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Equality Network works for lesbian, gay, bisexual and transgender equality in Scotland

Franck David,
Public Petitions Committee,
Scottish Parliament

7th August 2009

Dear Mr David,

Petition PE1239 – same-sex marriage

I hope that the Committee will not mind me writing again briefly to clarify the Equality Network's previous submission, PE1239/J, following an apparent misunderstanding of that submission by the Government, in their letter, PE1239/K.

The Government's letter states that the Equality Network proposes that "cross-border issues could be overcome by making the legislative change Scotland-only, thereby recognising the marriage for the purposes of registration whilst accepting that the rights that flow from marriage in respect of reserved legislation would not be afforded same-sex couples."

That is not at all what we suggested in our submission PE1239/J.

We proposed that the solution to reserved and cross-border issues would be for the UK Government to treat Scottish same-sex marriages in the same way that all foreign same-sex marriages are already treated by the UK Government – that is, as if they were civil partnerships. Since the reserved legal effects of marriage and civil partnership are effectively the same, this would give same-sex couples married in Scotland all the reserved legal effects of marriage / civil partnership. There would be no discrimination.

Same-sex couples would continue to have the same rights and responsibilities across the UK, but in Scotland they would be able to access those rights and responsibilities either by registering a civil partnership, or by registering a marriage. The difference is in the registration process, including the option for religious or humanist solemnisation, and in the name, marriage, which is symbolically hugely important.

We believe that the change proposed can therefore be made in Scotland, in devolved legislation, subject to the agreement of the UK Government to treat Scottish same-sex marriages the same as any other same-sex marriages, via a small UK amendment to the Civil Partnership Act 2004. We suggested that this might be done by the UK Government using their power under section 104 of the Scotland Act – this power has been used fairly regularly to amend reserved legislation in consequence of devolved Acts.

The European Court of Human Rights neither requires same-sex marriage, nor restricts it in any way; it leaves the issue for national governments to decide. *Schalk v Austria* is very unlikely to change this.

We therefore think this issue is primarily the responsibility of the Scottish Government. We accept that it requires careful consideration. We would not expect rapid legislation, but we would hope for a process of inclusive consultation and discussion and debate on options, whether led initially by a Parliamentary Committee, or hosted by the Government themselves (as with, for example, the former Scottish Executive's Working Group on Hate Crime, which met for 15 months in 2003-4).

Given the importance of this issue for LGBT people, the support for change from a number of quarters including those religious and humanist bodies that wish to conduct same-sex marriages, and the balance of public opinion which favours the petition, we feel it is reasonable to ask that our Government should engage in some detail with the proposal, through that process of consultation and discussion.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Hopkins', with a stylized flourish at the end.

Tim Hopkins
Equality Network