

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM LGBT YOUTH SCOTLAND

Q4 & Q5 How would you characterise your view of the Bill in General? How would you characterise your views of the introduction of same sex marriage?

LGBT Youth Scotland welcomes the Marriage and Civil Partnership (Scotland) Bill. We strongly believe that this Bill will have a positive impact on lesbian, gay, bisexual and transgender people by creating equal access to marriage for all couples regardless of sexual orientation or gender identity. At present it is a robust Bill although some parts of the Bill could be improved to ensure it considers the needs of lesbian, gay, bisexual and transgender people fully.

The key areas of the Bill which we believe are positive are:

- Making marriage available to same-sex couples
- Enabling religious and belief bodies the opt-in for conducting religious civil partnerships and same-sex marriages
- Recognition that there are currently sufficient legal protections to ensure that those who disagree with equal marriage are not negatively affected.

Mixed-sex Civil Partnerships

The LGBT National Youth Council, representing LGBT young people from across Scotland, first began campaigning on equal marriage in 2009. They believe that all couples, whether they are classified as 'same-sex' or 'mixed-sex' should have the same options for legal recognition. Their manifesto called for marriage and civil partnerships to be made available to all couples.

As we have stated in our previous two consultation responses, we believe that this Bill should include provision for mixed-sex civil partnership. As the current Bill does not extend civil partnerships to mixed-sex couples, it has the potential to negatively impact on bisexual people and transgender people who wish to have a civil partnership when in a mixed-sex relationship. It could also have a negative impact on transgender people who do not conform to binary gender identities. For example, those who do not identify as male or female (androgynous people) under the current legal system are forced to identify as the sex recorded on their birth certificate. This Bill would mean that they would not have access to civil partnerships if their birth certificate indicated that they were in a mixed-sex relationship, negating their gender identity.

During the consultation on the draft Bill, we asked LGBT young people what they felt about the proposed legislative changes. They expressed disappointment that the proposals created inequality based on sexual orientation or gender reassignment.

I'm bisexual and may one day want to enter a civil partnership instead of a marriage. It's more of a right to choose between two options that's important.

Work place – if you don't get mixed-sex civil partnerships and at work you have to say your relationships status as civil partnership you instantly open yourself up to discrimination and homophobia.

This is also reflected in current opinion polls which showed that 71% of respondents said that mixed-sex couples should have the right to get a civil partnership. (Ipsos MORI Scotland Opinion Poll 2012)¹. LGBT Youth Scotland agrees with the young people consulted that opening up mixed-sex civil partnerships would reduce inequality, increase freedom of choice and be very important for including and normalising bisexual and transgender people. We therefore ask the Equal Opportunities Committee to include in their stage 1 report the importance of the proposed review of mixed-sex civil partnership.

Age of Gender Recognition

There are additional instances where an individual of marriage age may be restricted due to gender identity. In Scotland the age of legal capacity is 16, meaning that young people aged 16 can not only consent to medical treatment, but enter into a marriage. The age for receiving a Gender Recognition Certificate, however, is 18. It is important that this Bill mirrors Scottish law in regards to the age of legal capacity.

We work with many transgender young people who begin living in their acquired gender far earlier than the age of 16. In addition to having an extended wait time prior to applying for GRC, these young people may be faced with a choice to enter into a marriage that will need to be re-registered once they are old enough to receive GRC, or wait until they attain the age of 18 and a GRC before entering into marriage.

When we asked young people from two transgender-specific youth groups what the current rules meant for them, they said:

I'm 18 and am currently engaged. My partner and I have been engaged for approximately a year and a half now and although we were both very keen to be legally married and had planned to do so the summer following our engagement. However, as the age for GRC is 18 and at the time we were 17, we couldn't get married...[Changing the age of GRC to 16] would have made a huge difference, my partner and I could have been married when we originally planned.

¹ Ipsos MORI Scotland Opinion Poll 2012, accessed: <http://equalmarriage.org.uk/wp-content/uploads/2012/10/Equal-Marriage-and-Public-Opinion.pdf>

Others highlighted the disconnect between having the ability to leave education and enter the workforce, being treated as an adult, but being denied the right to have all official documents reflect their acquired gender.

I'm currently 17 and am going away to college next year. I would much prefer to have myself as male on the official records, but they need to have my 'real' details on the system.

The ability to understand your own gender comes well before 16.

Legally, I could have been recognised as the gender I am and be able to be exactly who I am in every life situation as soon as I was old enough to leave school.

Q7 How would you characterise your views on the arrangements for authorising celebrants to solemnise opposite sex and same sex relationships.

LGBT Youth Scotland agrees that religious and belief bodies should be allowed, but not required to conduct same-sex marriages. We agree with an opt-in process for religious and belief bodies in authorising celebrants as this would protect religious bodies and celebrants who do not wish to solemnise same-sex marriage or religious civil partnership without restricting the freedom of religious or belief bodies who wish to conduct them.

Q8 How would you characterise your views of civil partnerships changing to marriage?

We agree that couples should have the right to convert their civil partnership to a marriage. Many same-sex couples would have entered into a civil partnership in order to gain legal recognition when the option of marriage was not available to them.

Registration of marriages should be gender neutral and there should be no difference between the forms and certificates used for same-sex and mixed-sex marriages. There should be an option for couples to decide what designation they would like to use, such as spouse or bride and bridegroom. This would ensure that religious bodies who chose to not recognise same-sex marriage have the option of retaining 'bride' and 'bridegroom' during the ceremony, yet other individuals in mixed-sex marriages are also free to choose 'spouse'.

