

EQUALITY NETWORK

Lesbian, Gay, Bisexual and Transgender Rights In Scotland



Marriage and Civil Partnership (Scotland) Bill Stage 1 supplementary evidence

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We request that the Committee please consider this supplementary evidence, which focusses on providing information on some of the issues discussed in oral evidence sessions. We are happy for this evidence to be published under our name.

Possible number of same-sex marriages

The Committee has received different figures, in evidence, about the number of civil partnerships in Scotland, and the likely rate of same-sex marriages. These range from 0.01% (1 in 10,000) of households (John Deighan, 5th Sept, Official Report col 1426) upwards.

The total number of civil partnerships registered in Scotland, from commencement in December 2005, to 30th June 2013, was 4639 (2430 women couples and 2209 men couples). Complete quarterly figures may be found here:

<http://www.gro-scotland.gov.uk/files2/stats/births-marriages-deaths-quarterly/2013/ve2013-q2-table-q1.pdf>

Once the initial surge had settled down, the rate of civil partnership registration in Scotland has averaged around 2% of the rate of marriage. Our survey work indicates that a majority of same-sex couples would prefer a marriage to a civil partnership, and we therefore expect the

annual rate of same-sex marriages to be at least 1.5% of the rate of mixed-sex marriages.

Effectiveness of same-sex couples as parents

It has been suggested that sociological data shows that children perform better if they come from a family with married parents (Dr Gordon Macdonald, 12th Sept, OR col 1452). However, the sociological evidence demonstrates that there is no difference between the outcomes for children with two parents of the same sex and for those with two parents of mixed sex. In our previous evidence we quoted one research review which concluded this (Biblarz and Stacey, Journal of Marriage and Family, Feb 2010).

We would like to clarify that we were not cherry-picking the research results in quoting that study. Other overview studies of all the relevant research reach the same conclusion. The American Sociological Association (ASA) provided written evidence on this to the US Supreme Court earlier this year, for Court cases considering same-sex marriage. The ASA wrote (page 5 of their brief), “when the social science evidence is exhaustively examined – which the ASA has done – the facts demonstrate that children fare just as well when raised by same-sex parents.”

The full ASA Supreme Court brief may be found here:

http://www.asanet.org/documents/ASA/pdfs/12-144_307_Amicus_%20%28C_%20Gottlieb%29_ASA_Same-Sex_Marriage.pdf

Religious and civil marriage in the rest of Europe

It has been suggested in evidence (Ephraim Borowski, 12th Sept, OR col 1461) that in many other European countries that have same-sex marriage, religious bodies do not conduct legally-effective marriages, and all marriages are solemnised in civil ceremonies (with an optional additional non-legally-effective religious marriage).

Of the nine European countries with same-sex marriage, this is the case in only three: the Netherlands, Belgium and France. In the other six countries, religious bodies do solemnise legally-effective marriages, as

in Scotland (those six are Iceland, Norway, Sweden, Denmark, Spain and Portugal). In all of those countries, religious bodies are free to choose whether or not to solemnise same-sex marriages.

The position of religious bodies in Denmark

It has been suggested (Dr Salah Beltagui and John Deighan, 5th Sept, OR cols 1410 and 1432) that the Church of Denmark has been unwillingly required to conduct same-sex marriages. The Church of Denmark is a state church, unlike the Church of Scotland, or even the established Church of England. The Church of Denmark cannot decide its own laws, and has no decision-making body like a General Assembly or Synod. Church law for the Church of Denmark can only be decided by the Danish Parliament, and there is accordingly a government Minister for the Church.

Church of Denmark law is proposed by the Danish government in consultation with the Church, and there was consultation on the proposals for same-sex marriage. The majority of bishops and clergy of the Church of Denmark support same-sex marriage, but a minority are opposed, and the law, which came into effect in 2012, allows clergy who disagree to opt-out of conducting such marriages. The law is fully permissive and there is no compulsion on any celebrant. Two of the ten Church of Denmark bishops opted out of developing the same-sex marriage rite, and around one third of clergy have opted out of solemnising same-sex marriages.

