

## SPICe Briefing

# Marriage and Civil Partnership (Scotland) Bill

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This Bill briefing has been produced to provide the Parliament with information on the provisions in the *Marriage and Civil Partnership (Scotland) Bill*.

It offers an overview of the provisions within this Bill, which was introduced in the parliament on 26 June 2013 by the Cabinet Secretary for Health and Wellbeing. It also provides some background to the Bill and briefly summarises the written evidence received by the Equal Opportunities Committee during its stage one considerations.

**Note:**

It may be noted that this briefing has been revised to clarify information around the 2011 Scottish Government consultation on the registration of civil partnerships and same sex marriage to give further detail on the weight of views for and against the introduction of same sex marriage. It also further highlights the difference in scale of membership between those religious groups which oppose the proposals in the Bill and those which support them.



# CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>GLOSSARY OF TERMS</b> .....	<b>4</b>
<b>THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL</b> .....	<b>5</b>
DEBATE .....	5
<i>The future of civil partnerships</i> .....	6
DIFFERENCES BETWEEN MARRIAGE AND CIVIL PARTNERSHIP .....	6
<i>Pensions</i> .....	6
GENDER RECOGNITION .....	7
TIMELINE .....	7
RATIONALE FOR CHANGE .....	8
RESPONSE TO SCOTTISH GOVERNMENT CONSULTATIONS .....	8
PROTECTIONS .....	9
<i>Education</i> .....	10
<i>Freedom of speech</i> .....	11
<i>Amendments to the Equality Act 2010</i> .....	11
<b>FINANCIAL MEMORANDUM</b> .....	<b>12</b>
<b>IMPACT ASSESSMENTS</b> .....	<b>13</b>
BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA) .....	13
EQUALITY IMPACT ASSESSMENT (EQIA) .....	13
<b>UK ACT</b> .....	<b>14</b>
PROVISIONS RELATING TO SCOTLAND .....	14
<b>PUBLIC ATTITUDES TOWARDS SAME SEX MARRIAGE</b> .....	<b>15</b>
SCOTLAND .....	15
GREAT BRITAIN .....	15
<b>SCOTTISH PARLIAMENT CALL FOR EVIDENCE</b> .....	<b>17</b>
<i>General principles</i> .....	17
<i>Views on the introduction of same sex marriage</i> .....	18
<i>Allowing belief celebrants to operate on the same basis as religious celebrants</i> .....	19
<i>Authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)</i> .....	20
<i>Civil partnerships changing to marriages</i> .....	21
<i>Location of civil marriage ceremonies</i> .....	21
<i>Allowing the religious and belief registration of civil partnerships</i> .....	22
<i>Allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate</i> .....	22
<i>Protections for those in society who may have concerns about same sex marriage</i> .....	23
<i>Freedom of speech</i> .....	23
<i>Other comments</i> .....	24
<b>ANNEXE A: SUMMARY OF THE BILL</b> .....	<b>25</b>
PART 1: MARRIAGE .....	25
PART 2: CIVIL PARTNERSHIPS .....	26
PART 3: MARRIAGE AND CIVIL PARTNERSHIP: OTHER PROVISION .....	26
PART 4: CHANGE OF GENDER MARRIED PERSONS OR CIVIL PARTNERS .....	26
PART 5: REGISTRATION SERVICES .....	27
PART 6: GENERAL PROVISIONS .....	27
SCHEDULES .....	27
<b>ANNEXE B: EXISTING LEGISLATION</b> .....	<b>28</b>
<b>ANNEXE C: INTERNATIONAL LAW – SAME SEX MARRIAGE IN OTHER COUNTRIES</b> .....	<b>29</b>
<b>SOURCES</b> .....	<b>30</b>

## EXECUTIVE SUMMARY

The Marriage and Civil Partnership (Scotland) Bill was introduced in the Parliament on 26 June 2013. The Bill provides for the introduction of same sex marriage and the religious and belief registration of civil partnerships. It proposes an opt-in procedure for religious and belief bodies and celebrants who wish to solemnise same sex marriages, and includes a range of protections for people who may have concerns about the proposals.

The Bill also provides for various other changes to marriage law, including:

- a relaxation of the rules about where civil marriage ceremonies can take place
- the establishment of belief marriage ceremonies, and
- the removal of the requirement for a couple to divorce before obtaining a full gender recognition certificate.

The Scottish Government first consulted on the plans in 2011, receiving over 77,000 responses - the highest number ever received by a Scottish Government consultation. Many respondents were part of large-scale postcard campaigns, the majority of which were against the introduction of same sex marriage.

In 2012, the Government announced its intention to introduce same sex marriage and launched a consultation on a draft Bill, which resulted in over 15,000 responses. The consultation paper set out the Government's rationale for the policy which stated that the introduction of same sex marriage and the religious registration of civil partnership would further equality for LGBT people; that LGBT people of faith would welcome the introduction of religious ceremonies at which to register their civil partnership or marry; and that a number of religious bodies would wish to carry out such ceremonies.

The Bill is in 6 parts containing 33 sections and two schedules. The financial memorandum states that the cost of the Bill will be modest as most of the associated costs arose following the introduction of the Civil Partnership Act 2004.

The Civil Partnership Act 2004 created a legal union which is very similar, but not identical, to marriage. Civil partners have the same rights and responsibilities as married couples in many areas, but there are differences in areas such as pensions. A legally valid marriage can currently be entered into only by a man and a woman, whereas a civil partnership is available only to same sex couples.

The Marriage (Same Sex Couples) Bill, which extends mainly to England and Wales, was introduced into the House of Commons in January 2013 and received Royal Assent on 17 July 2013. Its provisions are similar to those in the Marriage and Civil Partnership (Scotland) Bill. Both the UK and the Scottish Government have announced reviews of civil partnerships to decide what should happen to them if same sex marriage is introduced (i.e. whether they should be opened up to opposite sex couples or closed to new partnerships).

There have been several surveys undertaken specifically on the issue of same sex marriage, in Scotland and across the GB, which have produced contradictory results, mainly due to the differences in the wording of the questions asked.

## GLOSSARY OF TERMS

<b>Belief body</b>	An organised group of people, not being a religious body, with the purpose of upholding or promoting philosophical beliefs, and which meets regularly for that purpose.
<b>Celebrant</b>	A person from a religious or belief body who is empowered to carry out a ceremony, such as marriage
<b>Civil partnership</b>	A legally recognised relationship between two people of the same sex.
<b>Deacon</b>	A ministry in the Christian church that is generally associated with service of some kind.
<b>Declarator of marriage</b>	A court judgement that a valid marriage exists between two parties.
<b>Gender dysphoria</b>	A condition in which a person feels that their physical gender-related characteristics do not match the gender they identify with.
<b>GRC</b>	Gender Recognition Certificate
<b>Marriage</b>	A legal union between two people of the opposite sex. Currently, a marriage would be void if two parties are of the same sex.
<b>Minister</b>	Someone who is authorised by a church or religious organisation to perform functions such as teaching of beliefs, leading services such as weddings, baptisms or funerals, or otherwise providing spiritual guidance to the community.
<b>District Registrar</b>	A person who carries out the legal preliminaries to marriage and civil partnership.
<b>Authorised Registrar</b>	A person authorised to solemnise civil marriage or register civil partnership.
<b>Religious body</b>	An organised group of people meeting regularly for common religious worship.
<b>Solemnisation</b>	The legal ceremony which gives effect to a marriage.

# THE MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

The [Marriage and Civil Partnership \(Scotland\) Bill](#) (Scottish Parliament 2013b) was introduced in the Parliament on 26 June 2013 and provides for:

- the introduction of same sex marriage and the religious and belief registration of civil partnerships
- protection for religious and belief celebrants who do not wish to solemnise same sex marriage
- the provision of an opt in procedure for religious and belief bodies who want to solemnise same sex marriage or register civil partnerships
- civil partnership to change to marriage
- civil marriage ceremonies to take place anywhere agreed by the registrar and the couple, other than religious premises
- the establishment of belief marriage ceremonies
- removal of the requirement for a couple to divorce before obtaining a full gender recognition certificate
- automatic authorisation of Church of Scotland deacons to solemnise opposite sex marriage; and,
- introduction of the possibility of qualifying requirements for religious and belief bodies so that they can be authorised to solemnise marriage or register civil partnership, in light of increasing concerns over sham and forced marriages and marriages being carried out for profit or gain.

