

SPICe Briefing

Marriage and Civil Partnership (Scotland) Bill as amended at Stage 2

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14/10

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Stage 3 proceedings on the Marriage and Civil Partnership (Scotland) Bill are scheduled to take place on 4 February 2014.

This briefing summarises the main recommendations made by the Equal Opportunities Committee in its stage 1 report and the Scottish Government response. It also summarises the key amendments passed at stage 2.

This version of the briefing updates the previous version dated 27 January 2014. It takes account of additional information sent to the Equal Opportunities Committee concerning the analysis of Scottish Government consultation responses received through the Scotland for Marriage Campaign.

SPICe briefing 13-51 describes the Bill as introduced in more detail.



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EXECUTIVE SUMMARY

The Marriage and Civil Partnership (Scotland) Bill (the Bill) was introduced in the Parliament on 26 June 2013 by the Cabinet Secretary for Health and Wellbeing, Alex Neil MSP. The Equal Opportunities Committee was designated as lead Committee.

The Bill allows for the introduction of same sex marriage and the religious and belief registration of civil partnerships as well as outlining a number of protections for celebrants who do not wish to solemnise same sex marriage. The Bill also makes a range of other changes, for example, allowing civil partnerships to change to same sex marriage, the establishment of belief wedding ceremonies¹ and the removal of the requirement that a couple should divorce before one of them obtains a full gender recognition certificate (GRC).

This Bill has been highly controversial with the two sides polarised in their views. The majority of those against the Bill believe that marriage should be between one man and one woman. Those in support of the Bill see this as a significant step forward in equality for lesbian, gay, bisexual and transgender people.

In the Stage 1 debate the Equal Opportunities Convener reported that the majority of the Committee supported the general principles of the Bill. A minority of the Committee did not support the Bill either because they disagreed in principle or because they were not convinced that adequate protections were in place for those who disagree with same sex marriage. The Stage 1 report contained a number of conclusions and recommendations on the detail of the Bill. These included the following:

- The Scottish Government should consider the varying views on the freedom of religious and belief organisations to conduct legally valid marriages in keeping with their doctrines in its approach to the amending stages of the Bill.
- The Committee sought the Scottish Government's view on the suggested amendment to the redefinition of non-civil marriages, to more prominently reflect the distinction between religious ceremonies and belief ceremonies.
- If same-sex marriage is introduced, the Committee felt that couples from abroad should have the same access to the proposed administrative procedure for changing civil partnership to marriage as couples whose civil partnerships were registered in Scotland.
- The report drew the Parliament's attention to the views expressed as regards the relationship between the Bill and public services, including educational matters.
- The Committee took the view that it should be possible to allow a choice of gender-neutral or gender-specific language for marriage declarations.
- The Committee considered the requirement for 'spousal consent' for gender recognition was unnecessary and should be removed.
- The Committee noted the representations made about lowering the age requirement for gender recognition and requested a detailed response on the issue in advance of Stage 2.

¹ A belief wedding ceremony would be conducted by a belief body which can be defined as 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.

- On people who have been transitioned for a long time to an acquired gender, the Committee welcomed the Scottish Government's willingness to consult relevant stakeholders further with a view to lodging an amendment at Stage 2.

At Stage 2, 77 amendments were lodged on the Bill. Members of the Scottish Parliament were allowed to consider this Bill as a matter of conscience and not along party lines. The majority of amendments from those who disagreed in principle or with particular elements of the Bill concerned the issue of providing adequate protections for individuals or organisations that believe in the traditional view of marriage as being between one man and one woman.

In Stage 2 Committee consideration, the Cabinet Secretary outlined the existing protections such as the 'Opt-In' system for registration as well as the prosecution guidance produced by the Lord Advocate and the amendment to the Equality Act 2010 which will protect religious and belief bodies, celebrants and others carrying out religious and belief functions at marriage and civil partnership ceremonies from potential discrimination claims. In light of these measures and updates to existing guidance the Scottish Government view the current protections to be sufficiently robust.

Many of the substantive amendments which were agreed at Stage 2 concerned aspects related to the transgender provisions of the Bill. The Scottish Government also took on board some of the recommendations of the Equal Opportunities Committee, for example, the use of gender neutral language in wedding ceremonies.

INTRODUCTION

The [Marriage and Civil Partnership \(Scotland\) Bill](#) (Scottish Government 2013) 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 partnerships 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 (GRC)
- 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.

[SPICe briefing 13-51](#) describes the Bill as introduced in more detail.

PARLIAMENTARY CONSIDERATION

The Equal Opportunities Committee was appointed lead Committee for parliamentary consideration of the Bill. Table 1 lists the key dates of the Bill's progress through the Parliament.

