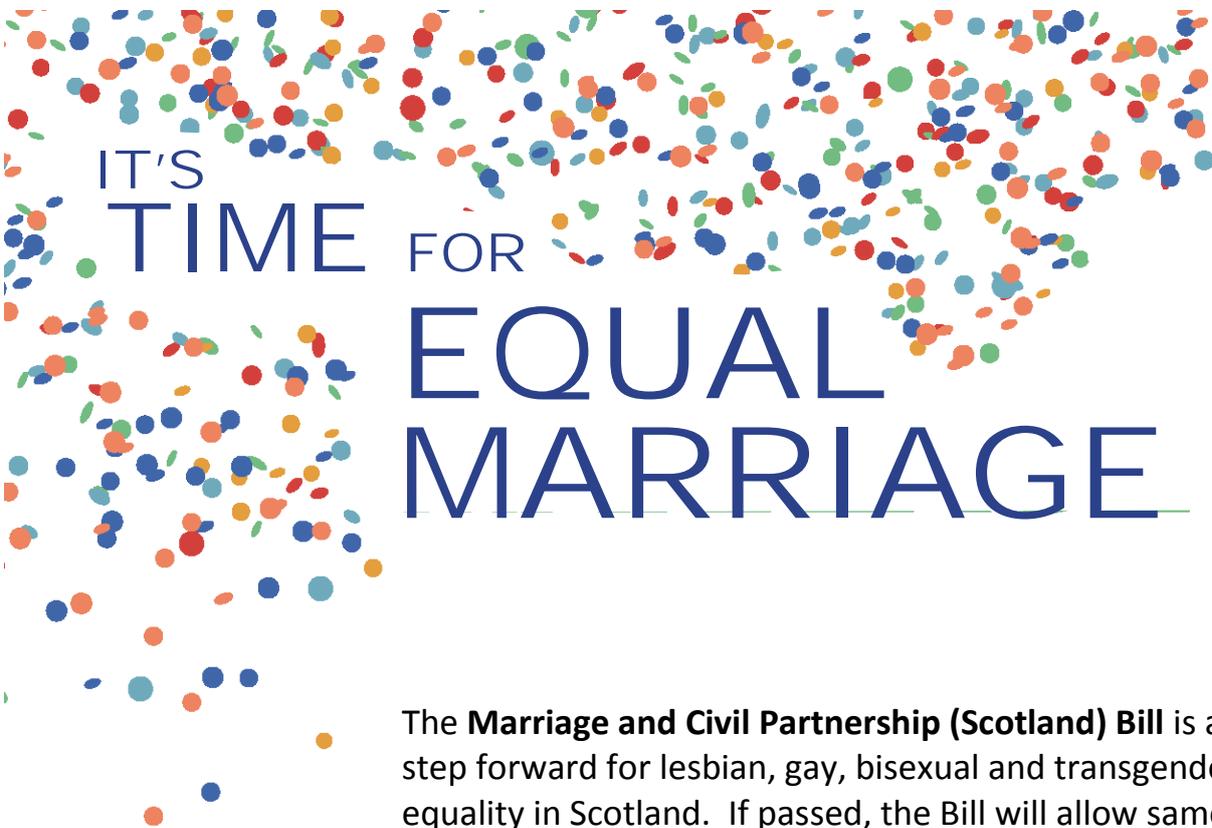




FIVE AMENDMENTS TO SECURE EQUAL MARRIAGE





IT'S
TIME FOR
EQUAL
MARRIAGE

The **Marriage and Civil Partnership (Scotland) Bill** is an historic step forward for lesbian, gay, bisexual and transgender (LGBT) equality in Scotland. If passed, the Bill will allow same-sex couples to marry and will remove the last major piece of sexual orientation discrimination from Scots law.

It also has the potential to deliver equal partnership rights for trans and intersex people. However, as the Equal Opportunities Committee heard in its evidence sessions there are a number of small but important improvements that need to be made in order to ensure that it does.

The **Equality Network** and **Scottish Transgender Alliance** have therefore proposed **five amendments** to the Bill. The Equal Opportunities Committee has made recommendations relating to these amendments and we hope that the Scottish Parliament will vote to support them.

