

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM LGCM

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

In support

LGCM (Lesbian and Gay Christian Movement) strongly supports and welcomes the bill. It will be a huge step forward for equality in Scotland, and it balances equality with respect for freedom of religion and freedom of speech.

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

In support

LGCM has campaigned for the introduction of same-sex marriage for many years, because LGBT people across Scotland have told us how important that is for them, especially LGBT people of faith who have been denied the opportunity to celebrate their relationships before God and with their community of faith. It is very important that the bill does not create two different versions of marriage, same-sex marriage and mixed-sex marriage, because that would lead to continued discrimination. The law should treat all marriages the same, regardless of the genders of the spouses. We welcome that the bill achieves that, with the exceptions of the arrangements to allow religious and belief bodies to choose to conduct mixed-sex marriages only, and the outdated rule of law that in a mixed-sex marriage the wife cannot be charged with resetting goods stolen by her husband. The treatment of those issues in the bill is appropriate. We also note that the bill applies unchanged the existing meaning of adultery as evidence for divorce, to same-sex and mixed-sex marriages. Under the existing law, sexual intercourse with a person of the opposite sex is adultery; other forms of sexual infidelity, with a person of the opposite sex or the same sex, do not fall within the existing legal definition of adultery but can form the basis of a divorce under the "unreasonable behaviour" rule. We agree with the approach taken in the bill, which applies the law on adultery and other sexual infidelity equally to same-sex and mixed-sex marriages, and allows divorce on grounds of sexual infidelity for all marriages. In Scotland, there is no consummation requirement for marriage, and so there is no need for the bill to address this for same-sex marriage.

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

In support

Humanist celebrants in Scotland can already conduct legally-recognised marriages. The bill clarifies that in the law, and makes clear that other philosophical belief organisations can also apply to conduct marriages. We welcome this.

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)?

In support

We agree that religious and belief organisations should be free to decide for themselves whether to solemnise only mixed-sex marriages, or same-sex marriages as well. Some religious bodies want to conduct same-sex marriages, including the Quakers, Unitarians, Metropolitan Community Churches, Liberal Jews and others. Other religious bodies, including the larger churches, do not want to conduct same-sex marriages. Religious freedom should apply to both groups, and the bill gets the balance right. However, it is important that where there are shared premises that one group does not have the right veto the ability of another group to opt in. We think that the opt-in procedures in the bill are the appropriate way to do this, and, together with the amendments to the Equality Act 2010 which have been agreed with the UK Government, protect the religious freedom of religious bodies and of their members who participate in marriage ceremonies. We think that a small amendment is needed to section 11(2) of the bill, in order to give those religious and belief bodies that want to, the option of using the gender-free form of the marriage ceremony, in section 11(2)(g), for mixed-sex couples who would prefer that form. This is particularly important for mixed-sex couples where one or both is transgender or intersex. Religious bodies that wish to always use the “husband and wife” gendered form of the marriage ceremony should be free to continue to do so.

How would you characterise your views on civil partnerships changing to marriages?

In support

From consulting with many people in civil partnerships, we know that at least half are likely to want to change their civil partnership to a marriage. Some couples who want to change would like to do so by marrying in the usual way, in a civil ceremony or a religious or belief ceremony conducted by an organisation that chooses to conduct same-sex marriages. However, many couples in civil partnerships would prefer to change their civil partnership to a marriage via a simple and inexpensive administrative procedure “they have already had their big ceremony when they had their civil partnership. The bill provides both those ways of changing a civil partnership to a marriage, which we welcome. However, in the bill, couples who are already in a civil partnership can only convert to a marriage in Scotland if their civil partnership was registered in Scotland. Clearly the lightweight administrative procedure for changing to a marriage can only work with civil partnerships registered here in Scotland, but we see no reason why couples in a civil partnership registered elsewhere should not be allowed to marry in Scotland in the usual way. Not allowing this would cause real problems for couples who registered a civil partnership abroad and then moved to Scotland. They will be unable to change to a marriage unless they first dissolve their civil partnership. But that requires proving that the civil partnership has irretrievably broken down, by living apart for a year. It is very unfair to ask civil partners to do that in order to marry. Even if they return to the country where they registered their civil partnership, if that country does not allow same-sex marriage, they would need to dissolve their civil partnership there in a

similar way before coming back to Scotland to marry. The practical result will be that the couple will effectively be barred from marrying. In contrast, same-sex couples from any part of the world who are not in a civil partnership will be allowed come to Scotland to marry, whether or not that marriage would be recognised in their home country. We see no reason why this should not also apply to couples who are already in a civil partnership, and we believe that the bill should be amended to allow this.

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?

In support

This is not specifically an issue for LGBT people, but we welcome the additional flexibility that will be allowed in choosing the location of civil marriage ceremonies.

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

In support

Allowing the registration of civil partnerships in a ceremony conducted by a religious or belief body that chooses to do so, is important as there are some religious bodies that would not wish to conduct same-sex marriages, but would be prepared to offer religious civil partnership ceremonies to same-sex couples who are their members. There may also be some couples with religious beliefs who would prefer a civil partnership to a marriage as they feel this type of contract is more relevant to how they understand their relationship.

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?