Table 1: Summary of Parliamentary Consideration

Bill introduced	26 June 2013
Stage 1 – general principles	
Finance Committee call for written evidence	2 July 2013 (6 responses)
Equal Opportunities Committee	5 September 2013 (evidence) 12 September 2013 (evidence) 19 September 2013 (evidence) 26 September 2013 (evidence) 3 October 2013 (evidence) 31 October 2013 (report writing) 7 November 2013 (report writing)
Delegated Powers and Law Reform Committee	3 September 2013 10 September 2013 1 October 2013 26 November 2013 28 January 2014
The Delegated Powers and Law Reform Committee's report to the Equal Opportunities Committee	2 October 2013

Stage 1 report: Equal Opportunities Committee	8 November 2013
Stage 1 debate	20 November 2013
Stage 2 detailed consideration	
Equal Opportunities Committee	19 December 2013 & 16 January 2014
Bill [as amended at Stage 2]	17 January 2014
Stage 3 final consideration	
Plenary	4 February 2014

STAGE 1 – KEY ISSUES

At stage 1, the lead Committee is tasked with reporting on the Bill’s general principles. During stage 1, the Committee took oral evidence over five meetings (dates noted in table above). At the end of its deliberations the Committee noted the differing views expressed in evidence on the meaning and purpose of marriage. It also recognised the validity of perspectives on all sides of this issue and drew the Parliament’s attention to the depth, range and sincerity of the views submitted.

On completion of Stage 1 evidence gathering, the Convener reported that the majority of the Committee supported the general principles of the Bill. A minority of the Committee did not support the Bill because they disagreed in principle or because they were not convinced that adequate protections for those who believe in the traditional view of marriage were in place. Overall the Committee wholeheartedly supported the right of individual members to decide on the Bill as a matter of conscience.

CONCLUSIONS IN STAGE 1 REPORT AND SCOTTISH GOVERNMENT RESPONSE

Below is a summary of the conclusions and recommendations of the Equal Opportunities Committee and the Scottish Government’s response. The [full response is available on the Parliament website](#) (Scottish Government 2013a) and offers a more detailed view of the Government’s decision making. It also includes comment on aspects of the report which were not part of the main conclusions. For example, drafting issues regarding religions with different branches celebrating same sex marriage.

Table 2: Recommendations in Stage 1 Report and [Scottish Government response](#)

Protections and freedom of expression	
Committee Conclusion / Recommendation	Scottish Government Response
The Scottish Government should consider the varying views on the freedom of religious and belief organisations to conduct legally valid marriages in keeping with their doctrines in its approach to the amending stages of the Bill.	The Scottish Government agreed to take account of views expressed by consultees in relation to protections and freedom of expression. The Scottish Government stated in its response that “we have the balance right in relation to furthering the rights of LGBT people and protecting those people and bodies with religious beliefs and faith who have expressed concerns about same sex marriage.”

Registration of celebrants	
Committee Conclusion / Recommendation	Scottish Government Response
<p>The Committee sought the Scottish Government's view on the suggested amendment to the redefinition of non-civil marriages, to more prominently reflect the distinction between religious ceremonies and belief ceremonies.</p>	<p>The Government considered that it was difficult to reach a designation which suits all religious and belief bodies. The Government's view is that the current designation in the Bill strikes the right balance and ensures respect for religious and belief bodies. Any changes might be contentious and it is unlikely that any changes would be agreed by all. Under these circumstances, therefore, the Government is not planning any amendments to the Bill in respect of the designation of religious or belief ceremonies.</p>
<p>The Committee sought the Scottish Government's view on the opinion expressed by the Humanist Society Scotland that the treatment in marriage law of the Church of Scotland affords it a privileged status.</p>	<p>The Government stated that "the system of authorisation in the 1977 Act is replicated for the solemnisation of same sex marriage and the registration of civil partnerships except that the Church of Scotland is not named in the Bill in respect of the solemnisation of same sex marriage and the registration of civil partnerships. This reflects that the Church of Scotland has indicated that it would not intend to take part in the solemnisation of same sex marriage and the registration of civil partnerships. If the Church of Scotland should subsequently decide to take part – and any such decision would be entirely a matter for the Church of Scotland – celebrants could be authorised by, for example, being nominated by the Church to the Registrar General." It also noted that "When a religious or belief marriage ceremony takes place, it presumably does not matter to the couple how the celebrant was authorised." Also that the Bill introduces qualifying requirements for religious and belief bodies to meet before their celebrants can solemnise marriage</p>
Civil Partnerships	
Committee Conclusion / Recommendation	Scottish Government Response
<p>We note that the Bill creates a requirement that those same-sex couples who have entered into a civil partnership in another country must dissolve their partnership before being permitted to marry in Scotland. If same-sex marriage is introduced, couples from abroad should have similar access to the proposed administrative procedure for conversion of civil partnership to marriage as couples whose civil partnerships were conducted in</p>	<p>The Government stated that it has carefully considered this issue which is not straightforward. Its response outlined a number of factors which need to be taken into account when working across multiple jurisdictions.</p> <p>With these factors in mind it lodged an amendment to the Bill which would allow Ministers to extend by Order the category of civil partners who could change their civil partnership in Scotland by having a marriage ceremony here. This will enable civil partners in a partnership registered outwith Scotland to marry here. The Order-making approach will enable the Government to consult fully and to consider the issues in detail. Any such Order</p>

