

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH YOUTH PARLIAMENT

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

The Scottish Youth Parliament warmly welcomes the introduction of the Bill and the opportunity to give evidence on it. Legislation to introduce equal marriage in Scotland is a priority for young people, and SYP is proud of the part we have played in campaigning for this positive change. We thank the Scottish Government for taking the decision to bring forward this Bill and would urge the Scottish Parliament to pass the Bill without delay.

Our evidence is shaped by the views of Scotland's young people, who overwhelmingly backed the statement that **“all laws regarding homosexual relationships, whether male or female, should be equal to those of heterosexual relationships”** in the largest youth consultation of its kind in Scotland in the development of our youth manifesto 'Change the Picture' – with 42,804 responses from young people, it represents a comprehensive picture of what Scotland's young people believe. **With 74% of respondents agreeing with the statement, it provides a compelling case for the change young people in Scotland want to see.**

Not only do the vast majority of Scotland's young people agree with the principle of equal marriage, it is a principle they are prepared to actively speak out for as a priority for action. The historic decision of Members of the Scottish Youth Parliament (MSYPs) to launch Love Equally – SYP's campaign for marriage equality has proved not only to be a successful campaigning activity for the organisation, but most importantly has demonstrated that Scotland's decision-makers are prepared to listen to the voices of its young people and act on their desires. Not only is the Marriage and Civil Partnership (Scotland) Bill a significant move towards equality for all in Scotland, it is a significant and welcome step for Scotland's democracy.

The message from Scotland's young people is consistent and straightforward - we think that two people who love each other should be able to get married. We want to live in a Scotland where same-sex couples are allowed to get married if they want to, where mixed-sex couples are allowed to register a civil partnership and if religious organisations want to perform same-sex marriages and civil partnerships, they should be allowed to do so. We welcome the provisions in the Bill that will legislate for elements of this vision, and await with interest the Scottish Government's planned review of civil partnerships, where we hope they will be retained and opened up to mixed-sex couples. This evidence is based on these principles and should be viewed as a collective representative response on behalf of the young people of Scotland.

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

The Scottish Youth Parliament believes that two people who love each other should be able to get married. The law in Scotland should be changed to allow same-sex couples to marry if they want to do so.

Following years of welcome progress in law to remove discrimination based on sexual orientation, marriage law stands virtually isolated, with the Marriage (Scotland) Act 1977 explicitly prohibiting same-sex couples from exercising the right to show their love and commitment to each other in the same way as mixed-sex couples can – by getting married.

Changes in the law reflect changes in society, and it is clear that there has been a seismic shift in attitudes in society towards same-sex relationships. This is particularly pronounced amongst young people – the ringing endorsement that Scotland's young people gave as part of SYP's 'Picture the Change' mass consultation, with 74% agreeing with the straightforward premise that relationship laws should be equal for mixed-sex and same-sex couples. Scotland's young people, many of whom have friends who are openly LGBT, simply cannot understand why some of their friends are denied rights afforded to others simply because of the person with whom they fall in love.

A wealth of evidence bears this out, including in the Scottish Social Attitudes Surveys of 2009ⁱ and 2010ⁱⁱ, in opinion pollsⁱⁱⁱ and by responding to the Scottish Government's 'The Registration of Civil Partnerships/Same Sex Marriage'^{iv}, enormous amounts of young people have time and again made clear their support for marriage equality.

The introduction of civil partnerships in 2004 saw many of the tax and legal benefits of marriage extended to same-sex couples for the same time and were a step in the right direction. More than 3,000 civil partnerships have been registered since their introduction. However, despite being viewed by some as 'gay marriage', civil partnerships are not marriage. Couples in a civil partnership are not legally allowed to be referred to as 'husband' or 'wife' but as 'civil partners'. No religious activity is permitted during the registration ceremony. In law it is a technical arrangement, which is designed to have the trappings of marriage, whilst going to great lengths to ensure that it is not viewed as a marriage but something else entirely.

Even if one was to take the view of a civil partnership as a 'gay marriage', why with all the positive changes towards equality, should there be a distinction? Rather than having 'gay marriage' and 'straight marriage', if one was to accept the view of the overwhelming majority of Scots, and that of Scots law, that sexual orientation is not grounds for discrimination, why the need for the qualification – why not 'marriage'?

Significant progress has been made to make Scotland a fair and equal nation for all of its citizens under law, with human rights for all and protection from discrimination. With the weight of public opinion firmly behind the move, and young Scots in particular taking up the cause as the biggest change they want to see, we believe that the time has come for same-sex marriage in Scotland, and that the Scottish Parliament should seize the opportunity to legislate for it presented by this Bill.

