

## MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

### SUBMISSION FROM MUSLIM COUNCIL OF SCOTLAND

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

In-opposition

The Scottish Government SG intends to proceed with the introduction of very controversial issue of same sex marriage SSM despite of the results of the consultation in 2011 with over 77,000 responses two thirds majority opposing SSM.

By forcing a new definition of marriage the Government is interfering in one of the fundamental practices of most faith communities and their way of life.

The scope of the present consultation is very limited because it seeks views on the detail of the legislation after having already ignored the objection to the principle itself.

#### 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

From the Islamic perspective we totally oppose same sex marriage in any shape or form. This view is very clear and straight forward within the teaching of Islam, as is the case with the very large majority of the world religions.

This belief does not and should not be considered a homophobic behaviour.

Marriage is a sacred institution and not just a contract to live together and is defined as "the union of a man and a woman with the interest of the children as the first priority and at the heart of it.

As a matter of principle, Governments do not have the right to re-define marriage and/ or subject the people to such a controversial environment with severe implication for the large majority of the Scottish People.

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

In opposition

We are not supportive of the proposal to establish 'belief' ceremonies because we do not wish to encourage secular marriages, which will cause confusion in defining what is Religious Faith and Secular Belief. There is a clear difference between marriage based on faith with rules that are divine and well tried for centuries and belief contracts which could be introduced by followers at any time with no experience of application.

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)?

Neither

We welcome the opt-in registration arrangement in the Bill. This goes well with the fact that the marriage is the act of worship as acknowledged by the SG in the consultation document.

While the UK Government will amend the Equality Act 2010 to give individual celebrants the right to refuse to solemnize same sex marriage even if their organizations opt in for solemnizing same sex marriages, there is a strong possibility that a claim of a breach of human rights might be taken against a religious organization by an individual celebrant.

This matter may be ultimately determined by the European Court of Human Rights. There is no guarantee that, at some future date, the court will not rule that religion and belief celebrants must either solemnise all 'marriages' or cease to marry people altogether.

Although the European Court of Human Rights has made it clear that it won't impose same-sex 'marriage' on nation states, if a country makes it available in some contexts it must be made available on an equal basis. Discrimination in the provision of same-sex 'marriage' could be ruled to contravene the Convention.

In summary, while the Government brings about equality for same sex marriage and the definition and meaning this has, it will also undoubtedly have a severe negative impact on traditional marriage and the very rights of the individuals being compromised or taken away to their detriment.

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

In Opposition

As stated before same-sex relations/unions are not accepted in our faith under any name.

This is one of many features of inconsistency in this Bill, This will create a two tier system giving same sex couples more options to register their relationships than is available to heterosexual couples.

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?

In Opposition

SG has not specifically clarified what they mean by 'religious premises'. Our concern is that many Islamic mosques/ Islamic centres have halls or spaces either within or linked to the premises which they may hire out.

We agree civil marriages, especially same-sex 'marriages', should not be performed on religious premises as, this may force a religious organisations to let their halls for a same-sex civil 'marriage' ceremony against their belief.

We require that in any case clear legislation should be made to guarantee the protection of religious premises from being used for SSM and not be subject to litigation based on discrimination of supply of services.

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

In Opposition

As stated before same-sex relations/unions are not accepted in our faith under any name.

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?

In Opposition

No Comment

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

The SG Equality Impact Assessment (EIA) annexed to the Bill, is very biased in favour of the perceived positive implications of the Bill.

Little or no mention is made in the EIA of the negative implications of this legislation for people who hold to a religious belief or who have a conscientious objection. Rather it limits the potential negative implications of the legislation solely to the matter of religious celebrants.

It does not consider the implications of this legislation for many other faith organizations and others working across the breadth of the public sector. They may find themselves being placed in the position of having to choose between following their religion/conscience or obeying their employer. In the event they chose their religion/ conscience they could be disciplined or even lose their job.

We made it clear that in Islam we cannot support this change in any shape or form, however we outline the following areas in the event the SG does not listen to the Scottish people and the various element of the legislations need to be addressed:

- Civil registrars are likely to be required by their employers to 'marry' same-sex couples.
- Teachers may well be asked to teach pupils about 'same-sex marriage'.
- Local authorities, owing to the public sector equality duty contained in the Equality Act 2010, may well decide that they cannot partner with, let halls to or provide grants to religious organisations which refuse to 'marry' same-sex couples.