There are of course many other religious bodies in Denmark, many of whom provide legally-effective marriage. They are all free to decide for themselves whether to conduct same-sex marriages.

Public opinion on protections for religious belief

A member of the Committee asked Prof John Curtice whether there is information on public opinion related to the protection of the beliefs of those who oppose same-sex marriage (19th Sept, OR col 1521). Prof Curtice referred to one Britain-wide Ipsos-MORI survey in 2012, discussed in paragraph 15 of his written evidence, which found that 45% said that same-sex marriage should be introduced but that religious bodies should not be required to provide same-sex marriages, while a

further 28% said that same-sex marriage should be introduced and that religious bodies should be required to provide them. The full results are here:

<http://www.ipsos-mori.com/Assets/Docs/Polls/gay-marriage-poll-topline-december-2012.pdf>

The Equality Network commissioned a Scotland-wide opinion poll from Ipsos-MORI, conducted in June 2012. The poll asked whether people agreed or disagreed with the statement “Religious organisations should have the right to decide for themselves whether or not to conduct same-sex marriage.” 68% agreed, and 21% disagreed, with 10% neither agreeing nor disagreeing. This represents a three to one agreement in Scotland with the principle of freedom of religious choice that is enshrined in the bill’s opt-in requirements. More details of the poll may be found here:

<http://www.ipsos-mori.com/researchpublications/researcharchive/2978/Majority-of-Scots-support-gay-marriage.aspx>

Registrars

It was suggested in oral evidence that, in the Netherlands, civil registrars have a statutory opt-out available if they do not wish to conduct same-sex marriages (Dr Gordon Macdonald, 12th Sept, OR col 1446). That is not in fact the case. There is no statutory opt-out in the Netherlands; however, as will also be the case in Scotland, local authorities there make their own arrangements for registrar cover for same-sex marriages, and manage their registrars accordingly.

Given the relatively small number of civil partnerships (around 3.5% of the number of civil marriages), not all registrars in Scotland have conducted them. It is for local authorities to manage their registrars to provide a good overall service, taking into account individual employees’ preferences, and the same will apply for same-sex civil marriages. No problems have arisen with the management of civil partnership registration in any part of the Scotland, and, as the Scottish Government has also said, we would expect the same good management to apply to same-sex civil marriages. We note that there is no call from the Association of Registrars of Scotland for a statutory opt-out, and the suggestion is also opposed by a number of local authorities.

Education

John Brown of the Catholic Education Commission (26th Sept, OR col 1548) expressed a concern that a teacher in a Catholic school who stated that the Catholic Church believes marriage to be between a man and a woman only, would be unprotected. However, the bill does not affect the faith content of the curriculum in any way. The Scottish Government have clearly said “the faith content at Roman Catholic schools is decided by the Scottish Catholic Education Service on behalf of the Bishops’ Conference of Scotland. The Government is committed to maintaining this” (Policy Memorandum to the bill, paragraph 124).

The Equality Network’s view is that it is appropriate for religious education to present and discuss the views of religious bodies on marriage, and in Catholic schools there will be a particular focus on the Roman Catholic faith. As Mr Brown acknowledged, that is a separate matter from presenting the facts about the law on marriage. Underlying all of this is the need to ensure that all pupils, whatever their family arrangements, are respected and supported.

Michael Calwell of the Family Education Trust asked for a number of statutory provisions (26th Sept, OR col 1546). These include a statutory obligation on schools to inform parents if any teaching about marriage conflicts with their views, and a right for parents to withdraw children from such teaching. That is clearly impractical, whether in the case of same-sex marriage or other issues on which there is a variety of strongly-held views, such as divorce. Some parents will disagree with divorce; should they have a right to be informed in advance of teaching about Henry VIII of England so they can withdraw their children? If a pupil asks what divorce is, what abortion is, or what same-sex marriage is, must the teacher say “I can’t answer that unless all your parents agree in advance”?