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

The Scottish Youth Parliament agrees that belief marriage ceremonies should be established as a distinct type of ceremony from religious and civil marriages.

Throughout the campaign for marriage equality in Scotland, the growing popularity of marriage ceremonies conducted by the Humanist Society of Scotland has been clear. In February 2011, it was reported that humanist weddings had overtaken Roman Catholic weddings to become the third most popular ceremony behind civil ceremonies and those conducted by the Church of Scotland.^v As humanist weddings were only granted legal status in 2005, at the current rate of growth, the Humanist Society of Scotland expects the number of ceremonies it conducts to overtake the Church of Scotland in 2015. The Humanist Society of Scotland is firmly in favour of same-sex marriage, and has been outspoken in campaigning for the right to conduct same-sex weddings.

Despite being a secular philosophy or belief system, humanist weddings are legally recognised by the Registrar General as religious marriages. Given the increasing numbers of couples choosing humanist belief ceremonies, and that humanism is secular rather than religious by its own description, we feel the creation of a third 'belief' category of equal marriage is welcome, reflects the reality of ceremonies available to couples today and could open the door to other similar belief organisations offering ceremonies that would allow couples to celebrate their union in a way that reflects their personal beliefs and philosophy.

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)?

The Scottish Youth Parliament believes that if religious organisations want to perform same-sex marriages and civil partnerships, they should be allowed to do so. We understand that not every religious institution would want to do this, however we believe it should be a matter for them to decide, with appropriate legal protections put in place to protect this freedom in accordance with their own decision-making processes. However, we also firmly believe that religious institutions that wish to conduct same-sex marriages and civil partnerships should not be prevented from doing so by law and should have the ability to decide this for themselves, in accordance with their own decision-making processes.

The Scottish Youth Parliament welcomes the legal protections and freedoms for religious and belief bodies and individual celebrants proposed in the draft Bill.

The Scottish Youth Parliament supports the introduction of the option of a gender-neutral form of words for same-sex marriage ceremonies, and recommends this option be extended to mixed-sex couples who would prefer it.

Throughout Love Equally the position of the Scottish Youth Parliament and that of our campaigning partners has been clear – no religious body or celebrant who does

not wish to do so should be 'forced' to solemnise same-sex marriages or civil partnerships. We would support any appropriate legal provisions to ensure that the rights of religious organisations and their clergy not to be required to conduct same-sex marriages are protected. We respect the rights of religious bodies to determine this for themselves in accordance with their own decision-making processes. In any event, as the law currently stands, religious bodies and their celebrants have the right to refuse to marry a mixed-sex couple who asks them to conduct a religious wedding. We see no reason why this should change, or not continue to be the case for same-sex couples – the right to refuse is an essential element of religious freedom.

Another essential element of religious freedom however, is the right for people to hold religious beliefs and choose which religion, if any, to follow. We would be concerned if the reservations and opposition of some religious bodies, such as the Roman Catholic Church or the Church of Scotland for instance, should be used to deny the right to conduct same-sex marriages to Quakers, Pagans, liberal Jews, Unitarians, the Metropolitan Community Church or other religious bodies that wish to conduct weddings for same-sex couples in accordance with their own decision-making process. To do so would effectively favour certain religions over others on the basis that they are perceived as bigger or more established.

The details of the proposed protections outlined in the Bill, together with the amendments to the Equality Act, satisfy the religious protections and freedoms we have consistently called for alongside the introduction of equal marriage. By requiring both the religious or belief body and the individual celebrant to opt in, together with an explicit commitment that there is no obligation on bodies to conduct same-sex weddings, removes any possibility of celebrants conducting ceremonies against the wishes of their organisation, or celebrants who disagree with their parent body's view being required to do so. These guarantees remove any possibility that religious organisations or individual celebrants will be 'forced' to conduct same-sex marriage against their wishes. This has never been SYP's intention at any point, and we warmly welcome these legal guarantees.

The Bill as introduced makes provision for a gender-neutral form of words to be used as an option in same-sex wedding ceremonies (e.g. a couple could choose between *"I now pronounce you married"* or *"I now pronounce you husband and husband"*). We support this option being provided, but would recommend it be extended to mixed-sex couples who would prefer the gender-neutral form of words in their ceremony.

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

The Scottish Youth Parliament is content with the proposed process for changing a civil partnership to a marriage.

Couples who have registered a civil partnership outside Scotland should be allowed to get married without dissolving their partnership.

