

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM FAMILY EDUCATION TRUST

About Family Education Trust

For over forty years, Family Education Trust has conducted research into the causes and consequences of family breakdown. By means of its publications and conferences, and through its media profile, the Trust seeks to stimulate informed public debate on matters affecting the family and the welfare of children and young people, based on reputable research findings.

Family Education Trust is a registered charity and has no religious or political affiliations.

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

In opposition.

Strongly committed as it is to creating legal parity between opposite sex and same-sex relationships, in drafting the legislation the Scottish Government has been unable to escape the fact that they are fundamentally different. No amount of rhetoric or manipulation of language will ever be able to make them the same. The whole notion of 'equal marriage' for same-sex couples is flawed.

We are concerned that, in pursuing something which does not and cannot exist out of a desire to accommodate the wishes of the few, the Scottish Government will inevitably create a whole host of injustices and inequalities for the many.

Please see our response to Question 5 for a fuller explanation of the basis on which we oppose the proposals contained in the Bill.

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

In opposition.

We are opposed to the redefinition of marriage for the following reasons:

- There are four key components in the definition of marriage: it is voluntary, heterosexual, monogamous and lifelong. These four elements belong together. If any one of them were to be amended or removed, it would change the definition of marriage and the meaning attached to marriage in society. The Scottish Parliament should no more legislate for same-sex marriage than it should legislate for forced marriage, polygamous marriages, or temporary contract marriages.
- Marriage does not merit special recognition simply because it marks an intimate relationship between two people. If that were the case, there would be no reason to prevent marriage between siblings or between a parent and his or her child.¹ Rather,

¹ As Professor John Haldane of the University of St Andrews has observed, 'In those countries where the arguments for same-sex marriage were first pressed, various polyamory and genetical sexual attraction groups now deploy parallel arguments in support of multi-party and sibling marriage (hetero- and homosexual).' Letter to the *Daily Telegraph*, 21 March 2012.

marriage between a man and a woman has a unique place in law because of its potential to produce children, because of the proven benefits it brings both to children and to society, and because of the web of intergenerational support it provides.

- Once the state legislates for marriage between two men or two women simply because they 'love each other and want to formalise a commitment to each other', it is difficult to maintain a principled objection to marriage between a group of men and/or women who are seeking a formal recognition of their love for each other.
- Since same-sex couples can already obtain all the legal benefits of marriage by entering a civil partnership, there is no compelling need for same-sex marriage.
- If marriage were to be redefined as proposed, the law would be sending out the message that a household of two women or two men is just as appropriate a context for raising children and that it does not matter whether children are reared by both their mother and their father, or by a parent of each sex at all. There is no evidence to suggest that children raised by a same-sex couple in a redefined version of marriage would reap the same benefits that are associated with being raised by their natural father and mother when they are married to each other.

Although research into the outcomes for children brought up by a same-sex couple is sparse, a recent study published in the journal *Social Science Research* found 'numerous, consistent differences' on 40 different social, emotional, and relational outcome variables between young adults raised by a parent who has had a same-sex romantic relationship and those raised in other family contexts. The differences were particularly marked when comparing the children of women who have had a lesbian relationship and those with still-married (heterosexual) biological parents.²

- Some employees have already faced disciplinary action and even dismissal because they found themselves unable in good conscience to facilitate civil partnerships as part of their employment duties. Since same-sex marriage arouses stronger sensitivities than civil partnerships, the conflict experienced by employees is likely to be much more widespread. (See response to Question 12 below.)
- Legislating for same-sex marriage would have implications for the education of children. Children in schools would have to be taught that society recognises no distinction between a marriage between a man and a woman, and a marriage between two men or two women. Large numbers of both parents and teachers would object to this.
- Legislating for same-sex marriage would inevitably lead to individuals and organisations facing legal challenges for expressing the view that, by its nature, marriage can only be between a man and a woman. (See response to Question 13 below.)

² Mark Regnerus, 'How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study', *Social Science Research*, Vol 41, Issue 4, July 2012, pp752–770.

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

In opposition.

Since civil partnerships were set up to be a separate and entirely distinct institution from marriage, it should not be possible to convert one to the other as if there were no material difference between them.

There are four key components in the definition of marriage: it is voluntary, heterosexual, monogamous and lifelong. These four elements belong together. If any one of them were to be amended or removed, it would change the definition of marriage and the meaning attached to marriage in society. Since a civil partnership is defined as ‘a relationship between two people of the same sex’, it is not possible for a civil partnership to change into a marriage.

As Lord Filkin, the minister for constitutional affairs at the time the Civil Partnerships Bill was being debated, put it: ‘The concept of homosexual marriage is a contradiction in terms.’³ It was so then, and it remains so now.