Mr Calwell also asked for a statutory obligation for teaching to comply with parents’ understanding of the nature and purpose of marriage. The obvious problem with that proposal is that parents of different pupils in the same class will have very different views on this (and some may be same-sex couples). How are such differences to be accommodated? Surely the answer is: just as they are at the moment on issues such as divorce and unmarried parenthood, through teachers being professional and sensitive to the situation of different pupils. The bottom line is that teachers are not there to promote their own personal opinions, or those

of one set of parents, but to support and facilitate the development of all the young people in their care.

The public sector equality duty

It has been suggested in evidence that the public sector equality duty in section 149 of the Equality Act 2010 might be used by public bodies as a reason to withhold services or partnership work from religious bodies that decline to conduct same-sex marriages, or to discriminate against organisations or employees who do not agree with same-sex marriage.

The equality duty is fairly weak; it requires only that public bodies give “due regard” to the need to advance equality of opportunity and to foster good relations between different communities. It covers all the equality strands to the same extent, and so applies to religion and belief as well as to sexual orientation. Treating a person or organisation detrimentally because of their religious belief would clearly not advance equality of opportunity on grounds of religious belief, nor would it be likely to foster good relations between people of religious belief and others.

More directly, all public bodies are subject to two much stronger legal requirements, which effectively trump the public sector equality duty. Public bodies are directly prohibited by the Equality Act 2010 from acting detrimentally towards any member of the public or any employee, because of their religious belief. And under the Human Rights Act 1998, a public body must not breach the ECHR rights of any person, including the right to freedom of religion provided by article 9. As the Committee has heard (Karon Monaghan, 19th Sept, OR col 1499), the Human Rights Act (in section 13) requires particular regard to be had to the importance of the article 9 rights of religious organisations, effectively placing greater emphasis on this right than on other rights.

The Equality Impact Assessment

It has been suggested that the Scottish Government’s Equality Impact Assessment (EQIA) for the bill says that the protections for organisations and people that oppose same-sex marriage cannot be guaranteed. We would respectfully point out that that view does not form any part of the assessment results in the EQIA.

The words “Concerns that Government reassurances on religious and belief bodies and celebrants not having to take part in same sex ceremonies could not be guaranteed, as there could be challenges on human rights grounds” appear in stage 2 (evidence gathering and consultation) of the EQIA, under the heading “Some consultation responses also made other points, as outlined below”. They are the view of some consultees, not the view of the Scottish Government or the result of the assessment.

Stage 3 (assessment) of the EQIA concludes that the overall effect of the bill on religion and belief equality will be positive. Stage 4 (decision making) of the EQIA sets out the actions that the Government has taken in response to these concerns, including protecting religious bodies and celebrants by the opt in system and the amendments to the Equality Act 2010. The Committee has heard evidence from expert lawyers about those protections, including that it is “inconceivable” that a human rights challenge to the protections could succeed (Karon Monaghan, 19th Sept, OR col 1501).

The general approach to statutory “protections”

There is a clear difference of view on whether additional statutory “protections” related to same-sex marriage are needed for teachers, registrars and others. We would point out that those calling for these additional protections are mainly organisations that are opposed to the bill proceeding at all. In contrast, the organisations that represent teachers, registrars and others, such as the EIS, the Association of Registrars of Scotland, and UNISON, do not think such provisions are either needed or beneficial.

The Equality Network believes that the evidence that the Committee has heard clearly indicates that the necessary protections are already provided. Our clear view is that any new statutory provision which singled out same-sex marriage as particularly sensitive or controversial, and something to which opposition should be “protected”, would undermine the key purpose of the bill, which is to bring about sexual orientation equality in the law. Such a provision would stigmatise LGBT people and would send a signal that discrimination against LGBT people is acceptable and is endorsed by the Parliament. It would in effect return us to the days of “section 28”, and would be a huge step backwards.