

The case for equal marriage law in Scotland

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The Equality Network is a national Scottish network of lesbian, gay, bisexual and transgender (LGBT) people and groups, working for LGBT equality in Scotland.

The Equality Network bases our policy work on detailed consultation with LGBT communities across Scotland. LGBT people have identified a number of priorities for sexual orientation and gender identity equality. Top priorities are (in no particular order):

- Working to end homophobic and transphobic bullying in schools, and to make schools more LGBT friendly
- Working to reduce transphobic and homophobic hate crime
- Improving public attitudes towards LGBT people
- Changing the law to allow full same-sex marriage
- Ending discrimination in public services, for example non-discriminatory access to NHS gender reassignment treatment and fertility treatment

Significant work has already been done on most of these. New legislation on hate crime came into effect in 2010, and new LGBT equality duties applying to schools and other public services start in April 2011. We are working to ensure that these are as effective as possible. The Challenging Prejudice report published by the Scottish Government in 2008 sets out a detailed programme of work to change public attitudes towards LGBT people.

It is now time to address the final area of legal discrimination against LGBT people – the ban on same-sex marriage.

Why is marriage equality a key issue for LGBT people?

Most of the laws that in the past discriminated against LGBT people are now gone. But there remains one area of deliberate and direct discrimination in devolved Scottish legislation: the segregation of civil partnership and marriage. Civil partnership is only available to same-sex couples and marriage only to mixed-sex couples. When civil partnership

was developed, in 2003-4, there were political concerns about potential opposition to opening marriage to same-sex couples. As a result, same-sex couples continued to be denied access to marriage itself.

But public opinion has moved on. More than 2500 couples have registered a civil partnership in Scotland, and the sky has not fallen. As explained below, there is now a clear public majority in favour of making marriage itself available to same-sex couples.

Marriage law and civil partnership law are devolved matters in Scotland, within the remit of the Scottish Parliament. However, there are a number of areas of reserved law, controlled by the UK Parliament, (inheritance tax, immigration, pension regulation) which also affect married people and civil partners. The Scottish Parliament could legislate to open up marriage to same-sex couples, with the cooperation of the UK Government in the form of a consequential statutory instrument allowing Scottish same-sex marriages to be recognised as if they were civil partnerships, for reserved purposes, and in other parts of the UK.

For the reasons outlined below, the Equality Network's policy is for the opening up marriage and civil partnership in Scotland to couples regardless of their gender. Within this, religious bodies should be free to choose whether or not to offer same-sex marriages.

Does civil partnership provide equality for LGBT people?

While LGBT people saw the introduction of civil partnership as a huge step forward, most do not consider it to be equality. Since 2006, LGBT people have been telling us that equal marriage is now a priority for them. In a detailed survey of 430 LGBT people that we conducted at the end of 2009, 85% said the law should be changed to open up marriage to couples regardless of gender. The same percentage rated this as a priority issue.

People give three reasons for this:

1. Religious freedom

A marriage can be legally solemnised in two ways: a civil ceremony conducted by a registrar, or a religious or humanist ceremony conducted by an approved celebrant. Only the first option is available for civil partnership. There are a number of faith bodies in Scotland – including

Quakers, Unitarians, the Metropolitan Community Church, Liberal Jews, and Pagans – as well as Humanists, who all have celebrants approved to solemnise marriages, and who want to solemnise same-sex marriages in some form. Same-sex couples of those faiths, or with humanist beliefs, are denied the opportunity to share that solemnisation with their faith or belief community. Religious freedom means letting each religious body choose whether or not to offer same-sex marriages.

2. Practical discrimination

Although the legal consequences within the UK of civil partnership and marriage are almost identical, people still experience direct discrimination. Because same-sex marriage is disallowed, transsexual people who are married before they transition gender, cannot obtain gender recognition (that is, legal recognition of their transitioned gender) unless they divorce first (otherwise a same-sex marriage would be created). They and their spouse are forced to choose between their marriage (often decades-long) and their human right to gender recognition.

There are also differences in the international legal framework for recognising civil partnerships and same-sex marriages – civil partnerships are recognised internationally in fewer countries, and are recognised for more limited purposes in some countries.

And crucially, the majority of civil partners report to us that they are not always given the same rights and treatment as married couples. In its simplest form, people are told “but it’s not a real marriage is it” – and that attitude leads on to discriminatory behaviour.

3. Segregation is not equality

The law segregates couples by gender: mixed-sex couples can only register a marriage; same-sex couples can only register a civil partnership. Some people speak of civil partnership as “gay marriage”, but many same-sex couples want to be able to marry, not just to “marry”. When segregation denies a minority access to the institution enjoyed by the majority, that inevitably results in inequality, regardless of claims that the segregated institution is equal in quality. Supreme Courts in several countries have ruled that providing same-sex couples only with civil partnership, even if it has the same legal effects as marriage, is inherently discriminatory, and that same-sex couples must have access to marriage itself.

Equal marriage

The Equality Network's policy is for the same choices to be available to all: for both marriage and civil partnership to be opened up to couples regardless of their gender, providing full equality in this area of the law.

This would give same-sex couples access to marriage, but it is important that civil partnership continues to be available as an alternative choice. Our survey work indicates that around a quarter of same-sex couples would prefer a civil partnership to a marriage. And we think it would be quite wrong to force those already in a civil partnership to convert to a marriage – that should be a matter of choice. The same choices should also be available to mixed-sex couples.

Public opinion supports change. The 2006 Scottish Social Attitudes Survey found that 54% of Scots agreed that “gay and lesbian couples should have the right to marry”, while only 21% disagreed. A representative Angus Reid poll of 1000 Scots in April 2010, asking the same question, found that 58% agreed and 19% disagreed.

Around us in Europe, there are already seven countries (Iceland, Norway, Sweden, Netherlands, Belgium, Spain and Portugal) that make marriage available to same-sex couples, and the number is rising every year. Scotland is being left behind on this key equality issue.

There has already been considerable political activity on this issue in Scotland, with two equal marriage petitions under consideration by the Scottish Parliament Public Petitions Committee. Two of the five parties currently represented in the Scottish Parliament (the Scottish Liberal Democrats and the Scottish Green Party) have already adopted equal marriage as party policy.

In short, the need for equality under the law for LGBT people, public opinion, and the political momentum in Scotland and elsewhere, all suggest that this is an issue that will need to be considered by the next Scottish Government, after the May 2011 Scottish Parliament election.

We therefore urge all parties in Scotland to adopt a policy of opening up marriage and civil partnership to couples regardless of their gender. Within this, religious bodies should be free to choose whether or not to offer same-sex marriages. The requirement to divorce before obtaining gender recognition should be abolished at the same time.