

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUPPLEMENTARY SUBMISSION FROM SCOTLAND FOR MARRIAGE

Following the oral evidence provided to the Equal Opportunities Committee on 3 October by Alex Neil MSP, Cabinet Secretary for Health & Wellbeing, Scotland for Marriage would wish to make the following comments.

Mr Neil said “We have agreed with the United Kingdom Government that there will be amendments to the Equality Act 2010” [Col 1579] and that these changes “will be made before the bill is implemented” [Col 1594]. It is our view that MSPs cannot reasonably be expected to have confidence in these protections (and therefore to vote on the bill) without having had sight of these amendments. We would therefore urge you to raise this matter with the Cabinet Secretary.

Mr Neil also noted that “the bill...contains a provision on freedom of speech” [Col 1579]. Our view is that the section of the Bill which attempts to deal with this issue (Section 14) falls short of what is required in two very important respects. Firstly, section 14 states that there is no effect on the exercise of existing rights, whether under the Convention or rule of law. As this must be true of any Holyrood legislation (apart from this section) it is essentially worthless. Secondly, it simply refers to “nothing in this part”, meaning the section only applies to the Bill itself. This is inadequate because our concerns relate to the impact of redefining marriage on how existing public order law will be applied. Mr Neil’s refusal to address amendments to other acts [Col 1600] is of great concern to us because in our view specific amendments to legislation such as the Offensive Behaviour at Football & Threatening Communications (Scotland) Act 2012 and the Criminal Justice & Licensing (Scotland) Act 2010 is what is required to seriously address the free speech concerns.

Christian Allard cited the Law Society of Scotland’s concern about the interaction between article 14 rights and the public sector equality duty (PSED), and asked that Mr Neil “consider the suggestion that has been made by some witnesses and allow the principle of reasonable accommodation for public sector workers” [Col 1602]. Mr Neil said in response that: “Quite frankly, our view is that there is no big issue here” [Col 1602] and regrettably most of his subsequent remarks to this line of questioning related to the specific issue of civil registrars. His further statement that that “The employee does not, as an individual, have a public sector duty” appears to miss the point because our concern is that local authorities, which *are* bound by the PSED, will use the duty as a justification for disputing the equality or diversity credentials of staff or applicants who happen to be opposed to same sex marriage [Col 1603]. We are gravely concerned that the Cabinet Secretary appears not to have grasped this, as this goes to the very heart of our concerns about this Bill.

At the very least, the Scottish Government should be pursuing an amendment to the Equality Act 2010 making clear that compliance with the PSED requires ensuring that no-one should suffer detriment as a result of holding the view that marriage is between a man and a woman. The Act should also be amended to specify that the protected characteristic of religion or belief includes the belief in marriage as presently defined.

We are especially concerned about how teachers will be affected, and would advise that a conscience clause be inserted into the Education (Scotland) Act 1980, under which teachers with a conscientious objection to same-sex marriage would be protected. In terms of the specific difficulties facing civil registrars, if Mr Neil's expectation that "the local authority that employs them will, I think, come to some kind of appropriate accommodation" [Col 1603] is correct, then surely there is no reason why this should not be made clear on the face of the Bill.

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Scotland for Marriage
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