“The introduction of equal marriage would be an important step forward for trans and intersex equality in Scotland.”

Jennie Kermode, Intersex Equality Campaigner

REMOVE THE SPOUSAL VETO ON GENDER RECOGNITION



A Gender Recognition Certificate (GRC) provides legal recognition of a trans person's acquired gender. To be eligible a trans person must have already lived for at least two years in their new gender role and have received medical assistance from a gender reassignment specialist.

The requirement to divorce in order to obtain legal gender recognition has been one of the most unfair effects of the lack of equal partnership rights for same-sex couples. While we are pleased that this Bill will repeal that requirement, we are very concerned that the provision requiring a trans person's spouse to consent to them obtaining gender recognition may mean some married applicants are still unable to have the gender they identify as legally recognised.

The problem

As the Bill stands, if the non-trans spouse will not consent, the trans person must wait until they can obtain a divorce before they can get gender recognition. If their spouse is uncooperative this could take several years, during which time the trans person is effectively vetoed from accessing their human right to be recognised as the gender they live as.

There are numerous actions which a person can take which may impact greatly on their spouse, for example risking serious physical health consequences by refusing medical treatment, but which can nonetheless be done without spousal consent. In all such situations the person is still afforded the personal autonomy to make the decision for themselves; the only recourse open to an aggrieved spouse is to initiate divorce proceedings after the action has been taken. In the same way, a trans person should be able to make their own decision to have their gender legally recognised, and if their spouse is unhappy with that decision they are then able to divorce them.

Many spouses of trans people are strongly opposed to the spousal veto and regard its removal as essential to provide true marriage equality.

Me & T Monthly, which is the only support group in Scotland for the partners of trans people, has spoken out against the spousal veto:

“We're a diverse group of people. We need access to information about what to expect when someone we love transitions. And we need good communication with our trans partners. But we do not need the power to deny our partners the right to have their gender legally recognised.

“There are difficult things about being in a relationship with a trans person. And one of those is that as people see your partner changing, it changes how they see you. They start to assume things about your identity and your sexuality. And that can be difficult. But a piece of paper doesn't change that. So get rid of the spousal veto. It's not wanted and it's not needed.”



Amanda Forde
Group Organiser of Me & T Monthly



“While I have supported my spouse, and I am proud that we have made our marriage work post transition, I feel that giving consent to her getting her gender changed legally is akin to saying that I am totally happy with this; that it would be my first choice; that I embrace it with open arms.

It is not my first choice, but I have come to terms with it and am happy to continue with this marriage whether or not she acquires a gender recognition certificate, but I do not want to be part of that decision. It is her decision to make not mine.”

Joanna Belcher

“I don't want - and absolutely disagree with the very concept that I should have - any say in whether another human, much less someone I love, is able to obtain the rights they are entitled to or the life they want. It's putting one person's humanity below the feelings of another.”

Maeve Regan

Our solution

Our proposed amendment enables a trans person who does not have the consent of their spouse to apply to the Sheriff Court for gender recognition. As the non-trans spouse has not consented, the marriage will not be re-registered to show new details for the trans spouse and no new marriage certificate will be issued – the marriage certificate remains as it was originally recorded. The rights of the non-trans spouse, such as their pension entitlements, will not be affected.

The decision whether or not to remain married is separated from the issue of gender recognition, giving both parties a chance to fully consider whether or not to seek a divorce. Either spouse will be able to apply for an un-defendable divorce on the grounds of gender recognition where gender recognition has been awarded by the Sheriff Court.

Our amendment has widespread support amongst equality and human rights organisations. For example, Emma Ritch, Executive Director of Engender, says:

“Engender, which works and campaigns around gender equality, believes that the spousal veto is inimical to the principle of individual autonomy. It places an unnecessary strain on couples' relationships by imposing an artificial deadline for non-transitioning spouses to opt themselves in or out of marriage. We support the removal of the spousal veto.”

The **Scottish Parliament's Equal Opportunities Committee** has considered this issue in detail and **unanimously supports** our amendment, stating in its Stage 1 Report:

“...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. We therefore believe the requirement for spousal consent for gender recognition is unnecessary and should be removed.”