A section by section summary of the Bill is available at **Annexe A**.

## DEBATE

Proposals to legalise same sex marriage and other planned changes to marriage law are controversial.

Supporters of same sex marriage consider that separate civil partnerships perpetuate the notion that same sex relationships are not as valid as heterosexual ones and that the legal rights conferred by civil partnerships are still not exactly the same as those conferred by marriage. Campaigners also say there would be international recognition for same-sex marriage, whereas there is no universally accepted recognition of civil partnerships which differ widely from one country to another

The proposals are supported by some religious groups, such as the Religious Society of Friends (Quakers), Unitarians and Liberal Jews, but opposed by several others, including the Roman Catholic Church, the Church of Scotland and the Muslim Council of Scotland. It should be noted that the religious groups which oppose the proposals have a significantly larger number of members in Scotland than those which support them.

Opposition to same sex marriage frequently stems from the conviction that a marriage is, and has always been, between one man and one woman. Concerns about weakening the status of heterosexual marriage lead some to suggest that allowing same sex marriage could potentially open the way for further changes such as allowing polygamy in Scotland. There are also concerns about the introduction of same sex marriage forming part of a move to secularise society.

## **The future of civil partnerships**

There is also some debate about the future of civil partnerships should the Bill be passed (i.e. should they be closed to new partnerships or opened up to opposite sex couples). On 27 June 2013, the Scottish Government [announced](#) (2013d) that it would be reviewing civil partnerships, and considering options for opening them up to opposite sex couples. This follows a [similar review by the UK Government](#) (2013) that is currently underway.

In various countries, civil partnerships have been replaced completely by same sex marriage, or opened up to opposite sex couples following the introduction of same sex marriage.

## **DIFFERENCES BETWEEN MARRIAGE AND CIVIL PARTNERSHIP**

Civil partners have the same rights and responsibilities as married couples in many areas including tax, social security, inheritance and workplace benefits. However, civil partnership is a legal relationship, distinct from marriage, exclusively for same sex couples.

The most significant difference between the two types of union is that a valid marriage can be entered into only by a man and a woman, whereas a civil partnership is available only to same sex couples. There are also other differences, including:

- at the moment, civil partnership can only be registered through a civil, and not religious, procedure, whereas opposite sex couples can choose to have either a religious or a civil marriage ceremony
- adultery is not a basis for dissolution of a civil partnership (as it is for divorce); however, infidelity may be a contributory factor where 'unreasonable behaviour' is cited as a factor for seeking dissolution of a civil partnership
- differences in procedure; a civil partnership is formed when the second partner signs the civil partnership schedule. A marriage is formed when the couple exchange spoken declarations in the presence of the celebrant and two witnesses and are then declared husband and wife by the celebrant. The marriage schedule is then signed by the couple, the celebrant and the witnesses; and,
- differences around eligibility for some pension rights which are explained in more detail below.

## **Pensions**

Pensions are a reserved policy area controlled by the UK Government. However, there are some executive devolved powers in terms of certain public sector pension schemes in Scotland.

Survivor benefits in pension schemes for a person in a civil partnership can be lower (as it may not take account of all the service in the scheme) than the equivalent benefit for a person in an opposite sex marriage.

For people in a civil partnership, public sector final-salary pension schemes will only pay out survivor's benefits for years of service after 1988, although widow's/widower's pensions are based on years of service starting from earlier dates.

In addition, for the purposes of occupational pension schemes, a surviving civil partner must be treated as a surviving spouse, but only in relation to their partner's service after December 2005 (when civil partnership became available).

For public sector pension schemes where the Scottish Government has devolved responsibilities, it is its intention to treat same sex spouses in the same way as civil partners.

The UK Marriage (Same Sex Couples) Act 2013 which applies in England and Wales treats same sex married couples in the same way as civil partners in relation to survivor benefits in pensions. The Act also (as a result of amendments to the Bill) provides for a review of differences in survivor benefits in occupational pension schemes. The review is to consider the costs, and other effects, of eliminating relevant differences in survivor benefits. A report is to be published by the UK Government before 1 July 2014.

## **GENDER RECOGNITION**

Currently, people who are married and who wish to officially change their legal gender cannot stay married to their partner as same-sex couples cannot be married. In these circumstances, the [Gender Recognition Panel](#) (Ministry of Justice 2013) will issue an interim Gender Recognition Certificate (GRC) to married applicants and applicants in civil partnerships.

The issue of an interim GRC is a ground for divorce or dissolution of a civil partnership in Scotland. Applicants then have six months from the date of issue of the interim GRC to apply to the court to end their marriage or civil partnership. Once a marriage or civil partnership has been ended, the court can issue a full GRC. Out of 523 full GRCs granted in the UK in the financial years 2010/11 and 2011/12 it is estimated that 52 of them were resident in Scotland. This is roughly 10% of the UK total. (Ministry of Justice 2013b)

Under the Marriage and Civil Partnership (Scotland) Bill's proposals, the requirement for a couple to divorce or dissolve their civil partnership before obtaining a full GRC will be removed. However, should the couple wish to separate, an interim GRC will still be issued and will remain grounds for a divorce or dissolution of a civil partnership. More information on what the Marriage and Civil Partnership (Scotland) Bill means for trans and intersex people is available in a [short briefing paper](#) produced by the Scottish Transgender Alliance (2013).

## **TIMELINE**

The Scottish Government has changed its position on same sex marriage since the last parliamentary session. In session 3, it indicated on several occasions that it did not favour a change in the law with regard to civil partnerships. The first indication that the Government had changed its views was in the publication of the [SNP Manifesto](#) for the 2011 Scottish parliamentary elections, which stated:



“We recognise the range of views on the questions of same-sex marriage and registration of civil partnership. We will therefore begin a process of consultation and discussion on these issues.” (SNP, 2011 p16)

On 2 September 2011, the Scottish Government launched a [consultation](#) (2011a) on same sex marriage and religious ceremonies for civil partnerships in Scotland. An [analysis of the consultation responses](#), (2012a) was published on 25 July 2012 with the Government [announcing](#) (2012b) that it intended to legislate to allow same sex marriage, and that the legislation would be accompanied by protections for freedom of speech and religion.

The Government undertook a [consultation](#) (2012c) between 12 December 2012 and 20 March 2013 on a draft Bill to allow same sex marriage in Scotland.

The [Marriage and Civil Partnerships \(Scotland\) Bill](#) was introduced in the Parliament on 26 June 2013. The Scottish Government published the [consultation analysis](#) on the draft Bill (Scottish government 2013a) on 27 June 2013.

## **RATIONALE FOR CHANGE**

The Scottish Government’s rationale for introducing this change was set out in the draft Bill [consultation](#) (2012c), which highlighted that:

- the introduction of same sex marriage and the religious registration of civil partnership will further equality for LGBT people
- LGBT people of faith would welcome the introduction of religious ceremonies at which to register their civil partnership or marry
- a number of religious bodies would wish to carry out such ceremonies
- there are existing protections in Schedule 23 to the *Equality Act 2010* which would apply to religious bodies and celebrants who do not wish to take part in same sex ceremonies; there are also plans to extend these protections if the Bill passes.

## **RESPONSE TO SCOTTISH GOVERNMENT CONSULTATIONS**

The Scottish Government’s [2011 consultation paper](#) received a total of 77,508 responses. This is the largest number of responses ever received by a Scottish Government consultation.

The paper set out 20 questions: 9 relating to civil partnership, 10 relating to the same sex marriage proposals and a final question asking for further views. There were also a number of amended versions of the consultation form in circulation developed by various interest groups that produced postcards or arranged petitions.

Question 10 asked “Do you agree that the law in Scotland should be changed to allow same sex marriage?” Overall, 67% of respondents said ‘No’ with 32% saying ‘Yes’. The consultation analysis states that:

“...across all respondents, a clear majority opposed changing the law to allow same sex marriage. However, there were differences in the balance of opinion when respondents’ country of residence was taken into account. The route through which a response was submitted was also a factor.”



The consultation analysis set out the results by type of response. The table is reproduced below. It shows that the majority of those that submitted a postcard response were against the proposals.

