

Civil Partnership (Scotland) Bill

Briefing on stage 2 amendments

Equality Network, 30 Bernard St, Edinburgh, EH6 6PR
Email: tim@equality-network.org

The Equality Network welcomes the stage 2 amendments proposed to the Civil Partnership Bill. We urge members of the Equalities and Human Rights Committee to support all the amendments.

Amendments 1 and 2

Amendment 1 addresses an issue raised at stage 1 concerning the interim provision of legal protection to people in mixed-sex civil partnerships registered outwith Scotland, in section 3 of the bill. Amendment 2 is a technical consequential amendment.

The Committee heard from Martin Loat of the Equal Civil Partnerships campaign, and others, that for the law to temporarily treat such civil partnerships as marriages is problematic because people in this situation have specifically chosen to register a civil partnership instead of marrying. There was a concern that mixed-sex civil partners, if they came to Scotland during the interim period, would find that they were in effect being told that they were in fact married here.

Amendment 1 makes clear that, although legal protections are provided during the interim period by, in law, treating the civil partnership as if it were a marriage, this does not prevent the partners from presenting themselves as civil partners, and not married.

If they had to complete an application form, for example, that asked their relationship status, they would answer civil partnership.

The amendment gives reassurance to people in this situation that they will not find themselves required to incorrectly define or describe themselves as married, if they come to Scotland during the interim period.

Nevertheless, couples who find themselves in this situation, and who need to access legal protections, will be treated in the legal processes

as if they were married. That gives them needed protections, but is not ideal. It is important therefore that the interim period between the commencement of section 3, and the commencement of the rest of the bill, is as short as possible. In the stage 1 debate on 19th May, the Cabinet Secretary committed to ensure this, and further information on the likely timetable would be welcome.

Amendments 10 and 11

At stage 1, several witnesses expressed concern that the bill lacks a provision enabling couples who are married to change their marriage to a civil partnership. Provision for change the other way already exists in the Marriage and Civil Partnership (Scotland) Act 2014.

It is clear that there are some mixed-sex couples who have married, who would have preferred a civil partnership, had it been available to them at the time. Same-sex couples who registered a civil partnership before marriage was available to them can change their civil partnership to a marriage, without losing the continuity of the relationship and the legal protections. It is only right that mixed-sex couples who have married before civil partnership becomes available to them should also be able to change.

Given that a couple's preference for marriage or civil partnership is an intensely personal one, and preferences differ, it would be discriminatory to allow change in one direction but not the other.

The Equality Network therefore welcomes amendment 10. It enables the government, by regulations, to provide for marriages to become civil partnerships. It is also welcome that the amendment allows that to be done in two ways, just as with changes in the other direction. Those are by the couple registering a civil partnership in the usual way, or by an administrative process, which will presumably only be available to those whose marriage is registered in Scotland.

People's needs can change – for example a couple in a mixed-sex civil partnership may join a religion that does not recognise civil partnership, and so wish then to change their civil partnership to a marriage. Or for example, a couple in a same-sex marriage who join a religion that does not recognise same-sex marriage, but does recognise same-sex civil partnership, may wish to change their marriage to a civil partnership. This could happen at any time in the future.

It is therefore crucial in our view that change in either direction (marriage to civil partnership, and civil partnership to marriage) is available to both mixed-sex and same-sex couples, and without time limit.

One of the issues that has been raised is whether there should be a limit on the number of changes that can be made to one relationship. The Equality Network would urge that if a limit is applied, it should allow at least for a couple to make two changes. For example, a mixed-sex couple may change their marriage to a civil partnership after this bill comes into effect, because that is what they have always wanted. Years later they may move to a country that does not recognise civil partnership, and so may find they need to change back to a marriage so that their family relationships are recognised in that country.

Amendment 11 deals with civil partnerships that have been created by conversion from marriage in other parts of the UK. It provides a regulation-making power to ensure that such civil partnerships are recognised in Scotland as civil partnerships. Such recognition is clearly needed and the Equality Network welcomes the amendment.

Amendments 3, 7, 8 and 9

These amendments correct minor omissions in the consequential amendments to family law in schedule 2 of the bill, and we welcome them.

Amendments 4, 5 and 6

These amendments correct an omission in the consequential amendments to the Gender Recognition Act, in schedule 2 of the bill. They follow the principle of bringing the details of the gender recognition process for civil partners into line with the already existing process for married people. The Equality Network therefore welcomes the amendments.