- Some religious organisations may lose their Charity Status if they refuse to allow same sex marriages in their premise.
- Chaplains working in the public sector could lose their jobs if they preach traditional marriage.
- Those with a religious/ conscientious objection to same-sex 'marriage' might find it difficult to foster or adopt children.
- We believe, like other religious organisations, that traditional family structure is the best environment to bring up children.

The introduction of this Bill will force many professionals to adopt the new definition in their teaching and work, which may be against their conscience and for those who do not comply, there is a real risk that they may be sacked from their employment.

Let us not be in any doubt that this will present limitations, restrictions and controversy on the freedom of religion.

Some of the areas of discrimination to list a few are as follows: those employed as registrars; teachers; student advisors; health workers; chaplains and also employers such as charities and businesses.

Further we would add that this would have serious impact and be detrimental to Imams, Mosques Trustees/ Executive Committee member(s), Charity Accreditations, application for funding and use of public places etc. It needs to be stressed that Islam is not the only faith which will be severely affected by this Bill, but majority of the religious organisations here in the UK and worldwide will be in a similar position.

Civil registrars, social workers, teachers etc who oppose same sex marriage may well lose their jobs. At the very least, new entrants to these professions will find it difficult to get a job if they continue to oppose same sex 'marriage' or have been vocal about their beliefs in the past.

Given the situation explained above, we are in no doubt that in the long term this will lead to an employment system which will exclude people who oppose SSM from both employment and from contribution to public life.

We would further state that given the religious background of the ethnic minority communities, the fact that employment within some groups of ethnic minorities' communities being as high as three to four times higher to its white counterpart; it will give disproportionate impact to different groups of people thus widening the unemployment ratio even further.

We believe that the Civil Partnership Act 2004 in the UK already gives same sex couples most of the rights and responsibilities of a civil marriage. Taking this further as outlined in the Bill will put an entirely and exceptionally bizarre dimension to the society at large to the detriment of all who oppose it and shattering their civil rights and freedom of expression and religious conscience. We don't believe much of the assurances given by the Scottish Government, with the best of intention, will be either practical or sustainable.

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

Many concerns were expressed by respondents to the 2011 consultation that freedom of speech could be inhibited if the 'same-sex marriage' is introduced.

Government should state in the Bill that SSM is a controversial issue and amend to clarify that public discussion or criticism of marriage, as regards the sex of the parties to marriage, would not of itself amount to an offence of stirring up hatred because of sexual orientation or any other discrimination category.

There are many case examples which happened or happening already, some are still in courts, such as:

- A robust debate about 'same-sex marriage' in a public place could lead to a charge of Breach of the Peace, within the context of street preaching.
- Distributing religious leaflets or preaching outside a football stadium could be treated as an offence under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.
- Offensive behaviour under this Act includes behaviour seen to be 'homophobic' etc.
- Any other public sector employee who speaks out against 'same-sex marriage' may be disciplined at work.
- A hospital Chaplain who preaches in his place of worship against same sex marriage can be disciplined by his employer.
- Similarly a University Chaplain, Prison Chaplain etc

Prosecutorial Guidelines by the Lord Advocate are not subject to consultation and can be easily amended by a future Lord Advocate. For these reasons we would like to have seen these guidelines as part of the Bill since we are already on a fine line to what may constitute criminal offences.

Whilst this Bill may give freedom of marriage to same sex couples, it could be detrimental to traditional marriage and religious communities in general. This could have a detrimental impact on positions that are/ or have been held by individuals due to it being a criminal offence under these changes.

It will also affect their future status in many aspects including employment.

In the circumstances the SG claims that guidance relating to NHS chaplains, current employment law and the European Convention of Human Rights are sufficient to protect freedom of expression, is not sustainable.

The European Court of Human Rights has already ruled in some cases that freedom of expression and manifestation of religion should be of secondary consideration to non-discrimination on grounds of sexual orientation where a clash of rights has occurred. There are also many cases to this effect in USA and Canada.

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

At the outset it needs to be said that the Scottish Government (SG) ignored the main issue of introducing same sex marriage despite a large majority to the consultation in 2011 (which received 77,000 responses) two thirds of which were opposed to the introduction of same sex marriage, we are now asked to comment on the Bill itself despite the SG having already ignored the objection to the principle itself.