**Table 1: Question 10 of the Scottish Government 2011 consultation by type of response**

	Forms		Prepared Letters		Postcards		Petitions	
	N	%	N	%	N	%	N	%
Yes	20,618	47%	1,593	100%	2,653	10%	40	1%
No	22,655	52%	-	-	23,730	90%	5,417	99%
Don't Know	161	<1%	-	-	-		-	-
Total	43,434	100%	1,593	100%	26,383	100%	5,457	100%
Potential Maximum respondents = 77,508								

Note: percentages may not sum to 100% due to rounding

An area of consensus emerged over whether legislation should allow, rather than require, religious bodies to be involved. The consultation [analysis report](#) (Scottish Government, 2012a) states that:

“Very few respondents thought religious bodies or celebrants should be required to undertake ceremonies which they were not comfortable with. Although approaching the basic proposals from very different starting points, many respondents were united in their insistence that Scotland must remain a country in which freedom of religious conscience is treated with the utmost respect.”

The Scottish Government’s [2012 consultation on the draft Bill](#) received 15,064 responses. The majority of responses (73%) were connected with one of three campaigns (organised by CARE Scotland, Equality Network or Scotland for Marriage) and contained only the suggested text that had been provided to respondents by the campaign group. All but 128 of the responses were submitted by individual members of the public.

The [analysis of responses to the consultation on the draft Bill](#) found that there were two main issues raised by those respondents who disagreed with all or some aspect of the proposals regarding the authorisation of religious and belief celebrants to solemnise same sex marriage: first, the protection of freedom of speech in general and of religious freedoms in particular; and secondly, concerns about the workability of the opting-in system as set out in the Bill. In relation to the opt-in system, specific concerns included that it is not practical and/or fair to require all celebrants to be willing to solemnise same sex marriage before a body can be prescribed in regulations to do so.

## PROTECTIONS

The Scottish Government are clear that no religious body would be required to register a civil partnership or solemnise a same sex marriage. The Government has highlighted the range of protections around same sex marriage that will be introduced, or that are already contained in legislation, in relation to religious bodies and celebrants, freedom of speech and education.

These protections include:

- religious and belief bodies who wish to solemnise same sex marriage or register civil partnerships will have to opt in to do so
- religious and belief celebrants will only be able to solemnise same sex marriage or register civil partnership if their body has decided to opt in
- if a religious or belief body decides to opt in, there will be no obligation on individual celebrants to solemnise same sex marriage or register civil partnerships arising out of the relevant provisions in the Bill
- there is no obligation on religious and belief bodies and celebrants to opt in to solemnise same sex marriage and register civil partnerships
- Amendments to the *Equality Act 2010* to provide further protection for individual religious and belief celebrants and for other people who are integral to religious aspect of the ceremony, as well as to provide further protection in relation to the use of religious or belief premises.

The UK and Scottish Governments have agreed that, should the Scottish Parliament Bill receive Royal Assent, the amendments to the Equality Act would be made by an Order by UK Ministers under section 104 of the Scotland Act 1998. The Scottish Government will not commence any of the provisions in the Bill in relation to same sex marriage and the religious and belief registration of civil partnership until the amendments to the Equality Act 2010 are in place.

However, the [Equality Impact Assessment](#) (Scottish Government 2013b) and [Consultation Analysis](#) (Scottish Government 2012c) for the Bill raised issues suggesting that these assurances cannot be fully guaranteed. Opponents expressed concerns to say that the possibility of challenge in the European Court of Human Rights cannot be ruled out (any challenges on ECHR grounds would start in the domestic courts).

## Education

The draft Bill consultation notes that concerns were expressed in the 2011 consultation about teachers being dismissed for offering views against same sex marriage or refusing to use certain teaching materials and about a lack of parental rights to withdraw children from any lesson where same sex marriage could be mentioned.

In response to these concerns, the Government (Scottish Government 2012c) highlighted that it does not consider legislation is required in relation to education as a result of same sex marriage, and that:

- there is existing legislative provision for parents to withdraw children from religious education, and existing guidance for parents to withdraw children from sexual health education. These rights will remain in place and the guidance on sexual health education will be updated to reflect the introduction of same sex marriage
- in its view, there is already sufficient legislation and guidance which provides a good framework to ensure that teachers are not unfairly treated or dismissed
- the Government does not plan to allow parents to opt children out of any class which might mention same sex marriage or civil partnerships
- the faith aspects of the curriculum in Roman Catholic schools will continue to be determined by the Scottish Catholic Education Service.

## Freedom of speech

The 2011 Consultation Analysis highlighted concerns about freedom of speech in areas such as potential criminal sanctions for opposing same sex marriage and in relation to people potentially losing their jobs for being against same sex marriage.

When the Bill was introduced in the Parliament, the Lord Advocate Frank Mulholland QC published [guidance](#) (Crown Office and Procurator Fiscal Service 2013) on the prosecution of anyone who opposes same sex marriage in Scotland, which states:

“Criticism of same sex marriage or homosexuality is not in itself an offence nor is the expression of religious views or the display of religious symbols.

The European Convention on Human Rights and the Charter of Fundamental Rights of the European Union state that all people are guaranteed the right to freedom of thought, conscience and religion along with the freedom of expression. These freedoms include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. It is important that those wishing to debate the issue of same sex marriage are able to express views and opinions which may be disagreed with and which may cause concern.

Crown Office and the Procurator Fiscal’s Service recognise the sensitivity of the issues and the strength of opinion surrounding same sex marriage. Crown Office and Procurator Fiscal Service will consider any incident reported to it involving criticism of or support for same sex marriage on its facts and circumstances. Views expressed or comments made in relation to same sex marriage in ways which do not incite hatred or violence towards a particular person or group of people and which do not cause or intend to cause public disorder will not be the subject of criminal prosecution.

In considering whether a prosecution is appropriate, consideration will be given to the facts of the case, the context in which any statements are made or actions taken and wider issues in relation to public safety, the protection of public order and the protection of the rights and freedoms of any victims. Any decision to take proceedings in relation to cases of this nature will be approved by Crown Counsel.”

## Amendments to the Equality Act 2010

While the Bill contains a number of protections for religious and belief bodies and celebrants, as discussed above, the Scottish Government concluded that an amendment was required to the Equality Act 2010 (the 2010 Act) to provide further protection in relation to discrimination. The Government published a [note](#) (2013c) alongside the Bill regarding amendments to the 2010 Act, which is a reserved matter.

The 2010 Act already makes provision about not discriminating when providing a service, and it also contains exemptions for religious and belief bodies from equality requirements relating to sexual orientation; however, these only apply where it is necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held convictions of a significant number of the followers of the religion or belief.

The Scottish Government considers that there is a need to amend the 2010 Act to provide further protection in relation to discrimination for individual celebrants with religious or belief objections to same sex marriage and the registration of civil partnerships, even if the body to which they belong does not share these objections.

The amendments proposed provide that:

- a religious or belief celebrant or other person integral to the religious or belief aspect of the ceremony does not contravene the 2010 Act by refusing to solemnise a same sex marriage or register a civil partnership for the reason that the marriage or civil partnership is a legally recognised union of a same sex couple.
- a person controlling the use of religious or belief premises does not contravene the 2010 Act by refusing to allow the premises to be used for a same sex marriage or a civil partnership.

## FINANCIAL MEMORANDUM

The Financial Memorandum accompanying the Bill states that:

“the main associated costs in this area arose following the introduction of the Civil Partnership Act 2004, which gave rights to a couple in a civil partnership. Costs this time are modest as civil partners have almost exactly the same rights as married couples. The difference therefore is predominantly around being able to marry rather than about financial issues.”

**Table 2: Summary of the financial costs of the Bill:**

Organisation	Description	Cost
Scottish Government	Public Sector Pension Schemes	£0 - £163,800 per year (costs only likely to arise if overall number of registered same sex unions increase).
Local Authorities	Following repeal of provisions that civil ceremonies can only take place in approved places	£150,000 - £200,000 (in total for all 32 local authorities) as a result of the loss of licensing income. However, this is likely to be offset through being relieved of the burden of carrying out a licensing function.
Local Authorities	Familiarisation costs for Civil Registrars	Very little impact
National Records of Scotland	To reform the ‘registration administration and family history’ system	£75,000 (upper estimate)
National Records of Scotland	To reform the ‘statistical’ systems	£45,000 (upper estimate)
National Records of Scotland	Minor adjustments to forms and extracts.	£80,000
Scottish Legal Aid Board	Legal Aid for divorces and dissolutions	£0 - £264,000 over a period of several years (costs only likely to arise if increase in overall number of registered same sex unions)

**Source:** Marriage and Civil Partnership (Scotland) Bill Explanatory Notes and Financial Memorandum, p41

# IMPACT ASSESSMENTS

## BUSINESS AND REGULATORY IMPACT ASSESSMENT (BRIA)

The Scottish Government states in its [Business and Regulatory Impact assessment \(BRIA\)](#) (2013e) that it expects the following groups to be affected by the introduction of legislation to legalise same sex marriage:

- pension providers
- businesses with employee pension schemes
- marriage tourism businesses
- National Records of Scotland – required to make amendments to IT systems and administrative processes to register same sex marriages
- local authorities – civil ceremonies will no longer only be available in approved places
- religious and belief bodies.