Scotland.	would be subject to affirmative resolution procedures. The Government would intend to consult in 2014 on whether or not to make such an Order and, if so, who it should cover. This consultation will form part of its work on the review of civil partnerships. Regardless of whether or not an Order is made, the Government would intend to report to Parliament on the outcome of the consultation.
Change of gender of married persons or civil partners	
Committee Conclusion / Recommendation	Scottish Government Response
It should be possible to allow a choice of gender-neutral or gender-specific language for marriage declarations. The Committee calls on the Scottish Government to reconsider its position.	<p>The Government noted the concerns expressed by some equalities bodies in relation to this amendment. The Government also considered that no religious body should be required to use gender neutral marriage declarations. Therefore, the Government lodged an amendment to the Bill so that religious and belief bodies who are nominating celebrants to the Registrar General could have the flexibility to choose to use the following types of marriage declarations in opposite sex marriages:</p> <ul style="list-style-type: none"> • Declarations which refer to “husband and wife”. • Declarations which refer to ‘marriage’ and the ‘couple being married’. • Either or both of these types of declarations.
The non-transitioning spouse’s personal choice is sufficiently protected by the automatic grounds for divorce triggered by his or her partner’s seeking gender recognition. The Committee considered the requirement for spousal consent for gender recognition as unnecessary and felt that it should be removed.	<p>The Government considers this to be a complicated issue and set out a range of factors in its response which it has taken into consideration.</p> <p>It stated in its response that the spousal consent is to staying in the marriage, not to the applicant receiving gender recognition. There is a need to ensure that the non-transitioning spouse is involved in a decision about the marriage continuing. Once gender recognition is granted, any marriage changes legally from opposite sex to same sex (or from same sex to opposite sex in the future).</p> <p>The Government was considering lodging an amendment which would allow an application to be made to the sheriff for a full GRC. However, upon further deliberation it decided not to lodge an amendment on this issue in stage 2.</p> <p>Amendments 60, 70 and 72 on this subject were put forward in the name of Linda Fabiani MSP and were agreed by the Committee.</p>
The Committee drew two further conclusions regarding gender	The Government response stated that it intended to lodge an amendment to the Bill along similar lines to the

<p>recognition issues raised in evidence, whilst recognising that it may not be possible to deal with them effectively within the scope of the Bill—</p> <p>“Regarding the difficulties facing long-termed transitioned people, we welcome the Scottish Government’s willingness to consult relevant stakeholders further with a view to lodging an amendment at Stage 2.</p> <p>We note the representations made to us about lowering the age requirement. We do not consider that we have received sufficiently comprehensive evidence in this area and ask the Scottish Government to provide, in advance of Stage 2, a detailed response on the issue.”</p>	<p>provisions at Part 2 of Schedule 5 to the Marriage (Same Sex Couples) Act 2013. This would allow long-term transitioned people, in certain circumstances, to obtain gender recognition through providing alternative evidence to the Gender Recognition Panel.</p> <p>Amendments were lodged and passed at Stage 2 to allow long-term transitioned applicants apply to the Gender Recognition Panel on alternative evidence.</p> <p>In terms of lowering the age requirement the Scottish Government has considered the evidence currently available to it and submitted it to the Committee as part of its response. In conclusion it stated that “Clearly, the Marriage and Civil Partnership (Scotland) Bill is about marriage and civil partnership rather than gender recognition. The Government has not consulted on changing the minimum age for applying to the Gender Recognition Panel (GRP). The Government considers that it would need to do so and would need to obtain more evidence from medical professionals, the GRP, transgender groups and others of the benefits and dis-benefits of being able to apply to the GRP at age 16.”</p> <p>An amendment to the Children and Young Persons Bill was subsequently considered at Stage 2. However, it was withdrawn and not voted on. The Government committed to considering the issue further with equality groups.</p>
Impact on other areas of life	
Committee Conclusion	Scottish Government Response
<p>The Committee drew the Parliament’s attention to the views expressed as regards the relationship between the Bill and public services, including educational matters.</p>	<p>The Government recently sought views on draft guidance on relationships education. The two main areas that attracted attention are:</p> <ul style="list-style-type: none"> • Paragraph 10 on teachers, children and young people not being made to do something against their conscience. • Paragraph 16 on parental right of withdrawal from specific lessons on sexual health education. <p>Government officials have met with everyone who requested a meeting (list of highlighted organisations included in response) and have started to analyse the views received. Further discussion and possible further changes to the draft will take place in the New Year.</p> <p>An unsuccessful amendment was also lodged in relation to the Children and Young People (Scotland) Bill by Alex Johnstone MSP. The amendment sought to create a right for parents to remove their children from school sex education, in the same way that they currently have the</p>