In support

Absolutely!! We strongly support the principle of allowing transgender people who are married to obtain gender recognition without being required by the state to divorce. In our view, however, a number of amendments are needed to the parts of the bill that deal with gender recognition. As the bill stands, a married person will require the consent of their spouse to obtain gender recognition. This enables the spouse to effectively “veto” the trans person’s gender recognition, or at least to delay it while the trans person applies for a divorce. If the relationship between the spouses is difficult, the divorce proceedings could take a long time, during which the trans person is unable to access their human right to legal recognition in their true gender. When a trans person applies for gender recognition, they have already been living in their acquired gender for at least two years. Obtaining gender recognition does not therefore change the practical nature of their marriage, which has been same-sex for at least two years. But it does free the trans person from discrimination by bringing their legal status into line with reality. That should be available with or without the spouse’s consent, because it

is a matter personal to the trans person, and has no direct effect on their spouse. It is the re-registration of the marriage after gender recognition where both spouses have a direct interest, and where a requirement for the consent of the trans person's spouse would be appropriate. We therefore believe that spousal consent should not be required for the granting of gender recognition, but should instead be required for the subsequent re-registration of the marriage and the issue of a new marriage certificate. As at present, the non-trans spouse would continue to be able to obtain a divorce in such circumstances, if they wished to end the marriage. The bill is also currently missing a provision that was added to the corresponding English legislation, allowing a person to obtain gender recognition with simpler evidence requirements if they have been transitioned for at least six years. When a person has been transitioned for a long time, it can be very difficult indeed to obtain all the medical evidence that is required from people who have only been transitioned two years. The doctors involved may have retired or even died. We therefore believe that a provision for simpler medical evidence for long-term transitioned people should be added to the bill – this would assist the Gender Recognition Panel as well as applicants. We would also like to see the minimum age for applying for gender recognition brought into line with the minimum age for marrying in Scotland, that is, 16.

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

We think that the bill strikes the right balance, and provides good protections for people with concerns about same-sex marriage. No religious organisation will be required to conduct same-sex marriages unless the organisation agrees to. Even where an organisation does agree, individual marriage celebrants within that organisation will be free to opt-out of same-sex marriages, as will any person who plays a part in the religious marriage ceremonies of that organisation (eg the church organist). These are strong protections. It has been proposed by some people that the bill should give civil registrars a statutory right to opt out of conducting same-sex marriages. We would strongly oppose that. Unlike religious celebrants, civil registrars are carrying out a civil function on behalf of the state, and therefore an opt-out on grounds of their personal religious belief is not appropriate. It would set a dangerous precedent that public service providers (in local government, NHS, etc) should have a legal right to pick and choose who they serve. This is no more acceptable on grounds of sexual orientation and gender identity than it would be on other grounds such as race. The registrars' organisation, the Association of Registrars of Scotland, is not calling for an opt-out. The registering of civil partnerships in Scotland by civil registrars has worked well without any such legal opt-out, and we expect the registering of same-sex marriages to work equally well in a similar way. It has also been proposed by some people that teachers should have the right to opt out of mentioning same-sex marriage if a pupil asks about it or it comes up in class, and that parents should be able to remove their children from any class where same-sex marriage might be mentioned. We would strongly oppose this. Teachers are there to teach the facts, not their personal views, and should answer questions factually. No teacher will be required to say that they personally agree with same-sex marriage, but all teachers must treat all pupils with respect, whatever their family arrangements, including pupils with same-sex married parents. It would be unworkable to allow opt-outs from lessons where same-sex marriage is mentioned.

Opt-outs are not available from lessons where divorce or abortion are mentioned, which are equally controversial for some people. We have developed a lesson plan to deal with this topic for use in secondary school and can be found at www.faithandsexuality.co.uk

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

The bill will have no negative effect on freedom of speech, as section 14 of the bill confirms. People will remain free to disagree with same-sex marriage and to express that disagreement publicly. The Lord Advocate's guidance published with the bill makes clear that it is not a crime to disagree publicly with same-sex marriage. The case of *Smith v. Trafford Housing Trust* demonstrates clearly that it is against the law for an employer to take action against an employee simply because they say publicly that they disagree with same-sex marriage.

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

The bill is a huge step forward for equality, but it does not introduce full equal marriage. Apart from the issues mentioned under questions 7, 8 and 11 above, the main thing missing from the bill is the introduction of mixed-sex civil partnerships. That has always been a part of the wider Equal Marriage campaign in Scotland. We believe that the same choices – marriage or civil partnership – should be open to all couples regardless of their gender. We therefore welcome the Scottish Government's public commitment on 27th June 2013 to conduct a review of civil partnership law, – driven by the need to consider the position on opposite sex civil partnership. We believe that review should start without delay, and, once it is complete, there should be prompt legislation to open up civil partnership in Scotland to couples regardless of their gender. This will also make it possible for a person in a civil partnership to get gender recognition without the need to change their civil partnership to a marriage. Finally, we note that the regulation of private sector pension schemes is reserved to Westminster, and that under the current rules, private sector pension schemes will be allowed to pay much smaller survivor's pensions to people in same-sex marriages than to those in mixed-sex marriages. This is clear discrimination, and the UK Government has agreed to set up a review of the situation, to report by July 2014. The UK Government have the power to change the rules on this by statutory instrument, and we strongly believe that they should do that once the review is complete.

Are you responding as...

a faith/belief-based organisation
a faith/belief local group or congregation
an LGBT group

Rev Sharon Ferguson
LGCM
21 August 2013