comment on any other wider issues in relation to the Bill that are not mentioned above?

Pensions

While we do have concerns about inequalities in pension provision for those in civil partnerships and for transgender couples, we recognise that pension policy is an area which is reserved to Westminster. The difference in treatment between same sex married couples and transgender couples on the one hand, and the opposite sex couples on the other is potentially discriminatory.

We note that the UK Government has said that it will review the issue and report by July 2014. Further, we note the impact of the recent Employment Tribunal decision in the case of *Walker v Innospec* (ET 2411316/2011), which held that a pension scheme's failure to provide survivor's benefits for civil partners equal to those provided for spouses was unlawful discrimination. The Tribunal held that the pension provisions as set out in the Civil Partnership Act in England and Wales, are not compliant with EU law. We understand that this case has now been appealed and that an EAT hearing is set for January 2014, which will be very relevant to this issue.

Where the Scottish Government has devolved powers in relation to certain public sector pension schemes in Scotland, it should exercise those powers in a way which ensures equality of access to pension benefits and avoids discrimination.

Mixed-sex civil partnership

The Bill does not make any provision for mixed-sex civil partnership. The Commission is in favour of choice being extended to all in relation to marriage and civil partnership. We welcome the extension of marriage to same sex couples and believe that opening up civil partnership to mixed-sex couples would be a further step to deliver equality.

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