	right to remove them from religious education.
Delegated Powers and Law Reform	
Committee Conclusion	Scottish Government Response
The Scottish Government should provide a response in relation to the recommendations from the Delegated Powers and Law Reform Committee (Scottish Parliament 2013) and any relevant amendments lodged should the Bill progress.	<p>The Government has responded to the report by the Delegated Powers and Law Reform Committee (Scottish government 2013b). In summary, the Government states that it has:</p> <ul style="list-style-type: none"> • Lodged amendments 15 and 19 to remove section 8(2)(g) of the Bill and clarify that persons changing their relationship from a civil partnership to a marriage will have the same rights and responsibilities regardless of whether they change through having a marriage ceremony or through the administrative route . • Lodged amendment 35 to remove section 28(2)(h) of the Bill. Provision on the continuity of a marriage following the issue of a full GRC is made through paragraph 9 of schedule 2 to the Bill. Similarly, provision on the continuity of a civil partnership following the issue of a full GRC (where both parties are transitioning) is made through paragraph 10 of schedule 2 to the Bill. • Lodged amendment 34 so that all orders made under section 5D of the Gender Recognition Act 2004 (as inserted by paragraph 6 of schedule 2 to the Bill) are subject to affirmative resolution procedures. <p>The Scottish Government also prepared a Supplementary Delegated Powers Memorandum (Scottish Government 2014) which describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.</p>

FUTURE REVIEWS WHICH WILL INFLUENCE FURTHER ACTION BY THE SCOTTISH GOVERNMENT

The Committee also noted in its Stage 1 report that the Scottish Government plans to consider issues relating to reform of civil partnerships, including opposite-sex civil partnerships, in its forthcoming [review](#) (Scottish Government 2013c). It also heard in evidence from the Cabinet Secretary that the UK Government is planning to conduct a review on the issue of survivor pension benefits relating to same sex couples. Section 16 of the Marriage (Same Sex Couples) Act 2013 outlines the [terms of the review](#) (UK Parliament 2013). The review will extend to Scotland and is expected to report in July 2014 and will inform the Scottish Government's approach to the public sector pension schemes which fall under its devolved responsibility.

STAGE 2 KEY AMENDMENTS

Stage 2 offers an opportunity for any member of the Parliament to propose amendments to a bill, although only members of the lead Committee taking forward the bill can vote on any amendments that are lodged.

The [Marshalled Lists of Amendments for Stage 2](#) (Scottish Parliament (2013a and 2014) and [Groupings of Amendments for Stage 2](#) (Scottish Parliament (2013b and 2014a), the [Official Reports of the Equal Opportunities Committee](#) (Scottish Parliament 2013c and 2014b) and the [Bill as amended](#) (Scottish Government 2014d) are available online.

A total of 77 amendments were lodged. The amendments were considered at Stage 2 by the Equal Opportunities Committee at its meetings of the 19th December 2013 and the 16th January 2014 (Scottish Parliament Equal Opportunities Committee 2013c and 2014b).

Of the 77 amendments considered by the Committee, all of the Government proposed amendments were successful (52 in total all agreed without division). An amendment moved by Linda Fabiani MSP was also successful. Eleven other amendments that were moved were disagreed to by division. Two amendments were moved and withdrawn, two were pre-empted and 8 were not moved (Scottish Parliament Equal Opportunities Committee 2013c and 2014b).

AMENDMENTS AGREED

Table 3 provides information on some of the key amendments that were agreed, either by the whole Committee or by division. (This is not an exhaustive list of all amendments.)

Table 3: Amendments agreed

Amendment	Discussion	Outcome
Abolition of a spouse's defence to charge of reset		
8 & 9 - Alex Neil	These amendments repeal the defence for wives against the crime of reset (handling stolen goods)	Agreed without division
Changing Civil Partnerships to marriage: civil partnerships registered outside Scotland		
14 - Alex Neil	The purpose of amendment 14 is to allow Ministers to extend by order the category of civil partnerships which can change their relationship to marriage by undergoing a marriage ceremony in Scotland. This would enable civil partners in a partnership registered outwith Scotland to marry here. The order is subject to affirmative resolution powers and could amend primary legislation. In particular, there may be a need to amend section 9 of the Bill.	Agreed without division
Power to provide for effect of changing civil partnership into marriage or of renewed marriage or civil partnership following change of gender		
15 & 19 – Alex Neil	This amendment will remove section 8(2)(g) of the Bill and clarify that persons changing their relationship from a civil partnership to a marriage will have the same rights and responsibilities regardless of whether they change through having a marriage ceremony or through the administrative route	Agreed without division