The BRIA states that there is some uncertainty around the numbers of ‘new’ couples who will be seeking a same sex marriage or those who will wish to move from civil partnership to marriage. However, a short term increase in demand is expected in the first year it is introduced.

It is also noted that, according to the National Records of Scotland (2011), around a quarter of all marriages taking place in Scotland are between couples who do not reside permanently in Scotland. With the introduction of same sex marriage and religious and belief civil partnership, it is envisaged therefore that there would be a further increase in ‘marriage tourism’ to Scotland.

The BRIA recognises that there may be an increase in applications to the Gender Recognition Panel as married people will be able to obtain a certificate without having to divorce. The [UK Government’s Impact Assessment](#) for the Marriage (Same Sex Couples) Bill estimates the total costs of increased applications to the Panel at up to £700,000. However, this is funded by the UK Government.

It also suggested that any training requirements associated with the proposed ‘qualifying requirements’ to allow bodies to solemnise marriage would be supported by the Scottish Government and National Records for Scotland.

## EQUALITY IMPACT ASSESSMENT (EQIA)

The Scottish Government has determined through its Equality Impact Assessment (EQIA) that the Bill will have no discernible impact concerning disability, gender or race. It has highlighted that there may be a negative impact on promoting good relations between age groups as older people are more likely to be opposed to the Bill. However, it also highlighted a positive impact in terms of equality of opportunity as same sex marriage and religious and belief registration of a civil partnership will be open to anyone aged 16 or over.

The EQIA also highlights the positive impact of the Bill for transgender people as the proposals mean that a person will no longer have to choose between remaining in his or her legal relationship and being recognised in his or her acquired gender. It also raises awareness of issues faced by people who present with gender dysphoria. Positive impacts are also recorded in terms of advancing equality of opportunity for lesbian, gay or bisexual people, and promoting good relations.

The Government recognises that a number of religious bodies, celebrants and lay people have raised strong concerns about same sex marriage. The Government stated in the EQIA that given protections are in place and that some religious or belief celebrants wish to solemnise same sex marriage and some same sex couples wish to be recognised by a religious or belief body, the Bill will have a positive impact overall on promoting good relations with religious people or people with belief.

## UK ACT

The [Marriage \(Same Sex Couples\) Bill](#) was introduced into the House of Commons on 24 January 2013 and received Royal Assent on 17 July 2013. Its provisions are similar but not identical to those in the Marriage and Civil Partnership (Scotland) Bill.

The Act:

- enables same-sex couples to marry
- ensures those religious organisations that wish to do so can opt-in to conduct marriage ceremonies for same-sex couples<sup>1</sup>
- protects those religious organisations that do not wish to marry same-sex couples from successful legal challenge
- enables civil partners to convert their partnership to a marriage, if they wish; and
- enables individuals to change their legal gender without having to end their marriage.

The Act also amends the Equality Act 2010 to provide protection against discrimination claims for celebrants and others who do not wish to take part in religious same sex marriage ceremonies in England and Wales.

As with the Scottish Bill, the proposals have proved highly controversial with interested parties expressing strong opinions both for and against same sex marriage.

## PROVISIONS RELATING TO SCOTLAND

The Act extends mainly to England and Wales, although some provisions do extend to Scotland and Northern Ireland.

Marriage is a devolved matter for Scotland. The Bill contained provisions that triggered the Sewel convention, and a [Legislative Consent Motion](#) (LCM) was lodged by the Scottish Government's Cabinet Secretary for Health and Wellbeing in May 2013.

The Act impacts on a number of devolved matters, including:

- recognition in Scots law of English and Welsh same sex marriages as civil partnerships<sup>2</sup>
- allowing transgender people who married in England and Wales or overseas, or entered into a civil partnership in England and Wales, to stay in the relationship and obtain a full GRC (such people may now live in Scotland); and
- marriages overseas through UK consuls and the UK armed forces.

The Act also impacts on some reserved matters which affect Scotland, including:

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<sup>1</sup> The Church of England and the Church in Wales can only opt in if further legislation is taken forward.

<sup>2</sup> Same sex marriages from England and Wales (and from overseas) will be recognised as marriages in Scotland if and when the Marriage and Civil Partnership (Scotland) Bill comes into force.

- a review by the Secretary of State of survivor benefits in occupational pension schemes (section 16 of the Act).

Paragraph 184 of the Policy Memorandum<sup>3</sup> for the Marriage and Civil Partnership (Scotland) Bill outlines reserved matters, including the planned amendment to the Equality Act 2010 for Scotland, which will need to be covered by a section 104 Order under the Scotland Act 1998, if the Bill should be passed.

## PUBLIC ATTITUDES TOWARDS SAME SEX MARRIAGE

There have been several surveys undertaken specifically on the issue of same sex marriage, in Scotland and across the UK, many of which have produced contradictory results.

### SCOTLAND

The [Scottish Social Attitudes Survey 2010](#) found that a majority (61%) of respondents agreed that gay or lesbian couples should have the right to marry one another if they want to. This figure increased from 41% in 2002.

**Table 3: Response to the SSA survey statement ‘gay or lesbian couples should have the right to marry one another if they want to’**

	2002	2006	2010
	%	%	%
Agree strongly	10	17	21
Agree	31	36	40
Neither agree nor disagree	24	21	18
Disagree	17	11	10
Disagree strongly	12	10	9
Can't choose	5	2	1
(Not answered)	1	2	1
<i>Sample size</i>	<i>1507</i>	<i>1437</i>	<i>1366</i>

Source: [SSA 2010](#), p132

The 2012 [Ipsos MORI survey](#), (Ipsos Mori 2012) commissioned by the Equality Network found that 64% of Scots agree that same sex couples should have the right to marry, and 68% agree that religious organisations should have the right to decide whether to conduct same-sex marriages.

### GREAT BRITAIN

The House of Commons Library [briefing](#) (House of Commons 2013) on the UK Marriage (Same Sex Couples) Bill summarises recent opinion polls on same sex marriage carried out in Great Britain by organisations that are members of the British Polling Council.

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[http://www.scottish.parliament.uk/S4\\_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-introd-pm.pdf)



**Table 4: Summary of recent polls on same sex marriage in Great Britain<sup>4</sup>**

Date	Polling company	Comissioned by	Results			Largest response
			Support	Oppose	Don't know	
19-Dec-12	ICM	Guardian	62%	31%	7%	Support
14-Dec-12	Survation	Mail on Sunday	60%	40%	0%	Support
09-Dec-12	YouGov	-	55%	36%	9%	Support
08-Dec-12	IpsosMORI	Freedom to Marry	73%	24%	3%	Support
14-Nov-12	ComRes	Coalition for Marriage	28%	62%	10%	Oppose
22-Aug-12	Angus Reid	-	46%	47%	7%	Oppose
10-May-12	YouGov	Sunday Times	51%	35%	14%	Support
09-Mar-12	Populus	-	65%	27%	8%	Support
08-Mar-12	YouGov	Sunday Times	43%	47%	10%	Oppose
07-Mar-12	ICM	Sunday Telegraph	45%	36%	19%	Support
23-Feb-12	ComRes	Catholic Voices	22%	70%	9%	Oppose
06-Jan-12	ComRes	Coalition for Marriage <sup>3</sup>	34%	51%	14%	Oppose
25-Nov-11	YouGov	Stonew all <sup>4</sup>	71%	28%	-	Support
12-Oct-11	ComRes	IoS/Sunday Mirror	51%	34%	16%	Support
20-Sep-11	YouGov	-	46%	45%	9%	Support
14-Jul-11	Angus Reid	-	43%	49%	7%	Oppose

**Notes:** 1. The date is the first day on which polling was conducted. Most polls are produced over two to three days. 2. Unless otherwise stated, polls are of adults aged 18+ in Great Britain. 3. England only. 4. "Don't know" answers not counted.