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

(a) The position of registrars who do not recognise same-sex marriage

If the proposed legislation is passed, many registrars will find themselves exposed to the risk of dismissal if they express a conscientious objection to conducting a same-sex marriage. Several registrars found themselves in this position when civil partnerships were introduced, but in view of the even greater sensitivities aroused by same-sex marriage, it is likely that many more registrars would be affected.

We would venture to suggest that the Scottish Government’s proposal not to allow an opt-out for registrars who cannot in good conscience preside at same-sex marriage ceremonies runs counter to its expressed aim to ‘*provide equality whilst, at the same time, promoting and protecting religious freedom and freedom of speech*’. Registrars who support the historic and well-nigh universal definition of marriage would run the risk of being denied the opportunity to continue in their role on an equal basis with those who are comfortable with embracing the redefinition of marriage.

Not all registrars who object to same-sex marriage do so on the basis of a religious faith, but if no opt-out is provided, those with a religious motivation would not enjoy the protection of religious freedom and freedom of speech which the Scottish Government professes to offer. Such protections should not be limited to the official representatives of faith groups, but should be extended to all people of faith who cannot in good conscience recognise the union of two people of the same sex as a *bona fide* marriage.

In the absence of an opt-out for registrars with a conscientious objection to same-sex marriage, we foresee that not only will some experienced registrars be lost to the profession, but that in the future many individuals would find themselves excluded from the field of civil registration on account of their views on marriage.

(b) The position of other wedding service providers

The Scottish Government is seeking to protect faith groups and individual religious celebrants who are persuaded that marriage can only ever be between a man and a woman.

³ House of Lords, Hansard, 11 February 2004, col 1094-1095.

However, with the exception of faith representatives who do not wish to solemnise same-sex marriages, the Bill currently contains no protections for other individuals who do not wish to be involved with same-sex marriages in the course of their employment duties, whether they are motivated by a religious faith or not.

For example, while a priest, minister, rabbi or imam is free to say he does not believe in same-sex marriage and wants nothing to do with the ceremony, the Bill provides no protection at all for the chauffeur, the seamstress, the printer, the photographer, the caterer or the marriage counsellor who is no less committed to the principle of traditional marriage than any faith leader.

It is not only church and faith leaders who require strong and effective protection. We would therefore like to see provision made within the Bill for a duty on an employer to accommodate an employee who has a conscientious belief that marriage is the union of one man to one woman for life to the exclusion of all others. In practice, that would mean taking steps to ensure that an employee is not put under pressure to assist with making arrangements for a same-sex wedding when to do so would go against his or her conscience.

'Reasonable accommodation' has a long pedigree in other parts of the world and particularly in the United States. The Civil Rights Act 1964 requires that employers reasonably accommodate the sincerely held religious beliefs of employees, unless doing so would impose an undue hardship on the operation of the employer's business. This protection extends to manifestation of those beliefs. Without such protection, employees could be faced with the stark choice of being forced to act against their conscience or losing their job.

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

Over recent years, several individuals have been investigated by the police for publicly expressing views deemed offensive to homosexuals, even though their views were expressed in a measured way. For example, childcare author Lynette Burrows was questioned for expressing the view that same-sex adoption was not in the best interests of children,⁴ and an Anglican bishop was similarly subjected to police inquiry for suggesting that it was sometimes possible for homosexuals to 'reorientate themselves'.⁵ Although charges were not pressed in either of these cases, the very fact that the police considered the expression of such views worthy of investigation is in itself a matter of some concern.

Adrian Smith was demoted by Trafford Housing Trust and had his salary cut by 40 per cent for referring to same-sex marriage 'an equality too far' in a post on his personal Facebook page in his own time. Although he won his High Court appeal,⁶ he was not reinstated to his post. The cost of his case exceeded £30,000, but he received only £98 in damages.⁷

We are not convinced that section 14 of the Bill will prove an adequate safeguard in cases such as these.

We are also concerned that teachers who indicate that they do not support same-sex marriage or who are unable in good conscience to use teaching materials that refer positively to same-sex marriage may face disciplinary action. We would therefore like to see protections written into the Bill to safeguard teachers who do not accept that same-sex marriage is possible by definition and also to pay due respect to the rights of parents who do not wish

⁴ Sally Pook, 'Police warn author over gay comments', *Daily Telegraph*, 10 December 2005.

⁵ BBC News Online, 'No charges for bishop in gay row', 9 November 2003.

⁶ *Smith v Trafford Housing Trust* [2012] EWHC 3221 (Ch).

⁷ Adrian Smith, Memorandum to the House of Commons Public Bill Committee: Marriage (Same-Sex Couples) Bill (MB 37), 27 February 2013.

their children to be taught that same-sex marriage is equivalent to the marriage of a man and a woman. This would include granting to parents the right to withdraw their children from classes in which same-sex marriage is to be discussed.

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