Language used in marriage declarations		
26 - Alex Neil	The amendment follows a recommendation by the Committee concerning the language used in marriage declarations to allow a gender neutral form of words to be used. Religious or belief bodies can use only gender specific or only gender neutral language or a mix of the two depending on their beliefs and the couples' requirements.	Agreed without division
Appeals against the issue of a gender recognition certificate (GRC)		
29 – Alex Neil	The effect of this amendment is that civil partners will have the same right as an applicant's spouse to apply to the Court of Session to quash a GRC on the grounds it was secured by fraud.	Agreed without division
Registration of qualifying Scottish marriages and civil partnerships: power to charge fees		
31 – Alex Neil	Amendment 31 makes an amendment in relation to the (negative procedure) regulation-making power on the registration of marriages and civil partnerships following the issue of a full GRC. It makes it clear that fees could be charged to applicants in respect of registration. Fees are generally charged for registration purposes.	Agreed without division
Meaning of “protected Scottish marriage”: consular marriages		
53 – Alex Neil	Amendment 53 amends the interpretation section of the Gender Recognition Act 2004. This ensures that marriages solemnised under new provisions in UK legislation on consular marriages are viewed as having been solemnised in Scotland, so long as the couple elected Scotland as the relevant part of the UK. (Schedule 2 will continue to cover UK consular marriages where the couple elected Scotland which took place under the current provisions contained in the Foreign Marriage Act 1892).	Agreed without division
Successful applications: when full or interim gender recognition certificate (GRC) are to be issued		
57 – Alex Neil	There are a number of changes included in amendment 57 which amends section 4 of the Gender Recognition Act 2004 and also amends, for Scotland, changes made to section 4 of the 2004 Act by the UK Marriage (Same Sex Couples) Act 2013. These changes aim to clarify understanding and avoid duplication. The main change ensures that a person in a <u>marriage solemnised in Scotland</u> who has spousal consent to stay in the marriage and a person in a Scottish protected civil partnership whose partner is transitioning on the same day can receive a full GRC. Previously, the provisions in the Scottish Bill and the UK Act were contradictory as the UK Act, which extends to Scotland, does not cover persons in a marriage solemnised in Scotland or in a civil partnership registered in Scotland.	Agreed without division
62 – Alex Neil	The amendment ensures that a person in a protected marriage under the 2013 Act (a marriage registered in England and Wales or overseas) who has spousal consent to stay in the marriage can receive a full GRC.	Agreed without division
63 – Alex Neil	The amendment ensures that a person in a civil partnership <u>registered in England and Wales</u> whose partner is transitioning on the same day can receive a full GRC. Previously, the provisions in the	Agreed without division

	Scottish Bill and the UK Act were contradictory as the Scottish Bill only covers civil partnerships registered in Scotland.	
Issue of a full GRC by a sheriff where a spouse has not declared consent to the marriage continuing		
68, 70, 72 – Linda Fabiani	<p>Amendment 68 enables a transgender person who married in Scotland to obtain legal gender recognition without needing first to get written consent from their spouse. It also ensures that the non-transitioning spouse has the right to be notified that an application has taken place and at any time, to seek a non-contestable divorce on the grounds of the trans person’s gender recognition.</p> <p>Amendment 70 provides that, “when gender recognition is granted under the provisions of new section 4E of the Gender Recognition Act 2004, a revised marriage certificate that showed the marriage as a same-sex marriage would be issued only with the spouse’s agreement. That would give the spouse the space to decide whether to seek to end the marriage without updated documentation related to the marriage being in circulation first.”</p> <p>Amendment 72 ensures that “the continuity of the marriage would not be affected by the issue of the full gender recognition certificate. That would mean that the spouse’s financial, parental and other rights associated with the marriage would not be affected in any way by the gender recognition.”</p> <p>Ms Fabiani also stated that legal gender recognition is an established human right; that the award of a gender recognition certificate is a final administrative step in a long process and that of the nine European countries (outwith the UK) that have same-sex marriage, none have a spousal consent requirement for gender recognition.</p> <p>The Cabinet Secretary stated that “amendments 68 and 72 do not reflect the Government’s preferred approach and, if they are agreed to, we will need to lodge further amendments at stage 3 to ensure that the proposed new procedures work effectively.” In relation to amendment 70 the Cabinet Secretary said that “I appreciate the rationale behind this amendment, but, as it is in line with what we intend the regulations to provide, it could be argued that it is not really necessary. The regulations will run along those lines anyway.”</p>	Agreed without division
Application for gender recognition certificates by long term transitioned persons		
74 – Alex Neil	Amendment 74 adds a new Part 2 to schedule 2 to the Bill. The purpose of the amendment is to make it possible for certain long-term transitioned persons to be able to apply to the GRP under a new “long term transitioned” process. There are a range of criteria an applicant must meet to qualify for this process.	Agreed without division
Grounds for divorce: interim GRC followed by a full GRC		
77 – Alex Neil	The purpose of amendment 77 is to amend the Divorce (Scotland) Act 1976 to provide that a divorce cannot be obtained on the grounds of the issue of an interim GRC where the GRP has gone on to issue a full GRC.	Agreed without division