**Source:** House of Commons Library briefing: [Marriage \(Same Sex Couples\) Bill](#), 31 January 2013. Poll sources: various (see footnote)<sup>5</sup>

There is considerable variation in the results of polls on same sex marriage. Of the sixteen polls listed in the table, ten found greater support than opposition for same sex marriage, while six found greater opposition than support. Eight polls found a majority of respondents in favour of same sex marriage, while three polls found a majority opposed. Two polls found more than 70% of respondents in favour of same sex marriage, while one poll found 70% of respondents opposed.

The variation in the results may be explained by differences in the questions that are used to test public opinion on same sex marriage. Polls commissioned by organisations campaigning for and against same sex marriage produced some of the strongest responses both for and against the proposal. This reflects the fact that respondents are sensitive to the form of the question they are asked and campaigning organisations tend to choose questions that are more likely to elicit a response that supports their position. Questions of the form "Do you agree that ..." can skew the results of a poll towards the statement that is offered, especially when the statement does not directly reflect the policy in question or presents a reason for respondents to agree with it.

<sup>4</sup> The source briefing notes that this table is intended to be as representative as possible. No polls have been knowingly omitted.

<sup>5</sup> Angus Reid 14-Jul-11, YouGov 20-Sep-11, ComRes 12-Oct-11, YouGov 25-Nov-11, ComRes 06-Jan-12, ComRes 23-Feb-12, ICM 07-Mar-12, YouGov 08-Mar-12, Populus 09-Mar-12, YouGov 10-May-12, Angus Reid 22-Aug-12, ComRes 14-Nov-12, IpsosMORI 08-Dec-12, YouGov 09-Dec-12, Survation 14-Dec-12, ICM 19-Dec-12.

## SCOTTISH PARLIAMENT CALL FOR EVIDENCE

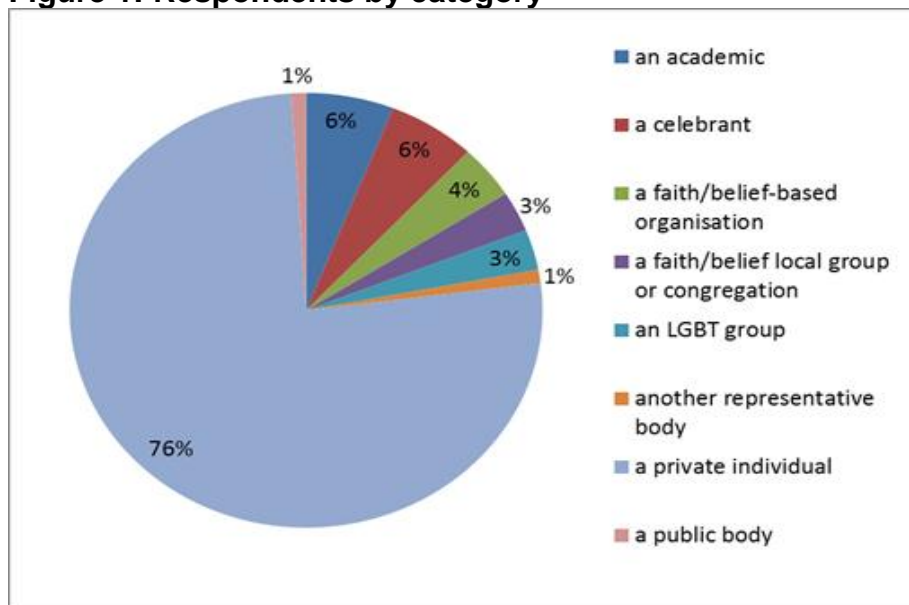
The Equal Opportunities Committee of the Scottish Parliament issued a call for written evidence which ran from the 27 June to the 23 August 2013. Respondents were able to submit their views using an online form or a traditional word document or paper submission. At the time of writing, the Committee had received approximately 1,296<sup>6</sup> submissions to its call for evidence.

These submissions will form part of the Committee's scrutiny of the Bill. The Committee also received petition [PE1413](#): by Amy King, "calling on the Scottish Parliament to urge the Scottish Government to make no changes to the current definition of marriage, as being a union between one man and one woman, regardless of what happens in Westminster". The Committee wrote to the Scottish Government in December 2012 drawing their attention to the petition and agreed to consider it again following the introduction of the Bill.

The following section outlines the breakdown of opinion on the main elements of the Bill and some of the key issues raised by respondents. Some respondents did not answer all of the questions and some respondents did not use the format provided. By far the largest group to submit were those categorising themselves as private individuals (76%). This was followed by academics and celebrants both at 6%. Faith or belief based organisations made up 4% of the total and local groups or congregations made up 3%. Public bodies and other representative bodies each made up 1%.

Figure 1 below sets out respondents by category. As it was not mandatory to provide this information, and respondents self-categorised,<sup>7</sup> it is intended to simply give an indication of the overall make up of people and organisation types that answered the question.

**Figure 1: Respondents by category**



### General principles

As expected with such a controversial topic, the call for evidence has reflected some extremely polarised opinions. However, overall, when asked for their views on the Bill, a significant majority (77%) stated that they were in support. This included groups and religious bodies such

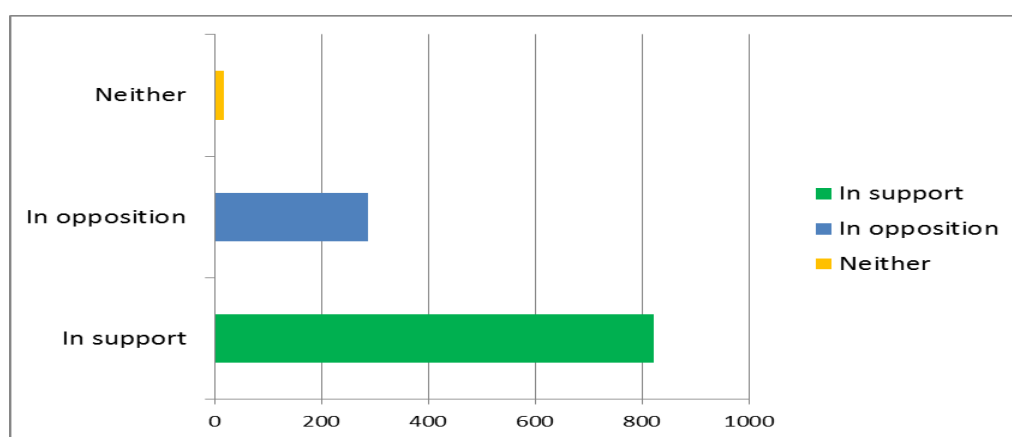
<sup>6</sup> The number of submissions received at time of writing may be different to the total number of full responses published online by the Equal Opportunities Committee. Many submissions were only partially completed and further checks had to be performed by the Committee Clerks.

<sup>7</sup> Many respondents double counted

as the Equality Network, Scottish Transgender Alliance, Scottish Youth Parliament, LGBT Youth Scotland, Equality and Human Rights Commission, Unison, the Religious Society of Friends (Quakers), the Unitarian Church, the Liberal Jews, the Humanist Society of Scotland and LGBT organisations of the police and fire brigade.

Twenty two per cent opposed the Bill, including groups such as the Church of Scotland, Scottish Catholic Education Service, the Free Presbyterian Church, CARE, the Family Education Trust, the Baptist Union, the Evangelical Alliance Scotland, Muslim Council of Scotland, Bishops Conference of Scotland, United Free Church of Scotland and Scotland for Marriage. Only 1% characterised their views as 'neither' in support of in opposition. The question was skipped by 219 respondents. When looking across the range of respondents the arguments and opinions put forward did not differ significantly by category of respondent.

**Figure 2: Response to the question “How do you characterise your views on the Bill in general?”**



### Views on the introduction of same sex marriage

Seventy seven per cent of respondents stated that they supported the introduction of same sex marriage. Twenty two per cent said that they were in opposition and one percent of respondents were neither in support or in opposition. The question was skipped by 183 respondents.