The Muslim Council of Scotland cannot support the proposal which enables “all couples” to have a civil marriage ceremony. This is not only the views of the Islamic community but reflects the views of the world religions, excluding a very few.

This Bill seeks to make serious changes to accommodate Same Sex Marriage. The words such as “Mother”, “Father”, “son” & “daughter”, which have been with us since history began can reveal kinship relations and are now at risk of being diluted to no specific relations if changed to accommodate Same Sex Marriage. To this end we draw your attention to section 1 (2e) of the Bill. Further, we draw your attention to the table on page 27 of the Policy Memorandum attached to the Bill outlining how the relationships will be described. We strongly disapprove of these changes and we don't believe that majority of the Scottish people will approve of this either. We don't believe that the implications of these changes have been fully explained to or appreciated by the public at large.

On the wider scale, all literature and teachings on marriage will lose their original meaning as intended by the authors, this action would amount to a rewriting of history and cultures.

The assertion that “religious marriage” will be unaffected by the proposal is totally untrue, since fundamentally changing the state's understanding of marriage means that the nature of marriage solemnised in places of worship would also be changed.

The Scottish Government has given various assurances that the civil liberties of those who have a conscientious objection to ‘marry’ same sex couple will be respected. We are of the strong view that whilst the Scottish Government may have the best of intention to address equality; however, it is not realistic or sustainable. We draw your attention to some of our arguments stated below:

Article 9 (1) of the European Convention on Human Rights, ECHR:

“Everyone has the freedom of thought, conscience and religion: the right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public and private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Article 9 (2) “Freedom to one's religion or belief shall be subject to such limitation as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or the protection of the rights and the freedom of the others.”

Whilst it is understood what Article 9(1) is stating, applying it in context with the controversial issue of 'Same Sex Marriage' as proposed in the Bill is going too far and opens up floodgates to the detriment of large majority of Scottish people. The Scottish Government would be going too far in pleasing and protecting the rights of a minority whilst seriously encroaching and negatively impacting the rights of the majority. Further, The interpretation which the Scottish Government will take of Article 9(2) is at present a total mystery as the Lord Advocate guidelines are not available and none will be made available until after the Bill has been passed.

It is our understanding that if the member state chooses to make provision in its domestic law for same sex marriage, then as far as the ECHR is concerned same sex marriage is protected by the convention in the same way that opposite sex marriage is protected: the right to marry contained in Article 12 is applicable to both categories so far as the state is concerned.

Whilst we may be prepared to accept that the present Scottish Government will do whatever is necessary to safeguard the interests of the majority of Scottish people, we must not forget that much of this will be outwith the remit of the Scottish Government and it will not be sustainable to uphold the assurances given. For example, the Equality Act 2010 is with the UK Government, articles 8,9,12 &14 fall under the European Human Rights Convention ECHR.

The European Court of Human Rights has already ruled in some cases that freedom of expression and manifestation of religion should be of secondary consideration to non-discrimination on the grounds of sexual orientation where a clash of rights has occurred.

Also, we conclude that the Religious organisations not willing to 'marry' same sex couples may well lose their charitable status or be excluded from hiring or using public facilities. We are aware of the Scottish Government guidelines and assurances, but we do not believe much of this will be sustainable as it will be outwith the jurisdiction of the Scottish Government.

In summary we would reiterate that the Scottish Government is under no obligation to introduce this controversial Bill and that there is adequate provision already within the legislation for same sex couples.

While the Government brings about equality for same sex couples to marry, it will undoubtedly have a severe negative impact on traditional marriage and the very rights of the individuals being compromised or taken away to their detriment. The Government has a clear obligation to uphold, sustain and protect the moral values of the people. Bringing this Bill will have a serious impact on the moral fabric of the Scottish society and the Scottish Government should be very cautious before interfering with this right.

Introduction of this Bill will be detrimental to the society and many of the safeguards assurances given by the Scottish Government are unrealistic and we fear that they will not be sustainable.

We therefore oppose this Bill as a matter of principle and for the reasons explained above. The SG will not be able to give safeguards to the majority who oppose SSM as this reality can be seen from those countries that have legalised SSM.

Muslim Council of Scotland  
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