AMENDMENTS NOT AGREED

Table 4: Stage 2 amendments - not agreed

Amendment	Discussion	Outcome
No power to compel religious or belief bodies to carry out same sex marriage		
38 - John Mason	<p>The aim of the amendment was to strengthen the existing wording to protect religious or belief bodies from being “compelled by any means” to carry out same-sex marriages. It was envisaged that the phrase “by any means” should cover, for example, the hire of public premises not being made conditional on a religious body having registered to conduct same-sex marriages.</p> <p>The Cabinet Secretary considered the amendment to be unnecessary, referencing the protections that are already in place to protect religious bodies and celebrants.</p>	Disagreed by division (For 3, Against 4, Abstentions 0)
Effect of holding the belief that marriage is between persons of different sexes: general		
39 – John Mason	<p>The stated purpose of the amendment was to “reflect the extremely high level of public concern about same-sex marriage.” Allowing individuals and organisations who do not agree with the new definition of marriage to feel free to express that disagreement without fear of reprisal.</p> <p>While agreeing that everyone should be entitled to their point of view and no one should be vilified, the Cabinet Secretary did not consider the amendment to be necessary as “section 14 of the Bill makes it clear that existing rights to freedom of speech are unaffected by the introduction of same-sex marriage”. Also that introducing specific provisions here would raise questions about freedom of speech in other areas.</p>	Disagreed by division (For 3, Against 4, Abstentions 0)
43 – Richard Lyle	<p>The amendment proposed that views on the nature of marriage cannot be taken into consideration during the process of approving prospective foster carers or adoptive parents. Richard Lyall stated that “Should same-sex marriage become law, there is a real danger that prospective foster carers or adopters might be wrongly deemed homophobic if they reveal their opposition to same-sex marriage”.</p> <p>The Cabinet Secretary stated that “I do not consider it necessary or appropriate to amend the law on adoption or fostering following the introduction of same-sex marriage. It is already the case that views on same-sex marriage cannot in and of themselves disqualify anyone from becoming a foster carer or an adoptive parent. It is the welfare of the child that is absolutely essential.”</p>	Disagreed by division (For 3, Against 4, Abstentions 0)
44– Richard Lyle	<p>The aim of amendment 44 was to ensure that an organisation’s charitable status cannot be removed because that organisation believes in traditional marriage. Richard Lyle referenced the wide number of religious, charitable organisations that may be “uncomfortable with same sex marriage” and the detrimental impact the loss of their charitable status may have on the</p>	Disagreed by division (For 3, Against 4, Abstentions 0)

	<p>vulnerable people who rely on their services.</p> <p>The Cabinet Secretary stated that “Decisions on charitable status are for the Office of the Scottish Charity Regulator, but the bodies in question must act within the law. (...) OSCR has advised that where charity trustees express views on behalf of the charity—for example, in relation to same-sex marriage—that are unconnected with the charity’s purpose, that would be an issue of trustee conduct rather than one of charitable status.”</p>	0)
Effect of holding the belief that marriage is between persons of different sexes : public sector employees and services		
40 - Siobhan McMahon	<p>The aim of this amendment was to offer “reasonable accommodation” to protect civil registrars who do not wish to officiate at same sex marriages. Siobhan McMahon stated that “Registrars face having their job transformed around them and, since the Scottish Government is responsible for that transformation, it is incumbent on it to provide protection for those who are disproportionately affected.”</p> <p>The Cabinet Secretary deemed amendment 40 to be unnecessary and “an unwelcome interference in a civil function”. Mr Neil drew the distinction between a registrar fulfilling a public function and a celebrant performing a religious function. He stated how smoothly the performance of civil partnerships by registrars has progressed and said that it was up to a local authority to decide how best to provide services for the registration of marriage.</p>	Disagreed by division (For 3, Against 4, Abstentions 0)
41 & 42 - Siobhan McMahon	<p>The aim of the amendments was to ensure that public authorities continue to operate in partnership with bodies that hold a traditional belief in marriage and also accommodate their employees who may hold such views.</p> <p>Siobhan McMahon stated that “It must be made clear that the PSED [public sector equality duty] should not be used to deny religious organisations that are known to be opposed to same-sex marriage the ability to provide public contracts or to hire public buildings” She also stated that “Nobody who works in or seeks a career in the public sector in Scotland should have their equality and diversity credentials or their suitability for employment disputed merely because they hold the existing view of marriage, whether expressed or not.”</p> <p>The Cabinet Secretary felt that amendment 41 was drawn too widely and could have unintended consequences for local authorities. For example allowing a public sector employee to refuse to deal with a request on any subject from a couple in a same-sex marriage.</p> <p>In terms of Amendment 42 the Cabinet Secretary stated that “a person or body that believes that “marriage may only be between one man and one woman” should not on the basis of that belief alone suffer detriment when using a public authority’s service or facility.” He also highlighted the protections offered in the Equality Act 2010 stating that “If a public sector body discriminated against</p>	Both disagreed by division (For 3, Against 4, Abstentions 0)