Views against the introduction of same sex marriage focused on a number of common arguments. The majority of people opposing the Bill expressed concerns that the redefinition of marriage to include people of the same gender would erode or undermine the concept of marriage as an institution and potentially open it up to further and more radical changes at a later date. For example, a number of respondents mentioned cases cited in the media regarding 3 person civil unions in Brazil and Holland.

Respondents stressed that being against the redefinition of marriage to include same sex couples, did not necessarily make you homophobic or bigoted.

The majority of those against also stated that marriage has always been understood to involve one man and one woman for the purposes of procreation and the care of children. Respondents felt that the traditional view of a stable family unit with a mother and a father should be protected and is the most beneficial environment for raising a child. Marriage was also considered by most opposing respondents to be a core building block of society. Redefining marriage was seen by some to be outwith the Government’s competence as it is an age old institution that spans geography, history and culture.

The majority of those against questioned the demand for the Bill as it was felt that the needs of same sex couples were dealt with adequately through civil partnerships. They also commented that the Bill impacted on a small minority within Scottish society and did not reflect what they felt to be majority views at a time when focus should be on more important issues, such as the economy.

Those in support of the introduction of same sex marriage thought that this Bill was a significant step forward for equality in Scotland and will allow same sex couples to access a basic human right. The vast majority felt that marriage should be about love, not gender, and that if two people wish to make a commitment to one another, that choice should be available to them.

Many respondents pointed out that there are same sex couples who wish to follow their personal beliefs and make their wedding vows before a religious or belief celebrant and not simply in a civil capacity. There are also a number of religious bodies that wish to perform same sex ceremonies.

The Law Society drew attention to Sections 4(2) to (5) of the Bill concerning the meaning of marriage and related expressions as it felt this would amend the definition of 'cohabitant' as contained in Section 25 of the Family Law (Scotland) Act 2006. The Law Society also suggested that there is a lack of clarity in Section 5 regarding the wording around adultery.

### **Allowing belief celebrants to operate on the same basis as religious celebrants**

Sixty eight per cent of respondents supported belief celebrants operating on the same basis as religious celebrants. Fourteen per cent said that they were in opposition, eighteen per cent said that they were neither in support or opposition and 257 respondents skipped the question.

For those who supported this proposal it was important to recognise that there are a wide variety of belief systems in operation in Scotland and that they should be recognised and respected. In particular, Humanists were used as an example as they now conduct around a third of all marriages in Scotland. It was clear for those supporting the proposal that religious celebrants should not have any advantage over other types of belief. In particular, there was a call from a respondent (on behalf of a faith / belief organisation) to remove what they see as the privileged status of The Church of Scotland and replace specific titles of Christian celebrants with the phrase 'Celebrant of a Religious or Belief body'.

However, a notable number of those in support also said that belief celebrants should only come from responsible organisations and that the introduction of qualifying requirements would be welcomed. There was some small concern that the provision stopping bodies solemnising marriages for profit or gain could be overly restrictive in terms of prohibiting nominal fees paid to celebrants or bodies for the use of their facilities or services. There was also a concern from small faith communities that requiring all celebrants to undergo formal training to meet qualifying requirements could be overly onerous.

For those opposed to this aspect of the Bill, one of the main concerns was the training and qualifications of those who would be performing marriage ceremonies. Religious celebrants were seen to be highly qualified in this area and able to provide support both before and after a wedding took place. It was recognised that the Bill introduced qualifying requirements and some groups sought more information on this.

A minority took a stronger position, questioning the legitimacy of belief celebrants and maintaining that religious weddings were totally different from belief ceremonies. As such, the people performing the ceremonies cannot and should not be placed on an equal footing.

## **Authorising celebrants to solemnise opposite sex and same sex marriage (including the opt-in procedures)**

Seventy five per cent of respondents supported the arrangements for authorising celebrants to solemnise wedding ceremonies. Sixteen per cent said that they were in opposition; nine per cent said that they were neither for or against and 369 respondents skipped the question.

There were significant concerns from the majority of those opposed to the Bill that the opt-in procedures do not provide sufficient security for those who do not wish to solemnise same sex marriages. It was also felt that the proposed safeguards, including the amendments to the Equality Act 2010, would not stand when challenged on European Convention of Human rights grounds. This view was shared by the Law Society of Scotland.

An amendment was sought by a small number of respondents concerning the proposed procedure for prescribed organisations to nominate celebrants or registrars in Sections 10 and 22. It was felt that the current wording would allow different branches of the same religion to nominate celebrants on their behalf – even if they were in a branch opposed to same sex marriage. For example, an orthodox rabbi being nominated by a liberal branch of Judaism.

The vast majority of those in support of the Bill felt that it provides the right balance between allowing a same sex couple to marry and protecting religious freedoms through the ‘opt-in’ procedure and the planned amendments to the Equality Act 2010. There were, however, concerns from some that this could be seen as an unbalanced approach as there are provisions for celebrants in organisations who opted-in, not to perform ceremonies. However, more liberal celebrants in religious bodies in opposition to same sex marriage would be unable to solemnise ceremonies.

A significant majority of those in support of same sex marriage respect the right of religious people and organisations not to solemnise same sex marriage if it goes against their beliefs. However, they were clear that registrars operating on behalf of the state should not be able to select the weddings that they officiate depending on personal preference or belief.

There was a minority of supporting views which stated that they would rather have an ‘opt-out’ rather than an ‘opt-in’ procedure, and that all organisations and institutions should be made to treat all marriages equally – regardless of gender. However, others stated that they would never wish to be married in an institution or by a person that did not support their choice.

A notable number of respondents sought an amendment to Section 11(2) of the Bill to allow the option of using gender neutral language in the marriage ceremony for both mixed sex and same sex couples. This was viewed to be particularly important to those who consider themselves to be transsexual or inter sex.

The issue of religions with different branches was again highlighted as there were concerns that the wording used in Section 12 of the Bill, regarding temporary authorisation, may inadvertently mean that a same sex couple that wish to be married by a celebrant from a branch that conducts same sex marriage, but does not currently have a presence in Scotland, would be unable to have the celebrant of their choice.

There was also a concern from a religious / faith based organisation that an unintended consequence of Section 12 may be that small faith communities, for example the Jewish Reform Community (who have not currently made a decision on their stance on same sex marriage), could not nominate a celebrant as they do not currently have a rabbi in post since the last incumbent left.

## **Civil partnerships changing to marriages**

Seventy two per cent were in favour of allowing civil partnerships to change to marriage. Twenty per cent said that they were in opposition; eight per cent said that they were neither for nor against and 282 skipped the question.

For the majority of those in favour of changing civil partnerships to marriages, the fact that the Bill allows for two separate ways to effect this change was welcomed (marriage ceremony and an administration process). In terms of the administrative route, respondents felt the process should be as simple and cost effective as possible.

There was a strongly expressed view from the majority of respondents that civil partnerships were in some ways inferior to marriage and, for many, simply an interim solution. Others expressed the view that civil partnerships were not understood as well by the public and did not offer the same rights or respect. Civil partnerships also propagated a sense of LGBT people being separate or 'other'. Examples were also given of civil partnerships leading to unequal pension arrangements. However, those supporting this proposal in the Bill were clear that those who wished to remain in a civil partnership should be allowed to do so.

A significant portion of those supporting this proposal thought that if civil partnerships continue then they should be open to mixed sex as well as same sex couples in order to achieve full equality. A range of individual and group respondents also suggested that the Bill should be amended to allow couples who have registered their civil partnership outside Scotland to marry here without having to dissolve their current partnership first. The Equality Network highlighted a unique situation where, in order to marry, couples would have to dissolve their civil partnership by proving irreconcilable differences (even where there are none) and living apart for a year. It was also said that international recognition of civil partnership is less consistent compared to same sex marriage.

The majority of those opposed to civil partnerships changing to marriage were also opposed to the principle of same sex marriage. As stated above they felt that civil partnerships are sufficient to confer the appropriate legal rights and the term 'marriage' should be left for religious purposes only.

Section 25 of the Bill corrects an anomaly where civil partnerships were dissolved using the simplified procedure. The Law Society suggests that further consideration is given to this section as its current wording may result in unintended consequences in relation to, for example, succession rights and pension entitlements.

## **Location of civil marriage ceremonies**

The Bill makes provisions for civil marriage ceremonies to take place anywhere, (other than religious premises), which is agreed between the couple and the registrar. Eighty one per cent of respondents said that they were in favour of this provision; nine per cent said that they were in opposition; ten per cent said that they were neither for nor against and 290 skipped the question.