The approach proposed in the Bill for couples to convert their civil partnership into a marriage appears sensible. In particular, we are pleased that civil partnerships are to

be retained alongside marriage, and there will be no requirement to convert a partnership to a marriage if the couple does not wish to do so. As we have highlighted elsewhere in this response and throughout our Love Equally campaign, civil partnerships are not marriage. However, this does not mean that they could not play an important role following the introduction of religious and civil same-sex marriage for same-sex couples, and eventually for mixed-sex couples too.

The Equality Network have highlighted a technicality in the Bill that would prevent a couple whose civil partnership was registered outwith Scotland from getting married without first dissolving their civil partnership, which requires living apart. SYP does not support this, and would recommend the Bill be amended to allow civil partners whose partnership was registered outside Scotland to be allowed to get married without dissolving their civil partnership.

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?

The Scottish Youth Parliament agrees that mixed-sex and same-sex civil marriages should be allowed to take place anywhere that the couple wishes, provided the registrar is content and it does not take place on religious premises.

Two key principles of the Scottish Youth Parliament's Love Equally campaign are that laws relating to mixed-sex and same-sex relationships should be equalised, and that two people in love should be allowed to demonstrate their love and commitment to each other in a way that reflects their personal feelings for each other. The change, removing the need for a civil marriage to take place in a registrar's office or an 'approved place', would result in equality with the current arrangements for civil partnerships, and would give greater freedom to couples to demonstrate their love and commitment in a personal way. We welcome this change.

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

The Scottish Youth Parliament believes that if religious organisations want to perform same-sex marriages and civil partnerships, they should be allowed to do so. The law in Scotland should be changed so that civil partnerships could be registered through religious ceremonies and by religious celebrants if that is how couples want to express their commitment to each other, and if the religious body and celebrant want to register their partnership.

We are firmly of the belief that two people in love should be allowed to demonstrate their love and commitment to each other in a way that reflects their personal feelings for each other. If a religious body or celebrant wishes to register their civil partnership in a place of worship, we see no reason why the law should stand in their way. In line with our responses on religious solemnisation of same-sex marriage and civil partnerships above and religious protections and freedom below, no religious body nor celebrant should be required to register a civil partnership if they do not wish to do so. These decisions should be in accordance with religious bodies' own decision-making procedures. If mixed-sex couples are allowed to register a civil

partnership in the near future, we would expect they should be able to do so in a religious or belief ceremony if they wish, and the religious body and celebrant are content.

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?

The Scottish Youth Parliament welcomes the provisions in the Bill to end the current situation where transgender people must divorce in order to obtain gender recognition.

The Scottish Youth Parliament notes concerns about the ‘spousal veto’ from the transgender community, and urges the Scottish Government to work with the community to create an interim process to prevent a spouse vetoing gender recognition.

As same-sex marriage and mixed-sex civil partnership are currently illegal, transgender people are forced to undergo a divorce or dissolve their civil partnership before receiving legal gender recognition – even if their partner is the same person.

The Scottish Youth Parliament believes the solution to this discrimination is equal marriage. This is an extremely welcome feature of legislating for marriage equality, and a much-needed step forward towards equality for transgender Scots.

However, we note the concerns raised by the Scottish Transgender Alliance regarding the ‘spousal veto’, where a married person requires their spouse’s agreement before acquiring gender recognition.^{vi} We would recommend that an interim process is created in line with STA’s suggestion.

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 Scottish Youth Parliament agrees that there should be no specific opt-out in the Bill for civil registrars who do not wish to solemnise same-sex marriage.

The Scottish Youth Parliament agrees that no new legislation is necessary specifically relating to education and same-sex marriage.

In contrast to religious or belief ceremonies, civil marriages or civil partnership registrations are services provided to the public by local authorities. They are secular, with no religious content allowed as part of the registration. We agree with the Scottish Government’s reasoning for not including an opt-out for civil registrars who do not wish to solemnise same-sex marriage. Whilst there may be civil registrars who personally disagree with the legalisation of equal marriage, we feel that this is best resolved by discussions between them and their local authority employers in accordance with employment law and in line with existing and established practice relating to the registration of civil partnerships. What matters most is that two people who love each other can choose a civil marriage if that is

how they wish to celebrate their union, and that local authorities are able to offer this as a service to the public.

We note the interest that has developed in how same-sex marriage may be addressed in schools. We do not believe that any change in the law in this area is necessary, or indeed welcome. We welcome the intention to review existing guidance on sex education in schools, but would urge caution to ensure that young people's rights are not undermined, and that discussion of same-sex marriage is not banned or restricted.