	a person or body because their religion or belief is that marriage should be between one man and one woman that would be unlawful discrimination.”	
Holding the belief that marriage is between persons of different sexes should not constitute commission of certain offences		
45 & 46– Richard Lyle	<p>Amendment 45 was designed to mirror the protections offered in the UK Government’s Marriage (Same Sex Couples) Act 2013 which includes a specific subsection making it clear that disagreeing with same-sex marriage does not breach incitement of hatred law. The amendment aimed to ensure that similar Scottish offences “contain proper regard for freedom of speech.”</p> <p>Amendment 46 contained similar provisions regarding what is considered to be offensive behaviour at regulated football matches.</p> <p>The Cabinet Secretary said that “The Government does not support amendments 45 and 46 because we think that they are unnecessary. Criticism of same-sex marriage is not, in itself, an offence and the bill will not change that situation. People can freely express that they are opposed to same-sex marriage provided that they do not incite hatred or intend to cause public disorder.”</p>	<p>45 - Disagreed by division (For 2, Against 4, Abstentions 1)</p> <p>46 - Disagreed by division (For 2, Against 5, Abstentions 0)</p>
Review of the effects of the introduction of same-sex marriage		
48 – John Mason	<p>Amendment 48 called for a review of the legislation after 5 years in order to establish whether it is operating as intended. It was not anticipated to act as a “sunset clause”. John Mason stated that “The point is that we should review what has happened and consider the implications and any tidying up that needs to be done to address the bill’s impact. If its impact has been minimal, a review would still be worth our while. If, however, the legislation proves to have had severe negative effects, as some of us fear—for example, on the civil liberties of those who believe in traditional marriage—the review would serve as a means of addressing those effects.”</p> <p>The Cabinet Secretary thought that the limits of the review were too narrow and stated that “amendment 48 is unhelpful. It would lay down specific requirements on what a review should consider, which could cut across what Parliament, the Government or others may want to do when considering the impact of the bill. I therefore do not support amendment 48 and invite the Committee to reject it.”</p> <p>John Mason noted that he may seek to revisit the issue during the Stage 3 debate.</p>	Disagreed by division (For 2, Against 4, Abstentions 0)
No commencement of same-sex marriage provisions until certain amendments to Equality Act 2010 are in place		
49 – John Mason	Amendment 49 relates to the UK Equality Act 2010. The amendment would ensure that “the commencement of the same-sex marriage elements of the bill would be conditional upon the Equality Act being amended to specify that the protected characteristic of religion or belief includes the belief in marriage as presently defined and to make clear that compliance with the public sector equality duty requires ensuring that no one should suffer any detriment as a	Disagreed by division (For 3, Against 4, Abstentions 0)

	<p>result of holding or expressing the view that marriage is between a man and a woman.” John Mason also highlighted that the current amendments to the Equality Act as set out by the Scottish Government only offer protection for celebrants and not wider society or specifically public sector workers. He also expressed the view that the courts’ interpretation of the Equality Act leads to a hierarchy of rights with religion and belief at the bottom.</p> <p>The Cabinet Secretary stated that he thought that the amendment was unnecessary and could potentially give rise to competence issues as the Equality Act 2010 is reserved. He also expressed the view that the amendment was too widely drawn and potentially unclear. He also referenced section 14 of the Bill which “makes it clear that existing rights to freedom of thought, conscience, religion and expression are unaffected by the introduction of same-sex marriage.”</p>	
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AMENDMENTS WITHDRAWN

Table 5: Key amendments withdrawn. (This is not an exhaustive list.)

Amendment	Discussion	Outcome
Indemnification of losses arising from certain legal actions		
47 – Alex Johnstone	<p>Amendment 47 was considered by Alex Johnstone to be “an amendment of last resort”. It sought to create a duty on the Scottish Government to use public funds to indemnify those who suffer financial loss from any discrimination claims which may result from the Bill.</p> <p>The Presiding Officer determined that the potential costs associated with this amendment would require a financial resolution by the Scottish Government. No financial resolution was lodged. Under rule 9.12.6(a), the question on whether to agree or disagree the amendment may not be put to the Committee even if the amendment is pressed.</p> <p>The Cabinet Secretary stated that “as we have made clear, the protections in the Bill and in the associated amendments to the Equality Act 2010, for religious bodies and celebrants are robust. Therefore, we have not lodged a financial memorandum.”</p> <p>Alex Johnstone noted that he may bring the issue back for further consideration at Stage 3.</p>	Withdrawn

ADDITIONAL INFORMATION RECEIVED BEFORE STAGE 3

THE EQUALITY ACT 2010

The Equal Opportunities Committee was aware during stage 1 consideration that [the Scottish Government had agreed with the UK Government](#) (Scottish Government 2013d) that, as a consequence of the Marriage and Civil Partnership (Scotland) Bill, amendments were required to the Equality Act 2010 ("the 2010 Act"). The stated purpose of these amendments would be to protect religious and belief bodies, celebrants and others carrying out religious and belief functions at marriage and civil partnership ceremonies from potential discrimination claims.

On 16 December 2013 the Scottish Government sent the Equal Opportunities Committee [draft amendments along with a draft Explanatory Note](#) (Scottish Government 2013e). These amendments will form part of an Order under section 104 of the Scotland Act 1998 to be taken forward at Westminster after the Bill completes its passage through the Scottish Parliament (assuming that the Bill is passed by Parliament). It was noted that the drafting could change before the section 104 Order is laid at Westminster.

The Scottish Government states in its covering letter that the draft amendments would protect the following people from court actions claiming discrimination:

- An employee of a secular body (eg a chaplain at a university) who would normally carry out marriages for other employees but refuses to officiate at a same sex marriage or a civil partnership because the couple are same sex.
- A celebrant who refuses to register a civil partnership because the celebrant reasonably believes that one of the parties has changed gender. (There is existing provision in the 2010 Act ensuring that an approved celebrant does not have to carry out a marriage where he or she reasonably believes that one of the parties has changed gender).
- A celebrant who refuses to solemnise a same sex marriage or register a civil partnership because the marriage or civil partnership is between a same sex couple.
- Other people who refuse to participate in a religious or belief aspect of a marriage or civil partnership ceremony because the marriage or civil partnership is between a same sex couple.
- A religious or belief organisation and persons in the organisation who decide that premises they own or control should not be used for same sex marriages or the registration of civil partnerships because these are same sex relationships.