Those in favour generally didn't have strong views on the matter. There was an overall desire for a common sense approach where, as long as everyone involved is willing and all the appropriate health and safety checks have been taken into consideration, people should be able to get married wherever they like.

Only a minority were against this provision, typically on the basis that a wedding is a solemn occasion and that the location should confer the appropriate level of dignity and respect.

## **Allowing the religious and belief registration of civil partnerships**

Seventy one per cent supported the religious and belief registration of civil partnerships. Sixteen per cent said that they were in opposition; thirteen per cent said that they were neither for nor against and 376 respondents skipped the question.

Those opposing this proposal wished to maintain the divide between religious and civil ceremonies and did not favour a crossover. Again, those who expressed this view also objected to the core principles of the Bill.

Those supporting this provision in the Bill also supported the Bill's main aims as they considered it increased freedom and choice.

## **Allowing transgender persons to stay married when obtaining a full Gender Recognition Certificate.**

The issue of a full GRC provides legal recognition in the acquired gender. Eighty per cent of the people responding to this question were strongly in favour of the Bill's proposals on allowing transgender persons to stay married when obtaining a full GRC. Ten per cent said that they were in opposition, 10% said that they were neither in support or opposition and 337 skipped the question.

Those opposing this section of the Bill tended to be against the Bill in general. Arguments centred on the result of gender recognition potentially leading to same sex marriage or civil partnership.

Scrutiny of this aspect of the Bill was seen to be particularly important to those in favour of the proposals in this part of the Bill as Schedule 2 (which is concerned with change of gender of married persons or civil partners) was not available as part of the consultation on the draft Bill. There were significant numbers of respondents suggesting amendments in this area.

There was widespread opposition of the need to require a declaration of spousal consent for the marriage to continue after gender recognition has taken place. It was felt that consent should only be required to re-register the marriage, not for the GRC to be awarded. There was a concern that the so called "spousal veto" could allow acrimonious spouses to delay full gender recognition.

There was also a call for a provision, which is present in the UK legislation, to allow for simpler evidence requirements when a person has been transitioned for at least 6 years. This is due to the fact that people who have been living in their acquired gender for a number of years find it more difficult to assemble the evidence required as they are likely to no longer be in touch with the gender specialists that treated them. There was also the suggestion that, in contrast to the UK Act, this provision should not be time limited and should only require evidence of medical not surgical treatment.

Sections 27 and 28 of the Bill seek to stop the loss of accrued rights when changing to marriage or a civil partnership. The Law Society suggests that further consideration is given to these sections to allow same sex couple to make financial claims as cohabitants.

In a similar argument to those stated in relation to civil partnerships, it was suggested that the Bill be amended to allow couples with civil partnerships registered outwith the UK to marry using Section 7 (Marriage between civil partners in qualifying civil partnerships). This would then enable applicants with foreign civil partnerships to obtain gender recognition without being required to divorce.



It was also noted by the Law Society that the provisions to allow a person to continue to receive a GRC if a spouse dies before the application is complete should be clarified as they currently do not cover all eventualities. It was also suggested that the provisions allowing a spouse to apply to the Court of Session to quash a GRC obtained by fraud be extended to civil partners.

It was also argued by some that the age of application to the gender recognition panel should be changed from 18 to 16 to align with the current age of consent.

## **Wider issues related but not included in the Bill**

### **Protections for those in society who may have concerns about same sex marriage**

Respondents were offered an open text format when asked whether they would like to comment on the wider issue of protections for those in society who may have concerns about same sex marriage. This question consistently received the most responses as part of the call for evidence and elicited some strong views.

The majority of those opposing the Bill had significant concerns about the protections available to those who disagreed with the principle of same sex marriage. Concerns were expressed that people could be in danger of losing their jobs or were vulnerable to criminal sanction for expressing views against same sex marriage. Respondents appeared to have little confidence in assurances provided by the Scottish Government through amendments to the Equality Act 2010 or those provided by article 9 of ECHR (freedom of thought, conscience and religion). It was also suggested that there would be scope for conflict in the desire to balance Article 9 and the public sector equality duties in relation to the Equality Act 2010. Some religious groups suggested the need to amend the current way in which the state authorises and recognises marriage in order to further guarantee protections. Amendments to this effect were put forward for sections 8 – 10 of the Bill dealing with the registration of civil partnerships and the solemnisation of marriages

It was suggested that the protections in the Equality Act should be extended beyond celebrants. The need to protect teachers, chaplains working in public bodies and registrars was highlighted by some respondents. Some groups suggested that a 'conscience clause' should be included in the Bill in the same way that atheist teachers are not forced to teach RE or religious doctors are not forced to perform abortions. However, those supporting the Bill felt strongly that teachers should present the facts and should not be offering their own personal views. In the same way as for registrars, it was felt that anyone working for the state should not be allowed to opt out of any service or to discriminate. Others suggested a middle ground where people should be allowed to opt out as long as there is someone else to perform the service. However, this should only be extended to those currently in post. Any new employees would be aware of the requirements of the role and would make their decision to apply for such posts accordingly.

The majority of respondents who supported the Bill, who chose to answer this question, felt that any concerns about same sex marriage and the need for protection is simply another form of prejudice. Many likened the refusal to perform a service based on sexuality to refusing based on gender or ethnicity. This potential change in the law was also likened to ending slavery or child labour.

### **Freedom of speech**

The vast majority of those in support of the Bill were clear that freedom of speech should be protected for all. However, many pointed out that responsibilities accompanied this right and that it should not be abused.

Almost all of those opposing the Bill felt very strongly that their freedom of speech and freedom of religion was being seriously infringed and that they were unable to express any disagreement with the concept of same sex marriage without being branded as homophobic or bigoted. Although some were aware that the Lord Advocate had published a statement on this issue a small number noted that this was a grey area and that they would like more clarity on exactly how they would be able to voice their disagreement.

## **Other comments**

In relation to the issue of protections some of those opposing the Bill sought legal rights for parents to take their children out of any lesson where same sex marriage may be mentioned. There were also concerns about the type of teaching materials that may be used. Alternatively, those supporting the Bill felt that more education in terms of LGBT issues would reduce prejudice and intolerance.

Concerns were also raised about public bodies potentially banning groups opposed to same sex marriage from using public facilities or services and organisations losing charitable status. This was seen to be especially true at a time when church related charitable groups are performing an increasing number of social welfare related services. There were also concerns regarding adoption agencies and prospective adoptive or foster parents losing their rights because they voice disagreement.

It was also noted that it was unclear whether the Registrar General will keep one or two registers for celebrants. As some people will only wish to solemnise either same sex or mixed sex unions it was suggested that separate registers should be kept.

Some Local Authorities commented on a potential loss of income in respect of loss of fees for 'certificates of approval' and potential loss of 'ceremony income' due to the potential increased number of celebrants.

## ANNEXE A: SUMMARY OF THE BILL

The [Marriage and Civil Partnership \(Scotland\) Bill](#) was introduced in the Parliament on 26 June 2013, accompanied by memorandum, policy and a [delegated powers memorandum](#).

The Bill allows same sex couples to marry, and provides for the consequences of that change.

A summary of each part of the Bill is provided below:

### PART 1: MARRIAGE

This Part of the Bill makes a number of amendments to the *Marriage (Scotland) Act 1977*.

