2 December 2020

Dear Convener

Justice Committee: Hate Crime and Public Order (Scotland) Bill

I refer to the oral evidence session on the Hate Crime and Public Order (Scotland) Bill which took place on 24 November 2020. During questioning the Cabinet Secretary was asked a question by Liam Kerr MSP about why the definition of sexual orientation within the Bill used the terminology of ‘different sex’ rather than ‘opposite sex’ (the terminology used in the Offences (Aggravation by Prejudice) (Scotland) Act 2009). In my answer I stated that the Marriage and Civil Partnership (Scotland) Act 2014 used the term ‘mixed sex’ when it fact it refers to ‘different sex’ as the Cabinet Secretary for Justice indicated. Therefore, I would like to take the opportunity to correct the inaccuracy in my statement.

Although Scottish Government guidance and other material (including the Explanatory Notes for the Civil Partnership (Scotland) Act 2020) does use the term ‘mixed sex’ and ‘same sex’, the legislation itself uses ‘different sex’ and ‘same sex’.

I also indicated that the Equality Network and Stonewall Scotland supported the move away from the term ‘opposite sex’ in legislation. In response to the 2018 consultation on the future of civil partnership in Scotland they stated:

Equality Network:

We note that the use of the term “opposite sex couples” in the consultation paper is not inclusive of non-binary people, and is inconsistent with the term used in marriage legislation, which is “persons of different sexes”. It will be important that any new civil partnership legislation is drafted as inclusively as possible, and, wherever possible, is simply gender-neutral, rather then specifying couples’ relative genders¹.

¹ The future of civil partnership in Scotland - Scottish Government - Citizen Space (consult.gov.scot) (please see under point 9)

Victoria Quay, Edinburgh, EH6 6QQ
www.gov.scot
Stonewall Scotland:

We would note that the language of ‘opposite sex’ is not inclusive of those with non-binary identities (i.e. those whose gender identity does not sit comfortably with ‘man’ or ‘woman’). We would recommend that the terminology of ‘mixed-sex’ is used when referring to the extension of civil partnership\(^2\).

I would like to reiterate our position that the language used within the definition of sexual orientation in the Hate Crime and Public Order (Scotland) Bill has been updated to provide greater clarity. The drafting is consistent with some recent legislation including the Marriage and Civil Partnership (Scotland) Act 2014 and the Civil Partnership (Scotland) Act 2020 which refers to ‘different’ rather than ‘opposite’ sexes. It also ensures a more inclusive approach.

I trust this is of assistance to the committee.

Yours faithfully

Rachael Wilson
Connected Communities

\(^2\) The future of civil partnership in Scotland - Scottish Government - Citizen Space (consult.gov.scot) (please see under point 5)