

MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM ALISDAIR SMITH

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

In opposition

Looking at this bill, specifically in relation to Equal Opportunities, it is actually rather sneaky. By creating a new category of same sex marriage, the Bill has the unintended consequence of legislating into existence a brand new form of discrimination. Straight couples will only be able to marry, whereas same sex couples will be able to either marry or enter a civil partnership. The effectual result is that straight couples have fewer rights in law than same sex couples. This is logically and legally untenable. If the law is to be changed to allow same-sex couples to marry, then the only just and fair way to avoid equal opportunities discrimination is to make both marriage *and* civil partnerships available to all couples (gay or straight) at the same time and in the same way. However, the Scottish Government has chosen not to introduce straight civil partnerships at this time because it acknowledges there are major implications for the public purse and there would be a legal requirement to carry out an impact analysis into the costs associated with it. (as well as great social costs for the state due to the likelihood of increased family breakdown, I might add). If the Scottish government proceeds with the bill in its current form, it is entirely foreseeable, indeed inevitable, that there will be a future legal challenge to the European Court of Human Rights which will result in the discriminatory parts of the bill being struck down and Scotland being compelled to introduce straight civil partnerships. Since the logical and unavoidable consequence of this bill becoming law is straight civil partnerships, the Scottish government is being legally negligent and financially irresponsible in failing to conduct an impact assessment at this time, before the bill is passed. It's shoddy and sneaky.

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

In opposition

It's not really needed in any legal sense as all the legal rights are already delivered by civil partnerships. It's causing huge division with no practical benefit. Marriage has never been simply a private contract between two people that just governs the relationship between them as individuals. Marriage is about a couple making a lifelong commitment and making a statement to the wider society that a new family unit has been created and that is beneficial to society as a whole, for the raising of the next generation of children.

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

In opposition

How do you define what a "belief" is, specifically? Who decides? On what basis? If you can't answer those questions in a way that holds together logically, you realise that this is opening up the institution of marriage to mockery and ridicule.

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)?

How would you characterise your views on civil partnerships changing to marriages?

In opposition

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

I think the assumption that lies behind this part of the bill, completely misunderstands and misrepresents what marriage is. It misses the point. Allowing marriages to be conducted anywhere has the obvious potential to undermine and make a mockery of the institution of marriage. Marriage is not about a one day party called a wedding. It's about a lifelong commitment

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

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?

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

Much of the focus, particularly from politicians, is to stress that ministers will be protected. That's misdirection and missing the point. Unless there is absolute freedom of religion, this impact will affect everybody in society, in any job, not just ministers. Over time, as this new right is extended by case law, believing Christians, muslims and Jews will end up being discriminated against in any job, not just excluded from the public square.

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

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

One of the things I find most frustrating about the way that marriage is currently being redefined in Scots law is something that I suspect few people have yet come to realise, but it has deep implications for us as a country. It's the way that the Marriage and Civil Partnerships Bill is subtly subverting the very nature of the system of Scottish representative democracy. The reason it's being allowed to happen is because most people do not understand the fundamental meaning of what government is in Scotland, or the type of democracy that we have. Scotland and the UK don't just have different legal systems. We also have fundamentally different systems of democracy. England is a parliamentary democracy; sovereignty lies with the Parliament. But Scotland is a representative democracy where the sovereignty lies with the people. In the Scottish system, government is merely an association of all the people of Scotland who organise together and delegate certain powers to an institution to exercise on our collective behalf. So, for example, the sovereignty over Scotland's natural resources like oil or renewable energy, always lies with the people of Scotland, not the state. We, the people, delegate the power to government to administer those natural resources on our behalf. The government is not free to do whatever it pleases with oil because it is only acting as our representative. The same is true with marriage in Scotland. Marriage existed as a social institution long before the state even came into existence. Sovereignty over marriage always lies with the people, not the state. We, the people, just delegate the administration of marriage to the state. The state is not free to do whatever it pleases with marriage because it is only acting as our representative. Legitimate government cannot exercise any authority that has not been delegated to it by the people, who have the authority to begin with. No matter what side of this debate you are on, we can all agree that the right for same-sex couples to marry does not currently exist. If a new right is going to be created, then the only legal authority that is able to grant that new right is the people of Scotland because that is where the sovereignty lies. The Scottish people might very well be willing to delegate their authority to redefine what marriage is to the state, but the only way to tell is to ask them in a referendum. Unless and until that happens, the Scottish government does not have the authority, from out of nowhere, to just grant someone a non-existent right. That may be how things work in a parliamentary democracy, but it's not how representative democracy works. The irony in all of this is that the SNP government's blinkered attempt to railroad this bill through is unwittingly undermining the very basis of Scottish representative democracy by acting in a way that resembles the very worst excesses of the Westminster parliamentary system. It doesn't hold out much hope that politics in an independent Scotland will be anything other than more of the same. That's a shame. I had hoped it could have been so much more and so much better.

Are you responding as...

a private individual

Alisdair Smith
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