Gender neutral language is particularly important for transgender individuals who identify as androgynous or who do not wish to apply for a GRC. Although such individuals would be able to enter into a marriage regardless of their gender (unlike for Civil Partnerships, as discussed above), gendered documents may force individuals into using language with which they are uncomfortable. For instance, if someone who identifies as androgynous enters into a marriage and their official

documents designate that marriage as a 'mixed-sex' marriage, they may be obligated to choose 'bride' or 'bridegroom' although they do not identify with such gendered concepts. Once the Bill passes, there should not be a distinction between the documents used to register same-sex and mixed-sex marriages, there should only be marriage documents which contain wording options. For further information on the specifics around converting civil partnerships to marriage and re-registering marriages after GRC, please see the discussion by Equality Network, which we support.

The administrative route should be available alongside the ceremony route to converting civil partnerships and should be available to those in qualifying civil partnerships who currently reside in Scotland. These individuals should not be required to undertake a ceremony in order to claim the legal status that they were denied at the time of registering their civil partnership. Couples may have already registered their civil partnership with a ceremony or celebrated with family and friends and the administrative route must be an option to all couples. The administrative route should be a simple procedure, such as attending a local registrar to verify documents and signatures, and should not cost more than the staff time and documents required.

Q10 How would you characterise your views on allowing the religious and belief registration of civil partnerships?

LGBT Youth Scotland welcomes the introduction of religious and belief options for same-sex couples of faith who wish to include their faith or belief community in celebrating their legal relationship commitment.

Q11 How would you characterise your views of allowing transgender persons to stay married when obtaining a full GRC?

We welcome the change to the law that would enable couples to remain married when obtaining a full Gender Recognition Certificate. Our concern, however, lies with the requirement for spousal consent prior to receiving a GRC. Although it should be required for both partners to consent to remaining in the relationship, it should not be the role of the spouse to block their partner from receiving official gender recognition. We propose that spousal consent be changed to only apply for re-registering the marriage rather than recognising the individual's gender.

Individuals possessing an interim certificate should be permitted to apply to the sheriff court to receive a full GRC, without divorcing. This would not re-register the marriage but enable it to continue in its present state. If the couple wishes to re-register their marriage with updated details, they would then supply a statutory declaration stating that they wish to remain in the relationship and re-register taking the GRC into account. For further details on the proposed changes to this process, see the Scottish Transgender Alliance's written evidence.

Q12 & 13 Would you like to comment on the wider issue of protections for those in society who may have concerns about same sex marriage? Would you like to comment on the wider issue of freedom of speech?

The Bill states that exercise of freedom of thought, conscience and religion or expression are not affected by the content of the Bill and individuals continue to remain protected in regards to these under existing laws. We feel that these protections are made clear and are sufficient, but this section must remain in the Bill. We are pleased to see reference to General Teaching Council for Scotland's *Code of Professionalism and Conduct* in the Policy Memorandum. This recognises that teachers have a duty to provide young people with unbiased information and consider their rights and wellbeing; our research shows that this results in positive learning experiences for young people.

The Policy Memorandum also mentions that the Education Circular 2/2001 will be updated and maintain the right of parents and carers to withdraw children and young people from sexual health education. While we recognise the importance of including the views of parents and carers in their child's education, and are not advocating that they be withdrawn, it is important that the rights of adults are not privileged over the rights of children and young people.

Sexual Health and Relationships Education within schools are often the only classes in which same-sex relationships are mentioned, meaning that there is low visibility for LGB identities in education and rarely does this include transgender visibility. We know that when LGBT young people do not receive appropriate health information they are less likely to have knowledge of safer sex practices, healthy relationships and may place themselves at increased risk of domestic abuse, sexual exploitation or sexually transmitted infections². It is therefore worth noting that this would be exacerbated for LGBT young people who are withdrawn by parents or carers from sexual health education.

Under the UNCRC, young people have the right to receive information that is relevant to them (Article 13) and to have a say in decisions that affect them (Article 12). At the time of the consultation on the draft Marriage and Civil Partnership (Scotland) Bill, we consulted with young people in seven youth groups and two school classes. Overall, young people felt that without their opinions taken into account, parental opt-out limits their education, undermines their right to information and implies that young people are unable to choose what is best for them. The Scottish Youth Parliament consulted with young people around PSE in schools. The majority felt that young people should be asked their views and have them taken into account where their parents have asked for them to be withdrawn from a lesson (80.7%)³. A smaller majority believed that they should be able to take part in lessons

² COGAM 'Adolescencia y Sexualidades Minoritarias. Voces Desde la Exclusión.' Universidad Autónoma de Madrid. 2007:2.

³ Scottish Youth Parliament (February 2013) 'What Do You Think About PSE in Schools' survey.

if they don't agree with their parents' view that they should be withdrawn, regardless of age (71.4%).

As noted in our previous consultation response: 'Any decisions that result in a child being removed from a class should take into account the principles of the *UN Convention on the Rights of the Child* regarding equal treatment, the child's best interests, and giving appropriate weight to the views of the child. This is specifically noted in GTC Scotland's *Code of Professionalism and Conduct* ⁴ which outlines these core principles and suggests that teachers '*should be aware of the general principles of the UN Convention on the Rights of the Child*'.

Including the views of young people would promote better Health and Wellbeing Experiences and Outcomes as outlined within *Curriculum for Excellence* under 'relationships, sexual health and parenthood'.

Q14 Would you like to comment on any other wider issues in relation to the Bill that are not mentioned above.

We have dealt with the wider issues in line with the questions above.

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⁴ General Teaching Council Scotland. *Code of Professionalism and Conduct*. 2012: 9.