<b>Section 1</b>	amends the 1977 Act in relation to ‘forbidden degrees’ (about people who are too closely related to each other to get married) to reflect the introduction of same sex marriage.
<b>Section 2</b>	legalises same sex marriage by removing the impediment to marriage of the two parties being the same sex.
<b>Section 3</b>	amends the preliminary procedures a couple must go through when they want to marry, including to submit a notice of intention to marry to a district registrar, with the fee, their birth certificates and certain other documents.
<b>Section 4</b>	makes provision on how the term ‘marriage’ and other expressions should be interpreted in legislation and documents and ensures that references to being married (or having been married) in the common law are to be read as applying equally to the legislation in relation to an opposite sex marriage and to a same sex marriage
<b>Section 5</b>	makes further provision on the introduction of same sex marriage and its effect on certain aspects of Scots law, including providing that “adultery” has the same meaning for the purposes for same sex marriages as it does for opposite sex marriages.
<b>Section 6</b>	introduces schedule 1 on the jurisdiction of the Scottish courts in proceedings relating to same sex marriages.
<b>Sections 7-9</b>	relate to changing a civil partnership to a marriage and the legal effect of doing so.
<b>Sections 10-13</b>	make provision on who may be authorised to solemnise marriage in Scotland, to include belief bodies alongside religious bodies. This section also provides a number of protections so that under the Bill: <ul style="list-style-type: none"><li>• there is no duty on any religious or belief body to request to be prescribed so that their celebrants can solemnise same sex marriage;</li><li>• there is no duty on any religious or belief body to nominate members to be empowered to solemnise same sex marriage;</li><li>• there is no duty on any person to apply for temporary authorisation to solemnise same sex marriage; and</li><li>• there is no duty on a celebrant approved to solemnise same sex marriages to solemnise such marriages.</li></ul>
<b>Section</b>	provides that the introduction of same sex marriages does not affect the exercise

<b>14</b>	of rights of anyone to freedom of thought, conscience, religion and freedom of expression.
<b>Section 15-20</b>	make additional changes to marriage law, including: <ul style="list-style-type: none"> <li>• the introduction of powers for district registrars to require evidence of nationality from people wishing to get married;</li> <li>• automatic authorisation of Church of Scotland deacons to marry opposite sex couples, and</li> <li>• allowing civil marriage ceremonies to take place anywhere agreed to by the couple and the local registration authority, other than religious premises.</li> </ul>
<b>Section 21</b>	clarifies the jurisdiction of the sheriff court in relation to declarators of opposite sex marriage.

## **PART 2: CIVIL PARTNERSHIPS**

This Part of the Bill makes a number of amendments to the *Civil Partnership Act 2004*. Many of the provisions in this Bill in relation to the authorisation of religious or belief celebrants to register civil partnerships mirror provisions in the 1977 Act on the solemnisation of marriage.

<b>Section 22</b>	amends the 2004 Act so that it will be possible to have a religious or belief ceremony to register the partnership - civil ceremonies will also remain available.  This section also amends the table of 'forbidden degrees' (about people who are too closely related to each other to form a civil partnership) in the same way as in section 1 of the Bill for marriages.
<b>Section 23</b>	introduces powers for district registrars to require evidence of nationality from people wishing to enter a civil partnership.
<b>Section 24</b>	makes provision on the recognition in Scotland as civil partnerships of overseas same sex registered relationships.
<b>Section 25</b>	relates to the removal of the requirement for third party evidence for the dissolution of civil partnerships.

## **PART 3: MARRIAGE AND CIVIL PARTNERSHIP: OTHER PROVISION**

<b>Section 26</b>	makes bigamy a statutory, rather than common law, offence in relation to both opposite sex and same sex marriage.
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## **PART 4: CHANGE OF GENDER MARRIED PERSONS OR CIVIL PARTNERS**

<b>Section 27</b>	introduces schedule 2 to the Bill on applications to the Gender Recognition Panel by married persons or persons in a civil partnership.
<b>Section 28</b>	empowers the Scottish Ministers to make regulations about the solemnisation of a renewed marriage for married persons who have obtained a full Gender Recognition Certificate. This would enable a new marriage certificate to be

	issued. Provision is also made in the Bill that could establish an administrative procedure for updating marriage certificates to reflect a new gender (as opposed to undertaking a renewed marriage ceremony).
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## PART 5: REGISTRATION SERVICES

<b>Section 29</b>	corrects a cross-reference in the <i>Registration of Births, Deaths and Marriages (Scotland) Act 1965</i> regarding the provision of information to district registrars.
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## PART 6: GENERAL PROVISIONS

<b>Sections 30-33</b>	relates to interpretation, ancillary provisions commencement and title.
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## SCHEDULES

<b>Schedule 1</b>	makes provision on the jurisdiction of the Scottish courts in relation to same sex marriages. The schedule amends the <i>Domicile and Matrimonial Proceedings Act 1973</i> to make provision for court actions in relation to same sex couples.
<b>Schedule 2</b>	<p>makes changes to the <i>Gender Recognition Act 2004</i> to enable an existing marriage to continue where one or both parties change their gender and both parties wish to remain married.</p> <p>It also amends the 2004 Act to enable a civil partnership to continue where both parties change their gender simultaneously and wish to remain in their civil partnership.</p>

## **ANNEXE B: EXISTING LEGISLATION**

### **The Marriage (Scotland) Act 1977**

The *Marriage (Scotland) Act 1977* allows mixed-sex couples to have a civil marriage ceremony or a religious marriage ceremony, i.e. the marriage can be solemnised before a religious celebrant, or before an authorised registrar.

### **The Civil Partnership Act 2004**

The *Civil Partnership Act 2004*<sup>8</sup> allows same-sex couples to have their relationship legally recognised, and for the legal impacts to be almost identical to marriage.

The registration of civil partnerships is devolved, however, the *Civil Partnership Act 2004* applies across the UK. The Scottish Parliament agreed at the time, through a Sewel Motion, that Westminster could legislate for Scotland, given that many of the responsibilities and rights held by civil partners relate to reserved matters, such as benefits and immigration.

### **Domicile and Matrimonial Proceedings Act 1973**

The *Domicile and Matrimonial Proceedings Act 1973* makes provision on the jurisdiction of the Scottish courts to deal with court actions on divorce, separation, declarator of nullity of marriage and declarator of marriage and on actions for recognition of foreign decrees.

### **Gender Recognition Act 2004**

The *Gender Recognition Act 2004* enables people to change their legal gender by applying for a gender recognition certificate.

The 2004 Act extends across the UK but relates largely to devolved matters. The Gender Recognition Panel deals with applications for a GRC and operates across the UK. The issue of a full GRC enables recipients to be recognised in law for all purposes in their new gender ("the acquired gender").

### **The Equality Act 2010**

The *Equality Act 2010* brought together over 116 separate pieces of legislation into one single Act that provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The 2010 Act is reserved.

Schedule 23 to the Equality Act 2010 has exemptions from equality requirements where these are necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held religious convictions of a significant number of the followers of the religion or belief.

Section 202 of the *Equality Act 2010* amends the *Civil Partnership Act 2004*, by repealing the prohibition on civil partnerships being registered in religious premises in England and Wales (not Scotland) and repealing the definition of "religious premises".

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<sup>8</sup> The 2004 Act has been in force since December 2005

## ANNEXE C: INTERNATIONAL LAW – SAME SEX MARRIAGE IN OTHER COUNTRIES

Countries where same sex marriage is legal	Countries where same sex couples offered most or all rights of marriage (through civil partnerships, registered partnerships, civil unions etc.)
South Africa (2006) Belgium (2003) Denmark (2012) France (2013) Iceland (2010) Netherlands (2001) Norway (2009) Portugal (2010) Spain (2005) Sweden (2009) Argentina (2010) Some parts of Mexico (2010) Uruguay (2013) Canada (2005) Some parts of the United States <sup>9</sup> New Zealand (2013) England and Wales (2013)	Austria (2010) Finland (2002) Germany (2001) Hungary (2009) Ireland (2011) Liechtenstein (2011) Switzerland (2007) United Kingdom (2005) Brazil (2011) Colombia (2009) Some parts of Mexico (2007) Some parts of the United States <sup>10</sup>

Same sex couples offered some rights of marriage	Countries where civil partnerships/Unions are open to opposite sex couples	Countries where civil partnerships have been replaced by same sex marriage
Andorra (2005) Czech Republic (2006) Croatia (2003) Luxemburg (2004) Slovenia (2006) Israel (1994) Ecuador (2009) Some Parts of the United States <sup>11</sup> Some states in Australia <sup>12</sup>	Netherlands France New Zealand Uruguay Ecuador US States: Colorado, Illinois and Hawaii. Some jurisdictions in Brazil.	Denmark Norway Sweden Iceland US states: New Hampshire, Vermont, Connecticut, Rhode Island and Delaware

<sup>9</sup> Connecticut, Delaware, District of Columbia, Iowa, Massachusetts, Maine, Maryland, Minnesota, New Hampshire, Rhode Island, Washington.

<sup>10</sup> California, Delaware, Illinois, Hawaii, Nevada and Oregon

<sup>11</sup> Wisconsin

<sup>12</sup> Norfolk Island, Northern Territory, Queensland, South Australia and Western Australia.



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