2 REDUCE THE AGE FOR GENDER RECOGNITION

A Gender Recognition Certificate (GRC) provides legal recognition of a trans person's acquired gender. As well as providing evidence of having lived in their acquired gender for 2 years and of being diagnosed with gender dysphoria, people applying for gender recognition must be at least 18 years of age.

The problem

While transgender people can already live in their acquired gender and get gender reassignment treatment from early in their teenage years they are currently not allowed to apply for a GRC until they are 18. This means that 16 and 17 year old transgender people are unable to get legal recognition of the gender they are already living as.

Increasing numbers of young people are transitioning to live as the gender they identify as at a young age. A significant number of young people have transitioned to live full time in their acquired gender before they are 14. The gender recognition certificate is the very final stage of this process and only changes an applicant's birth certificate.

Although they could easily satisfy all of the conditions required to receive gender recognition by the time they are 16, they are barred from applying because of their age. This means that they experience significant discrimination in education and employment due to the sex on their birth certificate not reflecting the gender they live as. Trans young people are also discriminated against compared to other 16 and 17 year olds because they are prevented from marrying in accordance with their gender identity until they are 18.



At age 16 in Scotland, people are considered legally old enough to leave school, get married and found a family. This is in spite of the fact that making a decision which they later regret in any of these areas of life could have profound consequences for the young person and others. In contrast, obtaining legal gender recognition is a purely paper exercise which carries no risks as the young person must already be living all of their day to day life in their acquired gender, regardless of whether or not their birth certificate has been amended.

Our solution

Under our amendment people living in Scotland, who satisfy all the requirements for gender recognition, would be allowed to apply for gender recognition from the age of 16, in line with the age of legal capacity in Scotland and the age at which people can marry.

The Scottish Parliament's Equal Opportunities Committee has asked the Scottish Government to provide a detailed response on this issue in advance of stage 2.



3

ALTERNATIVE EVIDENCE FOR LONG TERM TRANSITIONED PEOPLE

The legislation providing for a person's new gender to be legally recognised, the Gender Recognition Act 2004, included a two year temporary arrangement for people who had been transitioned for at least 6 years. This allowed such applicants to obtain gender recognition with alternative evidence requirements.

The problem

Obtaining confirmation of a diagnosis of gender dysphoria from a specialist in the field, which is required for gender recognition, can be extremely difficult after a long period of time. The specialist who provided the original diagnosis will often have retired, or may even have died, and applicants would therefore have to be re-diagnosed by another specialist. Patients wait for between one and three years to see a gender dysphoria specialist after referral, and it is extremely difficult for patients who have been out of the system for a considerable period to be re-referred. The temporary arrangement expired in 2007 but there will be many long term transitioned people who were unable to make use of it, either because they were married at the time and did not want to divorce, or they had not heard of gender recognition or they did not want to apply as a matter of conscience while married people were forced to divorce.

Our solution

Our amendment would introduce alternative evidence requirements for applicants who have been living in their acquired gender for at least six years. A medical report from a GP including evidence of having undergone medical treatment for gender reassignment, as opposed to having been diagnosed with gender dysphoria, would be sufficient. The **Scottish Parliament's Equal Opportunities Committee unanimously supports** introducing an alternative evidence requirement.



ALLOW GENDER NEUTRAL CEREMONIES

4

The Marriage and Civil Partnership (Scotland) Bill currently requires all ceremonies conducted for legally mixed-sex couples to include a declaration that they “accept each other as husband and wife.”