The Scottish Government is considering, with the UK Government, whether the amendments also need to cover cases where a denomination opts in, makes it clear that some of its celebrants will not take part and there is then a legal challenge against the denomination (rather than the celebrant) about some of its celebrants not taking part.

CONSULTATION RESPONSES RECEIVED THROUGH SCOTLAND FOR MARRIAGE

During Stage 1 the Committee was also [made aware](#) of a discrepancy between the number of electronic consultation responses received by the Scottish Government on the draft Bill and the number sent in through the Scotland for Marriage campaign. It was determined that this discrepancy was due to a technical error with the email address used by Scotland for Marriage for some returns.

Scottish Government advised that it was prepared to consider any additional points made in responses which it did not receive before the closing date of its consultation. Scotland for

Marriage called for the consideration of the Bill to be postponed until this analysis could be conducted. The Scottish Government did not consider it appropriate to make this request to the Parliament.

On the 28 January 2014 the [Scottish Government wrote to the Committee](#) (Scottish Government 2014a) to advise that the analysis of the additional 4,253 responses had been completed. The Scottish Government concluded that the points raised by these additional responses did not require any amendments to the Bill. It outlined the reasons for making this decision which included:

- Most of the responses followed the standard template, which the Scottish Government had already seen and taken account of.
- The Government considers that the system for authorising religious and belief bodies and celebrants who wish to take part in same sex marriage provides robust protections for those who do not wish to take part.
- There are a variety of measures in the Bill and in guidance which protect freedom of speech.
- On education, the Government has sought views on draft guidance in relation to the Conduct of Relationships, Sexual Health and Parenthood Education in Scottish Schools .
- In some areas, the Government has already taken action (for example, the proposed amendments to the Equality Act are now wider than was originally proposed, which is in line with the comments in the Scotland for Marriage standard template at question 7, and the Bill as introduced makes provision so that regulations providing the form of the Marriage Schedule may make different provision for different cases or circumstances).

The full analysis of the responses is available in an [annexe to the letter](#) which is accessible on the Committee pages on the Scottish Parliament website.

ANNEXE A

Table 6: Overview of action taken on all amendments

Action	Amendment Number	Total
Agreed	1, 2, 3, 4, 5, 6, 7,8, 9, 14, 15, 16, 19, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77	54
Disagreed	38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49	11
Withdrawn	10, 47	2
Pre-empted	18, 20	2
Not Moved	11, 12, 13, 17, 21, 22, 23, and 24.	8
		77

SOURCES

Scottish Government (2013) *Marriage and Civil Partnership (Scotland) Bill as introduced* available at

[http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-introd.pdf) [accessed 20 January 2014]

Scottish Government (2013a) *Scottish Government response to stage one recommendations* available at

http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/MCPBill_response.pdf [accessed 08 January 2014]

Scottish Government (2013b) *Scottish Government response to the Delegated Powers and Law reform Committee report on the Marriage and Civil Partnership (Scotland) Bill* available at

http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/20131126Papers.pdf [accessed 13 January 2014]

Scottish Government (2013c) *Scottish Government Review of Civil Partnership in Scotland* available at <http://www.scotland.gov.uk/Resource/0043/00434010.pdf> [accessed 23 January 2014]

Scottish Government (2013d) *Agreement between the Scottish and UK Governments on amendments required to the Equality Act 2010 as a result of the Marriage and Civil Partnership (Scotland) Bill* available at <http://www.scotland.gov.uk/Resource/0042/00426318.pdf> [accessed 13 January 2014]

Scottish Government (2013e) *Letter from Scottish Government setting out draft amendments to the Equality Act 2010 alongside explanatory notes* available at

http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/combined_equality.pdf [accessed 13 January 2014]

Scottish Government (2014) *Supplementary Delegated Powers Memorandum* available at http://www.scottish.parliament.uk/S4_Bills/MCP_SDPM_.pdf [accessed 27 January 2014]

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http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/suR-13-51w.pdf [accessed 26 November 2013]

Scottish Parliament (2013a) *1st Marshalled List of Amendments for Stage 2* available at

[http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36s4-stage2-ml1.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-stage2-ml1.pdf) [accessed 20 January 2014]

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[http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36s4-stage2-g1.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-stage2-g1.pdf) [accessed 20 January 2014]

Scottish Parliament (2013c) *Equal Opportunities Committee Official Report, 32nd Meeting, 2013 (Session 4) Thursday 19 December* available at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71510.aspx> [access 20 January 2013]

Scottish Parliament (2014) 2nd Marshalled List of Amendments for Stage 2 available at [http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36s4-stage2-ml2.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36s4-stage2-ml2.pdf) [accessed 20 January 2014]

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Scottish Parliament (2014c) Marriage and Civil Partnership (Scotland) Bill (as amended as Stage 2) Available at [http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20\(Scotland\)%20Bill/b36as4-stage2-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Marriage%20and%20Civil%20Partnership%20(Scotland)%20Bill/b36as4-stage2-amend.pdf) [Accessed 23 January 2014]

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