To inform our response to the Scottish Government's consultation on the draft Bill, and in anticipation of a forthcoming refresh of Education Circular 2/2001 which provides guidance on sex education to schools, the SYP conducted an extensive consultation with young people on how same-sex marriage should be addressed in schools.

In the consultation, the majority of young people felt that pupils should be able to take part in lessons if they disagree with their parents' view that they should be withdrawn for cultural or religious reasons, with this particularly important in the senior phase of high school. They felt that same-sex marriage should not be taught about as a controversial political or moral issue, and there should be no bar to it being mentioned in lessons. They were also concerned about the impact treating same-sex marriage on LGBT issues as controversial may have on homophobic bullying, which is still worryingly prevalent in schools.^{vii}

The message from Scotland's young people is clear – they are entirely comfortable with same-sex marriage being taught about in schools, and are confident that teachers will be able to deliver non-judgemental information that allows pupils to make informed decisions for themselves about the issues involved, in line with their responsibility as a teacher. As the consultation document makes clear, there are already well-established processes requiring local authorities to have consideration for teachers' religious beliefs, and to handle moral objections by teachers, which we are confident will prove more than sufficient in allowing any concerns by teachers to be addressed in a reasonable manner.

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

The Scottish Youth Parliament is content with a clause guaranteeing freedom of speech in the Bill.

The Scottish Youth Parliament believes in the right of free speech and the free exchange of opinion. We are content with a clause guaranteeing that nothing in the Bill will affect people's right to freedom of speech, thought, conscience or religion and expression under the European Convention of Human Rights.

Guidance from the Lord Advocate on prosecutions for alleged breach of the peace, or threatening and abusive behaviour relating to people's views on equal marriage would be welcome. We are confident this will appropriately balance people's right to free speech with existing legislation on hate crime, such as the Offences Motivated by Prejudice (Scotland) Act.

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

The Scottish Youth Parliament believes that mixed-sex couples should be allowed to register a civil partnership if they wish.

As the law currently stands, just as marriage is denied to same-sex couples, civil partnership is denied to mixed-sex couples, as a result of the Civil Partnership Act 2004. Scotland's young people are firmly of the opinion that relationship laws should be equal for mixed-sex and same-sex couples. The Scottish Youth Parliament therefore supports the removal of the legal barrier to mixed-sex couples being allowed to register a civil partnership.

We have consistently called for mixed-sex civil partnership to be introduced and whilst we are disappointed that it does not feature in the Bill, we are encouraged with the review of civil partnerships announced by the Scottish Government. We would hope that the review will give serious consideration to opening up civil partnerships to ensure that all laws governing relationship laws are equal for mixed-sex and same-sex couples in Scotland – true equal marriage. The Scottish Youth Parliament looks forward to giving evidence to the review, and is confident that the case for change is strong.

15. Organisational details

The Scottish Youth Parliament is a representative body. Our elected Members (MSYPs) represent 14-25 year olds living in Scotland.

Rob Gowans
Scottish Youth Parliament
23 August 2013

ⁱ Equal Access to Marriage, Equality and Human Rights Commission p. 24
http://www.equalityhumanrights.com/uploaded_files/Scotland/Projects_and_Campaigns/pdf_final_2.pdf

ⁱⁱ Scottish Social Attitudes Survey 2010: Attitudes to discrimination and positive action, Scottish Government 2011 www.scotland.gov.uk/Resource/Doc/355763/0120175.pdf

ⁱⁱⁱ Scottish Public Opinion Monitor - Attitudes towards same-sex marriage, Ipsos MORI, June 2012
www.ipsos-mori.com/Assets/Docs/Scotland/pa_scotland_spom_equalitynetwork1_charts_170612.pdf

^{iv} Registration of Civil Partnerships Same Sex Marriage: Consultation Analysis, Scottish Government p. 7-9

^v BBC News Online - More Scots wedding couples turn to humanist marriages (20th February 2011)
<http://www.bbc.co.uk/news/uk-scotland-12517893>

^{vi} 'What improvements to the Marriage and Civil Partnership (Scotland) Bill are we seeking for trans and intersex people?' Scottish Transgender Alliance and Equality Network, August 2013.
<http://equality-network.s3.amazonaws.com/wp-content/uploads/2013/08/STA-suggested-improvements-to-Marriage-and-Civil-Partnership-Scotland-Bill-FINAL.pdf>

^{vii} Further information on the consultation can be found in SYP's response to the Scottish Government consultation on the draft Bill (p. 7 - 15)
http://www.syp.org.uk/img/consultations/Marriage%20and%20Civil%20Partnerships%20Bill_SYP%20Response.pdf