The problem

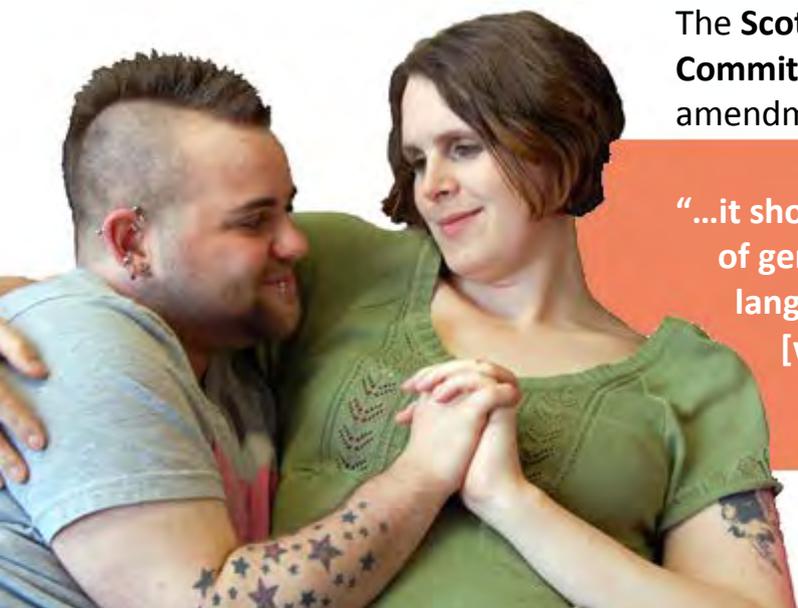
A person’s overseas gender recognition is not automatically recognised in the UK, e.g. an American trans woman who has received gender recognition as female in her home state would still be regarded as legally male in the UK. The Bill as it stands would require her to call herself a husband during her marriage ceremony which would be highly offensive and violate her privacy by revealing her gender history to everyone present.

Our Solution

Our amendment would enable mixed sex couples, where both the religious body and celebrant agree, to use the gender neutral form of wording “we accept each other in marriage.” The Bill already provides for this form of wording to be used for same-sex marriage ceremonies and we suggest that mixed-sex couples and religious bodies should also be given the freedom to use this form of wording if they wish to.

The Scottish Parliament’s Equal Opportunities Committee unanimously supports our amendment, stating in its Stage 1 Report:

“...it should be possible to allow a choice of gender-neutral or gender-specific language for marriage declarations and [we] call on the Scottish Government to reconsider its position.”



5 ALLOW PEOPLE WITH FOREIGN CIVIL PARTNERSHIPS TO MARRY

The Bill currently allows couples who are already in a civil partnership to convert their civil partnership to a marriage by having a marriage ceremony. However, this right is not provided to couples who have registered a civil partnership outwith Scotland.

The problem

Couples with a foreign civil partnership will effectively be barred from marrying. In order to do so they would have to either dissolve their civil partnership, which would involve proving that their relationship has irretrievably broken down (which is clearly not the case), by living apart for a year, or return to their original jurisdiction to marry, which may be completely impractical or not available to same sex couples. People with civil partnerships registered abroad would therefore be the only people in Scotland unable to get married.



Our solution

Our amendment will enable couples in foreign civil partnerships to marry each other in Scotland.

The **Scottish Parliament's Equal Opportunities Committee** has considered this issue and **unanimously supports** our amendment.

ABOUT THE SCOTTISH TRANSGENDER ALLIANCE

The Scottish Transgender Alliance, part of the Equality Network, is Scotland's national project working specifically to improve gender identity and gender reassignment equality and human rights.

Our Work

We provide expert guidance and training to politicians, civil servants, employers and service providers across Scotland to assist them in developing transgender legislation, equality policies and good practice.

We also conduct internationally-recognised transgender research and hold regular consultations with trans people to ensure their needs and priorities are visible and understood. We consult and involve many groups and individuals with various diverse identities, including: transsexual women, transsexual men, non-binary-gender people, cross-dressing people, intersex people and others. We support individuals working for trans equality in Scotland to develop their skills and to network with others working towards the same aims.

We work in partnership with many other local, national and international equality organisations and take an intersectional approach which recognises the importance of tackling multiple discrimination. We listen to intersex specific equality organisations and follow their lead on lobbying for intersex equality and human rights improvements. We work to support trans and intersex inclusion within Scottish LGBT and gender equality organisations.

To find out more about our work as well as information about trans and intersex equality and terminology, please go to www.scottishtrans.org

**Scottish Transgender Alliance (STA)
Equality Network
30 Bernard Street
Edinburgh
EH6 6PR**

**sta@equality-network.org
0131 467 6039**

**www.scottishtrans.org
www.facebook.com/scottishtrans.org
@ScottishTrans on twitter**



Published November 2013